



The Relinquishment Act

Copyright © by the Kilburn Law Firm, PLLC 2013. All rights reserved. No part of this presentation may be used or reproduced in any manner whatsoever without written permission from the Kilburn Law Firm. For information, please address Kilburn Law Firm PLLC, 1001 West Loop South Freeway, Suite 400 Houston, TX 77027.



Relinquishment Act CLE Outline



Texas History



Spanish control from 1727-1821

Texas History



Mexican control from 1821-1835

Texas History



Republic of Texas 1835-1845

Texas History



State of Texas since 1845

Legal Right Without Patent

What is the significance of a patent?



History of Mineral Reservations



King Charles III of Spain

Copyright © by the Kilburn Law Firm, PLLC 2013. All rights reserved

History of Mineral Reservations



El Sal Del Rey

Release of Minerals

Constitution of 1866

“That the State of Texas hereby releases to the owner of the soil all mines and mineral substance that may be on same . . .”

Cox v. Robinson

Applied retrospectively because:

History of reserving minerals

Enacted as an ordinance

Construction of provision

Circumstances leading to Relinquishment Act



Spindletop – January 10, 1901

The Relinquishment Act of 1919

“The State hereby constitutes the owner of the soil its agent . . . and relinquishes and vests in the owner of the soil an undivided fifteen-sixteenths of all oil and gas . . . The remaining undivided portion of said oil and gas and its value is hereby reserved for the use of and benefit of the public school fund and the several asylum funds.”

So, obviously, the landowners own $15/16$ of the oil and gas, right?

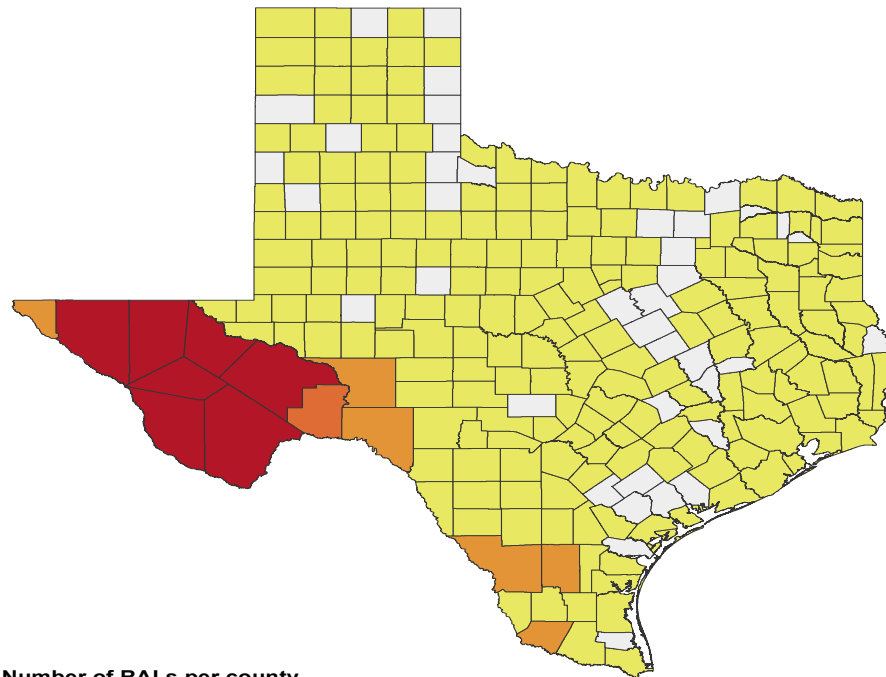
Greene v. Robinson

- ◆ In 1928, the Texas Supreme Court addressed the constitutionality of the Relinquishment Act.
- ◆ In holding that the Act was constitutional, the Court held that “there is no vesting of title of interest in the oil and gas in the owner of the soil.”
- ◆ Additionally, the compensation due to the owner of the soil was “in lieu of all damages to the soil” and not compensation for the sale of the oil and gas.

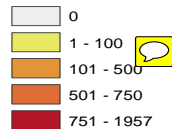
Lands Covered by the Relinquishment Act

Number of Relinquishment Act Lands (RALs) In Texas by County

(13,166 properties totalling 6.4 million acres)



Number of RALs per county



Source Data provided by General Land Office

12-15-2011

Tex. Nat. Res. Code §§52.183 and 52.184

No mineral lease . . . shall be effective until a certified copy of such lease is filed in the Land Office. No such lease . . . shall be binding upon the State unless it recites the actual and true consideration paid or promised

The Nine Year Gap

- ◆ The Relinquishment Act was enacted in 1919 and *Greene v. Robinson* was decided in 1928.
- ◆ During the nine year gap, the owners of the soil dealt with the land as if they owned $15/16$ of the oil and gas and as if the State were not entitled to any bonus money or to any delay rentals in excess of 10 cents per acre.

