PJC 302.3 Question and Instruction on Accommodation Doctrine

QUESTION _____

Did *Larry Lessee* fail to accommodate *Suzie Surface Owner*'s existing use of the surface of the land in question?

Larry Lessee failed to accommodate an existing use of the surface if—

1. *Larry Lessee*'s use of the surface completely precluded or substantially impaired *Suzie Surface Owner*'s existing use; and

2. there was no reasonable alternative method available to *Suzie Surface Owner* on the land in question by which the existing use could be continued; and

3. there were alternative reasonable, customary, and industry-accepted methods available to *Larry Lessee* on the land in question that would have allowed recovery of the minerals and also allowed *Suzie Surface Owner* to continue the existing use.

Answer "Yes" or "No."

Answer: _____

COMMENT

When to use. PJC 302.3 should be used when a surface owner claims that the party with the right to develop minerals has failed to accommodate an existing use of the surface subject to the lease of the land in question. This question should be used when "existing use" is not a disputed fact. In cases in which "existing use" is in dispute, a predicate question may be needed.

Source of question and instruction. PJC 302.3 is derived from *Merriman v. XTO Energy, Inc.*, 407 S.W.3d 244, 249 (Tex. 2013); *see also Coyote Lake Ranch, LLC v. City of Lubbock*, 498 S.W.3d 53, 64–65 (Tex. 2016) (applying doctrine to severed groundwater estate); *Tarrant County Water Control & Improvement District No. One v. Haupt, Inc.*, 854 S.W.2d 909, 911 (Tex. 1993); *Sun Oil Co. v. Whitaker*, 483 S.W.2d 808 (Tex. 1972); and *Getty Oil Co. v. Jones*, 470 S.W.2d 618, 622–23 (Tex. 1971).

Alternative submission. In *Getty Oil Co.*, the Texas Supreme Court recognized that a "single or a multiple issue submission may be in order depending on the facts and circumstances in a given situation." *Getty Oil Co.*, 470 S.W.2d at 628 (recognizing the evidence and circumstances were such that an initial inquiry was proper regarding element 2 above); *see also Merriman*, 407 S.W.3d at 249 (holding that if surface