



Are You Enchanted Yet? Common Title Issues Encountered in New Mexico: The Land of Enchantment

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Overview

- I. Federal and County Recording
- II. Record Title vs. Operating Rights
- III. New Mexico Quirks and Pitfalls
- IV. State Recording and Leasing Issues



New Mexico, Generally

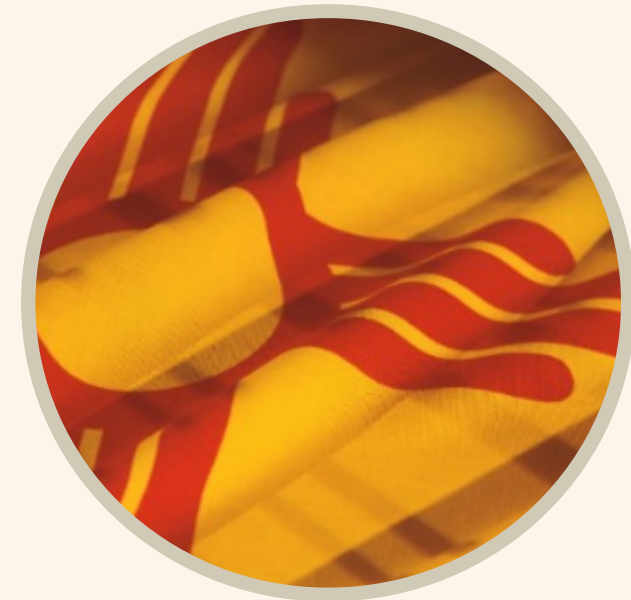
❖ Oil and gas jurisprudence similar enough to Texas to be dangerous

❖ Like Texas

- No dormant mineral act
- No marketable title act
- Community Property

❖ Unlike Texas

- No title standards
- Compulsory pooling used regularly
- Surface Owners Protection Act (SOPA)
- Follows a lot of Texas law but be careful (sometimes ok for gap filler)



Various Bodies of Law

❖ Federal

- Bureau of Land Management (BLM) – leasing federal lands
- Office of Natural Resource Revenue (ONRR) – royalty payments
- Interior Board of Land Appeals (IBLA) – administrative/regulatory hearings
- Unless specifically outlined in the statutes and regs, apply state substantive law
- Mineral Leasing Act of 1920 (MLA - Amended)

❖ State Lands

- State Land Office (SLO) – leasing state lands
- Oil Conservation Division (OCD) – regulates oil and gas production
- Royalty Management Division (RMD) – processes oil and gas royalty revenue

❖ Fee Lands – NM State/Common Law

❖ Indian Lands – BLM, Bureau of Indian Affairs (BIA)

Federal – Recording

- ❖ Instruments Evidencing Changes in Ownership of Federal Lease
- ❖ Where do these instruments need to be filed?



Where? – BLM

- ❖ The federal lease records are maintained by U.S. Department of the Interior – Bureau of Land Management – New Mexico State Office – Santa Fe, New Mexico
- ❖ Records regarding operations, well completions, production, unitization and communitization are maintained in the BLM Field Offices (i.e., the Las Cruces or Carlsbad Field Offices)
- ❖ Examples:
 - If you want to file an assignment of record title
 - BLM Santa Fe Office
 - If you want to know whether a lease located within the boundaries of a unit has actually been committed to the unit in Lea County
 - Carlsbad Field Office

Where? – County Clerk

- ❖ County records are maintained by the Office of the County Clerk in the county where the property is located.
- ❖ Certain instruments are also filed in the records of the district clerk, probate clerk and in the tax records (if any portion is patented fee lands).



Why do we have to file in both the federal and county records, and why do we need to obtain abstracts regarding both?



Why? – County Records

- ❖ There is no federal (or state) statute providing that the BLM records, either in Washington, D.C. or in the state offices, are actual or constructive notice to persons acquiring interests in federal oil and gas leases.
- ❖ In order to protect your interest from third party bona fide purchasers.
- ❖ Often assignments will be lengthy and assign numerous interests and leases. The BLM has limited manpower and simply does not have the time to interpret a 400-page assignment, so they should be recorded in the county.
 - Wellbore severances
 - Certain depth severances
 - Term and payout provisions, etc.

Why? – County Records (Cont.)

- ❖ Why do we need to examine abstracts of title covering the county records?
 - Often assignments are not recorded with the BLM
 - Liens, easements, and other encumbrances are not recorded with the BLM
 - Also, should include a search of the records of the district clerk, probate clerk and the tax records (if any portion is patented fee lands)



Why? – Federal Records

- ❖ 43 CFR § 3106.4-1: Each transfer of record title or of operating rights (sublease) shall be filed with the proper BLM office on a current form approved by the Director or exact reproductions of the front and back of such form...
- ❖ The rights of any such assignee shall not be recognized by the BLM until such assignment has been approved by an authorized officer thereof.