The Nine Year Gap

- ◆ What if there were mineral conveyances during this nine year gap? After all, the Relinquishment Act does give the owner of the soil the authority “to sell or lease . . . the oil and gas . . .”
- ◆ Two appellate court decisions pertaining to this situation: *State v. Magnolia* and *Permian Oil Co. v. State*.

The Nine Year Gap

Permian Oil Co. v. State

Facts:

Conveyance of all right, title and interest in and to 7/8 of the oil and gas. The 1/8 oil and gas reserved and excepted was to be considered a royalty and the grantee had full right to operate on the land for the discovery, production and marketing of the oil and gas.

Holding:

The instrument was an oil and gas lease.

The Nine Year Gap

State v. Magnolia Petroleum Co.

Issue:

Can the owners of the surface execute a mineral deed conveying 15/16 of the oil, gas and other minerals?

Holding:

Court held that the owners of the surface exceeded their authority as agents of the State and that the instrument was wholly void.

Core Principles

What can the landowner convey and when?

Lemar v. Garner

Facts:

- ◆ The owner of the soil, after the execution of an oil and gas lease, executed a mineral deed to a third party conveying the unaccrued rentals and royalties under the existing lease.
- ◆ The surface owner then conveyed the surface estate.
- ◆ The purchaser of the surface estate contended that he was entitled under the Relinquishment Act to receive all rentals and royalties accruing subsequent to the time he became the owner of the soil.

Core Principles

What can the landowner convey and when?

Lemar v. Garner

Holding:

- ◆ When the owner of the soil executes a lease, he acquires property rights for the duration of the lease: his share of rentals, royalties and bonuses. These rights are freely alienable.
- ◆ The authority to execute a lease as agent of the State of Texas runs with the land.

Core Principles

Who is the Lessor?

Colquitt v. Gulf Production Co.

Facts:

Owner of the soil executed a ten-year mineral lease. The Receiver of the owner's estate sought cancellation of the lease on the theory that the owner of the soil who had executed the lease was legally incapacitated due to mental and physical infirmity.

Issue:

Did the Receiver have the authority to cancel the lease?

Core Principles

Who is the Lessor?

Colquitt v. Gulf Production Co.

Holding:

- ◆ The Receiver did not have a right to cancel the lease on behalf of the owner.
- ◆ The State is the lessor through the authorized action of its agent.
- ◆ The lease belongs to the State and no one but the State can maintain an action to cancel it.

Core Principles

Who pays the State?

Shell Petroleum Corp. v. Tippett

Facts:

- ◆ Tippett executed two leases in the following capacities: “individually, and as survivor in community of the Estate of Laura Tippett and as Agent of the State of Texas.”
- ◆ Lease stated that one-half of royalty was to be paid to Tippett and the other one-half was to be paid to the State
- ◆ Tippett warranted title to the lands described in the lease
- ◆ The delay rentals and bonus were paid to and accepted by Tippett

Core Principles

Who pays the State?

Shell Petroleum Corp. v. Tippet

Holding:

- ◆ Tippet and Shell are jointly and severally liable to the State. However, as between Tippet and Shell, the primary obligation to pay the State is on Tippet.

Core Principles

What duty is owed to the State?

State v. Standard

Facts:

The landowner executed an oil and gas lease that included three direct benefits to the landowner only:

- ◆ An option to acquire a working interest in the lease;
- ◆ An option for the job of pumper if drilling operations were successful; and
- ◆ A right to receive \$500.00 per drilling location as liquidated damages to crops.

Core Principles

What duty is owed to the State?

State v. Standard

Holding:

- ◆ The leasing power of the surface owner is limited to the execution of an oil and gas lease for bonus, rental and royalty considerations not less than the statutory minimum and consistent with prevailing values.
- ◆ Statutory compliance has not occurred where the surface owner contracts for a benefit that the State does not also receive – i.e., a working interest in a lease.

Core Principles

What duty is owed to the State?

§52.189 of the Texas Natural Resources Code:

- ◆ Prohibition against self dealing
- ◆ The owner of the soil owes a fiduciary duty to the State
- ◆ Penalty of 10% on sums due to the State as a result of a breach of fiduciary duty

Core Principles

Forfeiture of Landowner's Agency

Failure to Drill an Offset Well



Core Principals

Forfeiture of Landowner's Agency

Offset Wells (old version)

If oil and/or gas is discovered in paying quantities within 1,000 feet of Relinquishment Act land . . . the owner . . . shall in good faith begin the drilling of a well within 100 days after the first discovery

An offset well shall be drilled to the depth necessary for effective protection against undue drainage by other wells on other lands in that locality.

