

OG Energy Education Series

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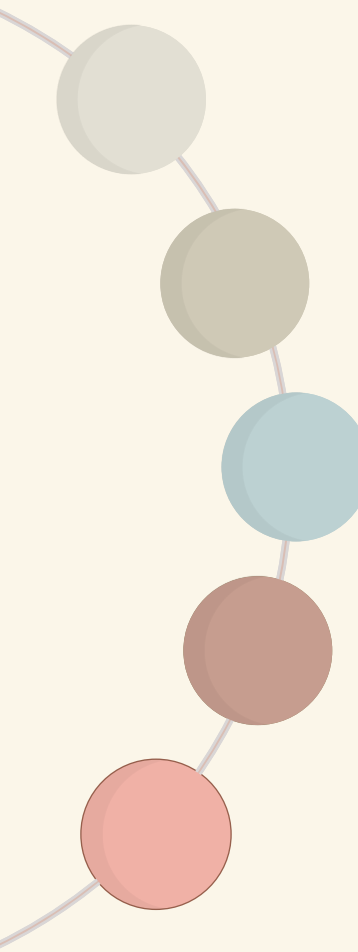
Relinquishment Act / Mineral Classified Issues in Texas

May 18, 2022

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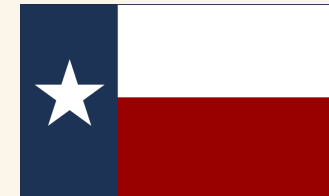
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Topics for Discussion

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- I. Historical Background of Relinquishment Act
 - II. Greene v. Robinson
 - III. Leasing
 - IV. Agency Relationship
 - V. Conveyancing of Relinquishment Act Lands
 - VI. Free Royalty Leasing

Historical Background

- ❖ Private title to all land in Texas emanates from a grant by the sovereign of the soil (successively, Spain, Mexico, the Republic of Texas and the State of Texas).



Historical Background (Cont.)

- ❖ Texas entered the Union retaining its public domain (land not sold to private citizens by Spain or Mexico)
- ❖ When Texas became an independent nation, it continued to recognize Spanish and Mexican grants

Historical Background (Cont.)

- ❖ Under the laws of Spain and Mexico, mines and their metals or minerals did not pass by the ordinary grant of the land without express words of designation.
- ❖ Congress of the Republic of Texas adopted this rule. A patentee of land before 1866 therefore had no interest in the minerals in the land unless that interest was expressly granted, however ...

Constitution of 1876

- ❖ Article VII, Section 2 established the perpetual public school fund, stating the following:
 - “All funds, lands and other property heretofore set apart and appropriated for the support of public schools; all the alternate sections of land reserved by the State out of grants heretofore made or that may hereafter be made to railroads, or other corporations, or any nature whatsoever; one-half of the public domain of the State, and all sums of money that may come to the State from the sale of any portion of the same, shall constitute a perpetual public-school fund.”
- ❖ Article XIV, Section 7 released all mines and minerals, stating the following:
 - “The State of Texas hereby releases to the owner or owners of the soil all mines and minerals that may be on the same, subject to taxation as other property.”

Constitution of 1876 (Cont.)

- ❖ Set aside more than 42,500,000 acres of unsold land as "public free school land," and provided that the sales of those lands would be set aside in a permanent fund to finance the provision of schools in Texas.
- ❖ Provided that the State released to the owners of lands previously sold "all mines and mineral substances" under their lands. (This same provision was included as an article in the Revised Statutes of 1895.)
- ❖ Thus, the State of Texas decided that, unlike Spain and Mexico (and the Republic of Texas), it would not retain title to minerals under lands it sold for settlement and development.

