

# What Were They Thinking?!

Making Sense of Idiosyncratic Language in  
Title Instruments

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# What Were They Thinking?!

## Making Sense of Idiosyncratic Language in Title Instruments

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On a daily basis, title examiners are faced with questions about how to interpret title instruments that contain non-standard language. This presentation aims to address those questions by giving examples of idiosyncratic language from actual title instruments, determining the issues that arise from each provision in question, and providing an explanation of how the examiner ultimately construed each instrument.



# **TEXAS INSTRUMENTS**

Document: Deed  
Date: October 6, 1875  
Grantor: L. L. Mobley  
Grantee: Fanning F. E. Taylor and Company

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**In a nutshell:** This deed conveys a one-half interest in 160 acres of land in Montague County, Texas. However, the deed was executed prior to the patent.

**Problem Language:**

- I, Grantor, “...release and convey unto the said Fanning F. E. Taylor and Company **one-half of the mineral that has or may be discovered** on said described land with all and singular the right to and privileges of erecting any and all buildings and machinery necessary on said land for working said mineral...”



Document: Deed  
Date: October 6, 1875  
Grantor: L. L. Mobley  
Grantee: Fanning F. E. Taylor and Company

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### **Issues with the Instrument's Language:**

- Does a deed being executed prior to the patent have any bearing on the situation?
- Does the language used in this deed make it a valid mineral deed?

### **Examining Attorney's Interpretation:**

- The fact that a mineral deed is executed prior to a patent does not necessarily invalidate the mineral deed. This assumes the subsequently executed Patent does not reserve minerals to the State. *Elliot v. Nelson*, 251 S.W. 501 (Tex. 1923).
- This is a valid mineral deed, assuming the references on the ground and to the surveyor's records are good. The phrase "one-half (1/2) of the mineral that has or may be discovered" is strange, but it still constitutes a one-half (1/2) mineral deed.

Document 1:	Assignment and Bill of Sale
Date:	September 1, 1988
Assignor:	A. Ray Davis
Assignee:	Robert B. Ross & Associates

Document 2:	Assignment and Bill of Sale
Date:	September 1, 1988
Assignor:	Robert B. Ross & Associates
Assignee:	Exxon Corporation

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**In a nutshell:** The first document purports to convey all of Assignor's right, title and interest of whatever nature in and to the Pembroke Unit. The second document assigns that same interest to Exxon.

### **Problem Language:**

"The Subject property conveyed to Assignee shall include all of Assignor's right, title and interest of whatever nature in and to the Pembroke Unit... Notwithstanding the foregoing, it is understood and agreed that the intent of this instrument is to convey to Assignee all of Assignor's right, title and interest, which is within and is part of said Unit, whether such interest is correctly described herein, mis-described or not described at all, and that Assignor will retain no reversionary rights to the interest conveyed."



Document 1: Assignment and Bill of Sale  
Date: September 1, 1988  
Assignor: A. Ray Davis  
Assignee: Robert B. Ross & Associates

Document 2: Assignment and Bill of Sale  
Date: September 1, 1988  
Assignor: Robert B. Ross & Associates  
Assignee: Exxon Corporation

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### **Issue with the Instrument's Language:**

- Does the interest conveyed include all depths or only the depths limited to the Pembroke Spraberry Unit? If the Assignment is interpreted to assign only depths limited to the Pembroke Unit, then would the Assignor still retain a working interest in the other depths?

### **Examining Attorney's Interpretation:**

- Given that the Pembroke Unit is depth limited, the conveyance only assigns those depths in the Pembroke. Had they wanted to assign all depths, they should have assigned "the leases committed to the Pembroke Unit."

Document: Oil, Gas and Mineral Lease  
Date: October 5, 2011; Primary Term of 3 Years  
Grantor: Quanah Exploration, LLC.  
Grantee: Range Texas Production, LLC.

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**In a nutshell:** The Continuous Development Clause of this lease is confusing and not easily interpreted. The Lessee's last well was completed in March of 2014.

**Problem Language:**

“Lessee must develop the lease premises by drilling additional wells without a lapse of more than 180 days between the end of the primary term and the commencement of actual drilling operations of the next succeeding well. On the completion of a well at or after the primary term, which is capable of producing in paying quantities, Lessee must develop the lease premises by drilling additional wells without a lapse of more than 180 days between the completion of one well and the commencement of operations for the drilling of the next succeeding well.”



Document: Oil, Gas and Mineral Lease  
Date: October 5, 2011; Primary Term of 3 Years  
Grantor: Quanah Exploration, LLC.  
Grantee: Range Texas Production, LLC.

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### **Issue with the Instrument's Language:**

- When does the next well need to be drilled?

### **Examining Attorney's Interpretation:**

- With a 3 year primary term, the term will expire on October 5, 2014. The last well was drilled in March 2014, which is more than 180 days prior to the end of the primary term. Thus, Lessee has 180 days from October 5, 2014 to “commence” the drilling of a well. → April 03, 2015

Document: Assignment of Overriding Royalty Interest  
Date: October 5, 2011; Primary Term of 3 Years  
Grantor: Ronna Robertson Cole  
Grantee: GOHO Properties, a Partnership of Larry Godwin and Gerald W. Hohfeld,  
and John E. Rhoads

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**In a nutshell:** This assignment purports to assign a 12.5% ORI to Grantee(s). The title opinion credited the entire 12.5% interest to GOHO, the partnership. John E. Rhoads claims that he should be credited with an individual interest.

**Problem Language:**

- Grantor for the sum of ten dollars and other valuable considerations in hand “paid by GOHO Properties, a Partnership of Larry A. Godwin and Gerald W. Hohfeld, whose address is [...] and John E. Rhoads, whose address is [...] (Grantees)... does hereby grant, bargain, sell and convey unto the said Grantees in equal shares, all of Grantors interest in and to the oil, gas and other minerals, royalties and overriding royalties on, in and under that may be produced in Montague County, Texas, including...”



Document: Assignment of Overriding Royalty Interest  
Date: October 5, 2011; Primary Term of 3 Years  
Grantor: Ronna Robertson Cole  
Grantee: GOHO Properties, a Partnership of Larry Godwin  
and Gerald W. Hohfeld, and John E. Rhoads

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### **Issue with the Instrument's Language:**

- Who is/are the Grantee(s)? Is it just the partnership, which consists of 3 partners? Or is it the partnership, which consists of 2 partners, and an another Grantee individually?

### **Examining Attorney's Interpretation:**

- A conveyance into multiple parties as “partners” creates a de facto partnership, regardless of whether one existed previously. Because of the lack of punctuation denoting that there are multiple Grantees, it could be interpreted as all 3 individuals being partners. Had there been an intent to convey to multiple parties, then a semi-colon would have been useful in making such intent clear.

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Document: Assignment of Overriding Royalty Interest  
Date: October 5, 2011; Primary Term of 3 Years  
Grantor: Ronna Robertson Cole  
Grantee: GOHO Properties, a Partnership of Larry Godwin  
and Gerald W. Hohfeld, and John E. Rhoads

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### **Examining Attorney's Interpretation (*continued*):**

Other interpretations include:

- One Grantee, being the Partnership; the other Grantee, being John E. Rhoads.
- The Grantees are Larry Godwin, Gerald Hohfeld, and John Rhoads, all individually, as GOHO Properties is only recited as paying the consideration.

Regardless, to resolve this issue, John E. Rhoads and GOHO Properties should execute a Stipulation of Interest agreeing to one interpretation (i.e., GOHO gets a one-half (1/2) interest and John Rhoads gets a one-half (1/2) interest).



Document: Mineral and Royalty Deed, Assignment and Conveyance  
Date: August 1, 2002  
Grantor: James Thomas Collins, Independent Executor and Trustee under the Will of  
Ruth Collins Shook for The Carolyn Collin Underwood Trust  
Grantee: Kelly H. Baxter

**In a nutshell:** This deed conveys all of Grantor's interest to the lands described in Exhibit "A", being Section 31, Block 31, Range 3N in Howard County, Texas.

### **Problem Language:**

- "That James Thomas Collins, Independent Executor and Trustee under the Will of Ruth Collins Shook for The Carolyn Collins Underwood Trust, called 'Grantor'... does convey unto Kelly H. Baxter, a single man... 100% of his interest in and to all the lands and oil, gas, royalty... from the following described lands in Howard County, Texas..."
- "Notwithstanding the specific descriptions set out herein, grantor conveys to grantee all lands and interests in lands of any kind, type and nature which grantor legally or equitably owns in Howard County, Texas and in addition to the foregoing, Grantor does hereby Transfer, Assign and Set Over unto Grantee all of Grantor's interest in and to all monies, proceeds, income and other personal properties now on hand, or in the possession of any third party, bank, trustee or pipeline company, which have heretofore accrued to the mineral and/or royalty interest of Grantor in said land that has been herein conveyed to Grantee."

Document: Mineral and Royalty Deed, Assignment and Conveyance  
Date: August 1, 2002  
Grantor: James Thomas Collins, Independent Executor and Trustee under the Will of Ruth Collins Shook for The Carolyn Collin Underwood Trust  
Grantee: Kelly H. Baxter

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### **Issues with the Instrument's Language:**

- Ruth Collins Shook inherited an undivided one-half (1/2) interest in the Captioned Land from her husband.
- In her will, Ruth Collins Shook appoints her son, James Thomas Collins, as Executor and devises the property one-half (1/2) to James Thomas Collins, and one-half (1/2) to James Thomas Collins, Trustee of the Carolyn Collins Underwood Trust . However, there is no executor's deed to either of them.
- There is an instrument conveying the subject lands to Kelly H. Baxter by Carolyn Underwood and husband around or even before the attached document.
- Does this instrument convey all of James Thomas Collins' interest in the Captioned Land, or does it just convey his interest and Carolyn's interest in and to the property that they inherited from Ruth Collins Shook, even though he did not execute the instrument in an individual capacity?



Document: Mineral and Royalty Deed, Assignment and Conveyance  
Date: August 1, 2002  
Grantor: James Thomas Collins, Independent Executor and Trustee under the  
Will of Ruth Collins Shook for The Carolyn Collin Underwood Trust  
Grantee: Kelly H. Baxter

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### **Examining Attorney's Interpretation:**

- Upon her death in 1997, the interest owned by Ruth Collins Shook devolved according to her Last Will and Testament (1/2 to James Thomas Collins and 1/2 to James Thomas Collins, Trustee of the Carolyn Collins Underwood Trust u/w/o Ruth Collins Shook.
- In 2002, James Thomas Collins, Independent Executor and Trustee, conveyed the Subject Property, as well as other under a “catch-all” to Kelly H. Baxter under a Mineral Deed; assuming the estate was not closed and he did not deed his interest in the property from the estate to himself individually, the Mineral Deed conveyed everything owned by Ruth Collins Shook.

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Document: Mineral and Royalty Deed, Assignment and Conveyance  
Date: August 1, 2002  
Grantor: James Thomas Collins, Independent Executor and Trustee under the Will of Ruth Collins Shook for The Carolyn Collin Underwood Trust  
Grantee: Kelly H. Baxter

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**Examining Attorney's Interpretation (*continued*):**

- We would not credit the conveyance from Carolyn C. Underwood because she did not, and never would, own an interest under the documents provided.
- The Family Agreement, which is executed prior to the Mineral Deed, was filed after the Mineral Deed. Thus, Kelly H. Baxter did not have notice and is a bona fide purchaser.
- Assuming the Estate was not closed on the date of the Mineral Deed, it conveys everything owned by Ruth Collins Shook.



Document: Gift Deed  
Date: November 1, 2013  
Grantor: Nancy Jan Daugherty Kemp, a single woman.  
Grantee: Patrick Chase Kemp and his wife, Ellen Claire Kemp

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**In a nutshell:** This “gift deed” purports to convey a gift, of all of Grantor’s interest to the Captioned Land, to Grantees, as *community* property.

**Problem Language:**

- “For and in *consideration of the love and affection* which Grantor bears for Grantees, Grantor has GIVEN, GRANTED, BARGAINED, SOLD and CONVEYED, and does hereby GIVE, GRANT, BARGAIN, SELL and CONVEY to Grantees, as their *community property*, the following described properties...”

Document: Gift Deed  
Date: November 1, 2013  
Grantor: Nancy Jan Daugherty Kemp, a single woman.  
Grantee: Patrick Chase Kemp and his wife, Ellen Claire Kemp

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### **Issue with the Instrument's Language:**

- Is the interest conveyed community or separate property?

### **Examining Attorney's Interpretation:**

- The law in Texas has long been settled that an attempted gift by a third party to the community estate vests each marital partner with a one-half undivided interest in the subject matter of the gift as his or her separate property. In the case of *Bradley v. Love*, 60 Tex. 472 (Tex. 1883), the facts were almost identical to those of the case at bar. There the wife's father made a gift of realty to the husband and wife jointly. The court concluded that such a conveyance would result in each marital partner having an undivided half interest in the land as separate property. *McLemore v. McLemore*, 641 S.W.2d 395, 397 (Tex. App. 1982).



Document: "Royalty Contract"  
Date: October 10, 1932  
Grantor: Chas. Gill and wife  
Grantee: Emson Smith

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**In a nutshell:** This deed conveys a one-half (1/2) interest in and to two tracts of land in Tyler County, Texas.

### **Problem Language:**

- Grantor conveys to Grantee "an undivided one-half interest in and to all of the oil, gas and other minerals in and under the following described tract of land..."
- "It is distinctly understood that said land is under an Oil and Gas Lease made by Grantor providing for a royalty of 1/8 of the oil and certain royalties or rentals for gas and other minerals, that Grantee herein shall reserve one-half of the royalties and rentals provided for in said lease; but he shall have no part of the annual rentals paid to keep said lease in force until drilling is begun.

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Document: "Royalty Contract"  
Date: October 10, 1932  
Grantor: Chas. Gill and wife  
Grantee: Emson Smith

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**Problem Language (continued):**

- It is further agreed that Grantee shall have  $1/2$  interest in any bonus money received by Grantor in any future lease or Lessees given on said land, and that it shall receive under such lease or leases  $1/16^{\text{th}}$  part of all oil, gas and other minerals taken and saved under any such lease or leases, and he shall receive the same out of the royalty provided for in such lease or leases, but Grantee shall have one-half part in the annual rentals paid to keep such lease or leases in force until drilling is begun."



Document: “Royalty Contract”  
Date: October 10, 1932  
Grantor: Chas. Gill and wife  
Grantee: Emson Smith

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### **Issue with the Instrument’s Language:**

- What is the deed trying to accomplish?

### **Examining Attorney’s Interpretation:**

- Despite this being called a Royalty Contract, Chas. Gill and wife convey to Emson Smith a one-half ( $1/2$ ) mineral interest.
- If the current lease is held by production (HBP) from that lease, the Grantee does not receive any rentals. However, after the expiration of that lease, the Grantee has a full one-half ( $1/2$ ) mineral interest.
- Regarding the one-sixteenth ( $1/16$ ) interest, that is just part of the one-half ( $1/2$ ) MI granted and does not limit the grant; it is just being more descriptive and utilizing the old “ $1/8$ ” royalty number demonstrating what the Grantee is receiving.

Document: Royalty Deed  
Date: May 8, 1929  
Grantor: Lillie E. Thrope, through Clell Q. Thrope, as a/i/f  
Grantee: M.W. Walters

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### **In a nutshell:**

- This deed conveys a one-eighth ( $1/8$ ) royalty and future delay rentals.

### **Problem Language:**

- Grantor has conveyed unto Grantee “the royalties, interests in the minerals, oil and gas...” as specified as follows: “ One-eighth of the land owners  $1/8$  royalty, and being  $1/64^{\text{th}}$  of all production in and under the South 320 acres of Section twenty-three (23) and being a total of 40 royalty acres therein...”
- “The Grantee herein shall participate after the termination of the present oil and gas leases as above specified, the Grantor reserving the right to the rentals under the now existing leases as above specified.”



Document: Royalty Deed  
Date: May 8, 1929  
Grantor: Lillie E. Thrope, through Clell Q. Thrope, as a/i/f  
Grantee: M.W. Walters

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### **Issue with the Instrument's Language:**

- Does the Deed convey a non-participating royalty interest with delay rentals, a non-executive mineral interest, or a full mineral interest?

### **Examining Attorney's Interpretation:**

- Despite confusing the attributes of the mineral estate, M. W. Walters received a fixed one-eighth (1/8) non-participating royalty interest with an interest in future delay rentals.

# **NORTH DAKOTA INSTRUMENTS**

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Document: Mineral Deed  
Date: November 16, 1992  
Grantor: Virgil M. Marmon  
Grantee: Reness R. Marmon, Barry Bruce Marmon, and Tiffany R. Porter

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**In a nutshell:** This deed conveys all of Grantor's interest to the lands described in Exhibit "A", being Section 31, Block 31, Range 3N in Howard County, Texas.

**Problem Language:**

- Grantor for the sum of ten dollars and other valuable considerations in hand "grants unto Reness R. Marmon; Barry Bruce Marmon; and Tiffany R. Porter...tenants in common, hereafter as Grantees, an undivided interest..."

Document: Mineral Deed  
Date: November 16, 1992  
Grantor: Virgil M. Marmon  
Grantee: Reness R. Marmon, Barry Bruce Marmon, and Tiffany R. Porter

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### **Issue with the Instrument's Language:**

- What are the interests being conveyed here?

### **Examining Attorney's Interpretation:**

- Every interest created in favor of several persons in their own right is an interest in common, unless acquired by them in partnership for partnership purposes, or unless declared in its creation to be a joint tenancy. N. D. CENT. CODE § 47-02-08. Since the Marmon Mineral Deed does not specify that the Grantees shall take the interest conveyed therein as joint tenants or in partnership for partnership purposes, such interest was conveyed to the Grantees as tenants in common.

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Document: Mineral Deed  
Date: November 16, 1992  
Grantor: Virgil M. Marmon  
Grantee: Reness R. Marmon, Barry Bruce Marmon, and Tiffany R. Porter

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**Examining Attorney's Interpretation (*continued*):**

- There is no presumption that tenants in common take in equal shares. It should be noted that other jurisdictions have consistently held that tenants in common are presumed to take equal undivided interests in the property, although this presumption may be rebutted. *Sanders v. Knapp*, 674 P.2d 385, 387 (Colo. App. 1983); *Sack v. Tomlin*, 871 P.2d 298, 304 (Nev. 1994); *Cummings v. Anderson*, 614 P.2d 1283, 1287 (Wash. 1980).
- When this issue is encountered in North Dakota, the usual remedy is to presume that they Grantees take in the proportions specified in the instrument, and a stipulation of interest requested. This requirement is frequently waived by the operator.

Document: Mineral Deed  
Date: November 17, 2005  
Grantor: William Owan, and his wife, Phyllis Owan  
Grantee: William Owan, as Trustee

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**In a nutshell:** Although the Grantee was identified as Trustee on the deed, it is merely identifying him in his individual capacity.

