"MUSCLING-IN" THE SHALE ERA: RECONCILING MIPA AND DRAINAGE THROUGH A LEGISLATIVE AMENDMENT

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ABSTRACT

The state of Texas has been a leader in oil and gas production since the industry's earliest days. Its friendly regulatory system and abundant natural resources have allowed it to flourish in this regard. In turn, Texas has benefited dramatically from this production and so have its schoolchildren through state-owned royalty funds. But what if one were to tell you that Texas's regulatory system is not as friendly as it may seem?

Then that person would be wrong because Texas's oil and gas regulatory scheme has enabled it to be the top producer in the country; however, that person might not be as wrong as it may initially seem. One could point out that Texas has recently condemned over 80,000 miles worth of its own minerals to remain in place, even if oil and gas production occurs directly adjacent. These 80,000 miles are state-owned riverbeds that cannot be produced without pooling adjacent lands to form a unit. Production royalties from state-owned lands, specifically riverbeds, fund all Texas public schools.

I know what you are thinking. What? How? Why? What about the poor schoolchildren? Well, like most oil and gas related things, it is complicated. But this Comment serves to provide you with the answers. It contends that Texas's unique force-pooling statute, the Mineral Interest Pooling Act (MIPA), which intends to promote efficient oil and gas production by allowing irregular tract owners a way to "muscle-in" adjacent units to join production, could save these condemned minerals and prevent waste. However, under its current judicial and administrative interpretation relying on drainage, MIPA does not have this effect. In fact, its interpretation relying on drainage directly contributes to this waste.

This reliance on drainage is especially concerning considering most new oil and gas production in Texas comes from unconventional drilling into

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shale rock that is less likely to drain adjacent tracts, increasing the potential for mineral stranding. The pervasiveness of unconventional shale drilling warrants legislative change to promote the Act in this context, especially because the Act's spacing requirements are too small for it to be used in this fashion. Accordingly, this Comment asserts that the Texas Legislature should amend MIPA to better promote its use as a vehicle to save stranded minerals, especially because this amendment would increase funding for Texas public schools.

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I. INTRODUCTION

Texas owns royalties on over 80,000 miles of minerals underlying its meandering riverbeds.[1] Recently, it condemned these riverbeds from oil and gas production, even if production occurs in the immediate area.[2] Specifically, the Texas Supreme Court held that these minerals should remain in place until they are drained, which, at that point, would enable the state to begin collecting revenues on its royalties.[3] This royalty revenue would contribute to funding all Texas public schools.[4] So, to secure revenue from these royalties, the state must wait patiently for an operator to lease its minerals and begin producing.[5]

Often, operators do not include these riverbeds in their drilling and production plans.[6] This proposition is supported by the approximately 150 voluntary pooling offers made by the General Land Office (GLO), which manages all state-owned land, through its agent-lessee to adjacent operators.[7] Pooling offers propose combining certain lands to form a unit to meet the regulatory spacing requirements of oil and gas wells.[8] These offers are attempts to secure production from these state-owned riverbeds through their inclusion in an adjacent unit.[9] Otherwise, they would remain unproduced.[10] Without successful voluntary pooling negotiations, the state must produce these riverbeds themselves.[11]

The state cannot produce these minerals without a pooled unit for two reasons.[12] First, modern drilling technology cannot drill through a

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1. *See* Brief of Amicus Curiae the Texas General Land Office in Support of Petitioner's Motion for Rehearing at 2, Ammonite Oil & Gas Corp. v. R.R. Comm'n of Tex., 698 S.W.3d 198 (Tex. 2024) (No. 21-0135) [hereinafter GLO Brief].

2. *See Ammonite*, 698 S.W.3d at 201; *see also infra* Part III (detailing how MIPA's current interpretation requiring drainage ends the Act's use, which will lead to waste).

3. *See Ammonite*, 698 S.W.3d at 208–12 (holding that a riverbed lessee could not muscle-in to form a force-pool under MIPA because the adjacent unit did not drain its tract).

4. GLO Brief, *supra* note 1, at 2 n.1 ("The Permanent School Fund [(PSF)] is a perpetual endowment fund created to support and maintain an efficient system of public free schools for present and future generations of Texas school children. The [PSF] consists of the surface and mineral estates in public land that the Texas Constitution and the Texas Legislature dedicated for the support of the Texas public schools. Included within the public land dedicated to the [PSF] are the navigable rivers and waterways.") (internal citations omitted).

5. *See id.* at 2 ("Virtually all the [state's] minerals underlying . . . more than 80,000 miles of navigable rivers and waterways must be pooled with adjacent tracts to be produced.").

6. *See Ammonite*, 698 S.W.3d at 215 (Young, J., dissenting).

7. *Id.*

8. HOWARD R. WILLIAMS & CHARLES J. MEYERS, MANUAL OF OIL AND GAS TERMS 894 (Patrick H. Martin & Bruce M. Kramer, eds., 18th ed. 2021) (defining pooling agreement).

9. *See infra* notes 12–21 and accompanying text (discussing that riverbeds must often be pooled with adjacent tracts to be produced).

10. *See infra* notes 12–21 and accompanying text (noting that pooling is essentially required for production of riverbeds).

11. *See supra* notes 2–11 and accompanying text (detailing the importance of pooling).

12. *See* Ammonite Oil & Gas Corp. v. R.R. Comm'n of Tex., 698 S.W.3d 198, 205 (Tex. 2024) (noting testimony where the expert "had not 'seen an instance where an operator has been able to drill a

meandering riverbed.[13] The meandering nature of the riverbed is too challenging for even the most modern directional drilling techniques.[14] Modern directional drilling techniques are not precise enough to meet riverbeds' challenging and meandering nature.[15]

Second, it is unlikely that the state would receive a drilling permit to drill along the meandering riverbed—and even if it did, technology would not allow for this drilling.[16] The state would likely be denied this drilling permit because most riverbeds do not meet the requirements to secure a permit.[17] Specifically, the irregular nature of riverbeds, as they meander and change in size over time, would create difficulty in determining the exact dimensions contained within the permit.[18] Also, the riverbed dimensions would likely be too small to receive a drilling permit.[19] To secure a drilling permit, certain sizing requirements must be met.[20] Irregular tracts like riverbeds cannot meet these requirements, and even if the state received a spacing exception, modern drilling technology could not drill through a meandering riverbed.[21]

A problem occurs when adjacent operators deny the state's attempts at voluntary pooling.[22] Because the state cannot produce these riverbeds without a pooled unit, it must rely on the adjacent operator accepting its offers.[23] But if the adjacent operator declines, these riverbeds are bound to remain in place, even if the adjacent operator produces directly next to the riverbed.[24] Only one option is left available to the state to secure oil and gas production from these riverbeds—the Mineral Interest Pooling Act (MIPA).[25]

MIPA is Texas's unique "compulsory voluntary pooling act" that was designed to promote efficient production from small or irregular tracts, like

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horizontal well that meanders along the course of the river'"); GLO Brief, *supra* note 1, at 2–5 (discussing that lessees would need to secure spacing exceptions to drill on such a narrow tract without pooling).

13. *See Ammonite*, 698 S.W.3d at 205.

14. *See id.*

15. *See* GLO Brief, *supra* note 1, at 4–5.

16. *See id.*

17. *See id.*

18. *See id.*

19. *See id.*; TEX. ADMIN. CODE §§ 3.37–38, 3.86.

20. TEX. ADMIN. CODE §§ 3.37–38, 3.86.

21. *See supra* notes 12–15 and accompanying text (discussing the difficulty of drilling in narrow, meandering riverbeds).

22. *See generally supra* notes 1–21 and accompanying text (discussing that the state often relies on pooling for production of riverbeds).

23. *See generally supra* notes 1–21 and accompanying text (detailing the state's need for pooled units for riverbed production).

24. *See* GLO Brief, *supra* note 1, at 5; Ammonite Oil & Gas Corp. v. R.R. Comm'n of Tex., 698 S.W.3d 198, 201 (Tex. 2024).

25. GLO Brief, *supra* note 1, at 5 ("MIPA is the *only* tool to prevent small, irregular tracts from being stranded. Riverbed tracts are precisely the kind of small, irregular tracts MIPA was created to protect.") (emphasis in original).

riverbeds.[26] It allows these tracts to "muscle-in" adjacent units to participate in production if certain conditions are met.[27] By muscling-in adjacent units, small or irregular tracts can efficiently participate in production by joining production immediately adjacent.[28] Otherwise, these tracts could not be produced at all because of technical and regulatory limitations.[29]

While MIPA was designed to empower small or irregular tract owners to participate in production efficiently, its current interpretation does not have that effect.[30] Its current interpretation focuses on drainage, which significantly limits small or irregular tract owners' ability to muscle-in adjacent units to participate in production under the Act.[31] This reliance on drainage significantly limits MIPA because production from properly spaced wells will not drain adjacent tracts, and this lack of drainage will preclude the small-tract owner's ability to muscle-in.[32] This statement is especially true in unconventional shale fields—the most common fields developed in the modern oil and gas industry—where the formations are tight and impermeable, and drainage from adjacent tracts is less likely to occur.[33] Because of this reliance on drainage, MIPA will rarely be successfully invoked, and its absence will lead to physical waste by stranding, especially regarding Texas riverbeds.[34]

Accordingly, this Comment asserts the Texas Legislature should amend MIPA to address drainage.[35] This amendment promoting MIPA's use will result in less physical waste as irregular tracts like riverbeds will no longer be stranded around adjacent production.[36] This amendment, in turn, would

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26. *See* 3 OWEN L. ANDERSON ET AL., TEXAS LAW OF OIL AND GAS § 12.1[B], (LexisNexis Matthew Bender 2025) (internal quotations omitted); *see also* John McFarland, *Texas Riverbeds and the Mineral Interest Pooling Act*, OIL & GAS LAW. BLOG (Jan. 26, 2022), https://www.oilandgaslawyerblog.com/texas-riverbeds-and-the-mineral-interest-pooling-act/ (noting that the Act's design seeks to encourage pooling of irregular tracts).