1895 Land Acts

- ❖ After September 1, 1895, Texas sold lands pursuant to various acts, and under those acts the State classified the land before sale as either "grazing land," "mineral land," "agricultural land," or "timber land."
- ❖ Almost all lands not previously sold by the State by 1895 were in West Texas, and the State classified most of those lands as "mineral lands." If the lands were "mineral-classified," the statutes provided that the State must retain all minerals when it was sold.
- ❖ The Act required that when an application was made to purchase "mineral lands", a waiver must be filed that there was no such minerals located on the land.
 - Acts 1895, 24th Leg., R.S. ch. 127

Land Sales Act of 1907

- ❖ GLO may specifically classify lands as “Mineral Lands” and sell them
- ❖ BUT
 - “. . . all sales of such land shall be upon the express condition that the minerals shall be and are reserved to the fund to which the land belongs and such reservation shall be stated in all applications to purchase.” 1907 Land Sales Act § 6f
- ❖ The Surface Estate and the Mineral Estate have been severed.

Historical Recap

- ❖ 1836-1866 (Post Independence from Mexico): Texas retains title to all minerals in lands sold, whether or not specifically stated on the Patent
- ❖ 1876: Texas Constitution sets aside 1/2 of all unsold public land to benefit public schools
- ❖ 1866-1895: A series of legislative acts release Texas mineral claims in lands previously sold
- ❖ 1895 Land Acts: Identifies minerally valuable lands, but prohibits their sale; hesitancy to sever estates
- ❖ Land Sales Act of 1907: GLO can 'minerally classify' lands and sell surface only; minerals are severed and reserved by the State

Early Leasing of State Lands

- ❖ Surface owners were originally paid ten cents per acre annually during life of lease to compensate for surface damages
 - Vestige of the Past: current Act still says, “no oil or gas rights shall be sold or leased for a delay rental during the primary term of less than 10 cents per acre per year plus royalty.”
- ❖ During the first west Texas oil boom, the landowners weren't too happy with this arrangement
- ❖ In response, the legislature passed ...

Relinquishment Act of 1919

- ❖ Enacted July 31, 1919
- ❖ The language of the Relinquishment Act provided the following:
 - It made the owner of the soil (the surface owner) the agent for leasing the land for oil and gas development.
 - In lieu of surface damages, and as compensation for acting as agent, the surface owner would be awarded an undivided fifteen-sixteenths of the minerals.
 - The State would retain only a 1/16th free royalty.
 - The Agent was authorized to sell or lease the oil and gas in place with the one restriction being the State was to receive 10 cents/acre as a rental, as well as its 1/16th royalty
- ❖ Soon after challenged as unconstitutional b/c those lands were supposed to be set aside for the public-school fund

Greene v. Robinson (1928)

- ❖ Key issue “Is Relinquishment Act of 1919 Constitutional under Texas Constitution?”
- ❖ Instead of striking down the Relinquishment Act of 1919 as unconstitutional, the Texas Supreme Court construed the Act in a way that would pass constitutional muster and held that it did not relinquish the oil and gas to landowners.
 - There is no vesting of title or interest in the oil and gas in the owner of the soil.
 - The payments made to the owner of the soil are just payments in lieu of damage to the soil
 - Compensation under the lease is to be paid equally to the state and the owner of the soil

Greene v. Robinson (1928) (Cont.)

❖ Key Takeaways:

- Surface owner owns no oil and gas. No vesting occurred under Relinquishment Act
 - State owns 100% of mineral estate in Relinquishment Act lands
 - All payment to surface owners are liquidated damages payments, not payment of sale proceeds of State-owned oil & gas.
 - 50/50 Rule: All lease benefits/compensation split equally between State of Texas and surface owner
- ❖ The general rule derived from Greene is that the owner of the surface of lands subject to the Relinquishment Act is a leasing agent for the state, entitled to one-half of the benefits of said lease, and those benefits and agency run with the land.
- ❖ Landowners still not happy, so ...