**Problem Language:**

- “THIS INDENTURE, Made this 17th day of November, 2005, by and between William Owan and Phyllis Owan, his wife, hereinafter referred to as the Grantors, and William Owan, Trustee..., hereinafter referred to as the Grantee...”



Document: Mineral Deed  
Date: November 17, 2005  
Grantor: William Owan, and his wife, Phyllis Owan  
Grantee: William Owan, as Trustee

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### **Issue with the Instrument's Language:**

- What does the identification of Grantee as "Trustee" mean in this conveyance?

### **Examining Attorney's Interpretation:**

- Identifications such as "trustee," "guardian," "executor," "administrator" or other representative capacity, without further identification of the beneficiary by name or the nature of the trust, are merely descriptive, and the person is deemed to be acting in an individual capacity. Title Standards, State Bar Association of North Dakota, § 10-06.
- In this example, neither the Deed nor other instruments identify a beneficiary by name or the nature of the Trust. Accordingly, the examining attorney must treat the title of "Trustee" in the title of the Grantee of the Owan Deed as being merely descriptive and has credited William Owan in an individual capacity. If the subsequent chain of title does not divest the Grantee of the interest, or if the subsequent chain continues to specify the representative capacity, the usual curative is to require a Certificate of Trust.

Document:     Transfer on Death Mineral Deed  
Date:           February 10, 2012  
Grantor:        Kay A. Satterlie  
Grantee:        Eric Wayne Satterlie

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**In a nutshell:** The Grantor quitclaims to multiple contingent beneficiaries, and the grant is effective on the death of the Grantor.

### **Problem Language:**

- “Kay A. Satterlie hereby quit claims to Eric Wayne Satterlie..., but if Eric Wayne Satterlie fails to survive Grantor Owner, then to Randal Kay Satterlie..., but if Randal Kay Satterlie fails to survive Grantor Owner and Eric Wayne Satterlie then to Debra Dorthy Plaster..., effective on the death of Kay A. Satterlie, Grantor Owner, all of Grantor Owner’s right, title and interest in and to all of the oil, gas...and other minerals of any nature whatsoever...”
- “This transfer is made subject to any rights existing to all lessees or assigns under any valid or subsisting oil and gas lease of record on the effective date; it being understood that the Grantee Beneficiary shall have...the herein granted undivided interest...in the above-described real property from and after the effective date of this instrument, precisely as if Grantee beneficiary had been at the effective date of the making of said lease the owner of a similar undivided mineral interest and into the real property described, one of the lessors therein.”



Document:     Transfer on Death Mineral Deed  
Date:           February 10, 2012  
Grantor:        Kay A. Satterlie  
Grantee:        Eric Wayne Satterlie

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### **Issue with the Instrument's Language:**

- Does the conveyance in this deed present an issue of waste?

### **Examining Attorney's Interpretation:**

- The examining attorney notes that the Grantor has effectively reserved unto herself a life estate interest which allows waste by having the grant take effect on a future date.
- The Grantor has quitclaimed one contingent remainder interest, and two alternative contingent remainder interests. The Grantor contemplates an open mine issue, which was in fact present in the fact pattern.
- Fortunately for both the examining attorney and the Grantor, despite the complexity, the instrument does not violate any North Dakota standard. The multiple possible grantees will be construed as contingent, and as such will not violate the prohibition against grantees in the alternative. The instrument is no doubt employed as a probate bypass for these assets. No action would be required, but there may be an advisory comment present to discuss the issue.

Document: Quit Claim Deed  
Date: August 3, 1972  
Grantor: Magnus Walla and Magnus Walla as a/i/f for Astrid Rikustad, et. al  
Grantee: Boyd D. White and Carol J. White

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**In a nutshell:** Grantor possesses a full fee interest, reserves a 1/2 mineral interest, but states they are conveying surface only.

**Problem Language:**

- Grantor for the sum of ten dollars and other valuable considerations in hand “hereby Quit Claim to the said grantee all of our undivided interest in and to the following described property... Grantor, reserves to himself, his heirs and assigns fifty (50) percent of all the oil, gas...and other minerals in and under said premises, together with full rights of ingress and egress, and all other rights necessary and incidental to the full use and enjoyment of same.”
- “It being the intent of this instrument to convey a surface estate only in and to said premises.”



Document:     Transfer on Death Mineral Deed  
Date:           February 10, 2012  
Grantor:        Kay A. Satterlie  
Grantee:        Eric Wayne Satterlie

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### **Issue with the Instrument's Language:**

- The instrument contains a conflicting reservation and statement of intent?

### **Examining Attorney's Interpretation:**

- Statement of intent and reservation are in conflict with each other. Here, the Grantors possessed a full fee interest prior to the date of the Deed. Accordingly, the statement that the Grantor intended to convey a surface estate only conflicts with the reservation of 50% of the minerals. Additionally, in instruments executed subsequent to this, the Grantors convey a 1/2 mineral interest to one of the Grantors, and a 1/2 mineral interest to the Grantees in this instrument.
- The primary purpose in construing a deed is to ascertain and effectuate the intent of the grantor.
- The typical curative here would be a stipulation of interest.

# **COLORADO INSTRUMENTS**



Document: Warranty Deed  
Date: March 15, 1918  
Grantor: Oscar W. Gumeson  
Grantee: Carl A. Nelson

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**In a nutshell:** One interpretation of a reservation could have Grantor reserving a mineral interest in excess of the quantum granted.

**Problem Language:**

- Grantor for the sum of ten dollars and other valuable considerations in hand “hereby grant...unto the party of the second part...an undivided one-half ( $1/2$ ) interest...excepting and reserving to first party,...all oil, coal and other minerals within or underlying said land, to the extent of an undivided two thirds ( $2/3$ ) interest therein, but conveying to the second party...the other undivided one-third ( $1/3$ ) interest therein...”

Document: Warranty Deed  
Date: March 15, 1918  
Grantor: Oscar W. Gumeson  
Grantee: Carl A. Nelson

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### **Issue with the Instrument's Language:**

- What is the quantum of interest purportedly being reserved? Is the Grantor reserving  $\frac{2}{3}$  interest in the entire mineral estate or just  $\frac{2}{3}$  of the  $\frac{1}{2}$  interest being conveyed in the deed?

### **Examining Attorney's Interpretation:**

- The reservation language contained in the Nelson Deed lends itself to several possible interpretations as to the quantum of interest purportedly being reserved.
- A court of competent jurisdiction may conclude that the Grantors reserved a two-thirds ( $\frac{2}{3}$ ) interest in the entire mineral estate, thereby vesting the Grantee with a one-third ( $\frac{1}{3}$ ) mineral interest, and that the phrase "in said lands" referred to the entirety of the Captioned Land.



Document: Warranty Deed  
Date: March 15, 1918  
Grantor: Oscar W. Gumeson  
Grantee: Carl A. Nelson

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### **Examining Attorney's Interpretation (*continued*):**

- However, a second possible interpretation is that the Grantors reserved a two-thirds ( $2/3$ ) interest in the land being conveyed (being an undivided one-half interest in Captioned Land), thereby resulting in the reservation of an undivided two-thirds ( $2/3$ ) of one-half ( $1/2$ ) mineral interest, vesting the Grantee with a one-sixth ( $1/6$ ) mineral interest.
- In this case, the reservation is more likely to be treated as having conveyed only a one-sixth ( $1/6$ ) mineral interest to Carl A. Nelson.

Document: Deed  
Date: December 29, 1975  
Grantor: Joseph Schmidt and wife, Betty Schmidt  
Grantee: Robert J. Winter and wife, Janet A. Winter

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**In a nutshell:** Grantors include a qualification in a deed which may indicate that reservation is to be proportionately reduced to Assignor's interest.

### **Problem Language:**

- Grantor for the sum of ten dollars and other valuable considerations in hand “hereby grant...unto the parties of the second part...all the following described land...”
- “The Grantors herein expressly except and reserve unto themselves...one-half (1/2) interest in and to all oil, gas and other minerals and mineral right in, on or under the two parcels of real estate described hereinabove, which are now owned by the Grantors.”
- “The Grantor further except and reserve unto themselves...a one-half (1/2) interest in and to all existing oil and gas leases in which they presently have any interest.”



Document: Deed  
Date: December 29, 1975  
Grantor: Joseph Schmidt and wife, Betty Schmidt  
Grantee: Robert J. Winter and wife, Janet A. Winter

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### **Issue with the Instrument's Language:**

- What is the quantum of interest purportedly being reserved?
- Are they reserving  $\frac{1}{2}$  in all minerals or are they reserving a  $\frac{1}{2}$  interest in the minerals they currently own?

### **Examining Attorney's Interpretation:**

- The reservation language in this deed opens the door for several possible interpretations as to the quantum of interest purportedly being reserved.
- A court of competent jurisdiction may conclude that the Grantors reserved a full one-half ( $\frac{1}{2}$ ) interest in all minerals, and that the use of the phrase "..., which are now owned by the Grantors" was an intent to show that they were currently only vested with one-half ( $\frac{1}{2}$ ) of the minerals.
- A second possible interpretation is that the Grantors reserved a one-half ( $\frac{1}{2}$ ) interest in the minerals currently owned by them, being a one-half ( $\frac{1}{2}$ ) interest, thereby resulting in the reservation of an undivided one-fourth ( $\frac{1}{4}$ ) mineral interest.

# **NEW MEXICO INSTRUMENTS**



Document: Paid-Up Oil and Gas Lease  
Date: July 1, 2007  
Lessor: Guy Pittman Witherspoon, III  
Lessee: OGX Resources LLC

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**In a nutshell:** New Mexico law requires all community property instruments to be executed by both spouses. If an instrument is executed by only one spouse it becomes a void instrument, but New Mexico legislature recently allowed for the ratification of the instrument by the other spouse.

**Problem Language:**

- “THIS AGREEMENT made on 1st day of July, 2007 between Guy Pittman Witherspoon, III... and OGX Resources LLC...”

Document: Deed  
Date: December 29, 1975  
Grantor: Joseph Schmidt and wife, Betty Schmidt  
Grantee: Robert J. Winter and wife, Janet A. Winter

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### **Issue with the Instrument's Language:**

- What issues could arise from Lessor's lack of martial designation?
- How would this lease be treated if both spouses executed a second lease with a different Lessee?

### **Examining Attorney's Interpretation:**

- In New Mexico, any community property instrument that is not executed by both spouses are void.
- In this instance, the lease does not designate whether Guy Pittman Witherspoon, III is a single man or a married man and the instrument is only executed by him. So if he were in fact married, this lease would be void unless his spouse ratifies the lease by executing it.

→ *continued on next slide*



Document: Deed  
Date: December 29, 1975  
Grantor: Joseph Schmidt and wife, Betty Schmidt  
Grantee: Robert J. Winter and wife, Janet A. Winter

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### **Examining Attorney's Interpretation (*continued*):**

- It is difficult to tell simply from the face of a lease whether or not it is void. Under New Mexico law, in order for a lease executed by an individual to be void, the Lessor, at the time of lease execution must have been married, the lands covered by said lease must have been community property, and the Lessor's spouse must not have executed a document ratifying the lease. Therefore, investigation beyond the face of the Lease is necessary to determine whether or not said lease is void.

# **MONTANA INSTRUMENTS**



Document 1: Mineral Deed  
Date: March 1, 1993  
Grantor: Rodney Kittleson  
Grantee: Lotus Trust

Document 2: Mineral Deed  
Date: June 27, 1997  
Grantor: Rodney C. Kittleson and Helen J. Norby, as Trustees of the Lotus Trust  
Grantee: Rodney C. Kittleson

**In a nutshell:** The Trustees were not identified in the 1993 Mineral Deed, but were identified in the 1997 Mineral Deed.

### **Problem Language:**

- Document No. 1 recites: “For a valuable consideration, a receipt of which is hereby acknowledged on this 1st day of March, 1993, the undersigned, Rodney Kittleson, ... hereby conveys and grants unto Lotus Trust, ... all of the gas, oil, coal, and other minerals he now owns...”
- Document No. 2 recites: “The undersigned, Rodney C. Kittleson and Helen J. Norby, as Trustees of the Lotus Trust, hereby convey and grant unto Rodney C. Kittleson...all of the oil, gas, coal, and other minerals owned by said trust...”

Document 1: Assignment and Bill of Sale  
Date: September 1, 1988  
Assignor: A. Ray Davis  
Assignee: Robert B. Ross & Associates

Document 2: Assignment and Bill of Sale  
Date: September 1, 1988  
Assignor: Robert B. Ross & Associates  
Assignee: Exxon Corporation

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### **Issue with the Instrument's Language:**

- Did the Trustees have the authority to execute the 2nd Mineral Deed?

### **Examining Attorney's Interpretation:**

- Montana provides protection for persons or entities that deal with a Trustee in good faith and obtain a Certification of Trust. Montana Code Annotated Section 72-38-1013 provides that instead of furnishing copy of the trust instrument to a person other than a beneficiary, the trustee may furnish to the person a certification of trust containing the following information: (1) a statement that the trust exists with the date the trust instrument was executed; (2) the identity of the settlor; (3) the identity and mailing address of the acting trustee(s); (4) the relevant powers of the trustee; (5) the revocability or irrevocability of the trust and the identity of any person holding a power to revoke the trust; (6) the authority of co-trustees to sign or otherwise authenticate and whether all or less than all the co-trustees are required in order to exercise powers of the trustee; and (7) a statement that the trust has not been revoked, modified, or amended in any manner that would cause the representations contained in the certification to be incorrect.

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Document 1: Assignment and Bill of Sale  
Date: September 1, 1988  
Assignor: A. Ray Davis  
Assignee: Robert B. Ross & Associates

Document 2: Assignment and Bill of Sale  
Date: September 1, 1988  
Assignor: Robert B. Ross & Associates  
Assignee: Exxon Corporation

---

### **Examining Attorney's Interpretation (*continued*):**

- A person or entity who acts in reliance on a Certification of Trust without knowledge that the representations contained therein are incorrect is not liable to any person for the action and may assume, without inquiry, the existence of the facts contained in the Certification.
- In this case, an assumption can be made that the Trustees named in Document No. 2 had the authority to execute said Deed, subject to the Certification of Trust.

Document: Deed  
Date: March 4, 1946  
Lessor: County of Richland  
Lessee: Henry Kittleson

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**In a nutshell:** The conveyance resulting from a tax sale reserved an NPRI in the amount of 6.25%, however, documents necessary to confirm the compliance of all statutory procedures were not provided.

**Problem Language:**

- “There is hereby reserved unto the grantor, its successors and assigns, a royalty interest of six and one-fourth percent (6-1/4%) of all oil, gas and minerals recovered and saved from the lands above described, which in the case of oil or gas, shall be delivered, free of cost...”



Document: Deed  
Date: March 4, 1946  
Lessor: County of Richland  
Lessee: Henry Kittleson

---

### **Issue with the Instrument's Language:**

- Did Richland County have the authority to reserve the 6-14% non-participating royalty interest?

### **Examining Attorney's Interpretation:**

- The courts have routinely held that the tax foreclosure procedures must be strictly complied with and failure to do so renders the tax title void. Further, Section 27-2-210(3)(a) of the Montana Code Annotated allows an action against a county to recover a royalty interest in land acquired by the county by tax deed to be brought within 3 years after the commencement of commercial production of oil, gas, or other minerals from the land.

→ *continued on next slide*

Document: Deed  
Date: March 4, 1946  
Lessor: County of Richland  
Lessee: Henry Kittleson

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**Examining Attorney's Interpretation (*continued*):**

- However, Montana Courts have also repeatedly held, in cases concerning royalty reservations in favor of counties contained in tax deeds issued in the 1930's and 1940's, that a claim by the heirs of the pre-tax sale deed owners to a royalty reservation in favor of the County contained in a tax sale deed is barred by laches even where the Tax Sale itself was defective due to the County's failure to satisfy all statutory requirements
- The examining attorney must assume that all statutory procedures were satisfied prior to the holding of the tax sale which resulted in the above described Tax Deed. It cannot be presumed that the County of Richland has marketable title to the royalty interest reserved in the Richland County Deed. The typical curative would be to obtain a quit claim deed from the vested owner prior to the Tax Deed, or initiate a quiet title action.



Document 1: Mineral Deed  
Date: March 1, 1993  
Grantor: Rodney Kittleson  
Grantee: Lotus Trust

Document 2: Reassignment of ORRI  
Date: February 1, 1990  
Grantor: Kanaly Trust Company,  
as Trustee for...  
Grantee: DKM Resources, Inc.

Document 3: Assignment of Leases  
Date: June 22, 1990  
Lessor: Westburne Exploration Inc.  
Lessee: DKM Resources, Inc.

**In a nutshell:** By means of the above conveyances, DKM Resources, Inc. was vested with a royalty estate and a mineral estate.

### **Problem Language:**

- **Document No. 1:** "...Assignor has transferred, assigned and conveyed, and subject to the terms and provisions hereinafter stated, does hereby transfer, assign, and convey, without warranty, express or implied, unto Assignee, an overriding royalty interest of 1% of 8/8ths of all the oil, gas and other minerals that may be produced, saved and marketed..."

→ *continued on next slide*

Document 1:	Mineral Deed	Document 2:	Reassignment of ORRI	Document 3:	Assignment of Leases
Date:	March 1, 1993	Date:	February 1, 1990	Date:	June 22, 1990
Grantor:	Rodney Kittleson	Grantor:	Kanaly Trust Company, as Trustee for...	Lessor:	Westburne Exploration Inc.
Grantee:	Lotus Trust	Grantee:	DKM Resources, Inc.	Lessee:	DKM Resources, Inc.

### Problem Language (*continued*):

- **Document No. 2:** "...The Trust hereby transfers, reassign and reconveys without warranty...unto DKM an overriding royalty interest of 1% of 8/8ths of all oil, gas, and other minerals that may be produced, saved and marketed... It is the intention of The Trust to reassign all of its right, title and interest in those certain oil, gas and mineral leases..."
- **Document No. 3:** "...hereby bargain, sell, transfer and convey unto DKM Resources, Inc.,...all Assignor's interest in and to the oil, gas and mineral leases described on Exhibit "A", attached hereto and the mineral leasehold estates created thereby..."



Document 1:	Mineral Deed	Document 2:	Reassignment of ORRI	Document 3:	Assignment of Leases
Date:	March 1, 1993	Date:	February 1, 1990	Date:	June 22, 1990
Grantor:	Rodney Kittleson	Grantor:	Kanaly Trust Company, as Trustee for...	Lessor:	Westburne Exploration Inc.
Grantee:	Lotus Trust	Grantee:	DKM Resources, Inc.	Lessee:	DKM Resources, Inc.

### **Issue with the Instrument's Language:**

- DKM Resources is vested with an overriding royalty interest and vested with a working interest – do these estates merge?

### **Examining Attorney's Interpretation:**

- Under the doctrine of merger, when a greater estate and lesser estate coincide and meet in one and the same person, without any intermediate estate, the lesser is immediately merged with and into the greater estate. *Dilts v. Brooks*, 213 P. 600, 602 (MT 1923).
- Accordingly, the overriding royalty interest vested in DKM Energy Inc. merged with the working interest vested in DKM Energy Inc.