27. *See* ANDERSON ET AL., *supra* note 26, § 12.3[C][1].

28. *See id.*

29. *See supra* notes 12–21 and accompanying text (explaining how the tracts are not produced due to limitations).

30. *See* Ammonite Oil & Gas Corp. v. R.R. Comm'n of Tex., 698 S.W.3d 198, 208–12 (Tex. 2024); Ronnie D. Blackwell, *The Mineral Interest Pooling Act: A Case Study of the Last Five Years*, 43 STATE BAR OF TEX., OIL, GAS & ENERGY RES. L. SEC. REP. 22, 36–37, 41–42 (2019) [hereinafter Blackwell II].

31. *See Ammonite*, 698 S.W.3d at 208–10; Blackwell II, *supra* note 30, at 36–37, 41–42.

32. *See infra* Part III (discussing that MIPA will rarely be used to muscle-in when its interpretation relies on drainage).

33. *See* GLO Brief, *supra* note 1, at 8–9; *see also infra* notes 50–57 and accompanying text (discussing the unlikelihood of drainage from adjacent tracts due to necessary use of expensive, new technology to extract oil from reservoirs with low permeability and the application of modern well-spacing rules intended to prevent drainage).

34. *See infra* Part III (discussing that without MIPA, small or irregular tract owners will have no means of producing their tract).

35. *See infra* Section III.D (detailing the specific amendments to Texas Natural Resources Code Section 102.011).

36. *See infra* Section III.B (noting that if a small or irregular tract can only be produced through a pooled unit and can add more value than cost to a unit, a MIPA unit should be established to prevent waste).

increase funding for all Texas public schools.[37] Part I of this Comment introduces the problem of irregular tracts, like state-owned riverbeds, being stranded around production, and briefly discusses how the legislature can amend MIPA to allow efficient production from these irregular, stranded tracts.[38] Part II discusses the interplay between MIPA and drainage, especially in light of the Shale Revolution, well-spacing rules, and recent administrative and judicial decisions applying MIPA.[39] Part III argues that the Texas Legislature should amend MIPA to address drainage, which, in turn, would promote muscling-in adjacent units and prevent waste.[40] Part IV concludes by briefly recalling why the Texas Legislature should amend MIPA.[41]

II. INTERPLAY BETWEEN MIPA AND DRAINAGE

Drainage and MIPA have had an interesting relationship develop over time. Historically, drainage played a role in MIPA's enactment.[42] The Texas Legislature enacted MIPA in the 1960s in response to a judicial decision limiting production from wells on small or irregular tracts.[43] Under the rule of capture, these tract owners were entitled to drill and produce their land, even if their land was too small or irregular to meet well-spacing requirements.[44] To produce without the required spacing, the irregular tract would often apply for and receive a well-spacing exception.[45] By producing without requisite spacing, these tracts would drain from a radius larger than the size of the tract, thereby draining their neighbors.[46] This production, which resulted in uncompensated drainage, was eventually deemed unfair, and production from these small-tracts was limited through a "proration formula" (i.e., formula prescribing how much oil or gas a certain well can

37. *See supra* note 4 and accompanying text (discussing how Texas public schools are funded through the state's oil and gas royalties).

38. *See supra* Part I (discussing that state-owned riverbeds cannot be produced without a pooled unit, and that MIPA's current interpretation relies on drainage, which does not allow the Act to be used to produce these riverbeds).

39. *See infra* Part II (outlining drainage's relationship with MIPA and briefly discussing MIPA's history).

40. *See infra* Part III (arguing for an amendment to MIPA addressing drainage to best promote the Act's use as a vehicle to save stranded minerals in the Shale Era).

41. *See infra* Part IV (discussing how MIPA will lose its relevance in the Shale Era, leading to waste of state-owned minerals, if the Texas Legislature does not amend the Act).

42. *See* ANDERSON ET AL., *supra* note 26, § 12.1[A].

43. *See id.* (noting that "the Texas Supreme Court invalidated [a] proration[] formula[] that allowed substantial uncompensated drainage from one tract to another" before the legislature passed MIPA).

44. *See id.*; The rule of capture is a foundational rule in Texas oil and gas law that gives ownership of oil and gas to the person who owned the wells that produced the oil and gas, even if the oil and gas migrated from adjoining lands. WILLIAMS & MEYERS, *supra* note 8, at 1055–57.

45. *See* ANDERSON ET AL., *supra* note 26, § 12.1[A] ("[Texas's] legal framework consisted of a fairly liberal Rule 37 exception process for obtaining well permits on small-tracts . . .").

46. *See id.*

produce over time).[47] This new formula made producing small-tracts uneconomic, and the Texas Legislature eventually decided that Texas needed some sort of compulsory pooling act to best promote efficient production from small or irregular tracts.[48] Thus, the legislature enacted MIPA in 1965.[49]

Now, drainage from adjacent tracts is less relevant than ever because of significant production in tight shale rocks.[50] Most modern oil and gas drilling in Texas occurs unconventionally in this shale rock.[51] Unconventional drilling refers to utilizing expensive techniques, like fracking and horizontal drilling, to enable commercial oil and gas production from tight formations that could not be commercially produced otherwise.[52] Accordingly, the term "unconventional" refers to using fracking and horizontal drilling to commercially produce shale geologic formations.[53]

In addition to the tight nature of the shale rock not being conducive for drainage, modern well-spacing rules are more developed than in the past.[54] These well-spacing rules are designed to prevent drainage from adjacent tracts.[55] In other words, the design of these well-spacing rules ensures that

47. *See id.* Proration formulas have an interesting history in Texas's oil and gas industry. *See generally* DANIEL YERGIN, THE PRIZE: THE EPIC QUEST FOR OIL, MONEY & POWER 249–59 (Simon & Schuster 1990) (discussing the inception of proration formulas in Texas). They served as conservation measures to control the oversupply of oil caused by the initial development of the East Texas Oil Field in the 1930s. *Id.* As the industry progressed, proration formulas were phased out as a conservation measure. *Id.* For more information on the inception of proration formulas in Texas, *see generally id.*

48. *See* ANDERSON ET AL., *supra* note 26, § 12.1[A].

49. *Id.*

50. *See Texas State Energy Profile*, U.S. ENERGY INFO. ADMIN., https://www.eia.gov/state/print.php?sid=TX (last visited Aug. 26, 2025). ("Most of the recent growth in Texas natural gas production came from the Eagle Ford shale and the Permian Basin . . . [where] advances in horizontal drilling and hydraulic fracturing technologies" improved production from shales and other low-permeability formations).

51. *See Permian Basin*, FED. RSRV. BANK OF DALL., https://www.dallasfed.org/research/energy11/permian (last visited Aug. 26, 2025) ("The share of rigs dedicated to horizontal drilling has continued rising over time [in the Permian Basin], reaching 90[%] in 2018 and 95[%] in 2022.").

52. *See* Ammonite Oil & Gas Corp. v. R.R. Comm'n of Tex., 698 S.W.3d 198, 201 ("In an impermeable shale formation, the minerals drain only through hydraulically created fractures in the formation radiating out from a horizontal wellbore over a shorter distance."); *see also* WILLIAMS & MEYERS, *supra* note 8, at 793–94 (defining oil shale as "[a] formation containing hydrocarbons which cannot be recovered by an ordinary oil well"); *Conventional vs Unconventional Resource*, ENERGY EDUC., https://energyeducation.ca/encyclopedia/Conventional_vs_unconventional_resource (last visited Aug. 26, 2025) (distinguishing conventional from unconventional resources by the difficulty of extraction).

53. *See The U.S. Shale Revolution*, STRAUSS CTR. FOR INT'L SEC. & L., https://www.strausscenter.org/energy-and-security-project/the-u-s-shale-revolution/ (last visited Aug. 26, 2025) (discussing how the "Shale Revolution" refers to combining fracking and horizontal drilling to significantly increase production from tight oil and gas formations); *see generally Texas State Energy Profile*, *supra* note 50 (providing an overview of oil and gas production in Texas).

54. Ronnie Blackwell, *Forced Pooling Within the Barnett Shale: How Should the Mineral Interest Pooling Act Apply to Units with Horizontal Wells?*, 17 TEX. WESLEYAN L. REV. 1, 21–22 (2010) [hereinafter Blackwell I].

55. *See id.*

the area within a drilling unit is actually being drained.[56] Therefore, properly spaced wells in shale fields will not drain adjacent tracts.[57]

Notwithstanding that drainage from adjacent tracts is much less prevalent than in the past due to unconventional drilling and development of well-spacing rules, both the Railroad Commission, which regulates all oil and gas production in Texas and administers contested MIPA hearings, and the Texas judiciary weigh it heavily when analyzing MIPA applications.[58] Specifically, drainage played an important role in the Commission's application of MIPA to shale fields,[59] which was eventually addressed by the Texas Supreme Court in 2024.[60] In this analysis, drainage is used as evidence that the small or irregular tract seeking to muscle-in an adjacent unit would add more benefit than cost to the unit through its inclusion.[61]

This reasoning is based on the idea that current production, evidenced by drainage, proves that the small or irregular tract can benefit the unit without adding costs.[62] Costs would be low in a drainage scenario because the existing wells are already producing that tract, precluding any well extension or rework costs.[63] In fact, drainage is considered the *only* evidence that the small or irregular tract would add benefit.[64] This Comment argues that analyzing only drainage ignores the possibility that the small or irregular tract's inclusion could add more benefit than cost to the unit if its inclusion yields more revenue over cost, even after existing well extensions or reworks.[65] By adding more benefit than cost, all parties would benefit from the tract's inclusion.[66]

A. Historical Context

In the spirit of oil and gas conservation, and to remedy the "evils which have plagued the Texas oil and gas industry for over thirty years," the Texas

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56. *See id.*

57. *See id.*

58. *See* Ammonite Oil & Gas Corp. v. R.R. Comm'n of Tex., 698 S.W.3d 198, 208, 208–12 (Tex. 2024); Blackwell II, *supra* note 30, at 36–40, 42 ("It appears the RRC will determine the MIPA unit is necessary to protect correlative rights, prevent waste, or prevent the drilling of unnecessary wells only if the applicant proves all tracts are being physically drained.").