Relinquishment Act of 1931

- ❖ Vested title in the landowners as to 15/16ths of all minerals underlying their lands.
- ❖ Constitutionality again quickly challenged, and act declared unconstitutional. Empire Gas & Fuel Co. v. State (1932)

1931 Land Sales Act

- ❖ However, the same legislature was successful in amending the Relinquishment Act of 1919 ultimately ending the era of the Relinquishment Act.
- ❖ 1931 Land Sales Act provided that thereafter public free school lands would be sold with a reservation of 1/16th of all minerals as a FREE ROYALTY to the State
 - Relinquishing to the owner of the soil the remaining 15/16ths of all oil and gas (See Tex. Nat. Res. Code Ann. § 52.171)
- ❖ Therefore, for any sales of land after May 29, 1931, the controlling legislation would be the 1931 Land Sales Act wherein the surface owner would act as agent for the State, and the State would receive a 1/16th free royalty

Relinquishment Act – Bottom Line

❖ Net Outcome:

- For sales of mineral-classified public free school lands after September 1, 1895, but before May 29, 1931, the State owns 100% of the minerals in fee.
- Surface owner has the right to lease those lands and receives one-half of bonus, rentals and royalty (for acting as agent, and in lieu of surface damages)
- Limitation: Lease must be on form approved by General Land Office