Document 1:	Oil and Gas Lease	Document 2:	Assignment	Document 3:	Amendment and Extension
Date:	May 20, 2004	Date:	April 13, 2005	Date:	November 4, 2010
Grantor:	Connie Anderson	Grantor:	BTC Oil Properties	Lessor:	Connie M. Anderson
Grantee:	BTC Oil Properties	Grantee:	Orion Energy Properties	Lessee:	Brigham Oil & Gas, LP

**In a nutshell:** A 19% overriding royalty interest reservation in an Oil and Gas Lease Assignment is deemed as a fixed 4% overriding royalty interest in order to prevent increase in the overriding royalty interest when the original lease is later amended to increase the Lessor's royalty from 15% to 18.75%.

### **Problem Language:**

- **Document No. 1:** "In consideration of the premises the said Lessee covenants and agrees:  
1st To deliver to the credit of Lessor, free of cost, in the pipe line...the equal 15% part of all oil produced and saved... 2nd To pay Lessor 15% of the gross proceeds each year...for the gas from each well...3rd To pay Lessor for gas produced from any oil well...a royalty of 15% of the proceeds..."

→ *continued on next slide*



Document 1:	Oil and Gas Lease	Document 2:	Assignment	Document 3:	Amendment and Extension
Date:	May 20, 2004	Date:	April 13, 2005	Date:	November 4, 2010
Grantor:	Connie Anderson	Grantor:	BTC Oil Properties	Lessor:	Connie M. Anderson
Grantee:	BTC Oil Properties	Grantee:	Orion Energy Properties	Lessee:	Brigham Oil & Gas, LP

### Problem Language:

- **Document No. 2:** “The Assignor...reserves and retains title to an overriding royalty interest equal to the difference between existing burdens of record...and 19% of all the oil, gas and casinghead gas, and other minerals...”
- **Document No. 3:** “NOW, THEREFORE, for a good and valuable consideration... Lessor and Lessee agrees to the following:...Amend the Lessors royalty from 15% to a 18.75% royalty.”

Document 1:	Oil and Gas Lease	Document 2:	Assignment	Document 3:	Amendment and Extension
Date:	May 20, 2004	Date:	April 13, 2005	Date:	November 4, 2010
Grantor:	Connie Anderson	Grantor:	BTC Oil Properties	Lessor:	Connie M. Anderson
Grantee:	BTC Oil Properties	Grantee:	Orion Energy Properties	Lessee:	Brigham Oil & Gas, LP

### **Issue with the Instrument's Language:**

- Does the Amendment change the quantum of overriding royalty interest vested in BTC Oil Properties?

### **Examining Attorney's Interpretation:**

- The examining attorney credited Document No. 2 as reserving a fixed 4.00% overriding royalty interest, being 19% LESS 15%, in and under the Oil and Gas Lease, and thus the increase in lessors royalty would not decrease the overriding royalty interest reserved in Document No. 2.
- The typical curative would be to obtain a Stipulation of Interest by and between the current working interest owners and the overriding royalty interest owners.



# **PENNSYLVANIA INSTRUMENTS**

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Document: Oil and Gas Lease  
Date: June 7, 2006  
Lessor: Roy C. Preston and Nancy L. Preston  
Lessee: Elexco Land Services

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**In a nutshell:** The acreage “called” for in an instrument may not accurately reflect the actual acreage of the property due to possible discrepancies between an old “call” and a modern survey.

**Problem Language:**

- “...in the township(s) of Herrick, in the County of Bradford, Commonwealth of Pennsylvania, containing 5.34 gross acres, more or less...for the purpose of exploring for, developing, producing, and marketing oil and gas, along with all hydrocarbon and nonhydrocarbon substances produced in association therewith...”



Document: Oil and Gas Lease  
Date: June 7, 2006  
Lessor: Roy C. Preston and Nancy L. Preston  
Lessee: Elexco Land Services

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### **Issue with the Instrument's Language:**

- If the lease calls for 5.34 gross acres, but the map only accounts for 4.856 acres, where did the remaining acreage “called” for in the oil and gas lease go?

### **Examining Attorney's Interpretation:**

- In Pennsylvania, tax parcels are often “called” a certain amount, but when it's surveyed, it may be over or under.
- Here, there are 3 units that should account for the entire 5.34 gross acres called for in the lease. The acreage calculations are as follows: 3.032 acres for the Whipple Unit; 0.363 for the Behrend-Ross North Unit; and 1.461 for the Behrend-Ross South Unit. These 3 units total 4.856 gross acres.
- So, where is the .484 acres remaining from the 5.34 gross acres as called for in the lease? Simple, the discrepancy exists because the acreage being called for in the lease is an old “call” compared to a modern survey showing a more accurate assessment of the acreage.

Document: Oil and Gas Lease  
Date: May 18, 2010  
Lessor: John Richard Neal and Mary Carol Neal  
Lessee: Cabot Oil & Gas Corporation

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**In a nutshell:** Lessor includes a Favored Nations provision in their Oil and Gas Lease.

**Problem Language:**

- “Lessee hereby agrees that if at any time prior to Lessee’s establishment of economic production on any portion of the leased premises or on land pooled therewith, should Lessee lease or otherwise acquire any interest in any lease within a distance of one (1) mile from any tract comprising a portion of the leased premises, and such lease provides per net mineral acre bonus consideration or reserved royalty more favorable than that realized by this Lessor for this lease, then Lessee shall forthwith tender, without the necessity of notice or demand, to Lessor an additional amount of bonus consideration and/or a recordable lease amendment increasing the reserved royalty applicable hereunder, as the case may be, sufficient to match such more favorable bonus and/or royalty. The execution and acceptance of this lease by Lessee shall constitute Lessee’s certification that it has not heretofore acquired any interest in any lease or option to lease within such distance at a more favorable bonus or royalty consideration than that provided to Lessor as consideration for this lease. This provision shall not apply as to other leases less than 20 gross acres in size...”



Document: Oil and Gas Lease  
Date: May 18, 2010  
Lessor: John Richard Neal and Mary Carol Neal  
Lessee: Cabot Oil & Gas Corporation

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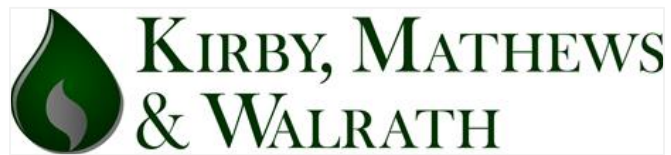
### **Issue with the Instrument's Language:**

- What is the effect of the Favored Nations provision?

### **Examining Attorney's Interpretation:**

The Favored Nations provision consists of the following qualities:

➤ Only applies up to and until "economic production"	➤ Limited to bonus and "reserved royalty"
➤ Geographical limitations	➤ Automatically applicable
➤ Retrospective	➤ Limited in leased acreage
➤ Applies to newly acquired leases or the acquisition of an interest in a lease	



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## ***What Were They Thinking?!***

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*Making Sense of Idiosyncratic Language in Title Instruments*

*By: M. Ryan Kirby, Vy “Tina” Huynh, and Phuong Vy Do*







## *Introduction*

*On a daily basis, title examiners are faced with questions about how to interpret title instruments that contain non-standard language. This presentation aims to address those questions by giving examples of idiosyncratic language from actual title instruments, determining the issues that arise from each provision in question, and providing an explanation of how the examiner ultimately construed each instrument.*





# TEXAS INSTRUMENTS





Document:	Deed
Date:	October 6, 1875
Grantor:	L. L. Mobley
Grantee:	Fanning F. E. Taylor and Company

### In A Nutshell:

This deed conveys a one-half interest in 160 acres of land in Montague County, Texas. However, the deed was executed prior to the patent.

### Problem Language:

*I, Grantor, "...release and convey unto the said Fanning F. E. Taylor and Company **one-half of the mineral that has or may be discovered** on said described land with all and singular the right to and privileges of erecting any and all buildings and machinery necessary on said land for working said mineral..."*

### Issues with the Instrument's Language:

- *Does a deed being executed prior to the patent have any bearing on the situation?*
- *Does the language used in this deed make it a valid mineral deed?*

### Examining Attorney's Interpretation:

*The fact that a mineral deed is executed prior to a patent does not necessarily invalidate the mineral deed. This assumes the subsequently executed Patent does not reserve minerals to the State. Elliot v. Nelson, 251 S.W. 501 (Tex. 1923).*

**This is a valid mineral deed, assuming the references on the ground and to the surveyor's records are good. The phrase "one-half (1/2) of the mineral that has or may be discovered" is strange, but it still constitutes a one-half (1/2) mineral deed.**



The State of Texas Know all men by these  
 Certificates of Montague presents, that for and in  
 consideration of One dollar to me paid by James  
 Fanning, J.E. Taylor, James M. Grigsby & Co all of  
 the County and State of Texas the receipt whereof  
 is hereby acknowledged, and for and in con-  
 sideration of the discovery of Mineral on a cer-  
 tain described tract of or parcel of land, situ-  
 ated in Montague County, to wit: A prospecting  
 survey of 160 acres of land made for J.E.  
 Mobley situated on the waters of Denton Creek  
 about 9 1/2 miles S.E. from the town of Montague  
 the land on which he is now residing and  
 which is more fully described by the records  
 in the Surveyor's Office in Montague County,  
 to which this has reference, hereby binding  
 myself my heirs Executors and Administrators  
 to release and convey unto the aforesaid James  
 Fanning, J.E. Taylor and Company one half  
of the Mineral that has or may be discov-  
ered on said described land with all and  
singular the rights and privileges of erecting  
any and all buildings and machinery nec-  
essary on said land for working said Mineral  
and I further bind myself to secure a  
patent on said land according to the prescrip-  
tion laws of the State of Texas. And I further  
bind myself if I should, sell and transfer  
my right and title to said land to release  
unto the said Fanning, Taylor, Grigsby & Co  
and their heirs or assigns one half of  
the Mineral on said land with all the privi-  
leges herein specified. — hereby granting  
 unto the aforesaid Fanning, Taylor, Grigsby &  
 Co and their heirs and legal representatives  
 all and singular the right to sell convey and  
 dispose of one half of the Mineral by shares  
 or otherwise, and said land hereby granting  
 to the aforesaid Fanning, Taylor, Grigsby & Com-  
 pany their heirs and assigns all and sing-  
 ular the rights & privileges herein mentioned.

Problem Language



Making this Contract binding by law as herein specified. Given under my hand this the 6<sup>th</sup> day of October A.D. 1875-

L. L. Mobley

The State of Texas & Before me the undersigned County of Montague & Authority personally appeared L. L. Mobley to me known and acknowledged that he signed executed and delivered the foregoing Contract for the purposes and considerations therein specified.

Seal

Witness my official seal and Signature at Office in the town of Montague this the 6<sup>th</sup> day of October A.D. 1875-

H. N. Richards  
Notary Pub. M. C. T.

Filed July 1<sup>st</sup> 1879 for Record at 10 o'clock P.M.  
and Recorded July 31<sup>st</sup> 1879.

J. A. Williams  
Clark County Clerk M. C. T.

The State of Texas & Know all men by these County of Montague & presents that for and in consideration of One Dollar to me paid by J. E. Fanning, J. E. Taylor, J. W. Grigsby & Co. all of the County and State aforesaid the receipt thereof is hereby acknowledged and for and in consideration of the discovery of mineral on a certain described tract or parcel of land situated in Montague County to wit: 160 acres of land prorrptions surveyed for E. D. Hughes situated on the waters of Denton Creek about 10 miles S.E. from the town of Montague. Beginning at the North Cor of a 160 acre survey in the name of John Morris. Thence N 45 W to the line of L. L. Mobley prorrptions Sur. Thence N 45 E to Mobley & Co. Thence N 45 W 300 yds. Thence N 45 E. — Thence S 45 W to the line of the said John Morris



Translation

Know all men by these present that for and in consideration of one dollar to me paid by William Fanning, T. E. Taylor, James M. Grigsby and Co., all of the county and state aforesaid, the receipt thereof is hereby acknowledged and for and in consideration of the discovery of mineral on a certain described tract of or parcel of land situated in Montague County, to wit: a preemption survey of 160 acres of land made for L. L. Mobley situated on the waters of Denton Creek about 9-1/2 miles S.E. from the town of Montague the land on which he is now living and which is more fully described by the Records in the Surveyors Office in Montague County, to which this has reference, hereby binding myself my heirs executors and administrators to release and convey unto the aforesaid Wm. Fanning, F. E. Taylor and Company one half of the mineral that has or may be discovered on said described land with all and singular the rights and privileges of erecting any and all buildings and machinery necessary on said land for working said mineral, and I further bind myself to secure a patent on said land according to the preemption laws of the state of Texas. And I further bind myself if I should sell and transfer my right and title to said land to reserve unto the said Fanning, Taylor, Grigsby and Co. and their heirs or assigns one half of the mineral on said land with all the privileges herein specified, hereby granting unto the aforesaid Fanning Taylor Grigsby and Co. and their heirs and legal representatives all and singular the right to sell convey and dispose of one half of the mineral by shares or otherwise. And said land hereby granting to the aforesaid Fanning Taylor Grigsby and Co. [illegible word] their heirs and assigns all and singular the rights and privileges herein mentioned making this contract binding by law as herein specified.

Given under my hand this 6<sup>th</sup> day of October AD 1875.

L. L. Mobley

Document 1:	Assignment and Bill of Sale
Date:	September 1, 1988
Assignor:	A. Ray Davis
Assignee:	Robert B. Ross & Associates

Document 2:	Assignment and Bill of Sale
Date:	September 1, 1988
Assignor:	Robert B. Ross & Associates
Assignee:	Exxon Corporation

In a Nutshell:

*The first document purports to convey all of Assignor's right, title and interest of whatever nature in and to the Pembroke Unit. The second document assigns that same interest to Exxon.*

Problem Language:

*"The Subject property conveyed to Assignee shall include all of Assignor's right, title and interest of whatever nature in and to the Pembroke Unit... Notwithstanding the foregoing, it is understood and agreed that the intent of this instrument is to convey to Assignee all of Assignor's right, title and interest, which is within and is part of said Unit, whether such interest is correctly described herein, mis-described or not described at all, and that Assignor will retain no reversionary rights to the interest conveyed."*

Issues with the Instrument's Language:

- *Does the interest conveyed include all depths or only the depths limited to the Pembroke Spraberry Unit? If the Assignment is interpreted to assign only depths limited to the Pembroke Unit, then would the Assignor still retain a working interest in the other depths?*

Examining Attorney's Interpretation:

**Given that the Pembroke Unit is depth limited, the conveyance only assigns those depths in the Pembroke. Had they wanted to assign all depths, they should have assigned "the leases committed to the Pembroke Unit," or otherwise made clear that the assignment was not depth limited.**



100043

VOL. 554 PG. 321  
UPTON COUNTY, TX.

## ASSIGNMENT AND BILL OF SALE

THE STATE OF TEXAS  
COUNTY OF UPTON  
COUNTY OF REAGAN

I KNOW ALL MEN BY THESE PRESENT, THAT:

The undersigned party, hereinbelow designated and hereinafter referred to as "Assignor", for the sum of TEN DOLLARS (\$10.00) and other good and valuable consideration, the receipt of which is hereby acknowledged, does hereby sell, convey, assign and grant to ROBERT B. ROSS & ASSOCIATES, INC., a Texas Corporation, whose address is P. O. Box 9904, Midland, Texas, 79708, hereinafter referred to as "Assignee", all of Assignor's right, title and interest in and to the oil and gas interests described on Exhibit "A", attached hereto and made a part hereof, and all wells and associated equipment located thereon, all of which are hereinafter referred to as the "Subject Property".

TO HAVE AND TO HOLD the Subject Property unto Assignee, its successors and assigns to Warrant and Forever Defend all and singular the Subject Property unto Assignee, its successors and assigns, against every person whomsoever lawfully claiming or to claim the same or any part thereof, by, through or under Assignor but not otherwise.

Assignor also hereby grants and transfers to Assignee, its successors and assigns, the benefit of and the right to enforce the covenants and warranties, if any, which Assignor is entitled to enforce with respect to the Subject Property against Assignor's predecessors in title.

Further, Assignor warrants and represents that it has the requisite consent and authority to sell the Subject Property to Assignee and that the Subject Property is free and clear of any preferential rights to purchase, claims, pending or threatened litigation, liens, mortgages, tax partnerships, or other encumbrances or contractual commitments except for the Pembroke Unit Agreement and Operating Agreement, and standard agreements for the sale and purchase of oil and gas.

Assignor agrees that it will from time to time and upon reasonable request of Buyer, execute and deliver any instrument necessary or desirable for perfecting in Assignee, its successors and assigns title to the Subject Property.

Assignor shall be entitled to all proceeds attributable to the Subject Property prior to the effective date hereof and shall be responsible and liable for all costs and expenses attributable to the Subject Property prior to the effective date. Assignee shall be entitled to all proceeds attributable to the Subject Property after the effective date and shall be responsible and liable for all costs and expenses attributable to the Subject Property after the effective date. Ad valorem taxes for 1988, levied against the Subject Property shall be prorated between Assignor and Assignee as of the effective date.

The provisions of this instrument shall be binding upon and shall insure to the benefit of the parties hereto and their respective heirs, executors, administrators, representatives, successors and assigns.

Executed by the parties as of October 10, 1988, but effective as of September 1, 1988, at 7:00 A.M. local time where the Subject Property is located.

Assignor's  
Social Security No.:

464-54-9468

ASSIGNOR:

*A. Ray Davis*  
A. RAY DAVIS, whose marital status  
has not changed since acquiring the  
interest conveyed herein.

Assignor's Address:

P.O. Box 79188  
Houston, TX 77279

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Attested:

ASSIGNEE: Robert B. Ross & Associates, Inc.

By: James B. Ross Secretary By: Robert B. Ross Robert B. Ross, President

THE STATE OF TEXAS  
COUNTY OF MIDLAND

III

This instrument was acknowledged before me on the 10th day of October, 1988, by Robert B. Ross, President of ROBERT B. ROSS & ASSOCIATES, INC., a corporation, on behalf of said corporation.

My Commission Expires:

6-1-89



ELLEN WHITE  
Notary Public, State of Texas  
My Commission Expires June 1, 1989

Ellen White  
Notary Public in and for the State of Texas.