59. Blackwell II, *supra* note 30, at 36–40.

60. *Ammonite*, 698 S.W.3d at 208, 210–12.

61. Blackwell II, *supra* note 30, at 36–37.

62. *See id.*

63. *See id.*

64. *Id.* at 36.

65. *See infra* Section III.A (discussing that a small-tract could add more revenue than costs associated with its inclusion in a unit even if the unit is not draining the small-tract).

66. *See* Ammonite Oil & Gas Corp. v. R.R. Comm'n of Tex., 698 S.W.3d 198, 225 n.15 (2024) (Young, J., dissenting) ("So, at that point, if you ultimately get recovery, huzzah—everybody gets paid . . . . There's increased recovery by everybody, which is what's contemplated.") (internal quotations omitted).

Legislature enacted MIPA.[67] Enacted in 1965, amended twice, and ultimately codified in 1977, this Act was meant to resolve the complicated situation regarding production from small or irregular tracts.[68] At first, and before MIPA's enactment, these tracts were permitted to drill their own wells, even without the requisite acreage.[69] Without the requisite acreage, production from these small or irregular tracts would drain their neighbors.[70]

Eventually, the Texas Supreme Court determined that this production "that allowed substantial uncompensated drainage from one tract to another," was unfair and inefficient.[71] The Court limited production from these small or irregular tracts through a stricter proration formula that made producing them uneconomic.[72] However, the limited proration formula for small-tracts created a new problem.[73] It made these tracts uneconomic to produce because the costs of drilling and operating a well were more than the newly-limited production revenues.[74] This uneconomic nature of small or irregular tracts led operators to exclude them from their drilling and developing plans.[75] These operators were banking on the fact they could secure a well-spacing exception and place the wells close to the small or irregular tract to drain their minerals without needing to compensate.[76] To conserve oil and gas by preventing the unnecessary drilling of offset wells and better protect small-tract owners from being drained at the hands of their neighbors, MIPA was enacted.[77]

Accordingly, there are two situations where MIPA would be used: its muscle-in and "urban development" contexts.[78] MIPA's urban development context developed because of shale production underneath city lots that were difficult and time-consuming to lease.[79] One of the main distinctions between

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67. Ernest E. Smith, *The Texas Compulsory Pooling Act*, 44 TEX. L. REV. 387, 423 (1966); TEX. NAT. RES. CODE §§ 102.001–102.112.

68. *See* ANDERSON ET AL., *supra* note 26, § 12.1[A].

69. *See supra* notes 42–47 and accompanying text (discussing production of small or irregular tracts before MIPA's passage).

70. *See* ANDERSON ET AL., *supra* note 26, § 12.1[A] ("For decades, this legal system benefitted the owners of small-tracts . . . by . . . let[ting] them produce more than the amount of original oil and gas in place underneath their tracts by draining from larger tracts nearby.").

71. Atl. Refin. Co. v. R.R. Comm'n of Tex., 346 S.W.2d 801, 811 (Tex. 1961); *see* ANDERSON ET AL., *supra* note 26, § 12.1[A].

72. *Atlantic*, 346 S.W.2d at 811; ANDERSON ET AL., *supra* note 26, § 12.1[A].

73. *See* ANDERSON ET AL., *supra* note 26, § 12.1[A]; Blackwell I, *supra* note 54, at 4–5.

74. *See* ANDERSON ET AL., *supra* note 26, § 12.1[A]; Blackwell I, *supra* note 54, at 4–5.

75. *See* ANDERSON ET AL., *supra* note 26, § 12.1[A]; Blackwell I, *supra* note 54, at 4–5.

76. *See* ANDERSON ET AL., *supra* note 26, § 12.1[A]; Blackwell I, *supra* note 54, at 5.

77. *See* Blackwell I, *supra* note 54, at 5 ("As a direct response to the harsh results *Atlantic Refining Co.* had on the small-tract owners, the Texas Legislature created MIPA to protect the small-tract owners from being denied the opportunity to pool their interest with large-tract owners who would otherwise drain the minerals from beneath the small-tract owner's land."); ANDERSON ET AL., *supra* note 26, § 12.1[A].

78. *See* Blackwell II, *supra* note 30, at 24, 29 (distinguishing the two types of MIPA applications as muscle-in and "standard compulsory MIPA" applications).

79. *See id.* at 29.

these two contexts is the person making the application.[80] In MIPA's muscle-in context, the small-tract owner would apply to get into a larger adjacent unit.[81] In contrast, the large operator would apply to force small city lots into its large urban unit in the Act's urban development context.[82]

Another key distinction is the purpose behind MIPA applications.[83] In the muscle-in context, the small-tract owner wishes to include their land in an adjacent unit to get production.[84] Alternatively, in the urban development context, the large operator wishes to include small city lots in their urban unit because it is time consuming to lease from owners of extremely tiny city lots and owners of these small city lots sometimes object to leasing on practical or moral grounds.[85] Arguments have been put forth that the Texas Legislature should amend MIPA to better promote its use for urban development in shale fields.[86] Accordingly, this Comment is the first to argue that MIPA should be amended to promote its muscle-in context in shale fields.[87] While this Comment's proposed amendment would indirectly promote MIPA's use in its urban development context as well, that context will not be the focus of this Comment because it has already been discussed at length.[88]

Nearly fifty years after MIPA's enactment, the commercialization of horizontal drilling and hydraulic fracturing techniques ushered in the Shale Revolution.[89] This revolution unlocked millions of shale oil and gas reserves previously considered technically or economically unsuited for production.[90] These reserves were believed to be unproductive due to the tight and impermeable nature of the shale rock, believed to preclude any commercial

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80. *See id.* at 24, 29.

81. *Id.*

82. *Id.*

83. *See id.* at 24, 29.

84. *Id.* at 24.

85. *See id.* at 29; *see also* Priscila Mosqueda, *The Holdouts*, TEX. OBSERVER, (Feb. 16, 2015, 11:07 AM) https://www.texasobserver.org/the-holdouts-three-texas-families-refused-sell-mineral-rights-fracking/ (detailing three scenarios where Texas families held out from leasing their rights to an exploration company).

86. *See generally* Blackwell I, *supra* note 54 (discussing MIPA's use in the urban development context); Blackwell II, *supra* note 30 (same); Emeka Duruigbo, *Small-Tract Owners and Shale Gas Drilling in Texas: Sanctity of Property, Holdout Power or Compulsory Pooling?*, 70 BAYLOR L. REV. 527 (2018) (same); Brady Paul Behrens, *Rule 37 Exceptions and Small Mineral Tracts in Urban Areas: An Argument for Incorporation Compulsory Pooling into Special Field Rules in Texas*, 44 TEX. TECH. L. REV. 1053 (2012) (same); Bret Wells, *Allocation Wells, Unauthorized Pooling, and the Lessor's Remedies*, 68 BAYLOR L. REV. 1, 49–56 (2016) (same).

87. *See infra* Part III (arguing for the Texas Legislature to amend MIPA to promote its muscle-in context that will, in turn, prevent physical waste by stranding).

88. *See supra* notes 79–85 and accompanying text (considering MIPA's use in urban development).

89. For a detailed analysis and historical documentation of the beginning of the Shale Revolution and its impact in Texas, see generally DIANA DAVIDS HINTON, SHALE BOOM: THE BARNETT SHALE PLAY AND FORT WORTH (2018).

90. Carole Nakhle, *U.S. Shale Oil and Gas: From Independence to Dominance*, GIS REPS., (Aug. 30, 2024) https://www.gisreportsonline.com/r/shale-oil/.

production.[91] However, the development of horizontal drilling and hydraulic fracturing enabled significant commercial production from these porous—filled with hydrocarbons—shale reserves.[92] In fact, most modern drilling and production comes from these shale reserves.[93] As a result, between 2014 and 2019, United States oil production increased by 5.3 million barrels per day, while its annual gas production grew by 223 billion cubic meters.[94] The Shale Revolution enabled the United States to become a net oil exporter for the first time since 1973.[95]

1. MIPA's Role as a Voluntary-Compulsory Pooling Statute

Many oil and gas producing states have compulsory pooling statutes similar to MIPA; however, MIPA is fundamentally different because its primary purpose is to promote voluntary pooling negotiations.[96] It delegates to the Commission the authority to compel parties to pool their tracts only if certain conditions are met.[97] The first threshold in a MIPA application is that the applicant must make "a fair and reasonable offer to pool voluntarily."[98] Because of this threshold requirement, MIPA is often called a "compulsory-voluntary pooling act" rather than a traditional compulsory pooling statute.[99] Additionally, "[b]ecause of this feature, most pooling in Texas occurs voluntarily, without resort to governmental process."[100]

Because the first step in a MIPA application is determining if the applicant's voluntary offer to pool was "fair and reasonable," what defines a fair and reasonable offer is important under Texas law.[101] Unfortunately, the

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91. *See supra* note 50 and accompanying text (detailing the increase in production from developing drilling technologies).

92. *See supra* notes 50–53 and accompanying text (showing the increased production in connection with shale reserves); *see also* WILLIAMS & MEYERS, *supra* note 8, at 793 (quoting Douglas Hale Gross, Annotation, *Grant, Lease, Exception, or Reservation of Oil and/or Gas Rights as Including Oil Shale*, 61 A.L.R.3d 1109, 1112 (1975)) ("It is estimated that America's western oil shale deposits contain at least 1,800,000,000,000 barrels of oil . . . .") (ellipsis in original).

93. *See supra* notes 50–51 and accompanying text (documenting production increase).

94. Nakhle, *supra* note 90.

95. *See id.*

96. *See* ANDERSON ET AL., *supra* note 26, § 12.3[B][1][a].