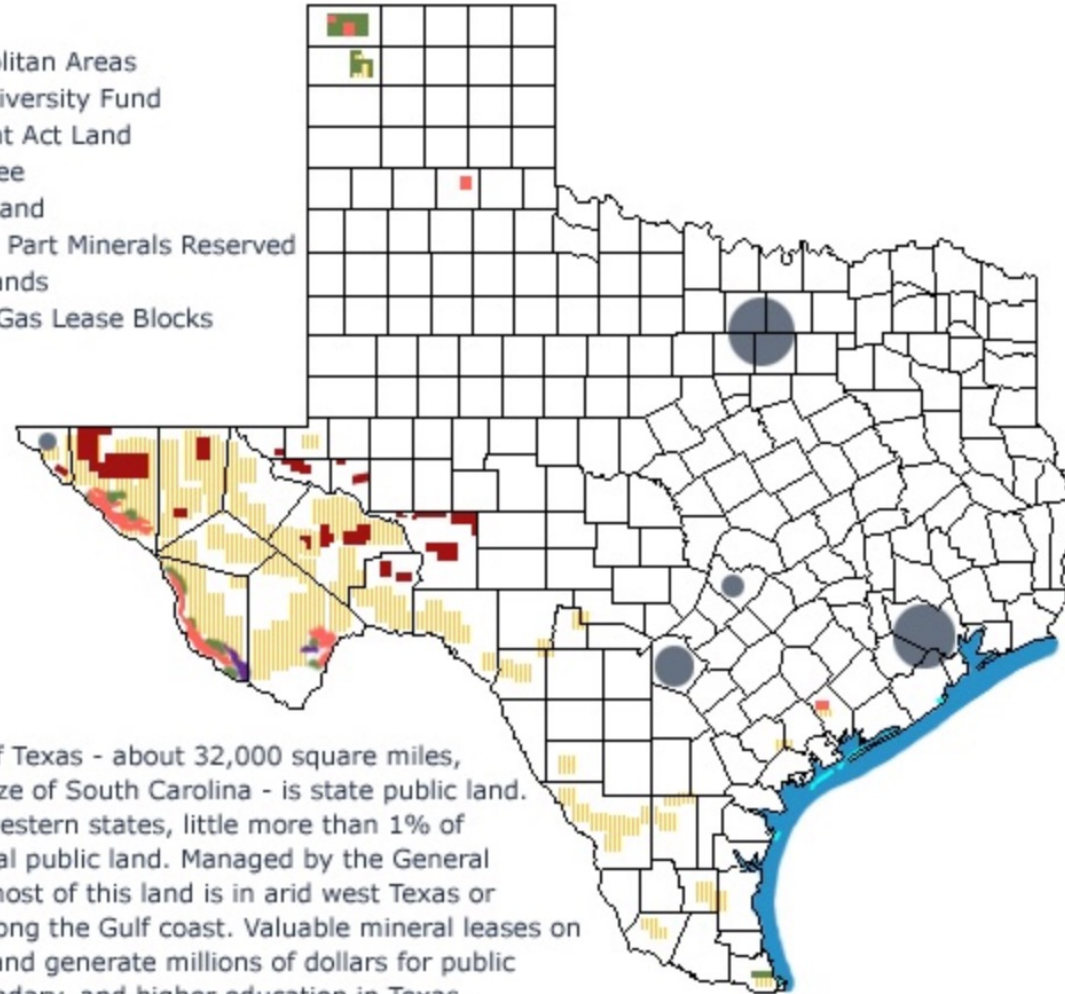
Free Royalty– Bottom Line

❖ Net Outcome:

- For sales of mineral-classified public free school lands from May 29, 1931 until June 19, 1983, the owner of the soil generally owns 15/16th of all oil and gas, and the State receives 1/16th as a free royalty
- In 1951, the GLO stopped selling mineral-classified lands due to the fact that the state could only legally retain a free royalty interest
- In 1983, the Texas Legislature enacted Section 51.054 of the Texas Natural Resources Code, permitting the School Land Board to sell the land and retain all the minerals.
 - Further, the 1983 enactment by the Texas Legislature of Section 51.054(a), permitted the School Land Board to set the state's free royalty at a minimum of 1/16th of oil and gas production, but allowing the State, in many cases, to negotiate an NPRI higher than 1/16th.

Texas Public Lands


- Major Metropolitan Areas
- Permanent University Fund
- Relinquishment Act Land
- School Land Fee
- Free Royalty Land
- Surface Sold - Part Minerals Reserved
- Submerged Lands
- State Oil and Gas Lease Blocks



Nearly 12% of Texas - about 32,000 square miles, an area the size of South Carolina - is state public land. Unlike most western states, little more than 1% of Texas is federal public land. Managed by the General Land Office, most of this land is in arid west Texas or submerged along the Gulf coast. Valuable mineral leases on parts of this land generate millions of dollars for public primary, secondary, and higher education in Texas.

GLO Standard Relinquishment Act Lease Form

The State of Texas



Austin, Texas

General Land Office
Relinquishment Act Lease Form
Revised 9/21

OIL AND GAS LEASE

THIS OIL AND GAS LEASE is made and entered into to be effective _____ (the "effective date"), by and between the State of Texas, acting by and through its agent, _____ whose address is: _____ said agent herein referred to as the owner of the soil (whether one or more) ("owner of the soil"), and _____ ("Lessee"), whose address is: _____

1. GRANTING CLAUSE; RESERVATION; BONUS. For good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, and the covenants contained herein, the State of Texas, acting by and through the owner of the soil, hereby demises, grants, leases and lets unto Lessee the non-exclusive right to explore for, and the exclusive right to produce and take, Oil and/or Gas from the Leased Premises (defined below) on the terms and conditions set out in this lease. Lessee's right hereunder to explore for Oil and Gas from the Leased Premises is non-exclusive. The Texas General Land Office (the "GLO") expressly retains and reserves the concurrent right to grant third parties (i) seismic, geophysical and geological permits, and to enter into other agreements with third parties, which permits or agreements shall allow such third parties to conduct geophysical, geological, or seismic surveys on, over, under, through, and across the land covered herein during the term of this lease, and which seismic, geophysical, or geological surveys shall not unreasonably interfere with Lessee's drilling or production activities on the Premises, and (ii) ingress and egress and use of the Leased Premises by the GLO and its lessees and permittees to explore for and produce minerals that are not covered, or that might not be covered in the future, under the terms of this lease, but that might be located within the surface boundaries of the Leased Premises. All of the rights in and to the Leased Premises retained by the GLO and all of the rights in and to the Leased Premises granted to Lessee herein shall be exercised in such a manner that neither shall unduly interfere with the operations of the other. This lease is made and entered into subject to any existing rights of way, easements, geophysical or geochemical exploration permits.