THE STATE OF TEXAS  
COUNTY OF HARRIS

III

This instrument was acknowledged before me on the 13 day of October, 1988, by A. RAY DAVIS

My Commission Expires:

5-1-92

Ann Slayden  
Notary Public in and for the State of Texas



ANN SLAYDEN  
Notary Public, State of Texas  
My Commission Expires May 1, 1992



ANN SLAYDEN  
Notary Public, State of Texas  
My Commission Expires May 1, 1992



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EXHIBIT "A"

ATTACHED TO AND MADE A PART OF THAT CERTAIN ASSIGNMENT AND BILL OF SALE, DATED THE 10th DAY OF October, 1988, BETWEEN,

A. RAY DAVIS,

as ASSIGNOR, AND ROBERT B. ROSS & ASSOCIATES, INC., AS ASSIGNEE

\*\*\*\*\*

The Subject Property conveyed to Assignee hereunder shall include all of Assignor's right, title and interest of whatever nature in and to the Pembroke Unit ("Said Unit") as defined in that certain Unit Agreement and Unit Operating Agreement for the development and operation of Said Unit, entered into as of the 1st day of September, 1961, as amended, and recorded in Volume 328, Page 193 of the Oil and Gas Lease Records of Upton County, Texas, and in Volume 84, Page 187 of the Oil and Gas Lease Records of Reagan County, Texas, and as extended by agreement executed as of the 25th day of October 1962, a counterpart of which is of record in Volume 328, Page 131 of the Oil and Gas Lease Records of Upton County, Texas, and in Volume 84, Page 298 of the Oil and Gas Lease Records of Reagan County, Texas.

It is believed that Assignor's interest in Said Unit is as follows:

Unit Working Interest (decimal): 0.0009359  
Unit Net Revenue Interest (decimal): 0.0006435

Further it is believed that Assignor's interest in Said Unit consist primarily of interest in the following Unit Tracts, to wit: Tract's 24, 39, 40, 42, 74, 133, 136, 137, 140, 142, 52, 60 and 134

Notwithstanding the foregoing, it is understood and agreed that the intent of this instrument is to convey to Assignee all of Assignor's right, title and interest, both real and personal, which is within and is a part of Said Unit, whether such interest is correctly described herein, mis-described or not described at all, and that Assignor will retain no revisionary rights to the interest conveyed.

THE STATE OF TEXAS ) I, Phyllis Stephens, Clerk of the County Court in and for said County do hereby certify that the foregoing instrument, dated 10-13-88  
COUNTY OF UPTON ) along with its certificate of authentication, was filed for record in my office in Rankin, Texas on  
the 4th day of November, 19 88 at 10:10 o'clock A.M. and was duly recorded on  
the 7th day of November, 19 88 at 8:58 o'clock A.M. Instrument No. 100043  
Vol. 554 Page 321 Deed Records, Upton County, Texas  
\$ 7.00 (Paid in Advance) Receipt No. A-42436  
By: Phyllis Stephens COUNTY CLERK  
Kimberly Teague Deputy  
Return to: Robert B. Ross & Assoc.  
P.O. Box 9904  
Midland, Texas 79708  
Compared by: Dick Butcher

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100387

VOL. 555 PG. 818  
UPTON COUNTY, TX.

## ASSIGNMENT AND BILL OF SALE

THE STATE OF TEXAS

KNOW ALL MEN BY THESE PRESENT, THAT:

COUNTY OF UPTON  
COUNTY OF REAGAN

ROBERT B. ROSS & ASSOCIATES, INC., sometimes hereinafter referred to as "Ross", for the sum of TEN DOLLARS (\$10.00) and other good and valuable consideration, the receipt of which is hereby acknowledged, does hereby sell, convey, assign and grant to EXXON CORPORATION, whose address is P. O. Box 2305, Houston, TX, 77252-2305, sometimes hereinafter referred to as "Exxon", all of Ross' right, title and interest in and to the oil and gas interests acquired by Ross by virtue of the Assignment and Bill Of Sales described on Exhibit "A", attached hereto and made a part hereof, and all wells and associated equipment located thereon, all of which are hereinafter referred to as the "Subject Property".

Ross hereby warrants title under a Special Warranty (by, thru and under only) but does grant and transfer to Exxon, its successors and assigns, the benefit of and the right to enforce the covenants and warranties, if any, which Ross is entitled to enforce with respect to the Subject Property against Ross' predecessors in title.

Ross agrees that it will from time to time and upon reasonable request of Exxon execute and deliver any instrument necessary for perfecting in Exxon, its successors and assigns title to the Subject Property.

Exxon agrees, by the acceptance hereof, to assume and abide by all of the terms and conditions of each Assignment and Bill Of Sale set out in Exhibit "A" attached hereto and made a part hereof and agrees to hold Ross harmless from all expenses, liabilities and causes of action resulting from Exxon's acts, or failure to act, as the case may be, under the terms of said Assignment and Bill Of Sales.

Attested:

ROBERT B. ROSS &amp; ASSOCIATES, INC.

By: [Signature]  
SecretaryBy: [Signature]  
Robert B. Ross, PresidentTHE STATE OF TEXAS  
COUNTY OF MIDLAND

This instrument was acknowledged before me on the 18th day of October, 1988, by Robert B. Ross, President of ROBERT B. ROSS & ASSOCIATES, INC., a corporation, on behalf of said corporation.

My Commission Expires:

[Signature]  
Notary Public in and for the State of TexasSTEPHEN M. BUCKLEY  
Notary Public, State of Texas  
My Commission Expires 11-19-89

Notary's Printed Name



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EXHIBIT "A"

ATTACHED TO AND MADE A PART OF THAT CERTAIN ASSIGNMENT AND BILL OF SALE, DATED THE 18th DAY OF October, 1988, BETWEEN, ROBERT B. ROSS & ASSOCIATES, INC., AS ASSIGNOR AND EXXON CORPORATION AS ASSIGNEE.

\*\*\*\*\*

Assignment And Bill of Sale from A. RAY DAVIS, as Assignor, to ROBERT B. ROSS & ASSOCIATES, INC., as Assignee, executed as of the 10th day of October 1988, but to become effective as of the 1st day of September 1988, at 7:00 A.M., local time, covering All of Assignors right, title and interest in and to the oil and gas interest of Assignor as described in said Assignment and the Exhibit "A" attached thereto, which said Assignment And Bill Of Sale is recorded in Volume Page of the Oil and Gas Lease Records of Upton County, Texas, and in Volume 554 Page 321 of the Deed Records of Upton County, Texas.

THE STATE OF TEXAS  
COUNTY OF UPTON

I, Phyllis Stephens, Clerk of the County Court in and for said County, do hereby certify that the foregoing instrument, dated 10-18-88, along with its certificate of authentication, was filed for record in my office in Rankin, Texas on the 20th day of December, 19 88 at 10:04 o'clock A. M., and was duly recorded on the 21st day of December, 19 88 at 9:08 o'clock A. M. Instrument No. 100387  
Vol. 555 Page 818 Deed Records, Upton County, Texas  
\$ 5.00 (Paid EXXON), Receipt No. A-42804  
Return to: Exxon Company  
P.O. Box 1600  
Midland, Texas 79702

By: Phyllis Stephens, COUNTY CLERK  
Kimberly League Deputy

Compared by: Libby Mitchell

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Document:	Oil, Gas and Mineral Lease
Date:	October 5, 2011; Primary Term of 3 Years
Grantor:	Quanah Exploration, LLC.
Grantee:	Range Texas Production, LLC.

### In a Nutshell:

The Continuous Development Clause of this lease is confusing and not easily interpreted. The Lessee's last well was completed in March of 2014.

### Problem Language:

*"Lessee must develop the lease premises by drilling additional wells without a lapse of more than 180 days between the end of the primary term and the commencement of actual drilling operations of the next succeeding well. On the completion of a well at or after the primary term, which is capable of producing in paying quantities, Lessee must develop the lease premises by drilling additional wells without a lapse of more than 180 days between the completion of one well and the commencement of operations for the drilling of the next succeeding well."*

### Issues with the Instrument's Language:

- *When does the next well need to be drilled?*

### Examining Attorney's Interpretation:

**With a 3 year primary term, the term will expire on October 5, 2014. The last well was drilled in March 2014, which is more than 180 days prior to the end of the primary term. Thus, Lessee has 180 days from October 5, 2014 to "commence" the drilling of a well. → April 03, 2015.**





**NOTICE OF CONFIDENTIALITY RIGHTS: IF YOU ARE A NATURAL PERSON, YOU MAY REMOVE OR STRIKE ANY OR ALL OF THE FOLLOWING INFORMATION FROM ANY INSTRUMENT THAT TRANSFERS AN INTEREST IN REAL PROPERTY BEFORE IT IS FILED FOR RECORD IN THE PUBLIC RECORDS: YOUR SOCIAL SECURITY NUMBER OR YOUR DRIVER'S LICENSE NUMBER.**

PRODUCERS 88 REV - TEX. C-PAID-UP (8-86)

**OIL, GAS AND MINERAL LEASE**

THIS AGREEMENT made and entered into this 5th day of October, 2011, by and between **Quannah Exploration, LLC**, whose mailing address is **P. O. Box 494, Midland, TX 79702**, hereinafter called "Lessor" (whether one or more), and **Range Texas Production, LLC**, a Delaware limited liability corporation, whose mailing address is **100 Throckmorton St., Suite 1200, Fort Worth, Texas 76102**, hereinafter called "Lessee".

**WITNESSETH:** That, for and in consideration of the sum of Ten and No/100 Dollars (\$10.00), the receipt of which is hereby acknowledged, and of the royalties herein provided and the agreements of Lessee herein contained, Lessor does hereby grant, lease and let exclusively unto Lessee, its successors and assigns, all of the land hereinafter described, together with any reversionary rights therein, for the purpose of exploring by geological, geophysical and all other methods, and of drilling, producing and operating wells or mines for the recovery of oil, gas and other hydrocarbons, and all other minerals or substances, whether similar or dissimilar, that may be produced from any well or mine on the leased premises, including primary, secondary, tertiary, cycling, pressure maintenance methods of recovery, and all other methods, whether now known or unknown with all incidental rights thereto, and to establish and utilize facilities for surface and subsurface disposal of salt water, and to construct, maintain and remove roadways, tanks, pipelines, electric power and telephone lines, power stations, machinery and structures thereon, to produce, store, transport, treat and remove all substances described above, and the products therefrom, together with the right of ingress and egress to and from said land and across any other land now or hereafter owned by Lessor. The land hereby leased is situated in the Counties of **Scurry, State of Texas**, and is described as follows:

**See the Exhibit "A" attached hereto for a complete description, said description of lands covered by this lease is separated into six different tracts.**

**Notwithstanding anything contained herein to the contrary, each of said six tract listed shall be considered a separate lease.**

This lease covers all of the land described above, and in addition thereto, it covers and there is hereby leased, let and demised to the same extent as if they were described herein specifically, all lands owned or claimed by Lessor adjacent, contiguous to, or a part of the tract or tracts specifically described above, whether such additional lands be owned or claimed by deed, limitation or otherwise, and whether the same be inside or outside the metes and bounds description and whether the same be held under fence by Lessor or not and whether such additional lands be in the named survey or other survey or surveys. This is a lease in gross and not by the acre and the bonus money paid, if any, shall be effective to cover all such lands irrespective of the number of acres contained therein, and the lands included within the terms of this lease are estimated for the purpose of calculating rental and/or shut-in royalty payments to comprise **6087.00** acres, whether they actually comprise more or less.

1. Without reference to the commencement, prosecution or cessation at any time of drilling or other development operations, or to the discovery, development or cessation at any time of production of oil, gas or other minerals, and notwithstanding anything else herein contained to the contrary, this lease shall be for a term of **three (3) years** from this date (called "primary term") and as long thereafter as oil, gas or other minerals are produced from said land, or land with which said land is pooled hereunder, or as long as this lease is continued in effect as otherwise herein provided;

2. The royalties to be paid by Lessee are: (a) on oil, and on other liquid hydrocarbons saved at the well, **1/5th** of that produced and saved from said land, same to be delivered at the wells or to the credit of Lessor in the pipelines to which the wells may be connected; Lessor's interest in either case shall bear its proportion of any expenses for treating oil to make it marketable as crude; (b) on gas including casinghead gas or other gaseous substances produced from said land and sold on or off the premises, **1/5th** of the net proceeds at the well received from the sale thereof, provided that on gas used off the premises or by Lessee in the manufacture of gasoline or other products therefrom, the royalty shall be the market value at the well of **1/5th** of the gas so used; as to all gas sold by Lessee under a written contract, the price received by Lessee for such gas shall be conclusively presumed to be the net proceeds at the well or the market value at the well for the gas so sold; (c) on all other minerals mined and marketed, **1/5th**, either in kind or value at the well or mine, at Lessee's election, and (d) at any time from time to time either at or after the expiration of the primary term of this lease, if there is a gas well or wells on said land or lands pooled therewith (and for the purposes of this clause (d) the term "gas well" shall include wells capable of producing natural gas, condensate, distillate, or any gaseous substance and wells classified as gas wells by any governmental authority) and such well or wells are or have been shut-in before or after production therefrom, it shall be deemed that said well or wells are producing gas within the meaning of paragraph number 1 of this lease and it shall not terminate. In such event, Lessee covenants and agrees to pay as royalty shut-in gas royalty in the amount of **\$6087.00** per annum as long as such well or wells are shut-in and this lease is not maintained in force or effect by other provisions hereof. Such shut-in royalty shall be paid or tendered to Lessor or to his credit in the Bank of \_\_\_\_\_ which Bank or any successor Bank thereof shall continue to be the agent for Lessor and Lessor's successors and assigns. Should Lessee elect, such Bank may also be used to pay any other sums, including royalties due hereunder. If such Bank (or any successor Bank) should fail, liquidate or be succeeded by another Bank or for any reason fail or refuse to accept shut-in royalty or any other payment, Lessee shall not be held in default until thirty (30) days after Lessor shall deliver to Lessee a recordable instrument making provisions for another method of payment or tender. Any depository charge is a liability of the Lessor. Any payment or tender of shut-in royalty made under the terms of this lease may be made by check or draft of Lessee mailed or delivered to said Bank or to Lessor. In the event Lessee is obligated to pay the shut-in royalty above indicated, the first payment of such shut-in royalty shall be due and payable on or before ninety (90) days following the date on which the well is shut-in, or if shut-in during the primary term then on or before ninety (90) days following the expiration of the primary term, and subsequent payments, if required under the terms of this paragraph, shall be due and payable annually on or before the anniversary of the date of the original payment. It is specifically provided that this is a paid-up lease during the term set out above as "primary term" and there shall be no obligation or liability on the Lessee to make any shut-in royalty payment or any other payment during the primary term, and without any such payment this lease shall remain in full force and effect during said primary term. The obligation to pay the shut-in royalty provided for above, shall be a covenant running with the land and, under no conditions, shall the failure to comply with such obligation serve or be used to terminate this lease or to work any forfeiture;

3. If at the expiration of the primary term of this lease oil, gas or other minerals are not being produced from the leased premises or land pooled therewith, but Lessee is then engaged in drilling or reworking operations thereon, this lease shall remain in force so long as drilling or reworking operations are prosecuted (whether on the same or different wells) with no cessation of more than sixty (60) consecutive days, and if they result in production, so long thereafter as oil, gas or other minerals are produced from said land or land pooled therewith. If production of oil, gas or other minerals on said land or land pooled therewith should cease from any cause after the primary term, this lease nevertheless shall continue in force and effect as long as additional drilling operations or reworking operations are conducted on this lease, or on acreage pooled therewith, which additional operations shall be deemed to be had when not more than sixty (60) days elapse between the abandonment of operations on one well and the commencement of operations on another well, and if production is obtained this lease shall continue as long thereafter as oil, gas or other minerals are produced from said land or land pooled therewith, and as long thereafter as additional operations, either drilling or reworking, are had thereon. In the event a well or wells producing oil or gas in paying quantities should be brought in on adjacent land and within 330 feet of and draining the leased premises, Lessee agrees to drill offset wells as a reasonably prudent operator would drill under the same or similar circumstances. The judgment of the Lessee, when not fraudulently exercised, in carrying out the purpose of this lease shall be conclusive;

4. Lessee, its successors and assigns, at its option, at any time and from time to time, and without Lessor's joinder or further consent, is hereby given the right and power to pool the land or any interest covered by this lease, or any portion thereof, as to oil, gas, condensate or distillate, or any of them, or either of them, with any other land, interests, lease or leases, or any of them, adjacent, adjoining or located in the immediate vicinity of these lands, when in Lessee's judgment it is necessary or advisable to do so in order efficiently to develop or operate said premises in compliance with the spacing rules of the Railroad Commission of Texas or other lawful authority or when to do so, would, in the judgment of Lessee, promote the conservation of oil and gas on said premises, such pooling to be into a well unit or units not exceeding forty (40) acres plus an acreage tolerance of ten per cent (10%) of forty (40) acres for oil, and not exceeding six-hundred-forty (640) acres plus an acreage tolerance of ten percent (10%) of six-hundred-forty (640) acres for gas, provided that should governmental authority having jurisdiction prescribe or permit the creation of units larger than those specified, units may be created or enlarged to conform substantially in size with those prescribed by governmental regulations. Lessee may pool the acreage or interests above described, or any portion thereof, as above provided, as to oil or gas in any one or more strata, and units so formed need not conform in size or area with the unit or units into which the lease is pooled or combines as to any other stratum or strata, and oil units need not conform as to area with gas units. The pooling in one or more instances shall not exhaust the rights of the Lessee hereunder to pool the land above described, or any portion thereof, into other units. Lessee shall execute in writing and file for record in the county or counties where the land is situated an instrument designating and describing the pooled acreage, which pooling and designation may be accomplished either before or after a well or wells are drilled or completed on the unit. The entire acreage so pooled into a unit shall be treated for all purposes, except the payments of royalties, overriding royalties or payments out of production, as if it were included in this lease; and drilling or reworking operations thereon, production of oil or gas, condensate or distillate therefrom, cessation of production thereon, or the existence thereon of a shut-in gas well, shall be considered for all purposes, except the payment of royalties, as if such operations were conducted, or such production or cessation of production, or existence of a shut-in gas well were on the land above described, whether or not the well or wells be located on the said lands. In lieu of the royalties, overriding royalties or payments out of production, if any, elsewhere herein specified, Lessor shall receive from a unit so formed only such portion of the royalty, overriding royalty or payment out of production, if any, stipulated herein as the amount of acreage (surface acres) above described which is placed in the unit bears to



the total acreage (surface acres) so pooled in the particular unit involved. Shut-in gas royalties with respect to unit shut-in gas wells shall be payable in accordance with the provisions and in the amount set forth in this Lease. Should any unit as created hereunder contain less than the maximum number of acres hereinabove specified or allowed, then Lessee may at any time thereafter, whether before or after production is obtained on the unit, enlarge such unit by adding additional acreage thereto, but the enlarged unit shall in no event exceed the acreage content hereinabove specified or allowed. In the event an existing unit is so enlarged, Lessee shall execute and file for record in the county or counties in which the land is situated a supplemental designation and description of the land added to the existing unit; provided, that if such supplemental designation and description is not filed until production is obtained on the unit as originally created, then and in such event the supplemental designation and description shall not become effective until the first day of the calendar month next following the filing thereof. In the event the well or wells drilled on any unit shall fail to produce oil or gas, or in the event the production from any such well or wells shall cease, Lessee may terminate any unitized area created hereunder by filing for record in the county or counties where the land is situated proper instruments evidencing such termination;