97. TEX. NAT. RES. CODE §§ 102.011–102.018.

98. *See id.* § 102.013; *see also* ANDERSON ET AL., *supra* note 26, § 12.3[B][1][a] (noting that an applicant must have "first . . . made a concerted effort to achieve pooling voluntarily"). There are several other requirements to successfully invoke MIPA. *See* ANDERSON ET AL., *supra* note 26 § 12.3. This Comment focuses on the Act's voluntary, fair, and reasonable offer, purposes of pooling, and acreage limitations requirements. *See infra* Section II.A.1 (discussing some of MIPA's requirements). For a detailed discussion on the requirements not discussed in this Comment, *see generally* ANDERSON ET AL., *supra* note 26, § 12.3.

99. *See* ANDERSON ET AL., *supra* note 26.

100. *Id.*

101. *See id.* § 12.3[B][1][a].

statute gives little guidance.[102] Generally, however, the Commission's jurisdiction to compulsory pool has been narrowly construed.[103]

The Texas Supreme Court has declined to specifically define the elements of a fair and reasonable offer.[104] Nevertheless, it has offered guidelines to analyze these offers.[105] In *Carson v. Railroad Commission*, the Court declared that "the offer must be one which takes into consideration those relevant facts, existing at the time of the offer, which a reasonable person would consider important when entering into a voluntary agreement concerning oil and gas properties."[106] There, an operator of a 642-acre proration unit proposed that royalty payments be allocated based on acreage contributed to the proration unit.[107] The proration unit had one producing well.[108] The Carsons, who owned royalties on the tract where the producing well was actually located, objected to the operator's proposal because it would reduce their interest in gross production by two-thirds.[109] Offering several factors, the Court declared that this proposal was unfair and unreasonable because it was made after the completion of the well on the Carsons' land, the operator did not negotiate with the Carsons, and the operator behaved in an overarching manner toward the Carsons.[110]

Under the guidance of *Carson*, determining whether an offer is fair and reasonable is a fact-based inquiry.[111] Accordingly, cases interpreting this provision of MIPA frequently focus on the factual circumstances surrounding the offers.[112] For instance, small-tract owners' offers have been found unreasonable for including unproductive acreage while providing no risk penalty, and because a well was not draining an offeror's tract.[113]

In addition to encouraging voluntary pooling, MIPA lists three purposes for forming a force pool.[114] These three purposes are to "avoid[] the drilling of unnecessary wells, protect[] correlative rights, [and] prevent[] waste."[115]

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102. *Id.*
103. *Id.* § 12.3[C][1].
104. *Id.* § 12.3[B][1][c].
105. *Id.*
106. Carson v. R.R. Comm'n of Tex., 669 S.W.2d 315, 318 (Tex. 1984).
107. *Id.* at 316.
108. *Id.*
109. *Id.*
110. *Id.*
111. *See id.*
112. *See* JOHN S. LOWE ET AL., CASES AND MATERIALS ON OIL AND GAS LAW 745 (8th ed. 2022) (first citing Am. Op. Co. v. R.R. Comm'n of Tex., 44 S.W.2d 149 (Tex. App.—Houston [14th Dist.] 1987, writ denied); then citing R.R. Comm'n of Tex. v. Broussard, 755 S.W.2d 951 (Tex. App.—Austin 1988, writ denied)).
113. *Id.* A risk penalty allows the operator to recover a certain percentage of the expenses before paying the muscled-in tract owner their share of production. WILLIAMS & MEYERS, *supra* note 8, at 1038 (defining "risk penalty").
114. TEX. NAT. RES. CODE § 102.011.
115. *Id.* Correlative rights in Texas oil and gas law refer to affording each landowner "the opportunity to produce his fair share of the recoverable oil and gas beneath his land . . . over a common reservoir of

A determination as to whether a forced pool would meet one of these three objectives is a conditional inquiry dependent on an offeror's offer being fair and reasonable.[116] Accordingly, if an offeror's offers were unfair or unreasonable, the Commission could not consider any of these purposes.[117]

MIPA was enacted to protect the correlative rights of small-tract owners and to prevent the minerals underneath small-tracts from being drained by neighboring tracts.[118] But it also lists two other independent purposes related to oil and gas conservation and efficient production.[119] These two purposes are to avoid drilling unnecessary wells and to prevent waste.[120] The interaction between these purposes in MIPA's application to horizontal drilling has resulted in some confusion.[121] Specifically, in some muscle-in applications, examiners have reasoned "that proof of 'waste' requires proof of drainage" because "the fact that oil or gas would remain in place [does] not amount to the 'ultimate loss of oil' required to merit a MIPA order on the basis of preventing waste."[122] However, in MIPA's urban development context, and in contrast with its muscle-in context, the Commission has granted MIPA orders "that force-pool when the large-tract applicant has shown that, without a MIPA unit, the minerals under its lease would not be developed because an unleased tract was in the well's proposed path."[123]

2. Properly Spaced Wells in Shale Fields Do Not Drain from Adjacent Tracts

Now that we are all experts on MIPA, it is time to briefly turn to drainage. The first thing one might think of when someone mentions the word "drainage" is Daniel Day Lewis screaming in Paul Dano's face before mentioning that he will drink his milkshake.[124] The second thing one might think of is the impermeable nature of the shale rock.[125] While Daniel Day Lewis's uncouth behavior towards Father Dano was pure fiction, the impermeable nature of the shale rock is very real.[126] In simpler terms, shale

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oil or gas." Elliff v. Texon Drilling Co., 210 S.W.2d 558, 582 (Tex. 1948); *see also* WILLIAMS & MEYERS, *supra* note 8, at 251–54 (defining "correlative rights").

116. *See* Ammonite Oil & Gas Corp. v. R.R. Comm'n of Tex., 698 S.W.3d 198, 209–10 (Tex. 2024).

117. *Id.*

118. *See* ANDERSON ET AL., *supra* note 26, § 12.1[A].

119. TEX. NAT. RES. CODE § 102.011.

120. *Id.*

121. *See* ANDERSON ET AL., *supra* note 26, § 12.3[A][6].

122. *Id.*

123. *Id.* This reasoning begs the question of why the lack of drainage is scrutinized more in MIPA's muscle-in context than its urban development context, especially because the Act was designed to help the small-tract owners muscle-in adjacent units. *See id.* After all, waste can still occur in the muscle-in context just the same as it occurs in the urban development context. *See id.* That is, the lack of drainage will result in oil and gas remaining in place. *See id.*

124. THERE WILL BE BLOOD (Paramount Pictures 2007).

125. *See* WILLIAMS & MEYERS, *supra* note 8, at 793–94 (defining "oil shale").

126. Ammonite Oil & Gas Corp. v. R.R. Comm'n of Tex., 698 S.W.3d 198, 201 (Tex. 2024).

rock is extremely tight, meaning that hydrocarbons cannot commercially flow through it without drillers utilizing unconventional techniques, like fracking and horizontal drilling.[127]

So, why should you care? Because the impermeable nature of shale formations and more developed well spacing and density rules largely preclude drainage from adjacent tracts as seen in the traditional sense, and this lack of drainage can lead to waste.[128] First, most modern oil and gas drilling in Texas occurs in shale fields, requiring unconventional techniques to recover hydrocarbons commercially.[129] These unconventional techniques are necessary to loosen up the tight rock and enable commercial production.[130] Without these expensive and specialized techniques used on the target area, hydrocarbons trapped in a shale field will remain in place.[131] Today, nearly all modern oil and gas wells drilled in Texas are unconventional wells.[132]

Second, well spacing and density rules are more developed than in the past, meaning drainage is less likely to occur from adjacent tracts.[133] For example, the Commission promulgated Rule 86 to supplement its traditional well spacing and density rules, which were enacted before the commercialization of hydraulic fracturing and horizontal drilling techniques.[134] To meet the shifting demands of the industry, the Commission promulgated Rule 86 to address horizontal well spacing specifically.[135] This rule established a mathematical formula that determines the size of a horizontal drilling unit.[136] The drilling unit will be based on the length of the horizontal lateral of the well.[137] Rule 86 assumes that the drilling unit should contain the area that the horizontal well will drain.[138] By enacting this rule, the Commission recognized that the differences between vertical and horizontal drilling required a new rule to govern spacing and local drainage, as the traditional rules did not apply adequately in this new context.[139]

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127. *See supra* notes 50–53 and accompanying text (describing the impermeability of shale formations).

128. *See* Blackwell II, *supra* note 30, at 36–37.

129. *See supra* notes 50–53 and accompanying text (discussing the increase in production from the Eagle Ford and Permian Basin shale fields).

130. *See supra* notes 50–53 and accompanying text (explaining how producers use horizontal drilling and hydraulic fracturing to increase production in shale fields).

131. *See supra* note 50 and accompanying text (describing the importance of unconventional drilling techniques for improving production in shale fields).

132. *See supra* notes 50–53 and accompanying text (providing statistical information regarding the increased use of horizontal drilling in Texas).

133. Blackwell I, *supra* note 54, at 21–22.

134. *Id.*

135. *See* Behrens, *supra* note 86, at 1060.

136. *See* TEX. ADMIN. CODE § 3.86.

137. *Id.*

138. Blackwell I, *supra* note 54, at 21–22.

139. *See* Behrens, *supra* note 86, at 1060.

In addition to Rule 86, the Commission promulgates specific field rules that modify Rule 86 to meet the geologic needs of each reservoir.[140] These rules "allow producers to implement field-specific well-spacing requirements in order to maximize production."[141] Producers establish field rules after they successfully drill a discovery well.[142] Many shale fields have specific field rules to cater to their unique geology, most notably their lack of permeability.[143]

Likewise, enforcing well-spacing rules in impermeable shale formations can lead to mineral stranding.[144] Wells will run up as close to adjacent tracts as legally permitted, creating a situation where hydrocarbons can be trapped in small spaces between wellbores or tracts.[145] Riverbeds are perfect examples of such small spaces.[146] Often, wells will be placed as close as applicable well-spacing rules allow to the riverbeds, and the subsurface formation's impermeable nature will result in hydrocarbons remaining under the riverbed.[147] Without voluntary pooling negotiations or MIPA, the hydrocarbons under these riverbeds will be "stuck" or "stranded" between adjacent production.[148]

B. MIPA's Application to Shale Fields

"Thousands of horizontal wells were drilled in Texas before MIPA's application to shale fields was first addressed by a court in 2021."[149] This case, the *Ammonite* decision, was issued at the appellate level in 2021 before the Texas Supreme Court issued its decision in 2024.[150] Through this case, the Texas Supreme Court reinforced the Commission's interpretation of MIPA relying on drainage.[151]

Before the *Ammonite* decision, the Commission had considered numerous muscle-in applications in the unconventional horizontal well context.[152] To that extent, Professor Blackwell summarized the

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140. *Id.* at 1061.