Which instruments should be recorded in both the county and federal records?

What Needs to Be Recorded with the BLM

- ❖ Assignments of Record Title Interest
- ❖ Transfers of Operating Rights (Sublease)
- ❖ Overriding Royalty Assignments
- ❖ Mass Transfers
- ❖ Name Changes or Mergers
- ❖ Probate Materials
- ❖ Divorce Decrees
 - **43 CFR § 3106.1 through 3106.8-3**

Record Title vs. Operating Rights

Record Title v. Operating Rights

- ❖ **Record Title** – Primary ownership of an interest in an oil and gas lease that includes the obligation to pay rentals, and the rights to assign and relinquish the lease. Note that this is defined in the federal regs (and is not referring to “record title” in the county).
- ❖ **Operating Rights/Working Interest** – The interest or contractual obligation created out of the lease (such as a sublease) authorizing the holder of that right to enter the leased lands to conduct drilling and related operations, including production.
 - Operating rights may or may not be transferred through an operating agreement, however, all transfers of operating rights on Federal leases **must be filed and approved on the official assignment form.**
- ❖ **Operating Agreements**: Create a different class of rights now as contractual working interests (sometimes referred to as beneficial interests)

Assignments of Record Title Interest

Form 3000-3 (July 2012)	UNITED STATES DEPARTMENT OF THE INTERIOR BUREAU OF LAND MANAGEMENT ASSIGNMENT OF RECORD TITLE INTEREST IN A LEASE FOR OIL AND GAS OR GEOTHERMAL RESOURCES Mineral Leasing Act of 1920 (30 U.S.C. 181 et seq.) Act for Acquired Lands of 1947 (30 U.S.C. 351-359) Geothermal Steam Act of 1970 (30 U.S.C. 1001-1025) Department of the Interior Appropriations Act, Fiscal Year 1981 (42 U.S.C. 6508)	FORM APPROVED OMB NO. 1004-0034 Expires: July 31, 2015 Lease Serial No. _____ Lease Effective Date (Anniversary Date) _____ New Serial No. _____				
Type or print plainly in ink and sign in ink.						
PART A: ASSIGNMENT						
1. Assignee* Street _____ City, State, Zip Code _____						
1a. Assignor _____						
*If more than one assignee, check here <input type="checkbox"/> and list the name(s) and address(es) of all additional assignees on page 2 of this form or on a separate attached sheet of paper.						
This record title assignment is for: (Check one) <input type="checkbox"/> Oil and Gas Lease, or <input type="checkbox"/> Geothermal Lease						
Interest conveyed: (Check one or both, as appropriate) <input type="checkbox"/> Record Title, <input type="checkbox"/> Overriding Royalty, payment out of production or other similar interests or payments						
2. This assignment conveys the following interest:						
Land Description	Percent of Interest			Percent of Overriding Royalty Similar Interests		
Additional space of page 2, if needed. Do not submit documents or agreements other than this form, such documents or agreements shall only be referenced herein.	Owned	Conveyed	Retained	Reserved		
	a	b	c	d	e	Previously reserved or conveyed f

Assignments of Record Title Interest (Cont.)

- ❖ **Operating Rights Not Severed:** a record title assignment will convey both operating rights and record title interest.
 - Therefore, it is not necessary to file both a record title assignment and an operating rights transfer when conveying all the interest in a lease.
- ❖ **Operating Rights Severed:** an operating rights transfer must be filed.

“Partial” Assignments

- ❖ Created when an assignor conveys 100% record title interest in a portion of the lands in the lease.
- ❖ Partial assignments segregate the lease into two separate leases.
- ❖ The segregated portion of the lease creates a new lease and is assigned a new lease number.
- ❖ Releases and discharges the assignor from all obligations thereafter accruing with respect to the assigned lands.
- ❖ Such lease continues for the primary term of the original lease ...
 - 30 USCS § 187a