5. Lessee shall have the free use of oil, gas and water from said land, except water from Lessor's wells and tanks, for all operations hereunder, including, but not limited to, repressuring, pressure maintenance, cycling, and secondary recovery operations, and the royalty on oil and gas shall be computed after deducting any so used. Lessee shall have the right at any time during or after the expiration of this lease to remove all property and fixtures placed by Lessee on said land, including the right to draw and remove all casing. No well shall be drilled within two hundred feet of any residence or barn now on said land without Lessor's consent;

6. The rights of either party hereunder may be assigned in whole or in part and the provision hereof shall extend to the heirs, executors, administrators, successors and assigns of the parties hereto, but no change or division in ownership of the land or royalties, however accomplished, shall operate to enlarge the obligations or diminish the rights of Lessee or impair the effectiveness of any payment theretofore made by Lessee. No such change or division in the ownership of the land or royalties shall impair the effectiveness of any payment theretofore made by Lessee or be binding upon Lessee for any purpose (and irrespective of whether Lessee has either actual or constructive knowledge thereof) until 60 days after such person acquiring any interest has furnished Lessee with the instrument or instruments, or certified copies thereof, constituting his/her/their chain of title from the original Lessor;


7. Lessee shall not be liable for delays or defaults in its performance of any agreement or covenant hereunder due to force majeure. The term "force majeure" as employed herein shall mean: any act of God including, but not limited to storms, floods, washouts, landslides, and lightning; acts of the public enemy; wars, blockades, insurrection or riots, strikes or lockouts; epidemics or quarantine regulations; laws, acts, orders or requests of federal, state, municipal or other governmental officers or agents under color of authority; freight embargoes or failures; exhaustion or unavailability or delays in delivery of any product, labor, service or material. If Lessee is required, ordered or directed by any federal, state or municipal law, executive order, rule, regulation or request enacted or promulgated under color of authority to cease drilling operations, reworking operations or producing operations on the land covered by this lease or if Lessee by force majeure is prevented from conducting drilling operations, reworking operations, or producing operations, then until such time as such law, order, rule, regulation, request or force majeure is terminated and for a period of ninety (90) days after such termination each and every provision of this lease that might operate to terminate it or the estate conveyed by it shall be suspended and inoperative and this lease shall continue in full force. If any period of suspension occurs during the primary term, the time thereof shall be added to such term;

8. Lessor hereby warrants and agrees to defend the title to said land and agrees that the Lessee, at its option, may discharge any tax, mortgage, other than lien upon said land, and in the event Lessee does so, it shall be subrogated to such lien with the right to enforce the same and apply royalties accruing hereunder toward satisfying the same. Without impairment of Lessee's rights under the warranty in the event of failure of title in whole or in part, it is agreed that if Lessor does not own, or have the right to lease, the entire mineral estate herein purported to be leased in the land above described, then the royalties and any other sums payable hereunder shall be reduced proportionately. Should any party named above as Lessor fail to execute this lease, or should any party execute the lease who is not named as a Lessor, it shall nevertheless be binding upon the party or parties executing the same;

9. Lessee, its successors and assigns, shall have the right at any time to surrender this lease, in whole or in part, to Lessor or his heirs and assigns by delivering or mailing a release thereof to the Lessor, or by placing a release thereof of record in the county in which said land is situated; thereupon Lessee shall be relieved from all obligations, expressed or implied, of this agreement as to the acreage so surrendered.

10. See the Exhibit "B" attached hereto for additional provisions.

IN WITNESS WHEREOF, this instrument is executed the day and year first above written.

  
Quanah Exploration, LLC  
by: Denise Newton, as Manager

STATE OF TEXAS           §  
  §  
COUNTY OF Midland   §

This instrument was acknowledged before me on the 10<sup>th</sup> day of October, 2011, by Denise Newton, as Manager of Quanah Exploration, LLC



  
Notary Public Signature



**Exhibit "A"**

Attached to and made a part of an Oil and Gas Lease dated the 5 day of October, 2011, by and between **Quanah Exploration, LLC** as "Lessor," and **Range Texas Production, LLC**, a Delaware limited liability corporation as "Lessee.

**Tract 1:**

All of Section 74, Block 2, H.T. & C. Railway Company Survey in Scurry County, Texas, save and except 160 acres out of the Northeast Corner, being the same property described in that certain Warranty Deed from Fagan, Inc., A Delaware Corporation and La Wayne L. Fagan to Grimmer Bros, Inc., and recorded in Volume 531, Page 131, Deed Records of Scurry County, Texas, Containing 401 Gross Acres.

All of Section 75, Block 2, H.T. & C. Railway Company Survey in Scurry County, Texas, save and except 5.5 acres out of the Southeast corner, and being further described in a Assignment and Conveyance dated June 11, 2010, from Quanah Exploration Limited Partnership to James A. "Buddy" Davidson Charitable Foundation, recorded in Volume 718, Page 60, Deed Records of Scurry County, Texas, Containing 634.5 Gross Acres.

**Tract 2:**

All of Section 77, Block 2, H.T. & C. Railway Company Survey in Scurry County, Texas, and Containing 525 Gross Acres.

All of Section 78, Block 2, H.T. & C. Railway Company Survey in Scurry County, Texas, and Containing 525 Gross Acres.

**Tract 3:**

All of Section 79, Block 2, H.T. & C. Railway Company Survey in Scurry County, Texas, Containing 633.3 Gross Acres.

All of Section 80, Block 2, H.T. & C. Railway Company Survey in Scurry County, Texas, Containing 607 Gross Acres.

**Tract 4:**

All of Section 81, Block 2, H.T. & C. Railway Company Survey in Scurry County, Texas, Containing 530 Gross Acres.

All of Section 95, Block 2, H.T. & C. Railway Company Survey in Scurry County, Texas, Containing 626.5 Gross Acres.

**Tract 5:**

All of Section 96, Block 2, H.T. & C. Railway Company Survey in Scurry County, Texas, Containing 640 Gross Acres.

All of Section 97, Block 2, H.T. & C. Railway Company Survey in Scurry County, Texas, Save and Except 160 acres out of the SE/4, being the same property as described in that certain Warranty Deed from Sallie Evelyn Boone to M.L. Duke, and recorded in Volume 295, Page 263, Deed Records of Scurry County, Texas, Containing 477.6 Gross Acres.

**Tract 6:**

N/2 and the SW/4 of Section 140, Block 2, H.T. & C. Railway Company Survey in Scurry County, Texas, Containing 478.125 Gross Acres.

**Problem Language****EXHIBIT "B"**

Attached to and made a part of an Oil and Gas Lease dated the 5 day of October, 2011, by and between **Quanah Exploration, LLC** as "Lessor," and **Range Texas Production, LLC**, a Delaware limited liability corporation as "Lessee."

11. If during the primary term of this Lease, a well is completed which is capable of producing oil and/or gas in paying quantities, to maintain all of the lands under lease, Lessee must develop the lease premises by drilling additional wells without a lapse of more than 180 days between the end of the primary term and the commencement of actual drilling operations of the next succeeding well. On the completion of a well at or after the primary term, which is capable of producing in paying quantities, Lessee must develop the lease premises by drilling additional wells without a lapse of more than 180 days between the completion of one well and the commencement of operations for the drilling of the next succeeding well. For the purposes of interpreting this provision, a well shall be deemed to be commenced when Lessee stakes the location for a well. The completion date of a well shall be deemed the earliest of the following dates: (i) the date on which the initial potential test is run; (ii) the date on which a dry hole is plugged; (iii) a date 90 days after the date on which Lessee reaches total depth in the well; or, (iv) the date certified by the applicable governing agency as the date a well has been completed as a producing well. Once commenced, drilling operations on a well shall be conducted with no cessation of more than 90 days.

Upon cessation of this continuous development program, this Lease and all Lessee's rights shall automatically terminate as to all lands covered by this Lease, save and except, as to each well then capable of producing oil or gas in paying quantities, the producing or proration unit surrounding the well, as established by the applicable governmental agency. Within 180 days after a partial termination of this Lease, Lessee shall execute and deliver to Lessor a recordable release of this Lease as to all lands, save and except the acreage allocated to each producing or proration unit. Nothing contained in this Lease shall be construed to limit the provisions of this paragraph 10.

12. At the expiration of the primary term hereof, the Lessee, at Lessee's option, can extend the primary term of this lease an additional two years. To exercise said option to extend, Lessee must pay to Lessor the same amount, per net mineral acre, paid for the initial lease. Said payment must be received by Lessor, at Lessor's address above, no later than 30 days prior to the expiration of said lease.



Document:	Assignment of Overriding Royalty Interest
Date:	October 5, 2011; Primary Term of 3 Years
Grantor:	Ronna Robertson Cole
Grantee:	GOHO Properties, et al.

### In a Nutshell:

This assignment purports to assign a 12.5% ORI to Grantee(s). The title opinion credited the entire 12.5% interest to GOHO, the partnership. John E. Rhoads claims that he should be credited with an individual interest.

### Problem Language:

Grantor for the sum of ten dollars and other valuable considerations in hand *“paid by GOHO Properties, a Partnership of Larry A. Godwin and Gerald W. Hohfeld, whose address is [...] and John E. Rhoads, whose address is [...] (Grantees)... does hereby grant, bargain, sell and convey unto the said Grantees in equal shares, all of Grantors interest in and to the oil, gas and other minerals, royalties and overriding royalties on, in and under that may be produced in Montague County, Texas, including...”*

### Issues with the Instrument’s Language:

- *Who is/are the Grantee(s)? Is it just the partnership, which consists of 3 partners? Or is it the partnership, which consists of 2 partners, and another Grantee individually?*

### Examining Attorney’s Interpretation:

**A conveyance into multiple parties as “partners” creates a de facto partnership, regardless of whether one existed previously. Because of the lack of punctuation denoting that there are multiple Grantees, it could be interpreted as all 3 individuals being partners. Had there been an intent to convey to multiple parties, then a semi-colon would have been useful in making such intent clear.**

**Other interpretations include: One Grantee, being the Partnership; the other Grantee, being John E. Rhoads.**

**The Grantees are Larry Godwin, Gerald Hohfeld, and John Rhoads, all individually, as GOHO Properties is only recited as paying the consideration.**

**Regardless, to resolve this issue, John E. Rhoads and GOHO Properties should execute a Stipulation of Interest agreeing to one interpretation (i.e., GOHO gets a one-half (1/2) interest and John Rhoads gets a one-half (1/2) interest).**



# CONVEYANCE OF MINERAL, ROYALTY OR OVERRIDING ROYALTY INTERESTS

STATE OF TEXAS

COUNTY OF MONTAGUE

KNOW ALL MEN BY THESE PRESENTS:

That, Ronna Robertson Cole, Individually and as Executrix of the Estate of Charlotte Willis, deceased, whose address is 4528 Overton Terrace Court, Ft. Worth, Texas 76109 (Grantor) for the sum of Ten Dollars (\$10.00) and other valuable considerations in hand paid by GOHO Properties, a Partnership of Larry A. Godwin and Gerald W. Hohfeld, whose address is 4719 Taft, Ste 6, Wichita Falls, Texas 76308, and John E. Rhoads, whose address is Rt 3 Box 486 L, Wichita Falls, Texas 76310-9715 (Grantees), the receipt and sufficiency of which is hereby acknowledged, has granted, bargained, sold and conveyed and does hereby grant, bargain, sell and convey unto the said Grantees in equal shares, all of Grantors interest in and to the oil, gas and other minerals, royalties and overriding royalties on, in and under and that may be produced in Montague and Wise County, Texas, including but not limited to the following described lands, to wit:

Problem Language

Tract 1: 120.75 Acres, more or less, out of the John Sturrock Survey, A-1581 described as beginning at the SW corner of said Sturrock Survey; Thence North with the West line thereof 921 varas to the NW corner of said survey; Thence East with the North line 733 varas; Thence South 939 varas to the South line of said survey; Thence North 88.5 deg West 733 varas with the South line to the place of beginning.

Tract 2: 109.5 Acres, more or less, being all of the J. W. Haynes Survey, A-1576, Montague County described as beginning at the SW corner of the John Sturrock Survey; Thence North with the West line 950 varas; Thence West with the South line of the Robert Millard Survey, 650 varas to a ell corner; Thence South 950 varas to the Southeast corner; Thence East 650 varas to the place of beginning and containing 104.5 acres in Montague County and 5 acres in Wise County, Texas.

Tracts 1 and 2 above are more fully described in a Mineral Deed dated February 22, 1940 from B. F. Burgess et ux to Mattie F. Willis in Volume 221 page 115, Deed Records, Montague County, Texas.

Should the foregoing descriptions prove incorrect or inadequate to cover the land intended to be conveyed, as above specified, Grantor agrees to sign such instrument(s) that may be necessary to correct such particular description. In addition, Grantor hereby grants, assigns, conveys, quitclaims and delivers unto Grantees all right, title and interests of Grantor in and to (I) all mineral fee interests, royalty interests, overriding royalty interests, net profits interests, production payments, leasehold interests and reversionary interests, oil payments and other property rights or interests wherever located affecting oil, gas or minerals or which are measured in terms of the production of oil, gas or other minerals; (II) all sums now or hereinafter held in escrow or suspense accounts for the account of Grantor which are attributable to oil, gas or other

194  
519 RR



Document:	Mineral and Royalty Deed, Assignment and Conveyance
Date:	August 1, 2002
Grantor:	James Thomas Collins, Independent Executor and Trustee under the Will of Ruth Collins Shook for The Carolyn Collin Underwood Trust
Grantee:	Kelly H. Baxter

In a Nutshell:

This deed conveys all of Grantor's interest to the lands described in Exhibit "A", being Section 31, Block 31, Range 3N in Howard County, Texas.

Problem Language:

*"That James Thomas Collins, Independent Executor and Trustee under the Will of Ruth Collins Shook for The Carolyn Collins Underwood Trust, called 'Grantor'... does convey unto Kelly H. Baxter, a single man... 100% of his interest in and to all the lands and oil, gas, royalty... from the following described lands in Howard County, Texas..."*

*"Notwithstanding the specific descriptions set out herein, grantor conveys to grantee all lands and interests in lands of any kind, type and nature which grantor legally or equitably owns in Howard County, Texas and in addition to the foregoing, Grantor does hereby Transfer, Assign and Set Over unto Grantee all of Grantor's interest in and to all monies, proceeds, income and other personal properties now on hand, or in the possession of any third party, bank, trustee or pipeline company, which have heretofore accrued to the mineral and/or royalty interest of Grantor in said land that has been herein conveyed to Grantee."*

***(Interpretation Issues and Examining Attorney's Interpretation on next page.)***



Document:	Mineral and Royalty Deed, Assignment and Conveyance
Date:	August 1, 2002
Grantor:	James Thomas Collins, Independent Executor and Trustee under the Will of Ruth Collins Shook for The Carolyn Collins Underwood Trust
Grantee:	Kelly H. Baxter

#### Issues with the Instrument's Language:

- *Ruth Collins Shook inherited an undivided one-half (1/2) interest in the Captioned Land from her husband.*
- *In her will, Ruth Collins Shook appoints her son, James Thomas Collins, as Executor and devises the property one-half (1/2) to James Thomas Collins, and one-half (1/2) to James Thomas Collins, Trustee of the Carolyn Collins Underwood Trust. However, there is no executor's deed to either of them.*
- *There is an instrument conveying the subject lands to Kelly H. Baxter by Carolyn Underwood and husband around or even before the attached document.*
- *Does this instrument convey all of James Thomas Collins' interest in the Captioned Land, or does it just convey his interest and Carolyn's interest in and to the property that they inherited from Ruth Collins Shook, even though he did not execute the instrument in an individual capacity?*

#### Examining Attorney's Interpretation:

**Upon her death in 1997, the interest owned by Ruth Collins Shook devolved according to her Last Will and Testament (1/2 to James Thomas Collins and 1/2 to James Thomas Collins, Trustee of the Carolyn Collins Underwood Trust u/w/o Ruth Collins Shook.**

**In 2002, James Thomas Collins, Independent Executor and Trustee, conveyed the Subject Property, as well as other lands under a "catch-all" to Kelly H. Baxter under a Mineral Deed; assuming the estate was not closed and he did not deed his interest in the property from the estate to himself individually, the Mineral Deed conveyed everything owned by Ruth Collins Shook.**

**We would not credit the conveyance from Carolyn C. Underwood because she did not, and never would, own an interest under the documents provided.**

**The Family Agreement, which is executed prior to the Mineral Deed, was filed after the Mineral Deed. Thus, Kelly H. Baxter did not have notice and is a bona fide purchaser.**

**Assuming the Estate was not closed on the date of the Mineral Deed, it conveys everything owned by Ruth Collins Shook.**





Doc 00003257 Bk OR Vol 899 Pg 747  
**MINERAL AND ROYALTY DEED, ASSIGNMENT AND CONVEYANCE**

THE STATE OF TEXAS \*

KNOW ALL MEN BY THESE PRESENTS

COUNTY OF HOWARD \*

That James Thomas Collins, Independent Executor and Trustee under the Will of Ruth Collins Shook for The Carolyn Collins Underwood Trust, called "Grantor" for and in consideration of the sum of Ten and No/100 Dollars (\$10.00) cash in hand paid and other good and valuable considerations, the receipt of which is hereby acknowledged, does hereby GRANT, BARGAIN, SELL, CONVEY, TRANSFER, ASSIGN and DELIVER unto Kelly H. Baxter, a single man, of P.O. Box 1649, Austin, TX 78767-1649, 100% of his interest in and to all the lands and oil, gas and other minerals, royalty, overriding royalties and other payments in and under that may be produced from the following described lands situated in Howard County, State of Texas, to-wit:

**Exhibit 'A'**

together with the rights of ingress and egress at all times for the purpose of mining, drilling, exploring and developing said lands, for oil, gas or other minerals, and storing, handling, transporting and marketing the same therefrom with the right to remove from said lands all of Grantor's property and improvements.

This sale is made subject to any rights now existing to any lessee or assigns under any valid and subsisting oil and gas lease heretofore executed and now of legal record; it be understood and agreed that said Grantee shall have, receive and enjoy the herein granted undivided interest in and to all bonuses, rents, royalties and other benefits which may accrue thereunder from and after the date hereof, precisely as if the Grantee herein had been at the date of the making of the said lease the owner of a similar undivided interest in and to the lands above described and none other and grantee one of the lessors therein.

Grantor agrees to execute such further assurances as may be requisite for the full and complete enjoyment of the rights herein granted and likewise agrees that Grantee herein shall have the right at any time to redeem for said Grantor by payment any mortgage, taxes or other liens on the above described lands upon default in payment by Grantor, and be subrogated to the rights of the holder hereof.

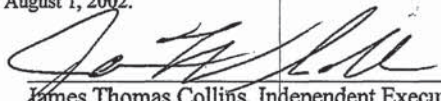
Notwithstanding the specific descriptions set out herein, grantor conveys to grantee all lands and interests in lands of any kind, type and nature which grantor legally or equitably owns in Howard County, Texas and in addition to the foregoing, Grantor does hereby Transfer, Assign and Set Over unto Grantee all of Grantor's interest in and to all monies, proceeds, income and other personal properties now on hand, or in the possession of any third party, bank, trustee or pipeline company, which have heretofore accrued to the mineral and/or royalty interest of Grantor in said land that has been herein conveyed to Grantee.