141. *Id.*

142. *Id.*

143. *See id.*

144. *See* Duruigbo, *supra* note 86, at 590–91.

145. *See* McFarland, *supra* note 26 (providing an image of the typical riverbed scenario where wells run up as close to riverbeds as possible without violating well-spacing rules).

146. *See id.*

147. *See id.*; GLO Brief, *supra* note 1, at 7 ("In the past decade, virtually all PSF mineral production has been from unconventional fracture treated (UFT) fields . . . where tight, low permeability shale formations . . . require hydraulic fracturing to stimulate the flow of hydrocarbons to the wellbore.").

148. *See supra* notes 3–25 and accompanying text (discussing the importance of pooling and the goal of MIPA to prevent small-tracts from being stranded).

149. ANDERSON ET AL., *supra* note 26, § 12.3[B][1][e].

150. Ammonite Oil & Gas Corp. v. R. R. Comm'n of Tex., 672 S.W.3d 33 (Tex. App.—San Antonio 2021, pet. granted), *aff'd on other grounds*, 698 S.W.3d 198, 208, 210–12 (Tex. 2024).

151. *Id.* at 209–12.

152. *See* Blackwell II, *supra* note 30.

Commission's treatment of the fair and reasonable offer requirement in ten dockets involving unconventional units, four of which involved muscle-in applications.[153] According to his research, an applicant attempting to muscle-in a larger unit had more difficulty obtaining a force-pooling order than an applicant attempting to use the act in the urban development context.[154]

Interestingly, the four muscle-in dockets Professor Blackwell analyzed all involved Ammonite Oil & Gas Corporation,[155] which is a company that "focuses on [acquiring] [s]tate riverbed leases and stranded [s]tate tracts, [and] getting them included in adjacent pooled units."[156] Ammonite attempts to pool these state-owned riverbeds into adjacent units to secure production from these tracts and make the unit more productive overall.[157] "Ammonite profits from its pooling, as does the [s]tate, which has greatly benefited from Ammonite's efforts."[158] At the time of the *Ammonite* decision, Ammonite owned "about [sixty] riverbed leases [with the GLO] . . . made 'nearly 150' pooling offers . . . and . . . worked out voluntary pooling agreements in all but four cases."[159]

Further, Professor Blackwell's research showed that the Commission typically puts great weight on the presence of drainage when considering a muscle-in application in two respects.[160] First, the Commission requires proof that the offeree will receive a benefit from the applicant's voluntary pooling offer.[161] To this extent, the Commission focuses on "whether the applicant's tract will be physically drained to provide additional hydrocarbons to the unit mineral owners."[162] The Commission's rationale is that "if the well is not actually draining the applicant's tract, then the tract is providing no benefit to the proposed MIPA unit, thus the offer is unreasonable."[163] Professor Blackwell notes that this reliance on drainage, coupled with practical factors relating to oil and gas development, "seems to create a difficult, if not impossible, challenge for a small mineral owner to force its way into a producing unit."[164]

Second, drainage has become increasingly important in proving that a MIPA unit is necessary to "(i) protect correlative rights; (ii) prevent waste;

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153. *Id.*

154. *Id.* This proposition begs the question as to why MIPA voluntary offers in its muscle-in context are scrutinized more than in its urban development context. After all, MIPA was enacted to promote small-tract owners muscling-in adjacent units. Duruigbo, *supra* note 86, at 529 n.5.

155. Blackwell II, *supra* note 30, at 24–28.

156. *Ammonite*, 698 S.W.3d at 202.

157. *See id.*

158. *Id.*

159. *Id.*

160. Blackwell II, *supra* note 30, at 36.

161. *Id.*

162. *Id.*

163. *Id.*

164. *Id.* at 36–37.

or (iii) avoid the drilling of unnecessary wells."[165] Specifically, the first muscle-in MIPA application discussed in Professor Blackwell's analysis was approved to protect correlative rights "because the applicant would otherwise be unable to produce the hydrocarbons under its tract, thus denying their right to produce its fair share of the hydrocarbons within a common reservoir."[166] In the next MIPA application analyzed, the Examiner reasoned that the minerals could be wasted in a similar fashion to the minerals in the first MIPA application.[167] Notwithstanding the Examiner's belief that a MIPA unit is needed to prevent waste and protect correlative rights, the Commissioners denied the application because, in their opinion, the MIPA unit would not achieve any of those objectives.[168] Finally, and unlike the first two applications analyzed, the Examiner determined that lack of drainage would not prove waste, and does not prove a correlative rights violation because the minerals could be produced later.[169] Contrary to prior decisions, the Examiner stated the "word 'drainage' does not have to be in the statute to be a relevant factor."[170] The progressive importance of drainage in the MIPA applications Professor Blackwell analyzed illuminates drainage's growing importance in the Commission's interpretation of the Act.[171]

The Commission's MIPA interpretation relying on drainage was eventually challenged at the Texas Supreme Court in 2024.[172] In *Ammonite Oil & Gas Corp. v. Railroad Commission of Texas*, the Court held that a riverbed lessee's offers were unfair and unreasonable because "they were based solely on [the adjacent operator's] wells as permitted, which did not drain Ammonite's riverbed tract, and Ammonite made no effort to show that it was possible for [the adjacent operator] to redo its drilling plans or extend existing wells to reach the riverbed."[173] There, Ammonite, like it typically did, leased a riverbed from the GLO and offered to include it in an adjacent producing unit.[174] The adjacent operator declined these offers on the ground that its units did not drain Ammonite's riverbed.[175] The Court reasoned that Ammonite's offers were thus unfair and unreasonable because they "required [Ammonite] to produce nothing and [the adjacent operator's] lessors to receive less, which the Commission could consider unfair on its face."[176] Further, after pointing to a similar conclusion a lower court reached in

165. *Id.* at 38.
166. *Id.* at 39.
167. *See id.*
168. *See id.*
169. *Id.* at 40.
170. *Id.*
171. *See id.*
172. *See* Ammonite Oil & Gas Corp. v. R.R. Comm'n of Tex., 698 S.W.3d 198, 210 (Tex. 2024).
173. *Id.* at 208.
174. *Id.* at 202.
175. *Id.*
176. *Id.* at 208.

Railroad Commission of Texas v. Broussard,[177] the Court noted that commentators, when discussing *Broussard*, observed that "[i]t is unfair to let an applicant share in production from a well that does not drain any oil or gas from the applicant's tract."[178]

Similarly, the Commission views drainage as the only evidence that the small or irregular tract could add more benefit than cost.[179] The Commission opts not to consider whether production from these small or irregular tracts would provide more benefit than cost after well extensions or reworks, a position this Comment urges the Commission to reconsider.[180] Professor Blackwell notes that:

> The [Commission's] analysis regarding 'Muscle-In' applications [has] changed drastically within the last five years. A once favorable solution for small-tract owners to participate in royalties and prevent their mineral tract from being stranded and inaccessible, has now become a practical impossibility; and the only thing that has changed is the RRC's interpretation of MIPA.[181]

III. MIPA WILL NOT BE USED, WHICH WILL LEAD TO WASTE, UNLESS THE TEXAS LEGISLATURE AMENDS NATURAL RESOURCES CODE SECTION 102.011

Focusing on drainage will result in almost no successful MIPA applications in the muscle-in context.[182] This reliance on drainage prevents the Act from accomplishing its purpose, which is allowing small or irregular tract owners to muscle-in adjacent units.[183] Small or irregular tract owners cannot muscle-in because properly spaced wells will not drain adjacent tracts.[184] This lack of drainage, combined with the Act's interpretation relying on it, will result in a lack of successful MIPA applications.[185] The lack of

177. *See* R.R. Comm'n of Tex. v. Broussard, 755 S.W.2d 951, 956 (Tex. App.—Austin 1988, writ denied) (upholding the Commission's dismissal of a force-pooling application on the basis that the offers were not fair and reasonable because the offeree's wells were not draining the offeror's land at the time the offers were made).

178. *Id.* (quoting ANDERSON ET AL., *supra* note 26, § 12.3[B][1]).

179. Blackwell II, *supra* note 30, at 36–37.

180. *See id.*; *infra* Part III (arguing for an amendment to MIPA for consideration of the benefits of producing small or irregular tracts).

181. *Id.* at 37.

182. *See Ammonite*, 698 S.W.3d at 208–12; *see also supra* Part I (discussing that the denial of voluntary offers and technical and regulatory limitations results in small or irregular tracts needing MIPA to produce their tract).

183. Duruigbo, *supra* note 86, at 529 n.5; *see also* McFarland, *supra* note 26 (stating the purpose of MIPA was to prevent wasting minerals underlying irregular tracts).

184. Blackwell II, *supra* note 30, at 36–37.

185. *Id.*

successful MIPA applications will lead to waste because small or irregular tracts will be stranded around adjacent oil and gas production.[186]

Therefore, the Texas Legislature should amend MIPA to address drainage, which, in turn, would promote efficient oil and gas production by "de-stranding" irregular tracts, like state-owned riverbeds.[187] Relying on drainage leads to waste because it will result in more denials of force-pooling orders that should be approved to prevent waste.[188] MIPA is often the only way to capture efficient production from small or irregular tracts.[189] By focusing on drainage, minerals will be wasted because MIPA applications will be denied for lack of drainage before the Commission properly considers whether the applicant tract would add more benefit than cost through its inclusion in the adjacent unit, even after well extensions or reworks.[190]

A. A MIPA Interpretation Focusing On Drainage Is Too Limited

The Texas Supreme Court and the Commission's interpretation relying on drainage effectively ends the Act's use in its muscle-in context because properly spaced wells will not drain adjacent tracts.[191] This lack of drainage, coupled with the Act's interpretation relying on it, will result in MIPA force-pooling applications being automatically denied without considering whether a small-tract could add more benefits than costs.[192] This reliance on drainage, in essence and application, condemns minerals under small-tracts like riverbeds to remain in place absent voluntary pooling negotiations.[193]

To maintain relevancy and to best promote efficient oil and gas production, the legislature should amend MIPA to explicitly address how the Commission should treat circumstantial facts like drainage.[194] Without an amendment containing this instruction, MIPA will not be used *at all* to

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186. *See infra* Section III.B (describing how a lack of successful MIPA applications will result in small or irregular tracts being stranded or "stuck" between adjacent production).