Assignments of Operating Rights

Form 3000-3a (July 2012)	UNITED STATES DEPARTMENT OF THE INTERIOR BUREAU OF LAND MANAGEMENT	FORM APPROVED OMB NO. 1004-0034 Expires: July 31, 2015 <hr/> Lease Serial No.			
TRANSFER OF OPERATING RIGHTS (SUBLEASE) IN A LEASE FOR OIL AND GAS OR GEOTHERMAL RESOURCES					
Mineral Leasing Act of 1920 (30 U.S.C. 181 et seq.) Act for Acquired Lands of 1947 (30 U.S.C. 351-359) Geothermal Steam Act of 1970 (30 U.S.C. 1001-1025) Department of the Interior Appropriations Act, Fiscal Year 1981 (42 U.S.C. 6508)					
Type or print plainly in ink and sign in ink.					
PART A: TRANSFER					
1. Transferee (Sublessee)* Street City, State, Zip Code					
		1a. Transferor			
*If more than one transferee, check here <input type="checkbox"/> and list the name(s) and address(es) of all additional transferees on page 2 of this form or on a separate attached sheet of paper.					
This transfer is for: (Check one) <input type="checkbox"/> Oil and Gas Lease, or <input type="checkbox"/> Geothermal Lease					
Interest conveyed: (Check one or both, as appropriate) <input type="checkbox"/> Operating Rights (sublease) <input type="checkbox"/> Overriding Royalty, payment out of production or other similar interests or payments					
2. This transfer (sublease) conveys the following interest:					
Land Description	Percent of Interest			Percent of Overriding Royalty Similar Interests	
Additional space on page 2, if needed. Do not submit documents or agreements other than this form, such documents or agreements shall only be referenced herein.	Owned	Conveyed	Retained	Reserved	Previously reserved or conveyed
	a	b	c	d	e

Assignments of Operating Rights (Cont.)

- ❖ Same recording formalities as an Assignment of Record Title Interest.
- ❖ Operating Rights transfers must identify the lease formation depths either by zone, formation, or deposit.
- ❖ It is not necessary to file separate operating rights transfers when conveying interest in several sections of land. One transfer can convey various interest percentages at various depths.
 - **43 CFR § 3106.1**

Geologic age		Delaware Basin strata		Northwest Shelf strata		
Permian	Leonardian	Bone Spring Formation	1st carbonate	Glorieta Fm.		
			1st sand			
			2nd carbonate	Yeso Formation	Paddock mbr.	
			2nd sand			
			3rd carbonate			Blinebry mbr.
			3rd sand			
		lower carbonate	Tubb mbr.			
				Drinkard mbr.		
	Abo Formation					

Assignments of ORRIs

- ❖ Overriding royalty interests may be filed by either an Assignment of Record Title (Form 3000-3) or a Transfer of Operating Rights (Sublease) (Form 3000-3a).
- ❖ Only one originally executed copy is required to be filed.
- ❖ Overriding royalty assignments are not adjudicated and no formal approval is given.
- ❖ Note on ORRIs in NM – must ratify pooling (unlike Texas).
- ❖ ORRI assignments should also be filed in the county!

Name Change or Mergers

- ❖ For the BLM to recognize a name change or merger, the following must be submitted:
 1. A list of serial numbers of all leases, pending assignments and unit and communitization agreements;
 2. A copy of the Secretary of State's certificate of name change or merger;
 3. A copy of the amendment of the Articles of Incorporation ...
- ❖ If one company buys out the interests of another company, and it is not a merger or name change, record title assignments and/or transfer of operating rights must be filed.
 - 43 CFR § 3106.8-2 and 8-3
- ❖ These documents or an assignment should also be filed in the county!

Name Change or Mergers (Cont.)

- ❖ If one company buys out the interests of another company, and it is not a merger or name change, record title assignments and/or transfer of operating rights must be filed.
 - 43 CFR § 3106.8-2 and 8-3
- ❖ These documents or an assignment should also be filed in the county!

New Mexico Quirks and Pitfalls

Decedent's Estates – Resident Decedents

- ❖ Note that affidavits of heirship do not deliver marketable title in New Mexico (more on this later)
- ❖ Title is only marketable in New Mexico after there has been a probate proceeding (whether will or intestacy and whether formal or informal)
- ❖ If a decedent's estate is not disposed of by will, it will pass under the rules of intestacy.
- ❖ For example:
 - Separate Property passes 1/4 to the surviving spouse and 3/4 to the surviving issue of the decedent “by representation.” If there is no surviving issue, all passes to the spouse (different than Texas).
 - Community Property passes to the surviving spouse (like Texas).
 - If no spouse or issue, all to parents, etc.
 - Prior to July 1, 1993, it was “per stirpes” instead of “by representation.”



Decedent's Estates – Resident Decedents (Cont.)

- ❖ In the probate (or administration) of an estate, a “personal representative” will be named and letters testamentary or letters of administration will be issued.
- ❖ Wills must be probated within three years, though in some instances it may be allowed as a “muniment” of title.
- ❖ Title relates back to the date of death, and the probate of a will and filing of a personal representative's deed is a ministerial act only.
- ❖ Under NMSA 45-3-907 (1975), a deed of distribution from the personal representative will be filed evidencing the passage of title.

Decedent's Estates – Resident Decedents (Cont.)