For the same consideration, Grantor also grants, sells, conveys, assigns and transfers to Grantee, his heirs, successors, administrators, executors and assigns, all of Grantor's interest in any production of oil, gas or other minerals from the lands covered hereby prior to the date hereof, together with any such production now held in storage, tanks and pipelines, and any and all sums of money, suspended runs or accounts of any type or character, due to owing to Grantor by parties by reason of any such prior production, all rights, claims and causes of action with respect to such sums including and without limitation all claims for the underpayment of said royalties, and all of Grantor's future interest and after-acquired title in and to the above described royalties, insofar as they cover said lands.

Grantor does hereby irrevocably appoint and constitute Kelly H. Baxter as my agent and attorney-in-fact for the limited purpose only of executing division orders, transfer orders and all other instruments as may be necessary to make fully effective this conveyance of this interest, so that he may act in my place and stead for this limited purpose only.

TO HAVE AND TO HOLD the above described property and easement with all and singular the rights, privileges and appurtenances themselves under or in anywise belonging to the said Grantee herein his heirs, successors and assigns forever, and Grantor does hereby bind himself, his executors, administrators, successors and assigns to warrant and forever defend all and singular the said property unto the said Grantee herein, his heirs and assigns, against every person whomsoever lawfully claiming or to claim the same or any part thereof by, through and under Grantor and shall provide for full subrogation of Grantee under all warranties of title theretofore made by others.


WITNESS my hand this 6<sup>th</sup> day of June, 2003, but effective as of August 1, 2002.

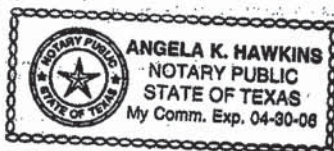
  
James Thomas Collins, Independent Executor and Trustee under the Will of Ruth Collins Shook for The Carolyn Collins Underwood Trust

**ACKNOWLEDGMENT**

THE STATE OF TEXAS \*  
COUNTY OF Smith \*

This instrument was acknowledged before me on the 6<sup>th</sup> day of June, 2003, by James Thomas Collins, Independent Executor and Trustee under the Will of Ruth Collins Shook for The Carolyn Collins Underwood Trust.

  
Notary Public, State of Texas



**KELLY H. BAXTER**  
P.O. Box 1649  
Austin, TX 78767-1649

Document:	Gift Deed
Date:	November 1, 2013
Grantor:	Nancy Jan Daugherty Kemp, a single woman.
Grantee:	Patrick Chase Kemp and his wife, Ellen Claire Kemp

### In a Nutshell:

This “gift deed” purports to convey a gift, of all of Grantor’s interest to the Captioned Land, to Grantees, as community property.

### Problem Language:

*“For and in consideration of the love and affection which Grantor bears for Grantees, Grantor has GIVEN, GRANTED, BARGAINED, SOLD and CONVEYED, and does hereby GIVE, GRANT, BARGAIN, SELL and CONVEY to Grantees, as their community property, the following described properties...”*

### Issues with the Instrument’s Language:

- *Is the interest conveyed community or separate property?*

### Examining Attorney’s Interpretation:

**The law in Texas has long been settled that an attempted gift by a third party to the community estate vests each marital partner with a one-half undivided interest in the subject matter of the gift as his or her separate property. In the case of *Bradley v. Love*, 60 Tex. 472 (Tex. 1883), the facts were almost identical to those of the case at bar. There the wife's father made a gift of realty to the husband and wife jointly. The court concluded that such a conveyance would result in each marital partner having an undivided half interest in the land as separate property. *McLemore v. McLemore*, 641 S.W.2d 395, 397 (Tex. App. 1982).**



**GIFT BLANKET CONVEYANCE, ASSIGNMENT AND BILL OF SALE**

STATE OF TEXAS                   §  
   §  
 COUNTY OF UPTON               §

This GIFT BLANKET CONVEYANCE, ASSIGNMENT AND BILL OF SALE dated effective November 1, 2013 (the "Effective Date") is from **NANCY JAN DAUGHERTY KEMP**, a single woman, dealing in her sole and separate property (hereinafter called "Grantor"), whose address is 2871 Morning Star Drive, Las Cruces, New Mexico 88011, to **PATRICK CHASE KEMP** and his wife, **ELLEN CLAIRE KEMP**, (hereinafter called "Grantees"), whose address is 2831 Cloudcroft Circle, Las Cruces, New Mexico 88011.

For and in consideration of the love and affection which Grantor bears for Grantees, Grantor has GIVEN, GRANTED, BARGAINED, SOLD and CONVEYED, and does hereby GIVE, GRANT, BARGAIN, SELL and CONVEY to Grantees, as their community property, the following described properties (hereinafter referred to collectively as the "Properties"):

**Problem Language**

(a) All of Grantor's surface estate interests, fee mineral interests, royalty interests, overriding royalty interests, interests in oil and gas leases, production payments and other interests in oil, gas and other hydrocarbons and minerals, of every kind and character and wherever located in the State of Texas, including, but not limited to, such interests in the county named in the caption above, and including, but not limited to, such interests in those certain lands described on Exhibit "A" attached hereto, together with all property and rights incident thereto, including, but not limited to, all rights in, to and under all unit, pooling and other agreements, product purchase and sale contracts, leases, permits, rights-of-way, easements, licenses, farmouts and options in any way related thereto;

(b) All of Grantor's rights under any contracts, agreements and other instruments which concern and relate to the Properties, or the operation thereof, all claims and causes of action in connection therewith of whatsoever nature, and all proceeds of production accruing to the Properties conveyed hereby from and after the Effective Date; and

(c) All of Grantor's interest in all personal property, fixtures and improvements on the Properties, appurtenant thereto or used or obtained in connection with the Properties or with the production, treatment, sale or disposal of hydrocarbons or water produced or attributable thereto and all other appurtenances thereunto belonging together with all books, records and files and all geological, geophysical, engineering and title information and data in any way relating to the Properties.

This Gift Blanket Conveyance, Assignment and Bill of Sale is made subject to any and all valid and subsisting oil and gas leases, pooling agreements, unit agreements, division orders, previously reserved or conveyed oil, gas and other minerals, and the rights of all owners thereof, and any other rights now existing under any valid and subsisting instrument heretofore executed and now of legal record.

Grantor agrees to execute such further assurances as may be necessary for the full and complete enjoyment of the rights conveyed hereby.

TO HAVE AND TO HOLD the above described Properties, together with all and singular the rights and appurtenances thereto in anywise belonging, unto Grantees and Grantees' heirs, executors, administrators, successors and assigns forever, and Grantor does hereby bind Grantor and Grantor's heirs, executors, administrators, successors and assigns to warrant and forever defend all and singular the said Properties unto Grantees and Grantees' heirs, executors, administrators, successors and assigns, against every person whomsoever lawfully claiming or to claim the same or any part thereof by, through or under Grantor, but not otherwise.

EXECUTED as of the date of acknowledgment, but effective for all purposes as of the Effective Date.

**GRANTOR:**

Nancy Jan Daugherty Kemp  
NANCY JAN DAUGHERTY KEMP

STATE OF NEW MEXICO      §  
COUNTY OF DONA ANA      §

This instrument was acknowledged before me this 10 day of December, 2013, by NANCY JAN DAUGHERTY KEMP.

[Signature]  
NOTARY PUBLIC - STATE OF NEW MEXICO

Printed Name: John B. [Signature]

EXPIRES: 11/11/2016



## EXHIBIT "A"

Upton County, Texas

1. Section 25, Block D, EL&RR Ry. Co. Survey, Upton County, Texas. 0
2. Section 5, Block C, L&SV RR Co. Survey, Upton County, Texas. 0
3. Sections 18, 30, 29 and 21, Block 38, T&P Ry. Co. Survey, Upton County, Texas. 9
4. Section 9, Block A, CCSD&RGNG Ry. Co. Survey, Upton County, Texas. 0
5. Section 12, Block B, CCSD&RGNG Ry. Co. Survey, Upton County, Texas. 0
6. Sections 22, 26 and 34, Block 41, T&P Ry. Co. Survey, Upton County, Texas. 2
7. Section 29, Block 41, T-5-S, T&P Ry. Co. Survey, Upton County, Texas. 1
8. Section 3, Block X, J.H. Gibson Survey, Upton County, Texas.
9. Section 89, Block Y, GC&SF Ry. Co. Survey, Upton County, Texas.
10. Section 108, Block D, CCSD&RGNG Ry. Co. Survey, Upton County, Texas.
11. Section 35, Block 35, H&TC Ry. Co. Survey, Upton County, Texas.
12. Section 37, Block Y, TC Ry. Co. Survey, Upton County, Texas.
13. Section 46, Block 29, T-5-S, T&P Ry. Co. Survey, Upton County, Texas.
14. Section 30, C&M RR Co. Survey, Upton County, Texas.
15. Section 3, Block M, EL&RR Ry. Co. Survey, Upton County, Texas.
16. Section 14, 20, 8, 2, 16, 10, 28, 18, 17 and 9, Block 37, T-5-S, T&P Ry. Co. Survey, Upton County, Texas.
17. Section 23, Block D, EL&RR Ry. Co. Survey, Upton County, Texas.
18. Section 9, Block N, HE&WT RR Co. Survey, Upton County, Texas.
19. S/2 Section 20, Block N, HE&WT RR Co. Survey, Upton County, Texas.
20. E/2 Section 18, Block N, HE&WT RR Co. Survey, Upton County, Texas.
21. Section 1, Block O, EL&RR Ry. Co. Survey, Upton County, Texas.
22. Section 38, Block Y, TC Ry. Co. Survey, Upton County, Texas.

23. Section 3, EL&RR Ry. Co. Survey, Upton County, Texas. 0
24. Section 4, EL&RR Ry. Co. Survey, Upton County, Texas. 0
25. Section 4, GC&SF Ry. Co. Survey, Upton County, Texas. 7
26. NW/4 and E/2 Section 39, Block Y, TC Ry. Co. Survey, Upton County, Texas. 0
27. Section 39, Block Y, TC Ry. Co. Survey, Upton County, Texas. 6
28. Section 14, Block 4-1/2, GC&SF Ry. Co. Survey, Upton County, Texas. 0
29. Section 48, Block Y, TC Ry. Co. Survey, Upton County, Texas. 0
30. Section 10, C.D. Moseley Survey, Upton County, Texas. 2
31. Section 3, C. Bendle Survey, Upton County, Texas. 2
32. NW/4 Section 50-1/2 Alford Estate, Upton County, Texas.
33. Section 1280-1/2, Upton County, Texas.
34. Section 7, GC&SF Ry. Co. Survey, Upton County, Texas.
35. Section 1, Block N. HE&WT Ry. Co. Survey, Upton County, Texas.
36. Section 3, Block G, TWNG Ry. Co. Survey, Upton County, Texas.
37. Section 12, Block B-2, GC&SF Ry. Co. Survey, Upton County, Texas.
38. Section 6, Block 3, MK&T Ry. Co. Survey, Upton County, Texas.
39. E/2NW/4 Section 4, Block W, GC&SF Ry. Co. Survey, Upton and Crockett Counties, Texas.
40. S/2 Section 40, Block 39, T-5-S, T&P Ry. Co. Survey, Upton County, Texas.
41. N/2 Section 11, Block Y, GC&SF Ry. Co. Survey, Upton County, Texas.
42. East 1/3 Section 17, Block B, CCSD&RGNG Ry. Co. Survey, Upton County, Texas.
43. Section 32, Block 45, T-5-S, T&P Ry. Co. Survey, Upton County, Texas.

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Upton County, Texas



Honorable Lakanda McMuray,  
County Clerk  
Upton County

STATE OF TEXAS, COUNTY OF UPTON  
I hereby certify that this  
instrument was filed on  
the date and time stamped  
hereon by me and was duly  
recorded in the volume  
and page of the Official Public  
Records of Upton County  
as stamped hereon by me.  
Dec 02, 2013

Filed for Record in:  
Upton County  
On: Dec 02, 2013 at 03:23P  
As a  
RECORD  
Document Number: 00158895  
Amount 28.00  
Receipt Number - 65688  
By:  
Mary Pruett



Document:	“Royalty Contract”
Date:	October 10, 1932
Grantor:	Chas. Gill and wife
Grantee:	Emson Smith

### In a Nutshell:

This deed conveys a one-half (1/2) interest in and to two tracts of land in Tyler County, Texas.

### Problem Language:

Grantor conveys to Grantee *“an undivided one-half interest in and to all of the oil, gas and other minerals in and under the following described tract of land...”*

*“It is distinctly understood that said land is under an Oil and Gas Lease made by Grantor providing for a royalty of 1/8 of the oil and certain royalties or rentals for gas and other minerals, that Grantee herein shall reserve one-half of the royalties and rentals provided for in said lease; but he shall have no part of the annual rentals paid to keep said lease in force until drilling is begun.”*

*“It is further agreed that Grantee shall have 1/2 interest in any bonus money received by Grantor in any future lease or Lessees given on said land, and that it shall receive under such lease or leases 1/16th part of all oil, gas and other minerals taken and saved under any such lease or leases, and he shall receive the same out of the royalty provided for in such lease or leases, but Grantee shall have one-half part in the annual rentals paid to keep such lease or leases in force until drilling is begun.”*

### Issues with the Instrument’s Language:

- *What is the deed trying to accomplish?*

### Examining Attorney’s Interpretation:

**Despite this being called a Royalty Contract, Chas. Gill and wife convey to Emson Smith a one-half (1/2) mineral interest.**

**If the current lease is held by production (HBP) from that lease, the Grantee does not receive any rentals. However, after the expiration of that lease, the Grantee has a full one-half (1/2) mineral interest.**

**Regarding the one-sixteenth (1/16) interest, that is just part of the one-half (1/2) MI granted and does not limit the grant; it is just being more descriptive and utilizing the old “1/8” royalty number demonstrating what the Grantee is receiving.**



ROYALTY CONTRACT

THE STATE OF TEXAS )

COUNTY OF TYLER ) KNOW ALL MEN BY THESE PRESENTS:

That we, Chas. Gill and wife Rejetter Gill of said County and State, hereinafter called Grantor (whether one or more) in consideration of the sum of Ten Dollars and other valuable considerations, all cash to Grantor cash in hand paid by Amson Smith hereinafter called Grantee (whether one or more) the receipt of which is hereby acknowledged, have GRANTED, RANGAINED, SOLD, and CONVEYED and by these presents do Grant, Bargain, Sell and Convey unto said Grantee, an undivided one-half interest in and to all of the oil, gas and other minerals in and under the following described tract of land, situated in Tyler County Texas, to-wit:

First Tract: 64-1/10 acres of the L. Lewis survey and being the same land conveyed to the grantor by Tom Durham by deed dated and recorded in Vol. 52 page 322, which is hereby referred to for further description.

Second Tract: 25 acres of the L. Lewis survey and being the same land conveyed to Ira Gill by Geo. Darden and wife on October 18th, 1924 by deed recorded in Vol. 52 page 369 of the Deed records of Tyler County, Texas, and conveyed by the said Ira Gill to the Grantor, and all of said deeds and the record thereof are hereby referred to for further description, together with the rights of ingress and egress at all times for the purposes of taking said minerals.

It is distinctly understood and herein stipulated that said land is under an Oil and Gas Lease made by Grantor providing for a royalty of 1/8 of the oil and certain royalties or rentals for gas and other minerals, and that grantee herein shall receive one-half of the royalties and rentals provided for in said lease; but he shall have no part of the annual rentals paid to keep said lease in force until drilling is begun.

It is further agreed that Grantee shall have 1/2 interest in any bonus money received by grantor in any future lease or leases given on said land, and that it shall be necessary for the Grantee to join any such lease or leases so made; That Grantee shall receive under such lease or leases 1/16th part of all oil, gas and other minerals taken and saved under any such lease or leases, and he shall receive the same out of the royalty provided for in such lease or leases, but Grantee shall have one-half part in the annual rentals paid to keep such lease or leases in force until drilling is begun.

TO HAVE AND TO HOLD the same unto the said Grantee, his heirs and assigns, forever; and we hereby bind ourselves our heirs and administrators to warrant and Forever Defend all and singular the said minerals unto the said Grantee, his heirs and assigns, against all persons whomsoever lawfully claiming or to claim the same or any part thereof.

Witness \_\_\_\_\_ hand on this the \_\_\_\_\_ day of \_\_\_\_\_ A.D. 19 \_\_\_\_\_

Charlie Gill

Rejetter Gill

THE STATE OF TEXAS )

COUNTY OF TYLER ) BEFORE ME, the undersigned authority in and for Tyler County, Texas, on this day personally appeared Chas. Gill known to me to be the person whose name is subscribed to the foregoing instrument, and acknowledged to me that he executed the same for the purposes and consideration therein expressed.

GIVEN UNDER MY HAND AND SEAL OF OFFICE, this 10th day of October A.D. 1932.

(Seal)

Mary Davis, Notary Public in and for  
Tyler County, Texas.

THE STATE OF TEXAS )

COUNTY OF TYLER ) BEFORE ME, the undersigned authority in and for Tyler County, Texas,

Problem Language



on this day personally appeared Rejeter Will wife of Chas Will known to me to be the person whose name is subscribed to the foregoing instrument, and having been examined by me privately and apart from her husband, and having the same fully explained to her, she, the said Rejeter Will acknowledged such instrument to be her act and deed, and she declared that she had willingly signed the same for the purposes and consideration therein expressed, and that she did not wish to retract it.

GIVEN UNDER MY HAND AND SEAL OF OFFICE this 12th day of October A.D. 1932.

(Seal)

Mary Davis, Notary Public in and for  
Tyler County, Texas.

THE STATE OF TEXAS :

COUNTY OF TYLER : I, JAMES C. STEAROCK, Notary Public, do hereby certify that the foregoing instrument with the certification of authentication was filed for record in this office on the 10th day of Oct. 1932 at 11 o'clock A.M., and was this day duly recorded in Vol. 70 pages 494 et seq., of the Public Records of Tyler County, Texas.

Witness my hand and official seal, at office in Houston, this 22 day of Oct. 1932.

(Seal)

JAMES C. STEAROCK, Notary Public,  
Tyler County, Texas.

By James C. Stearock Deputy

-----  
JAMES C. STEAROCK

THE STATE OF TEXAS :

COUNTY OF TYLER : I, JAMES C. STEAROCK, Notary Public, do hereby certify that the foregoing instrument with the certification of authentication was filed for record in this office on the 10th day of Oct. 1932 at 11 o'clock A.M., and was this day duly recorded in Vol. 70 pages 494 et seq., of the Public Records of Tyler County, Texas.