187. *See infra* Section III.B (arguing for an amendment to MIPA to better address drainage and promote efficient oil and gas production).

188. *See* Ammonite Oil & Gas Corp. v. R.R. Comm'n of Tex., 698 S.W.3d 198, 220–21 (Tex. 2024) (Young, J., dissenting).

189. *See supra* Part I (discussing how the denial of voluntary offers and technical and regulatory limitations result in small or irregular tracts needing MIPA to produce their tract).

190. *See Ammonite*, 698 S.W.3d at 220–221.

191. *See* Blackwell II, *supra* note 30, at 36–37; *see also* Brad Gibbs, *Muscled Out While "Muscling In": The Role of Actual Drainage in MIPA*, OLIVIA GIBBS PLLP (Aug. 2, 2024), https://oglawyers.com/muscled-out-while-muscling-in-the-role-of-actual-drainage-in-mipa/ ("[The *Ammonite* decision] appears to extract yet another tooth from the already toothless Mineral Interest Pooling Act."); *see also* GLO Brief, *supra* note 1, at 3 ("If rehearing is denied, the precedent created by [the *Ammonite*] decision could sound the death knell for MIPA in the modern era of tight shale and condemn-in-place a substantial portion of the PSF's riverbed acreage to the detriment of public education.").

192. *See* Blackwell II, *supra* note 30, at 36–37.

193. *See id.* at 37; *supra* Part I (discussing why minerals will be condemned in place absent a successful MIPA application or voluntary pooling negotiation).

194. *See Ammonite*, 698 S.W.3d at 220–22 (Young, J., dissenting).

prevent waste because its interpretation relying on drainage creates a practical impossibility to use it for any purpose other than protecting correlative rights.[195] This practical impossibility will result in inefficient oil and gas production, evidenced by physical waste by stranding.[196]

Additionally, relying on drainage for successful MIPA muscle-in applications unfairly shifts the bargaining power towards the adjacent unit operator and away from the small-tract owner attempting to muscle-in.[197] Relying on drainage destroys all bargaining power a small-tract owner has in these negotiations because, absent drainage, the operator can deny all voluntary offers without worrying about being force-pooled under MIPA.[198] Without the threat of MIPA force pooling, the small or irregular tract owner has no leverage, and the adjacent operator can deny all attempts at voluntary pooling.[199] These denials contradict MIPA's primary purpose of encouraging voluntary negotiations.[200] Even worse, a proper determination as to whether the forced pool would prevent waste, protect correlative rights, or prevent the unnecessary drilling of wells cannot be made under a fair and reasonable offer analysis that focuses on drainage.[201]

To clarify drainage's role in the MIPA process, the Act should be amended to note that drainage, or its lack thereof, should merely be considered as a relevant factor.[202] Drainage is evidence of a correlative rights violation and can be analyzed in that light when an applicant bases their application on that purpose.[203] However, drainage plays a different role when the application is based on preventing physical waste by stranding.[204] In this context, the lack of drainage would be a reason to force-pool the tracts because this lack of drainage is evidence that the tract is not being produced and is at risk of being wasted.[205]

Further, MIPA's fair and reasonable voluntary offer requirement should not limit the Commission's power to pool more than it already does.[206] Arguments have been made that there is no reason to limit the Commission's power to pool by requiring it to find that an applicant made a fair and reasonable voluntary offer.[207] These arguments are based on the idea that MIPA is a conservation statute "whose avowed purpose is to compel pooling

195. Blackwell II, *supra* note 30, at 36–37.

196. *See id.*; *see also supra* notes 144–48 and accompanying text (illustrating how riverbeds can be wasted without pooling).

197. *See Ammonite*, 698 S.W.3d at 221 (Young, J., dissenting).

198. *See id.*

199. *See id.*

200. *See supra* Section II.A (discussing the historical purpose of MIPA).

201. *See* Blackwell II, *supra* note 30, at 36–37.

202. *See Ammonite*, 698 S.W.3d at 221.

203. *See* TEX. NAT. RES. CODE § 102.011.

204. *See Ammonite*, 698 S.W.3d at 221–22.

205. *See id.* at 223–24.

206. *See* Smith, *supra* note 67, at 392–93.

207. *Id.* at 392.

in order 'to avoid the drilling of unnecessary wells, or to protect correlative rights, or to prevent waste.'"[208] Accordingly, the statute should not be so limited to where applications are dismissed before the Commission can properly determine if a force-pool would meet one of these objectives.[209] However, the statute's plain language refutes these arguments and expressly requires the Commission to consider whether an applicant's voluntary offers to pool were fair and reasonable.[210] Notwithstanding this statutory requirement, the same rationale underpinning these arguments supports that the Commission's fair and reasonable voluntary offer analysis should not be limited by drainage, especially considering drainage considerations will lead to waste.[211]

MIPA's role as a conservation statute is reflected in its language and history.[212] Limiting MIPA to only drainage scenarios will not allow it to conserve oil and gas properly because oil or gas will be left stranded.[213] These minerals will be stranded because MIPA is the only way to produce these small or irregular tracts, and relying on drainage does not allow operators to use the Act to muscle-in adjacent units.[214] To bolster MIPA's role as a conservation statute and to prevent waste by stranding, its fair and reasonable offer requirement should not be limited by drainage considerations.[215]

B. Minerals Will Be Wasted Unless the Texas Legislature Amends Texas Natural Resources Code Section 102.011

"Waste" is statutorily defined to include "physical waste or loss incident to or resulting from . . . *locating*, *spacing*, or operating a well or wells in a manner that *reduces* or *tends to reduce* the total ultimate recovery of oil or gas from any pool."[216] Thus, physical waste can result from inefficiently locating or spacing wells, reducing the amount of hydrocarbons recoverable from the reservoir.[217] In turn, the Commission is authorized to establish a MIPA unit to prevent waste.[218] It has the authority to establish a unit and pool interests within it to "avoid[] the drilling of unnecessary wells, protect[] correlative rights, or *prevent*[] *waste*."[219] "For over a century, the Commission has been charged with 'do[ing] all things necessary' to

208. *Id.*
209. *See id.*
210. TEX. NAT. RES. CODE § 102.013.
211. *See* Smith, *supra* note 67, at 392–93.
212. *See id.*
213. *See* Blackwell II, *supra* note 30, at 36–37.
214. *See id.*
215. *See* Smith, *supra* note 67, at 392–93.
216. TEX. NAT. RES. CODE § 85.046(a)(6) (emphasis added).
217. *See id.*
218. *Id.* § 102.011.
219. *Id.* (emphasis added).

'prevent[] . . . waste' of the [s]tate's oil and gas resources."[220] "[I]f there is waste, then pooling is on the table and is sometimes mandatory."[221]

Recall this Comment's brief discussion on how proper enforcement of well-spacing rules and the impermeable nature of shale rocks can lead to waste.[222] Drilling in shale fields can result in hydrocarbons being stuck between adjacent property lines and wellbores.[223] Riverbeds are perfect examples of such small or irregular tracts that tend to be stranded between adjacent production.[224] To participate in production, these irregular tracts must use MIPA to join adjacent production.[225] But under its current interpretation, MIPA cannot be used to this effect, resulting in minerals being left stranded, or stuck, between adjacent production.[226]

Including a small or irregular tract through a successful MIPA application will prevent waste if the small or irregular tract can only be produced through a pooled unit, and its benefits of inclusion outweigh the costs.[227] Currently, the Commission analyzes muscle-in applications in this manner but mistakenly only recognizes one benefit—current production evidenced through drainage.[228] This sole focus on drainage ignores the potential commercial benefit of including the small or irregular tract into an adjacent unit.[229] If a MIPA force pool is established where the small or irregular tract's inclusion would yield more revenue than cost, even after existing well extensions or reworks, then waste would be prevented.[230] Waste would be prevented because, without this pooled unit, the total recovery amount from the reservoir would decrease as hydrocarbons beneath the small or irregular tract would be bound to remain in place.[231]

Accordingly, force-pooling orders in the Shale Era should be entered to prevent waste precisely *because there is no drainage*.[232] Waste, by definition, necessarily requires no drainage, as no drainage indicates that the tract is not currently being produced and is at risk of being wasted, especially if there is

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220. Petitioner's Brief on the Merits at 33, Ammonite Oil & Gas Corp. v. R. R. Comm'n of Tex., 698 S.W.3d 198 (Tex. 2024) (No. 21-1035) (citing TEX. NAT. RES. CODE § 85.202(b)).

221. *Ammonite*, 698 S.W.3d at 213.

222. *See supra* Section II.A.2 (discussing how enforcing well-spacing rules in shale fields can result in hydrocarbons being stuck between adjacent property lines and wellbores).

223. *See supra* notes 144–48 and accompanying text (describing how minerals can be stranded under riverbeds).

224. *See supra* notes 144–48 and accompanying text (discussing why small-tract owners must pool their tracts to produce their minerals due to well-spacing rules).

225. *See supra* Part I (discussing why irregular tracts must resort to MIPA to benefit from production from their land).

226. *See* Ammonite Oil & Gas Corp. v. R.R. Comm'n of Tex., 698 S.W.3d 198, 208–12 (Tex. 2024).

227. *See id.* at 224–25 (Young, J., dissenting).

228. Blackwell II, *supra* note 30, at 36–37.

229. *See Ammonite*, 698 S.W.3d at 225 (Young J., dissenting).

230. *See id.* at 213, 220–21, 224–26 (Young J., dissenting); Blackwell II, *supra* note 30.