The bonus consideration paid for this lease is as follows:

To the State of Texas: _____
Dollars (\$ _____)

To the owner of the soil: _____
Dollars (\$ _____)

Total bonus consideration: _____
Dollars (\$ _____)

Relinquishment Act Lease

❖ Leasing Guidelines:

- The primary term is negotiable
 - May not encompass more than four full sections or 2,560 acres (must be contiguous)
 - A “mother Hubbard” or “coverall” clause in the lease is not acceptable
 - Private Land and Relinquishment Act land may not be included in the same lease
 - Top leasing forbidden – cannot execute new lease while prior lease still in effect.
- ❖ Collateral agreements forbidden – i.e. no surface use agreements, easements, etc. (everything must be in lease).
- ❖ A lease must adequately reflect the actual consideration paid or promised for the lease. The state and the surface owner must share equally in all consideration paid under the lease. However, the surface owner may waive or defer his or her share of the bonus. At any time after preapproval and before filing with the GLO, the adequacy of the consideration may be reassessed by the commissioner.

Agency Relationship

- ❖ The Relinquishment Act creates an agency relationship between the owner of the soil and the State of Texas. (See Tex. Nat. Res. Code Ann. § 52.171)
- ❖ 1985 Amendment Codified in Tex. Nat. Res. Code Ann. § 52.189 (b):
 - “An owner of the soil owes the state a fiduciary duty and a duty of utmost good faith... Any conflict of interest must be resolved by putting the interests of the state before the interests of the owner of the soil.”

Agency Relationship (Cont.)

- ❖ Surface Owner owes the State Fiduciary Duty of Utmost Good Faith (highest duty)
 - Must act in State's best interest (Duty to lease on good terms to a good operator)
- ❖ If Commissioner determines that the surface owner has breached duty, may request Attorney General file an action to enforce.
- ❖ May be liable for punitive damages

Self-Dealing Prohibited

❖ Surface owner cannot lease to:

1. Family members or corporations in which he is a principal stockholder
2. Himself or a nominee

❖ Exception: may request approval of the Board for authority to execute such a lease. Must execute a sworn affidavit that owner will not receive any benefit under a lease that will not be shared with the Permanent School Fund.

Unavailable Owner

- ❖ Relinquishment Act addresses this scenario specifically in Tex. Nat. Res. Code Ann. § 52.186.
 - If deemed unavailable by the terms of the statute, agency rights are forfeited and the oil and gas can be leased under the procedure for leasing unsold surveyed public school lands.
 - Subsection (b) explains the requirements in which an owner may be legally deemed unavailable.
 1. Operator proves up unavailability under the statute..
 2. Commissioner provides written notice to the owner of the soil explaining the consequences of finding him “unavailable.”
 3. Notice is sent to the owner’s last known address and provided by publication.
 4. The owner of the soil has 30 days at this point to contact the GLO.
 5. If no reply, agency rights terminated and process goes to sealed bid by School Land Board.
 6. 2 Year Redemption Period for surface owner if can prove improper notice.

Conveyancing of Relinquishment Act Lands

- ❖ **GENERAL RULE:** Mineral Deeds and Mineral Reservations from surface owners for Relinquishment Act Lands are VOID.
 - McDonald v. Dees, 15 S.W.2d 1075 (Tex Civ. App – El Paso 1929)
- ❖ Because the Court in Greene established that the owner of the soil had no right to the oil and gas in place, the owner cannot sell the minerals as he could if he were a true mineral owner.
 - See Greene; State v, Magnolia Petroleum Co., 173 S.W.2d (Tex Civ. App - San Antonio 1943)

Conveyancing of Relinquishment Act Lands (Cont.)

- ❖ **EXCEPTION:** Surface Owner may convey/reserve lease benefits under an existing lease.
 - Lemar, et al. v. Garner, 121 Tex. 503 (1932)
- ❖ A surface owner's rights or benefits (including rentals, royalties and bonuses) under an existing oil and gas lease may be conveyed or reserved apart from the surface rights, but said rights or benefits revert to the current surface owner upon expiration of said existing lease.
 - Id. at 509.
- ❖ The surface owner cannot, however, make an assignment of a perpetual royalty that will outlast the existing oil and gas lease or convey or reserve any sort of royalty if no oil and gas lease is in existence.
 - Lewis v. Oates, 195 S.W.2d 123 (1946)

Conveyancing of Relinquishment Act Lands (Cont.)