Core Principles

Forfeiture of Landowner's Agency

Failure to Drill Offset Well (old version)

Termination of landowner's agency if:

- ◆ Fails to drill offset well within the time required;
- ◆ Fails to drill such well diligently and in good faith;
- ◆ Fails to drill to the necessary depth; or
- ◆ Fails to use the means necessary to develop such offset well

Core Principles

Forfeiture of landowner's agency

Norman v. Giles

Facts:

- ◆ Relinquishment Act land covered by a lease
- ◆ Oil was discovered in paying quantities within 1,000 feet of the RA land
- ◆ No offset well
- ◆ Lease was surrendered by lessee on September 9, 1948
- ◆ Landowner executed another lease on September 23, 1948
- ◆ October 5, 1948 – Land Commissioner terminated landowner's agency and refused to accept for filing the new lease

Core Principle

Forfeiture of Landowner's Agency

Norman v. Giles

Holding:

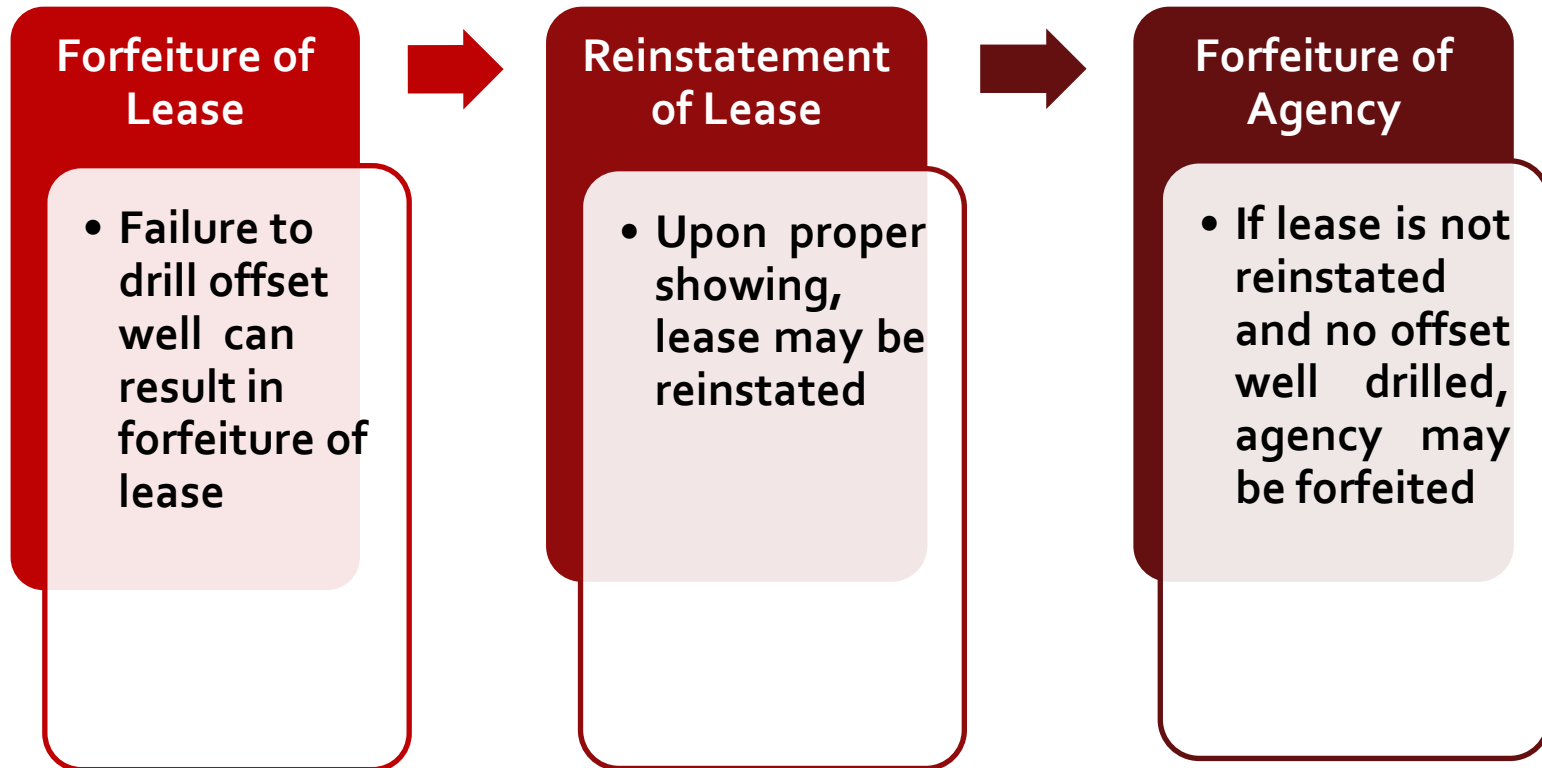
Failure to drill an offset well results in the termination of the agency of the surface owner as well as the termination of any lease made thereunder.