231. *See Ammonite*, 698 S.W.3d at 225.

232. *See id.* at 213.

production adjacent to it.[233] After all, the small or irregular tract owner in a tight shale formation is likely attempting to pool their tract in the first place because their tract is not being drained and, therefore, not produced.[234] Seeking drainage and production, the small-tract owner hopes to include their tract in nearby production through MIPA.[235] To deny this owner drainage and production because their land is not currently being drained misunderstands the purpose of the application and leads to waste.[236]

By focusing on the presence of drainage when determining if an MIPA claim would prevent waste, the Texas Supreme Court and Commission conflate the role drainage plays in protecting correlative rights with its role in preventing waste.[237] Specifically, drainage would be relevant when considering if a party's correlative rights are being violated, which is a separate consideration for forced pooling; however, the lack of drainage in the Shale Era does not necessarily indicate a lack of a reason to force pool.[238] In fact, the lack of drainage in itself is proof of potential waste, and the Commission should inquire further into the commercial viability of the potential forced pool to determine whether the small-tract's inclusion in the unit would add more benefit than cost.[239]

On the other hand, an operator could reenter the area and produce the small-tract's minerals later.[240] This later production refutes this Comment's claim that a small-tract's minerals would be stranded because they could be produced without that specific MIPA unit.[241] In other words, a MIPA application based on waste by stranding can always be refuted by the claim that the applicant's land could can be produced later, precluding the need for the small-tract to muscle-in that specific MIPA unit.[242]

However, this position is speculative.[243] It assumes that an operator will reenter that area, which the previous operator has mostly produced.[244] Even if later operations occur, this position relies on the assumption that the new operator would include the small-tract in their operations, unlike the previous operators.[245] In the abstract, this later-production theory could go on for an

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233. GLO Brief, *supra* note 1, at 6–7.

234. *See* McFarland, *supra* note 26 ("[MIPA] was passed to prevent mineral underlying small, irregularly shaped tracts from being wasted by production from adjacent wells.").

235. *See* GLO Brief, *supra* note 1, at 6–7.

236. *See id.*

237. *Ammonite*, 698 S.W.3d at 226 (Young, J., dissenting).

238. *See id.* at 213, 226.

239. *See id.* at 224–26.

240. *See id.* at 212 (majority opinion).

241. *See id.*

242. *See id.*

243. *See id.* at 223–24 (Young, J., dissenting).

244. *See id.*

245. *See supra* note 6 and accompanying text (discussing that most operators do not include small or irregular tracts in their operations).

infinite amount of time.[246] Assume in 1,000 years, a small-tract owner makes the tract's 100th MIPA application, hoping to finally secure production from their tract.[247] But this application fails, like the last ninety-nine, on the basis that it is not wasted because the tract could be produced later.[248] The minerals will continue to sit in place even as oil and gas production occurs around it.[249]

Accordingly, the problem of physical waste by the stranding of small or irregular tracts should be addressed when the opportunity presents itself.[250] When production occurs around a small or irregular tract, the Commission should entertain the technical and economic feasibility of including the small or irregular tract in an adjacent unit to prevent waste.[251] Of course, the small-tract owner must make a MIPA application and satisfy the Act's fair and reasonable offer requirement before the Commission makes this determination.[252] However, MIPA's fair and reasonable offer requirement should not be so limited that the Commission never makes this determination.[253] Otherwise, MIPA applications will *never* be approved to prevent waste.[254]

To truly prevent waste, the legislature must amend MIPA to clarify the confusing role drainage should play in MIPA applications.[255] Specifically, drainage should be used as evidence of a correlative rights violation, which is a basis for forming a force-pool under MIPA.[256] In the same vein, the lack of drainage should be used as evidence of potential waste, and further inquiry should be made about the potential force-pool's commercial viability and whether the forced pool is the only way for the applicant to benefit from production under their land.[257]

In other words, if the force-pool would not be commercially viable or the applicant could efficiently produce their tract through a spacing exception, a force-pool under MIPA would not be necessary to prevent waste or the unnecessary drilling of wells.[258] However, if the force-pool would be the only means to economically capture the minerals underlying the applicant's tract, then a force-pool should be established to prevent waste by stranding.[259]

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246. *See Ammonite*, 698 S.W.3d at 212.
247. *See id.*
248. *See id.*
249. *See id.*
250. *See id.* at 224–25 (Young, J., dissenting).
251. *See id.*
252. TEX. NAT. RES. CODE § 102.013.
253. *See Ammonite*, 698 S.W.3d at 221 (Young, J., dissenting).
254. *Id.*
255. *See id.* at 226 (discussing how the factual circumstance of drainage does not warrant the legal conclusion that a MIPA force-pool was not necessary).
256. TEX. NAT. RES. CODE § 102.011; *Ammonite*, 698 S.W.3d at 226 (Young, J., dissenting).
257. *Ammonite*, 698 S.W.3d at 225 (Young, J., dissenting).
258. *See id.*
259. *See id.* at 213.

So, how would the Commission determine if the force-pool would prevent waste? To approve a forced-pooling application in the muscle-in context, the proposed force-pool must be technically and economically feasible.[260] Otherwise, the force-pool would be unnecessary, fail to meet one of MIPA's three purposes, and dilute the interests of the large operator.[261] After determining if the offeror's offers are fair and reasonable—by analyzing the relevant facts but not making them so dispositive to where MIPA cannot achieve its stated purposes—the Commission should then analyze whether one of its three purposes is met through the proposed force pool.[262]

In this second-stage analysis, the proposed pool's technical and economic potential will illuminate whether one of the Act's three purposes is met.[263] For instance, to establish a force-pool to prevent physical waste by stranding, the proposed pool must actually be technically and commercially viable.[264] Indeed, this pool would need to satisfy the assumption all oil and gas production is based on—that this sustained production will result in revenues over operating costs—or else there would be no production in paying quantities, and waste would not be prevented.[265]

The technical and economic feasibility of a proposed force-pool may fail from time to time, but this determination should be well-informed and made in all muscle-in MIPA applications where the applicant makes a fair and reasonable voluntary offer.[266] With force pooling in the muscle-in context, it is important that the rights of the adjacent operator are not diluted by including unproductive acreage into its unit.[267] To ensure that the adjacent operator's rights are protected, the Commission must have all the relevant information regarding the technical and commercial viability of the proposed forced pool to ensure its benefits outweigh its costs.[268]

Likewise, the burden of proving the proposed force-pool's technical and commercial feasibility should be on the applicant, and they should be required to provide this information to succeed in their forced-pooling claim.[269] To ease the burden on the Commission, the applicant should aid in this process by providing data and information to the Commission.[270] The

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260. *See id.* at 224–26.

261. *See id.* at 226; Blackwell I, *supra* note 54, at 26–27.

262. *See Ammonite*, 698 S.W.3d at 224–25 (Young, J., dissenting).

263. *See id.* at 225.

264. *See id.*

265. *See id.*; WILLIAMS & MEYERS, *supra* note 8, at 938–39 (defining "production in paying quantities").

266. *See Ammonite*, 698 S.W.3d at 225–26 (Young, J., dissenting) (expressing doubt that a small-tract's inclusion would yield more benefit than cost, but recommending the case be remanded back to the Commission to determine the feasibility of de-stranding the minerals).

267. *See id.* at 208 (majority opinion).

268. *See* Blackwell II, *supra* note 30, at 36–37.

269. *See Ammonite*, 698 S.W.3d at 212.

270. *See id.*

applicant likely has geologic or economic data incentivizing them to file a force-pooling application.[271] Without this information, their application would be based on the premise that they would benefit from the already established unit without contributing anything of their own.[272] An application based on this premise should fail, as the applicant would be diluting the rights of the adjacent unit operator.[273] To ensure the protection of the adjacent operator's rights, better meet the stated purposes of MIPA, and ease the burden on the Commission, the force-pooling applicant should be required to produce technical and economic data capable of showing the commercial sufficiency of the forced pool after making fair and reasonable offers to succeed with a MIPA application.[274]

While the Commission could use technical and economic data to establish a force-pool, there is not a strong legal incentive for the operator to rework or extend their proposed or existing wells in the adjacent unit to reach the applicant's land that muscled-in to the adjacent unit.[275] However, while there is little legal incentive to rework or extend these wells, there is a strong practical (and somewhat legal) incentive to undertake these operations to capture more production from the now increased-in-size unit.[276] To include additional acreage, whose minerals are owned by a different party (in this case, the successful MIPA applicant), in a pooled unit mathematically decreases the percentage of production from this pooled unit the original operator would be entitled to.[277] To make up for this reduction in percentage, unit operators will be practically incentivized to produce more from the

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271. *See id.* at 225 (Young, J., dissenting).

272. *See id.* at 208 (majority opinion).

273. *See* Blackwell II, *supra* note 30, at 36–37. This proposition is the holding in the *Ammonite* case, which has been subject to criticism throughout this Comment. *See, e.g.*, *supra* text accompanying notes 239–41 (criticizing *Ammonite* because it conflates MIPA's role in protecting correlative rights with its role in preventing waste). While the rationale underpinning *Ammonite*'s holding is sound, the problem in that case was the Commission never determined the technical and commercial viability of Ammonite's proposed force-pool, and the reviewing courts did not remand the case back to the Commission to make this determination. 698 S.W.3d at 212. This Comment argues that a MIPA application based on waste that satisfies the fair and reasonable offer requirement cannot be properly analyzed without this technical and economic data. *See id.* at 225–26 (Young, J., dissenting).

274. *See Ammonite*, 698 S.W.3d at 225 (Young, J., dissenting).

275. *See* Blackwell II, *supra* note 30, at 36–37 (noting the only burden a successful MIPA application places on operators is "an insignificant decrease in their net revenue interest").