That, whereas, by virtue of a certain order of sale for delinquent taxes issued out of the District Court of the County of Tyler in favor of State of Texas as plaintiff vs. B. B. Dutton and wife F. Dutton defendants, on a certain judgment and order of sale, rendered on the 24th day of February A.D. 1932 and directed and delivered to me, as Sheriff of Tyler County, commanding me to seize and sell, as under execution in cases of foreclosure, the land and premises described in said order of sale, I, J. C. Stearock, Sheriff of said County, did, upon the 10th day of March A.D. 1932, in obedience to said order of sale, seize and levy upon all the estate, right, title and interest which the said defendants, on the 24th day of February A.D. 1932, so had of, in and to, and since said time had of, in and to the premises hereinafter described; and on the first Monday of April A.D. 1932, the same being the 5th day of said month, within the period prescribed by law, sold said premises at public auction in the County of Tyler at the door of the Court House thereof in the town of Houston, having first publicly advertised the time and place of said sale with an advertisement in the English language, published once a week for three consecutive weeks preceding the day of sale, beginning on the 10th day of March A.D. 1932, in the Tyler County Opticist, a newspaper published in the County of Tyler, sitting in said advertisement the authority by virtue of which said sale was to be made, the time of sale, the time and place of sale, a brief description of the property to be sold, the number of acres, the original survey, its locality in the County, and the name by which the land is generally known; and by reason, to B. B. Dutton and wife F. Dutton there being no attorney of record of said defendants for execution, one copy of said notice of sale on the 10th day of March A.D. 1932, as required by law.

And, whereas, at said sale the said premises were struck off to J. C. Stearock for the sum of one hundred three and 63/100 (\$103.63) dollars he being the highest bidder therefor, and that being the highest secure bid for the same;

NOW, THEREFORE, in consideration of the premises aforesaid and said judgment and order of sale, and of the payment of the said sum of \_\_\_\_\_ Dollars the receipt of

Document:	Royalty Deed
Date:	May 8, 1929
Grantor:	Lillie E. Thrope and Clell Q. Thrope, as a/i/f
Grantee:	M. W. Walters

### In a Nutshell:

This deed conveys a one-eighth (1/8) royalty and future delay rentals.

### Problem Language:

Grantor conveyed unto Grantee *“the royalties, interests in the minerals, oil and gas...” as specified as follows: “ One-eighth of the land owners 1/8 royalty, and being 1/64th of all production in and under the South 320 acres of Section twenty-three (23) and being a total of 40 royalty acres therein...”*

*“The Grantee herein shall participate after the termination of the present oil and gas leases as above specified, the Grantor reserving the right to the rentals under the now existing leases as above specified.”*

### Issues with the Instrument’s Language:

- *Does the Deed convey a non-participating royalty interest with delay rentals, a non-executive mineral interest, or a full mineral interest?*

### Examining Attorney’s Interpretation:

**Despite confusing the attributes of the mineral estate, M. W. Walters received a fixed one-eighth (1/8) non-participating royalty interest with an interest in future delay rentals.**



THE STATE OF NEW YORK  
COUNTY OF NEW YORK

BEFORE ME, the undersigned, a Notary Public, in and for said County and State, on this day personally appeared C. E. Bedford, known to me to be the person and officer whose name is subscribed to the foregoing instrument, and acknowledged to me that the same was the act of the said Vacuum Oil Company, a corporation, and that he executed the same as the act of such corporation for the purposes and consideration therein expressed, and in the capacity therein stated.

GIVEN under my hand and seal of office this the 8th day of May A D 1929.

W. DeForest Underhill, Notary Public,  
in and for New York County, State of  
New York.

Notary Public, Westchester County,  
New York Co., Register's No. 1 U 9  
Commission expires March 30, 1931.

(Seal).

Filed for record on the 15th day of May A D 1929 at 1 o'clock P.M. and duly recorded on this the 21st day of May A D 1929 at 11:40 o'clock A.M.

*James Doyle*  
County Clerk, Reeves County, Texas.

NO. 2000

LILLIE THORPE TOO M. W. WALTERS.  
(ROYALTY DEED)

THE STATE OF TEXAS

COUNTY OF REEVES

KNOW ALL MEN BY THESE PRESENTS:

THAT Lillie E. Thorpe, the Grantor herein, of Kansas City, County of Jackson, State of Missouri, acting by and through Clell Q. Thorpe, Agent and Attorney-In-Fact, under General Power-of-attorney, recorded in Reeves County, Texas, in Book 35, page 264, for and in consideration of Ten Dollars, and other valuable considerations paid by M. W. Walters, of Tarrant County, State of Texas, the Grantee herein, the receipt of the consideration being acknowledged in full, have GRANTED, SOLD, CONVEYED, ASSIGNED AND DELIVERED, and by these presents does GRANT, SELL, CONVEY, ASSIGN AND DELIVER unto the said M. W. Walters, the royalties, interests in the minerals, oil and gas, as vested therein by the State of Texas, under Chapter 81, approved July 13, 1919, and Chapter 94, approved March 19, 1925, as specified herein and in and to the lands described as follows, to-wit:

One-eighth of the land owners 1/8th royalty, and being 1/64th of all production in and under the South 320 acres of Section twenty-three (23) and being a total of 40 Royalty

Problem Language

Deed Record 70 Page 215



acres therein, same being under oil and gas lease to the California Company, dated November 14, 1927, for 10 years, paid up; the field notes of the legalized survey made November 19, 1901, by State Surveyor, W. D. Twichell, showing the metes and bounds of said Section 23, is recorded in the office of the County Surveyor; of Reeves County, Texas in Book C page 154, and as follows:

BEGINNING at the SE corner of Survey 22, this Blk;  
THENCE N 78 deg. 08' W 2310 vrs;  
THENCE S 11 deg. 16' W with the E boundary of Bl'k 6 at 1451 vrs an old iron pipe marked 36-37 at 1570 vrs a point;  
THENCE S 78 deg. 08' E 2293 1/2 vrs;  
THENCE N 11 deg. 52' E at 576 vrs pass the NW corner of Survey 14, this Bl'k at 1570 vrs the beginning corner of this survey;

One-eighth of the land owners 1/8th royalty, and being 1/64th of all production in and under, the last eighty four (84) acres of the West one hundred and sixty four (164) acres of the North two hundred and three (203) acres of the North half (1/2) of section fourteen, and being a total of 10 1/2 royalty acres therein, same being under oil and gas lease to the Humble Oil & Refining Company, dated November 1927, for five (5) years at 50 cents per acre annual rentals; said 84 acres, as described in the legalized surveys above described, said section 14 on page 145, Book C the metes and bounds being as follows:

BEGINNING at the NW corner of survey 13, this Bl'k as the starting point for this 84 acres;  
THENCE N 11 deg. 52' E 1901 vrs;  
THENCE S 78 deg. 08' E 1534.97522 vrs to a point in the N line of this section 14, this Bl'k for the place of beginning, the NE corner of this 84 acres;  
THENCE S 11 deg. 52' W 602.65625 vrs to a point for the SE corner of this tract;  
THENCE N 78 deg. 08' W 786.20682 vrs to a point and the SW corner of this tract;  
THENCE N 11 deg. 52' E 602.65625 vrs to a point in the N line of said Section 14 and the NW corner of this tract;  
THENCE S 78 deg. 08' E 786.20682 along the N line of said section 14, to the place of beginning;

One-fourth of the land owners 1/8th royalty, and being 1/32 of all production in and under the south one hundred and thirty six (136) acres of Section Fifteen (15) and being a total of 34 royalty acres therein, same being under oil and gas lease to the Humble Oil & Refining Company, dated November 1927, for five (5) years, at 50 cents per acre annual rentals; and as shown in the legalized field notes above described, of section 15 in Book C page 146, the metes and bounds of said 34 royalty acres are described as follows, to-wit:

BEGINNING at the NW corner of Survey 14, for the SW corner of this 136 acres;  
THENCE N 11 deg. 52' E 393.75 vrs to a point and the NW corner of this tract;  
THENCE S 78 deg. 08' E 1901 vrs to a point in the E line of said section 15, and the NE corner of this tract;  
THENCE S 11 deg. 52' W 393.75 vrs to the SE corner of said section 15, being the SE corner of this tract;  
THENCE N 78 deg. 08' W 1901 vrs to the beginning corner of this tract and survey;

Making a Grand Total of eighty-four and one-half (84 1/2) ROYALTY acres, and all being in Block C Public School Lands in Reeves County, Texas, and subject to the Texas School Law of 9 1/2 cents per acre, due November 19, 1927, at 5% interest;

the Grantee herein shall participate after the termination of the present oil and gas leases as above specified, the Grantor reserving the right to the rentals under the now existing leases as above specified;

TO HAVE AND TO HOLD the above described Royalties, Interests, together with all and singular the rights and appurtenances thereto in anywise belonging unto the said M W Walters, his heirs, executors, administrators and assigns;

WITNESS our hands at Pecos, Texas, this 1st day of May, 1929.

Lillie E. Thorpe  
By Clell Q. Thorpe  
Agent and Attorney-in-fact

STATE OF TEXAS  
COUNTY OF REEVES

BEFORE ME, J H McGree, A Notary Public in and for Reeves County, Texas, on this day personally appeared Clell Q. Thorpe in the capacity of Agent and Attorney-in-fact for Lillie E. Thorpe, known to me to be the person whose name is subscribed to the foregoing instrument and acknowledged to me that he executed the same for the purposes and consideration therein expressed and in the capacity therein stated.

GIVEN UNDER MY HAND AND SEAL OF OFFICE, this 1st day of May, 1929.

Filed for record on the 15th day of May, A D 1929, at 2:40 o'clock P M and duly recorded on this the 21st day of May, A D 1929 at 1:20 o'clock P M

J H McGree,  
Notary Public, Reeves County, Texas.

Jannie [Signature]  
County Clerk, Reeves County, Texas.

Problem Language (contd)

File No. 2002

WHEREAS, ten (10) and is desirable

WHEREAS, 1920 acres, at \$960.00 in cash order of Citizens their date, and

WHEREAS, and upon such

RESOLVED BREWSTER, at the he is here now property to the

THE STATE OF TEXAS  
COUNTY OF REEVES

I, George Toyah, Texas, resolution under quorum thereof C-12, Public S in Book Pa.

WITNESS April, 1929.

(Seal).

THE STATE OF TEXAS  
COUNTY OF REEVES

BEFORE ME, Secretary of the be the person that she execute

GIVEN UNDER 1929.

(Seal).

A meeting at the office following direct

E B Daniel  
M McAlister  
E B Daniel  
C A Daniel  
Georgia

being 5 of the

President presided at the

WHEREUPON

President

WHEREAS, E B Daniel, 1st warranty deed all in Block C \$3840.00 paid numbered 1,2,3, Citizens State notes bearing it accrues, \$ per acre due

WHEREAS, aforesaid, and now therefore





# NORTH DAKOTA INSTRUMENTS





Document:	Mineral Deed
Date:	November 16, 1992
Grantor:	Virgil M. Marmon
Grantee:	Reness R. Marmon, Barry Bruce Marmon, and Tiffany R. Porter

### In a Nutshell:

The interests conveyed to Grantee in this deed are conveyed as tenants in common.

### Problem Language:

Grantor for the sum of ten dollars and other valuable considerations in hand *“grants unto Reness R. Marmon; Barry Bruce Marmon; and Tiffany R. Porter...tenants in common, hereafter as Grantees, an undivided interest...”*

### Issues with the Instrument’s Language:

- *What are the interests being conveyed here?*

### Examining Attorney’s Interpretation:

**Every interest created in favor of several persons in their own right is an interest in common, unless acquired by them in partnership for partnership purposes, or unless declared in its creation to be a joint tenancy. N. D. CENT. CODE § 47-02-08. Since the Marmon Mineral Deed does not specify that the Grantees shall take the interest conveyed therein as joint tenants or in partnership for partnership purposes, such interest was conveyed to the Grantees as tenants in common.**

**There is no presumption that tenants in common take in equal shares. It should be noted that other jurisdictions have consistently held that tenants in common are presumed to take equal undivided interests in the property, although this presumption may be rebutted. *Sanders v. Knapp*, 674 P.2d 385, 387 (Colo. App. 1983); *Sack v. Tomlin*, 871 P.2d 298, 304 (Nev. 1994); *Cummings v. Anderson*, 614 P.2d 1283, 1287 (Wash. 1980).**

**When this issue is encountered in North Dakota, the usual remedy is to presume that they Grantees take in the proportions specified in the instrument, and a stipulation of interest requested. This requirement is frequently waived by the operator.**



547429

MINERAL DEED

KNOW ALL MEN BY THESE PRESENTS, that VIRGIL M. MARMON, a widower, of Williston, North Dakota, hereinafter Grantor, for and in consideration of the sum of Ten Dollars and other good and valuable consideration, the receipt of which is hereby acknowledged, does hereby grant, bargain, sell, convey, transfer, assign, and deliver unto RENESS R. MARMON of 2115 2nd Avenue E., Williston, North Dakota; BARRY BRUCE MARMON, of Pouch 34005, Dead Horse, Alaska; and TIFFANY R. PORTER, of 2115 2nd Avenue E., Williston, North Dakota, tenants in common, hereinafter Grantees, an undivided interest, reserving unto the Grantor a life estate, including the right to all bonuses, royalties, delay rental payments, and rights to negotiate and execute leases pertaining to the same, all his interest in and to all of the oil, gas, gravel, clay, coal, uranium, thorium, and all other minerals containing fissionable materials, and all other minerals in and under and that may be produced from the following described lands situated in the County of Williams, State of North Dakota, to-wit:

Township 154 N., Range 95 W.

Section 22: W 1/2 NE 1/4 NW 1/4 NE 1/4,  
SE 1/4 NW 1/4 NE 1/4, W 1/2 NW 1/4 NE 1/4

Township 154 N., Range 95 W.

Section 22: S 1/2 NE 1/4, NE 1/4 SW 1/4, NW 1/4 SE 1/4

Township 157 N., Range 98 W.

Section 20: S 1/2 S 1/2

Township 157 N., Range 98 W.

Section 30: N 1/2 NE 1/4, SE 1/4 NE 1/4

(It is the Grantor's intent to transfer all his right, title, and interest in and to the above described properties, reserving unto himself a life estate, including the right to receive all bonuses, royalties, delay rentals, and executive rights.)

Problem Language

together with the right of ingress and egress at all times for the purpose of mining, drilling, exploring, operating, and developing said lands for oil, gas, uranium, thorium, and all other minerals containing fissionable materials, and all other minerals, and storing, handling, transporting and marketing the same therefrom with the right to remove from said land all of Grantees' property and improvements.

This sale is made subject to any rights now existing to any lessee or assigns under any valid and subsisting oil, gas, or mineral lease of record heretofore executed; it being understood and agreed that said Grantees shall have, receive, and enjoy the herein granted undivided interest in and to all bonuses, rents, royalties and other benefits which may accrue under the terms of said lease insofar as it covers the above described land from and after the date hereof, precisely as if the Grantees herein had been at the date of the making of said lease the owner of a similar interest in and to the lands described and Grantees one of the lessors therein, subject to the reservation set forth above.

Grantor agrees to execute such further assurance as may be requisite for the full and complete enjoyment of the rights herein granted and likewise agree that Grantees herein shall have the right at any time to redeem for said Grantor by payment any mortgage, taxes, or other liens on the above described land, upon default in payment by Grantor, and be subrogated to the rights of the holder thereof.



TO HAVE AND TO HOLD the above-described property and easement with all and singular the rights, privileges, and appurtenances thereunto or in any wise belonging to said Grantees herein their successors, personal representatives, administrators, executors, and assigns forever, and Grantor does hereby warrant said title to Grantees their executors, administrators, personal representatives, successors and assigns forever and does hereby agree to defend all and singular the said property unto the said Grantees their heirs, successors, executors, personal representatives, and assigns against every person whomsoever claiming or to claim the same or any part thereof.

Dated this 16th day of November, 1992.

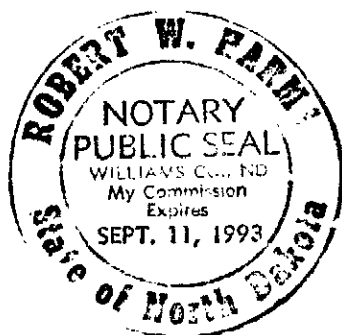
A statement of consideration  
is not required pursuant to  
NDCC 11-18-02.2 6(c)

Giles D. Dwyer 11/16/92  
Grantee or Agent

Virgil M. Marmon  
VIGIL M. MARMON

STATE OF NORTH DAKOTA)  
COUNTY OF WILLIAMS ) :ss

On this 16th day of November, 1992,  
before me a notary public, personally appeared VIRGIL M. MARMON,  
known to me to be the person who is described in and who executed  
the within instrument, and acknowledged to me that he executed  
the same.



Robert W. Harms  
Notary Public  
My Commission Expires: 9/11/93

Document:	Mineral Deed
Date:	November 17, 2005
Grantor:	William Owan, and his wife, Phyllis Owan
Grantee:	William Owan, as Trustee

### In a Nutshell:

Although the Grantee was identified as Trustee on the deed, it is merely identifying him in his individual capacity.

### Problem Language:

*"THIS INDENTURE, Made this 17<sup>th</sup> day of November, 2005, by and between William Owan and Phyllis Owan, his wife, hereinafter referred to as the Grantors, and William Owan, Trustee..., hereinafter referred to as the Grantee..."*

### Issues with the Instrument's Language:

- *What does the identification of Grantee as "Trustee" mean in this conveyance?*

### Examining Attorney's Interpretation:

**Identifications such as "trustee," "guardian," "executor," "administrator" or other representative capacity, without further identification of the beneficiary by name or the nature of the trust, are merely descriptive, and the person is deemed to be acting in an individual capacity. Title Standards, State Bar Association of North Dakota, § 10-06.**

**In this example, neither the Deed nor other instruments identify a beneficiary by name or the nature of the Trust. Accordingly, the examining attorney must treat the title of "Trustee" in the title of the Grantee of the Owan Deed as being merely descriptive and has credited William Owan in an individual capacity. If the subsequent chain of title does not divest the Grantee of the interest, or if the subsequent chain continues to specify the representative capacity, the usual curative is to require a Certificate of Trust.**



MINERAL DEED

THIS INDENTURE, Made this 17th day of November, 2005, by and between William Owan and Phyllis Owan, his wife, hereinafter referred to as the Grantors, and William Owan, Trustee, 2317 17th Avenue West, Williston, North Dakota 58801, hereinafter referred to as the Grantee.

WITNESSETH:

WHEREAS, Grantors are the owners of certain mineral interests in the following described real property, and desires to transfer the same to the Grantee named above.

NOW THEREFORE, Grantors, in consideration of the sum of Ten and no/100 Dollars (\$10.00) and other good and valuable consideration, do hereby grant, assign, convey and transfer to the Grantee, ALL of the Grantors' right, title and interest in all of the oil, gas and all other minerals in, on, under and that may be produced from the following described real property situated in Williams County, North Dakota, to-wit:

Township 155 North, Range 100 West of the 5th P.M.