“And it is hard to see how our construction of the statute will work substantial injustice to the surface owners of the school lands generally. A diligent attention to their agency opportunities, rights, and duties is far from onerous.”

Core Principles

Forfeiture of Landowner's Agency

Failure to Drill Offset Well (new version)



Who Can Execute a Lease

What if I have a lease executed by . . .

- ◆ A legal representative?
- ◆ An insane person?
- ◆ An attorney-in-fact?
- ◆ Life tenant and/or remainderman?

Who Can Execute a Lease?

Legal Representatives

May a Guardian, Administrator, Executor, Receiver or other legal representative execute a lease on behalf of the landowner?

Favored by public policy

Who Can Execute a Lease?

Insane Persons

Can insane persons execute a lease as agent of the State of Texas?

Yes

Who Can Execute a Lease?

Attorney-in-Fact

Can a landowner authorize an Attorney-in-Fact to execute a lease under the Relinquishment Act?

This issue has never been decided by the courts.

Who Can Execute a Lease?

Life Tenant and Remainderman

- ◆ Where the fee title to land subject to the Act is owned by a life tenant and a vested remainderman, the joinder of both in the execution of lease should be secured.

Bibliography

Statutes

Tex. Nat. Res. Code Ann. § 52.189 (2012)

Tex. Nat. Res. Code Ann. § 52.171 (2012)

Tex. Nat. Res. Code Ann. § 52.173-74 (2012)

Tex. Nat. Res. Code Ann. § 52.183-84 (2012)

Tex. Nat. Res. Code Ann. § 52.182 (2012)

Bibliography

Cases

Colquitt v. Gulf Prod. Co., 52 S.W.2d 235 (Tex. Comm'n App. 1932).

Lemar v. Garner, 121 Tex. 502, 50 S.W.2d 769 (1932).

Lewis v. Oates, 145 Tex. 77, 195 S.W.2d 123 (1946).

Cox v. Bray, 28 Tex. 247 (1866).

Greene v. Robison, 117 Tex. 516, 8 S.W.2d 655 (1928).

Allison v. Stanolind Oil & Gas Co., 133 Tex. 540, 129 S.W.2d 267 (1939).

Shell Petroleum Corp. v. Tippett, 103 S.W.2d 448 (Tex. Civ. App.--Austin 1937, writ ref'd).

Permian Oil Co. v. State, 161 S.W.2d 568 (Tex. Civ. App.--Austin 1942, no writ).

State v. Magnolia Petroleum Co., 173 S.W.2d 186 (Tex. Civ. App.--San Antonio 1943, writ ref'd w.o.m.).

Bibliography

Cases (cont'd)

Cox v. Robison, 105 Tex. 426, 150 S.W. 1149 (1912).

Schendell v. Rogan, 94 Tex. 585, 63 S.W. 1001 (1901).

State v. Durham, 860 S.W.2d 63 (Tex. 1993).

State v. Standard, 414 S.W.2d 148 (Tex. 1967).

Norman v. Giles, 148 Tex. 21, 219 S.W.2d 678 (1949).

Bibliography

Secondary Sources

A.W. Walker, KR., *The Texas Relinquishment Act*, 1st OIL & Gas INST. 245 (1949).

Texas. Attorney-General's Office. and Grover Sellers. Texas Attorney General Opinion: O-6233, Text, 1944; digital images, (<http://texashistory.unt.edu/ark:/67531/metaph263511/> : accessed March 21, 2013).

TEXAS LAW OF OIL AND GAS (3 vols.; Carlsbad, CA: LEXIS Law Publishing, 2nd ed. 1998; Austin: Butterworth, 1st ed. 1989; 1997, 1991, 1990 Pocket Part) (with Jacqueline Lang Weaver).

John R. Ray, *Patents and Classification in Mineral Title Examination*, Advanced Oil, Gas and Energy Resources Law Course, State Bar of Texas 2001.

Ingrid K. Hansen, *Dusting off the Relinquishment Act*, Oil, Gas and Mineral Law Institute, March 22, 2002.

13 St. Mary's L.J. 868.