276. *See id.*

277. *See* Blackwell II, *supra* note 30, at 36–37. Pooling mathematical formulas are based on the amount of acreage contributed to the pooled unit. *See* WILLIAMS & MEYERS, *supra* note 8, at 892–94 (defining "pooled unit," "pooling," and "pooling agreement"). For instance, if the original operator pools two 40-acre tracts, in which this operator owns 100% of the minerals, to form an 80-acre unit, they would be entitled to 80/80 of the production from that tract, subject to lease royalties. *See id.* If a 20-acre tract muscles-in to this 80-acre unit, the unit size increases to 100 acres, and the original operator would be entitled to 80/100 of the production, subject to lease royalties, and the muscled-in tract owner gets 20/100 of the production, subject to lease royalties. *See id.* Also, it is worth noting that nearly all force-pooling applications in the muscle-in context are subject to a risk penalty. *See supra* note 113 and accompanying text (discussing and defining risk penalties).

newly expanded unit by reworking or extending their existing or proposed wells to reach and get production from the muscled-in tract.[278]

C. Unrelated to Drainage, MIPA's Spacing Requirements Are Too Small

Unrelated to drainage, MIPA's current spacing requirements are much smaller than what is typically required for an unconventional horizontal well.[279] Like "almost all the other conservation statutes within the Railroad Commission's jurisdiction, MIPA was enacted with only vertical wells in mind."[280] Likewise, the Act's language is designed for vertical wells.[281] Horizontal wells' spacing designations, which Railroad Commission Rule 86 and applicable field rules govern, are much larger than vertical wells' designations.[282] By its own language, MIPA is limited to forming units that do not meet the requisite size for horizontal wells.[283]

However, there is ambiguity in the statute regarding the interaction of the Act's muscle-in clause and spacing requirements.[284] The muscle-in clause enables the Commission to form units larger than what it is authorized under its typical spacing requirements.[285] It has been argued that a more favorable construction of MIPA is one that allows the Commission to form units larger than the general acreage authorized under the statute when considering a muscle-in application.[286] Otherwise, MIPA could not be used in horizontal drilling *at all* because its general spacing requirements are too limited.[287]

In turn, MIPA's spacing requirements should be increased or supplemented to promote its use in unconventional horizontal drilling.[288] This change would better promote MIPA's use for unconventional horizontal drilling, which consumes the majority of modern drilling in Texas, and keep the Act relevant in the Shale Era.[289] To best encourage the Act's use in unconventional horizontal drilling, MIPA's spacing requirements should incorporate Railroad Commission Rule 86 and an additional small-acreage tolerance depending on the geology of the specific field and its field rules.[290]

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278. *See* Blackwell II, *supra* note 30, at 36–37.
279. Blackwell I, *supra* note 54, at 21–22.
280. ANDERSON ET AL., *supra* note 26, § 12.1[C].
281. *See* TEX. NAT. RES. CODE § 102.011 ("[T]he [C]omission . . . shall establish a unit . . . containing the approximate acreage of the proration unit, which unit shall in no event exceed 160 acres for an oil well or 640 acres for a gas well plus a 10 percent tolerance.").
282. Blackwell I, *supra* note 54, at 22.
283. *Id.*
284. *See* TEX. NAT. RES. CODE §§ 102.011, 102.014; ANDERSON ET AL., *supra* note 26, at 12.3[C][1].
285. TEX. NAT. RES. CODE § 102.014.
286. ANDERSON ET AL., *supra* note 26, 12.3[C][1].
287. *See id.*
288. *See* Blackwell I, *supra* note 54, at 24–25.
289. *See id.*
290. *See id.*

Incorporating Rule 86 with an additional small-acreage tolerance best promotes MIPA's use in horizontal drilling because Rule 86 is designed to cater to horizontal wells, and it has proven to be effective.[291] Rule 86 provides a mathematical formula based on the length of the horizontal wellbore to calculate the size of the unit.[292] The idea behind this calculation is that the unit should contain the acreage that the horizontal wellbore will drain, and this calculation serves to calculate that figure.[293] Much thought went into the design of this rule to ensure that it promotes the use of horizontal drilling to exploit unconventional oil and gas prospects.[294]

A small-acreage tolerance has been advocated for in MIPA's urban development context in the Barnett Shale.[295] There, Professor Blackwell recommended a tolerance of twenty acres.[296] Twenty acres were chosen for that specific field because this amount best served its geologic characteristics.[297] Professor Blackwell argued that this formula best serves to achieve MIPA's three purposes: to protect correlative rights, prevent the unnecessary drilling of wells, and prevent waste.[298]

To illustrate how this formula would work in practice, assume that an operator has proposed and been permitted to drill a horizontal well that runs up to the edge of a riverbed.[299] The corresponding unit for this well has been calculated according to Rule 86.[300] Assuming they cannot produce the riverbed without a pooled unit, the riverbed owner files a MIPA application with the Commission to join this adjacent horizontal unit.[301] The Commission could use the small-acreage tolerance—the exact amount established by the Commission in accordance with the specific field's geology—to allow this riverbed owner to muscle-in the adjacent unit.[302] The established MIPA unit would be the Rule 86 acreage plus the small-acreage amount, and this unit would best accomplish the Act's goals of "preventing waste, protecting correlative rights, or preventing the unnecessary drilling of wells" because it would be tailored to meet the specific geologic needs of the field.[303] Because this formula best meets the specific geologic needs of each field and promotes

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291. *See id.* at 22.
292. TEX. ADMIN. CODE § 3.86.
293. Blackwell I, *supra* note 54, at 22.
294. *Id.*
295. *Id.* at 21–25.
296. *Id.* at 24–25.
297. *Id.*
298. *Id.* at 23–25.
299. *See* McFarland, *supra* note 26 (providing an image of the typical riverbed scenario where wells run up as close to riverbeds as possible without violating well-spacing rules).
300. *See* TEX. ADMIN. CODE § 3.86.
301. *See supra* Part I (providing the reasons why a riverbed owner could not produce the riverbed without a pooled unit).
302. *See supra* notes 286–300 and accompanying text (explaining the advantage of small-acreage tolerance).
303. Blackwell I, *supra* note 54, at 23–25.

MIPA's use in unconventional horizontal drilling, MIPA should be amended to contain specific language to this effect.[304]

D. The Proposed Amendment to Texas Natural Resources Code Section 102.011

Texas Natural Resources Code Section 102.011 currently provides:

> [T]he [C]ommission . . . shall establish a unit and pool all of the interests in the unit within an area containing the approximate acreage of the proration unit, which unit shall in no event exceed *160 acres for an oil well or 640 acres for a gas well plus 10 percent tolerance*.[305]

This portion of this statute should be modified to say:

> [T]he [C]ommission . . . shall establish a unit and pool all of the interests in the unit within an area containing the approximate acreage of the proration unit, which unit shall in no event exceed *the prescribed or permitted acreage amount according to applicable well spacing and density rules, and an additional small-acreage tolerance determined by the Commission for the specific field*.[306]

Further, this statute should be supplemented to add instruction to the Commission regarding how to analyze drainage and determine if the force-pool would "avoid[] the drilling of unnecessary wells, protect[] correlative rights, or prevent[] waste[.]"[307] This instruction should be added as a separate paragraph and should read:

> To determine if the unit would fulfill one of these three purposes, the Commission shall require the applicant to produce technical and economic data capable of showing the expected commercial sufficiency of the unit after it has been determined that the applicant's voluntary offers were fair and reasonable. This data can be used to prove a correlative rights violation if the adjacent unit is draining the applicant's tract or to prove the prevention of waste and the unnecessary drilling of wells if the applicant's tract is not being drained and they can show that the only way to commercially produce their tract would be through its inclusion in the unit.[308]

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304. *See id.*

305. TEX. NAT. RES. CODE § 102.011 (emphasis added).

306. *See supra* Section III.C (arguing that MIPA's spacing requirements should be amended to clearly promote unconventional drilling).

307. *See* TEX. NAT. RES. CODE § 102.011.

308. *See supra* Part III (arguing that MIPA should be amended to address drainage to promote the Act's use, which will, in turn, prevent physical waste by stranding, especially of state-owned riverbeds).

IV. CONCLUSION

To preserve MIPA's relevance and effectiveness in an era of drilling into tight shale rock, the Texas Legislature should amend MIPA to address drainage.[309] While MIPA was designed in an era of traditional vertical oil and gas drilling, it is now time to consider the Act in a more affirmative sense by considering its use in preventing waste caused by spacing regulations and the lack of drainage.[310] Through these proposed amendments, MIPA can stay true to its purpose and promote efficient oil and gas production by de-stranding irregular tracts.[311] These amendments also protect the rights of the adjacent operator by requiring the MIPA applicant to prove their tract's commercial sufficiency before muscling-in.[312]

Lastly, the Texas Legislature should amend MIPA to increase funding for all Texas public schools.[313] Unless the Legislature amends MIPA, there will be significantly less oil and gas production from Texas riverbeds.[314] These riverbeds contribute millions of dollars to funding all Texas public schools.[315] A MIPA interpretation relying on drainage does not allow small or irregular tracts, like riverbeds, to muscle-in adjacent units.[316] These tracts are wasted without the ability to muscle-in as the hydrocarbons underneath these tracts are bound to remain in place.[317] Accordingly, the Texas Legislature should amend MIPA to address drainage and increase its spacing requirements to promote the Act's use to save stranded minerals in the Shale Era.[318]

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309. *See* GLO Brief, *supra* note 1, at 7.

310. ANDERSON ET AL., *supra* note 26, § 12.1[A]; *see supra* Section II.A.2 (discussing how well-spacing rules applied to shale fields can lead to hydrocarbons being stuck between adjacent property lines and wellbores).

311. *See* ANDERSON ET AL., *supra* note 26, § 12.1[A].

312. *See supra* Section II.B (discussing the importance of an applicant tract's technical and economic viability to ensure the rights of adjacent operators are not infringed).

313. *See* GLO Brief, *supra* note 1, at 5–6.

314. *See id.* at 3.

315. *See supra* note 4 and accompanying text (describing the funding contributed to the PSF by production of Texas riverbeds).

316. GLO Brief, *supra* note 1, at 3.

317. *Id.*

318. *See supra* Part III (arguing that the Texas Legislature should amend MIPA to address drainage and increase its spacing requirements to promote the Act's use in the Shale Era).