- ❖ A few additional notes:
- ❖ If there is no will and probate proceedings are not required (i.e. small estates), the following must be submitted:
 - A statement signed by the heirs that they are the only heirs of the deceased; and
 - A qualification statement as to citizenship and acreage for each heir.
 - 43 CFR § 3106.8-1

Decedent's Estates – Non-Resident Decedents

- ❖ In Texas you can merely file “exemplified” probate in the county. Not in New Mexico!
- ❖ Full or short form ancillary probate is required and a foreign domiciliary personal representative will be appointed.
- ❖ Bottom line: Merely filing the will/probate in the county records is never the answer in New Mexico.

Affidavits of Heirship?

- ❖ As mentioned, there is no statutory protection for an affidavit of heirship in New Mexico and they do not deliver marketable title. However, they are sometimes used for practical purposes or for “small” interest without much perceived value. They should include:
 - Name of the decedent;
 - Decedent’s residence at the time of death;
 - Time and place of death;
 - Identity of the heirs;
 - Marital history;
 - Whether they died testate or intestate;
 - Identify any probate proceedings; and
 - A description of the New Mexico property
 - Sworn under oath, disinterested party

Community Property v. Separate Property

❖ Presumption that property acquired during marriage is **community property**.

❖ **Separate Property:**

- Acquired before marriage
- After divorce decree entered
- By gift, devise or descent
- Designated as such by written agreement between the spouses (transmutation)
- Property acquired by a woman in her name alone prior to July 1, 1973
 - **N.M. Stat. Ann. § 40-3-8**



Conveyance of Community Property

- ❖ Both spouses **must** join in the transfer of community property. N.M. Stat. § 40-3-13(A). An attempted conveyance by one spouse is **VOID**.
- ❖ However, under N.M. Stat. § 40-3-13(B), a void instrument may be ratified by the non-joining spouse. Best practice is to get both spouses to join the ratification. If it is before June 18, 1993 (the date of the statute) the ratification must be joined by both spouses **AND** contain words of present grant.
- ❖ Note that in Texas failure of a spouse to join makes an instrument VOIDABLE (i.e., binding on the parties thereto, but able to be challenged). The absolutely void rule is specific to New Mexico and causes a lot of problems for those unfamiliar with NM law.

State Recording and Leasing Issues



New Mexico State Land Office

- ❖ In 1912, when New Mexico became a state, the United States granted them certain lands in each township. State owns Sections 2, 16, 32 and 36 in every township for the public schools and insane asylums. In some instances, these sections were already patented to individuals, so the state elected alternative sections, many in Lea County.
- ❖ Result – State of New Mexico owns four square miles in each township.
- ❖ SLO is responsible for leasing State of New Mexico's 13 million mineral acres. Administers state lands on behalf of the State Land Trust for the benefit of schools, hospitals, etc.



Recording, Generally

- ❖ New Mexico is a “Notice Jurisdiction” – recording imparts constructive notice to the world of the existence and contents of the instruments so recorded from the time of recording.
- ❖ **N.M. Stat. Ann § 14-9-2**
 - Unrecorded documents are **NOT** effective against good faith purchasers without knowledge of doc’s existence.



Undivided Interests and Joint Ownership

- ❖ Like federal oil and gas leases, record title of state leases can be severed from operating rights.
- ❖ Record Title = primary ownership and right to relinquish
 - Only two entities can own operating rights at any given time (very restrictive)
 - Own as tenants in common
- ❖ Operating Rights = authorize holder to enter the land and conduct operations

Record Title – Recording

- ❖ Assignments of record title must be filed with the commissioner for approval within 100 days after execution. NMAC § 19.2.100.40 – Rn, SLO Rule 1, Section 1.033, 12/13/2002.
 - If an assignment of record title is filed after that time, the parties must show “extreme hardship”.
 - There is no requirement that assignments of record title be recorded in the county records.

Recording Summary

- ❖ **Assignments of Record Title** must be filed for approval with the SLO, and no more than two parties can own record title at any given time.
- ❖ **Miscellaneous Instruments** can be filed in the state or county records, but do not have to be filed in both.
 - Therefore, when determining leasehold ownership in a state oil and gas lease, it is necessary to obtain abstracts of county and state records
- ❖ There is no requirement that a state oil and gas lease be recorded in the county records.
- ❖ **BEST PRACTICE:** File all Miscellaneous Instruments in the county records and file a “courtesy” copy with SLO.
 - This ensures a clean, unbroken and current chain of title will be reflected in both the county and state records.
 - This can be contrasted with federal recording requirements - federal records are not deemed to impart constructive notice. Therefore, all instruments affecting a federal leasehold interest should be filed in both the federal and county records.

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LOCATION

Based in Houston, TX



BAR ADMISSIONS

Texas, North Dakota, Kansas and Wyoming



EDUCATION

J.D., University of Houston Law Center

B.S. in Technology, Texas State University

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