❖ **QUESTION:** Can the operator/owner of existing leasehold estate acquire surface interest AND benefits (bonus, rents and royalties) from the Relinquishment Act surface owner?

Conveyancing of Relinquishment Act Lands (Cont.)

- ❖ **QUESTION:** Can the operator/owner of existing leasehold estate acquire surface interest AND benefits (bonus, rents and royalties) from the Relinquishment Act surface owner?
- ❖ **ANSWER:** The purchase of the surface and/or benefits (including bonus, rents and royalties) of Relinquishment Act Land already under lease is not considered 'self-dealing'. However, if an operator/owner of existing leasehold estate were to purchase the surface and the existing lease were to expire, establishing a new lease with the State by the Operator on lands where the Operator owns the surface would be considered 'self-dealing' and a waiver of the prohibition would be required.

Free Royalty Leasing

- ❖ In some later patents the state reserves a “Free Royalty”
- ❖ Seen mainly in patents of “Scrap File” lands
- ❖ A free royalty is treated the same as an NPRI – the mineral owner executes the lease and the state only participates if there is production.

Free Royalty Leasing (Cont.)

- ❖ Permanent School Fund gains revenue from a portion of production depending on the particular free royalty reservation, which is usually a 1/16 or 1/8th free royalty interest
- ❖ Like mineral classified lands, certified copy of lease must be filed with the GLO, and any pooling or communitization of the state's interest requires School Land Board approval.

Sample Relinquishment Act Patent

Pat M. Neff, Governor,
to
A. P. Johnson.

Patent.
* Dated: February 7th, 1921.
* Filed: February 18th, 1921.
* Recorded: Vol. 1, pp 450,
* Patent Rec., Dimmit Co., Tex.
* Consideration:

.....I, Pat M. Neff, Governor of the State aforesaid, by virtue of the power vested in me by law, and in accordance with the laws of said State in such case made and provided, do by these presents grant to A. P. Johnson, his heirs or assigns, forever, Fifty-one & 49/100 (51.49) acres of Land, situated and described as follows:

In Dimmit County, known as Survey 68, S. F. 12347, A. P. Johnson, about 19 1/2 miles S 25° E of the County Seat, bought and fully paid for an the application of A. P. Johnson filed in the General Land Office January 24, 1921, under the laws regulating the sale of Public Free School Land.

Beginning at a stk. & md. the S. E. cor. of Sur. 17, blk. 5, Cert. 2730, I. & G. N. Ry. Co., same being the S. W. cor. of Sur. 24, same Blk; Thence W 600 vrs to a stake for the N. W. cor. of this Sur., same being a reentrant cor. in said Sur. No. 17; Thence S 153 vrs to a stake in the N. line of G. Denton Sur. No. 67 at a post 1300 vrs. E of the S. W. cor. of said Sur. No. 17; Thence E., along the N. line of said G. Denton Survey 67, 1900 vrs to a stake for Cor., being cor., being 660 vrs W of the S. E. cor. of said Survey 24. Thence N 153 vrs to stake for cor., being the N. E. cor. of this sur. and being a reentrant cor. in said sur. 24; Thence W 1300 vrs to the place of beginning.

The oil and gas that may be in the above described land are subject to Chapter 81 Act approved July 31, 1919, and other minerals are reserved to the fund to which the land belongs.

Hereby relinquishing to him ~~ix~~ the said A. P. Johnson and his heirs or assigns, forever, all the right and title in and to said Land heretofore held and possessed by the said State, and I do hereby issue this Letter Patent for the same.

In Testimony Whereof, I have caused the seal of the State to be affixed, as well as the seal of the General Land Office.


Done at the City of Austin, on the Seventh day of February in the year of our Lord One Thousand Eight Hundred and Twenty-one.

Pat M. Neff, Governor.
J. T. Robinson, Commissioner of Gen. Land Office.

Sample Free Royalty Patent

LETTER PATENT

Vol. 34- B No. 367

In The Name of  the State of Texas

To All to Whom These Presents Shall Come, Know Ye:

I, **JOHN CONNALLY**, Governor of the State aforesaid, by virtue of the power vested in me by law and in accordance with the laws of said State in such case made and provided, do by these presents Grant to **WESLEY WEST** **HIS** heirs and assigns forever, **FORTY NINE AND 50/100 (49.50)** acres of land situated and described as follows in **DIMMIT** County, known as **S. F. 16184, Wesley West, about 26 miles South 35° West from Carrizo Springs, Texas.**

Bought and fully paid for on the application of **Wesley West** filed in the General Land Office **August 8, 1964** under the laws regulating the sale of Public Free School land, and under the provisions of an Act approved June 19, 1939, amending the laws relating to the sale of unsurveyed School Land.

Beginning at a concrete monument with a brass cap in top marked "1581-W. West-13" for the northwest corner of Survey #13 in Block 7, for I. & G. N. RR. Company, as patented, and in the east line of Survey #1581 for C. & M. RR. Company; and from the monument an old 1-1/2 inch pipe marked "B7-102-13" bears south no degrees-36 minutes-26 seconds west 140 varas;

Thence north no degrees-36 minutes-26 seconds east, along the east line of said Survey #1581, a distance of 1786-96/100 varas to a concrete monument with a brass cap in top marked "1581-W. West-7" set to replace an old 1-1/2 inch pipe marked "B7-7-3" for southwest corner of Survey #7, in Block 7 for I. & G. N. RR. Company, as patented;

Thence south 89 degrees-25 minutes-54 seconds east, along the south line of said Survey #7, a distance of 140-3/10 varas to a concrete monument with a brass cap in top marked "W. West-7-8" for the northwest corner of Survey #8, in said Block 7;

Thence south no degrees-04 minutes-32 seconds west 1784-68/100 varas to a concrete monument with a brass cap in top marked "W. West-8-13", set in the north line of Section 13 in said Block 7 as patented;

Thence south 89 degrees-45 minutes-48 seconds west, along the north line of said Survey #13, a distance of 164-9/10 varas to the place of beginning.

One-eighth of all oil, gas, sulphur and all other minerals is reserved as a Free Royalty to the State.

Additional Resources

❖ Guidelines for Relinquishment Act Leasing

- <http://www.glo.texas.gov/energy-business/oil-gas/mineral-leasing/leasing/forms/Guidelines-for-Leasing-Relinquishment-Act-Lands.pdf>

❖ Application and Checklist for Leasing Relinquishment Act Lands

- <http://www.glo.texas.gov/energy-business/oil-gas/mineral-leasing/leasing/forms/Application-Checklist-RAL-Leasing.pdf>

❖ Rules for Relinquishment Act Leasing (Texas Administrative Code)

- [https://texreg.sos.state.tx.us/public/readtac\\$ext.TacPage?sl=R&app=9&p_dir=&p_rloc=&p_tloc=&p_ploc=&pg=1&p_tac=&ti=31&pt=1&ch=9&rl=22](https://texreg.sos.state.tx.us/public/readtac$ext.TacPage?sl=R&app=9&p_dir=&p_rloc=&p_tloc=&p_ploc=&pg=1&p_tac=&ti=31&pt=1&ch=9&rl=22)

Patrick Schenkel

Senior Attorney, Oliva Gibbs LLP



I focus my practice on **due diligence, complex mineral titles, pooling issues, lease analysis, joint operating agreements, surface use issues, title curative, regulatory, litigation and general upstream matters.**



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EDUCATION

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J.D., Loyola University New Orleans College of Law

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