Section 4: Lots 1, 2, 3, 4, S $\frac{1}{2}$ N $\frac{1}{2}$   
Section 5: Lots 1, 2, 3, 4, S $\frac{1}{2}$ NW $\frac{1}{4}$ , S $\frac{1}{2}$ NE $\frac{1}{4}$   
Section 5: E $\frac{1}{2}$ SW $\frac{1}{4}$ , SE $\frac{1}{4}$   
Section 5: W $\frac{1}{2}$ SW $\frac{1}{4}$   
Section 6: Lots 1, 2, SE $\frac{1}{4}$ NE $\frac{1}{4}$ , NE $\frac{1}{4}$ SE $\frac{1}{4}$   
Section 6: SW $\frac{1}{4}$ NE $\frac{1}{4}$ , S $\frac{1}{2}$ SE $\frac{1}{4}$ , NW $\frac{1}{4}$ SE $\frac{1}{4}$   
Section 7: NE $\frac{1}{4}$   
Section 8: E $\frac{1}{2}$ SE $\frac{1}{4}$ , NE $\frac{1}{4}$ , E $\frac{1}{2}$ NW $\frac{1}{4}$ , NE $\frac{1}{4}$ SW $\frac{1}{4}$   
Section 8: W $\frac{1}{2}$ NW $\frac{1}{4}$

Township 156 North, Range 100 West of the 5th P.M.

Section 30: Lot 4, SE $\frac{1}{4}$ SW $\frac{1}{4}$   
Section 31: Lot 1, NE $\frac{1}{4}$ NW $\frac{1}{4}$   
Section 33: S $\frac{1}{2}$ SW $\frac{1}{4}$ , W $\frac{1}{2}$ SE $\frac{1}{4}$

WITNESS, the hand of the Grantors:

William Owan  
William Owan

Phyllis A Owan  
Phyllis Owan

STATE OF NORTH DAKOTA)

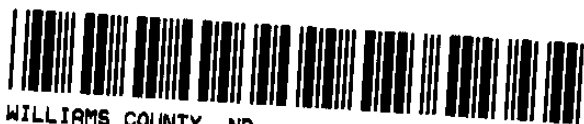
:ss.

COUNTY OF WILLIAMS )

On the 17<sup>th</sup> day of MARCH, 2006 before me personally appeared William Owan and Phyllis Owan, his wife, known to me to be the persons who are described in and who executed the within and foregoing instrument and acknowledged to me that they executed the same for the purposes intended therein.

John H MacMaster  
NOTARY PUBLIC  
My Commission Expires:

JOHN H MACMASTER  
Notary Public  
State of North Dakota  
My Commission Expires November 4, 2011



WILLIAMS COUNTY, ND

MD 16.00

633140

Page: 1 of 2

03/09/2006 08:04A

Document:	Transfer on Death Mineral Deed
Date:	February 10, 2012
Grantor:	Kay A. Satterlie
Grantee:	Eric Wayne Satterlie

### In a Nutshell:

The Grantor quitclaims to multiple contingent beneficiaries, and the grant is effective on the death of the Grantor.

### Problem Language:

*"Kay A. Satterlie hereby quit claims to Eric Wayne Satterlie..., but if Eric Wayne Satterlie fails to survive Grantor Owner, then to Randal Kay Satterlie..., but if Randal Kay Satterlie fails to survive Grantor Owner and Eric Wayne Satterlie then to Debra Dorthy Plaster..., effective on the death of Kay A. Satterlie, Grantor Owner, all of Grantor Owner's right, title and interest in and to all of the oil, gas...and other minerals of any nature whatsoever..."*

*"This transfer is made subject to any rights existing to all lessees or assigns under any valid or subsisting oil and gas lease of record on the effective date; it being understood that the Grantee Beneficiary shall have...the herein granted undivided interest...in the above-described real property from and after the effective date of this instrument, precisely as if Grantee beneficiary had been at the effective date of the making of said lease the owner of a similar undivided mineral interest and into the real property described, one of the lessors therein."*

### Issues with the Instrument's Language:

- *Does the conveyance in this deed present an issue of waste?*

### Examining Attorney's Interpretation:

**The examining attorney notes that the Grantor has effectively reserved unto herself a life estate interest which allows waste by having the grant take effect on a future date.**

**The Grantor has quitclaimed one contingent remainder interest, and two alternative contingent remainder interests. The Grantor contemplates an open mine issue, which was in fact present in the fact pattern.**

**Fortunately for both the examining attorney and the Grantor, despite the complexity, the instrument does not violate any North Dakota standard. The multiple possible grantees will be construed as contingent, and as such will not violate the prohibition against grantees in the alternative. The instrument is no doubt employed as a probate bypass for these assets. No action would be required, but there may be an advisory comment present to discuss the issue.**





# TRANSFER ON DEATH MINERAL DEED

Kay A. Satterlie, ("Grantor Owner"), hereby quit claims to Eric Wayne Satterlie, whose post office address is 23758 Sunnyside Dr. NW, Evansville, MN 56326 but if Eric Wayne Satterlie fails to survive Grantor Owner, then to Randal Kay Satterlie, whose post office address is 23422 Sunnyside Dr. NW, but if Randal Kay Satterlie fails to survive Grantor Owner and Eric Wayne Satterlie then to Debra Dorothy Plaster, whose post office address is Debra Plaster, (collectively "Grantee Beneficiary"), effective 3715 Co. Rd. 25 NW  
Evansville, MN. 56326

- ☐ on the death of the Grantor Owner, if only one Grantor Owner is named above; or
- ☐ on the death of the last of the Grantor Owners to die, if the Grantor Owners are joint tenants; or
- ☒ on the death of Kay A. Satterlie, Grantor Owner,

all of Grantor Owner's right, title and interest in and to all of the oil, gas, casinghead gasoline, condensates, all related hydrocarbons, coal, methane, coal bed gas, and other minerals of any nature whatsoever, including sand, gravel, clay, and scoria, in and under and that may be produced from the following described real property in Mountrail County, North Dakota:

Southeast Quarter (SE $\frac{1}{4}$ ) of Section Eleven (11), Township One Hundred Fifty-seven (157), Range Ninety-four (94), Mountrail County, North Dakota.

The Southwest Quarter (SW $\frac{1}{4}$ ) of Section Twelve (12), Township One Hundred Fifty-seven (157), Range Ninety-four (94), Mountrail County, North Dakota.

The East Half of the East Half (E $\frac{1}{2}$ E $\frac{1}{2}$ ) of Section Twenty-three (23), Northwest Quarter of the Northeast Quarter (NW $\frac{1}{4}$ NE $\frac{1}{4}$ ) and the Northeast Quarter of the Northwest Quarter (NE $\frac{1}{4}$ NW $\frac{1}{4}$ ) of Section Twenty-three (23), the Southeast Quarter of the Southwest Quarter (SE $\frac{1}{4}$ SW $\frac{1}{4}$ ) and the Southwest Quarter of the Southeast Quarter (SW $\frac{1}{4}$ SE $\frac{1}{4}$ ) of Section Fourteen (14), all in Township One Hundred Fifty-seven (157), Range Ninety-four (94), Mountrail County, North Dakota.

This transfer is made subject to any rights existing to all lessees or assigns under any valid or subsisting oil and gas lease of record on the effective date; it being understood that the Grantee

Problem Language

OHNSTAD TWICHELL PC

PO BOX 458  
WEST FARGO ND 58078-0458



**387501**  
County Recorder  
Mountrail County  
Stanley ND  
Page 1 of 3

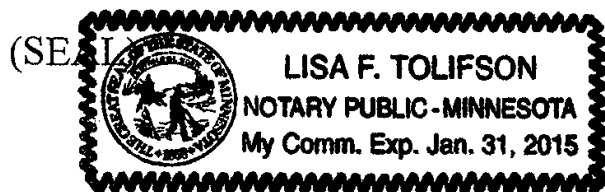
Beneficiary shall have, receive and enjoy the herein granted undivided interest in and to all bonuses, rents, royalties and other benefits which may accrue under the terms of said lease insofar as it covers the interest herein conveyed in the above-described real property from and after the effective date of this instrument, precisely as if Grantee Beneficiary had been at the effective date of the making of said lease the owner of a similar undivided mineral interest and into the real property described, one of the lessors therein.


Dated this 10<sup>th</sup> day of February, 2012.

  
Kay A. Satterlie

STATE OF MINNESOTA    )  
  ) ss.  
COUNTY OF DOUGLAS    )

On this 10<sup>th</sup> day of February, 2012, before me personally appeared Kay A. Satterlie, known to me to be the person described in and who executed the within instrument and acknowledged to me that he executed the same.



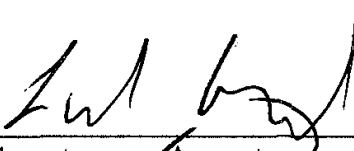
  
Notary Public, Douglas County, MN  
My Commission Expires:





I certify that the requirement for a report or statement of full consideration paid does not apply because this deed is for one of the transactions exempted by Subdivision c of Subsection 7 of North Dakota Century Code Section 11-18-02.2.

Dated this 13<sup>th</sup> day of February, 2012.

  
\_\_\_\_\_  
Grantee or Agent

The mineral exceptions and legal description contained in this instrument was obtained from a previously recorded instrument.

This document was drafted by:

Lukas D. Andrud  
OHNSTAD TWICHELL, P.C.  
901 - 13<sup>th</sup> Avenue East  
P.O. Box 458  
West Fargo, ND 58078  
PHONE: 701-282-3249

County Recorder  
Mountrail County  
Stanley ND

**387501**



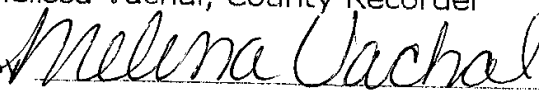
Page 3 of 3

County Recorder, Mountrail County ND.

**387501**

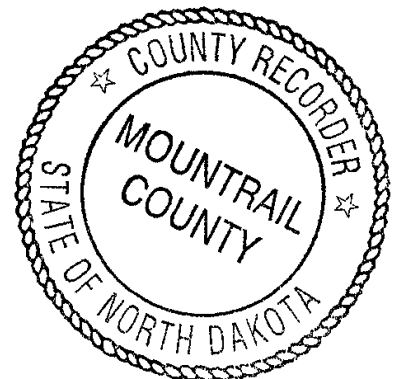
I certify that this instrument was filed and recorded.

Melissa Vachal, County Recorder

By 

Fee \$16.00

2/16/2012 12:30 PM



Document:	Quit Claim Deed
Date:	August 3, 1972
Grantor:	Magnus Walla and Magnus Walla as a/i/f for Astrid Rikustad, Alfred Rikustad, Kenneth Rikustad, Joseph Walla, Eilert Walla, Inga Thompson, Ellen Lewis and Selma Gudbranson
Grantee:	Boyd D. White and Carol J. White

### In a Nutshell:

Grantor possesses a full fee interest, reserves a 1/2 mineral interest, but states they are conveying surface only.

### Problem Language:

*Grantor for the sum of ten dollars and other valuable considerations in hand "hereby Quit Claim to the said grantee all of our undivided interest in and to the following described property... Grantor, reserves to himself, his heirs and assigns fifty (50) percent of all the oil, gas...and other minerals in and under said premises, together with full rights of ingress and egress, and all other rights necessary and incidental to the full use and enjoyment of same."*

*"It being the intent of this instrument to convey a surface estate only in and to said premises."*

### Issues with the Instrument's Language:

- *The instrument contains a conflicting reservation and statement of intent.*

### Examining Attorney's Interpretation:

**Statement of intent and reservation are in conflict with each other. Here, the Grantors possessed a full fee interest prior to the date of the Deed. Accordingly, the statement that the Grantor intended to convey a surface estate only conflicts with the reservation of 50% of the minerals. Additionally, in instruments executed subsequent to this, the Grantors convey a ½ mineral interest to one of the Grantors, and a ½ mineral interest to the Grantees in this instrument.**

**The primary purpose in construing a deed is to ascertain and effectuate the intent of the grantor.**

**The typical curative here would be a stipulation of interest.**





## Q U I T   C L A I M   D E E D

THIS INDENTURE, Made this 3rd day of August, 1972,  
between Magnus Walla and Magnus Walla as attorney-in-fact for  
Astrid Rikustad, Alfred Rikustad, Kenneth Rikustad, Joseph Walla,  
Eilert Walla, Inga Thompson, Ellen Lewis and Selma Gudbranson  
grantor, whether one or more, and Boyd D. and Carol J. White,  
whose address is Watford City, North Dakota;

For and in consideration of the sum of Ten Dollars and no/100  
(\$10.00) and other valuable consideration-----Dollars,  
grantor does hereby Quit Claim to the said grantee all of our  
undivided interest in and to the following described property  
located in McKenzie County, North Dakota to-wit:

TOWNSHIP 151 NORTH, RANGE 98 WEST:

Section 3: Lot 4, SW $\frac{1}{4}$ NW $\frac{1}{4}$

Section 4: SE $\frac{1}{4}$ NE $\frac{1}{4}$

Grantor, reserves to himself, his heirs and assigns fifty (50)  
percent of all the oil, gas, clay, gravel, coal, uranium, and  
other minerals in and under said premises, together with full  
rights of ingress and egress, and all other rights necessary  
and incidental to the full use and enjoyment of same. It being  
the intent of this instrument to convey a surface estate only in  
and to said premises.

Magnus Walla  
Magnus Walla

Astrid Rikustad By Magnus Walla  
Astrid Rikustad  
By Magnus Walla, attorney-in-fact  
for Astrid Rikustad

Alfred Rikustad By Magnus Walla  
Alfred Rikustad  
By Magnus Walla, attorney-in-fact  
for Alfred Rikustad

Kenneth Rikustad By Magnus Walla  
Kenneth Rikustad  
By Magnus Walla, attorney-in-fact  
for Kenneth Rikustad

Joseph Walla By Magnus Walla  
Joseph Walla  
By Magnus Walla, attorney-in-fact  
for Joseph Walla

BOOK

122

PAGE 490

Eilert Walla By Magnus Walla  
Eilert Walla

By Magnus Walla, attorney-in-fact  
for Eilert Walla

Inga Thompson By Magnus Walla  
Inga Thompson

By Magnus Walla, attorney-in-fact  
for Inga Thompson

Ellen Lewis By Magnus Walla  
Ellen Lewis

By Magnus Walla, attorney-in-fact  
for Ellen Lewis

Selma Gudbranson By Magnus Walla  
Selma Gudbranson

By Magnus Walla, attorney-in-fact  
for Selma Gudbranson

STATE OF NORTH DAKOTA )  
County of McKenzie ) ss.

On this 3rd day of August, 1972, before me personally appeared Magnus Walla, known to me to be the person who is described in, and who executed the within and foregoing instrument, and severally acknowledged that he executed the same.

My Commission Expires:  
January 26, 1975

William R. Tschetter  
William R. Tschetter, Notary Public  
McKenzie County, North Dakota

STATE OF NORTH DAKOTA )  
County of McKenzie ) ss.


On this 3rd day of August, in the year 1972 before me William R. Tschetter, a Notary Public, personally appeared Magnus Walla, known to me to be the person who is described in and whose name is subscribed to the within instrument as the attorney-in-fact of Astrid Rikustad, Alfred Rikustad, Kenneth Rikustad, Joseph Walla, Eilert Walla, Inga Thompson, Ellen Lewis and Selma Gudbranson and acknowledged to me that he subscribed the names of

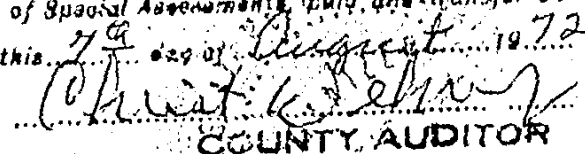


QUIT CLAIM DEED

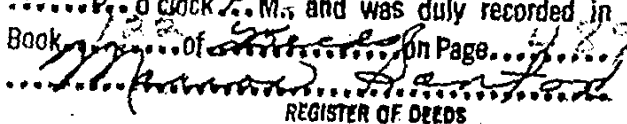
Astrid Rikustad, Alfred Rikustad, Kenneth Rikustad, Joseph Walla, Eilert Walla, Inga Thompson, Ellen Lewis and Selma Gudbranson thereto as principal and his own name as attorney in fact.

My Commission Expires:  
January 26, 1975

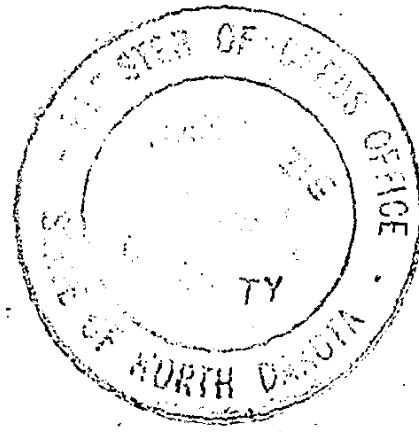
  
William R. Tschetter, Notary Public  
McKenzie County, North Dakota

Delinquent Taxes and Special Assessments, or installments of Special Assessments, paid and transfer entered this 7<sup>th</sup> day of August, 1972  
  
COUNTY AUDITOR  
By ..... Deputy

DOCUMENT NO 190086

STATE OF NORTH DAKOTA, } OFFICE OF  
COUNTY OF MCKENZIE. } ss. REGISTER OF DEEDS  
I hereby certify that the within instrument was filed in this office for record on the 7<sup>th</sup> day of August, A. D. 1972, at 1:08 o'clock P.M., and was duly recorded in Book 122 of McKenzie County, North Dakota, on Page 491.  
  
REGISTER OF DEEDS  
By ..... Deputy

150



BOOK 122 PAGE 491

# COLORADO INSTRUMENTS





Document:	Warranty Deed
Date:	March 15, 1918
Grantor:	Oscar W. Gumeson
Grantee:	Carl A. Nelson

### In a Nutshell:

One interpretation of a reservation could have Grantor reserving a mineral interest in excess of the quantum granted.

### Problem Language:

Grantor for the sum of ten dollars and other valuable considerations in hand *“hereby grant...unto the party of the second part...an undivided one-half (1/2) interest...excepting and reserving to first party,...all oil, coal and other minerals within or underlying said land, to the extent of an undivided two thirds (2/3) interest therein, but conveying to the second party...the other undivided one-third (1/3) interest therein...”*

### Issues with the Instrument’s Language:

- *What is the quantum of interest purportedly being reserved? Is the Grantor reserving 2/3 interest in the entire mineral estate or just 2/3 of the 1/2 interest being conveyed in the deed?*

### Examining Attorney’s Interpretation:

**The reservation language contained in the Nelson Deed lends itself to several possible interpretations as to the quantum of interest purportedly being reserved.**

**A court of competent jurisdiction may conclude that the Grantors reserved a two-thirds (2/3) interest in the entire mineral estate, thereby vesting the Grantee with a one-third (1/3) mineral interest, and that the phrase “in said lands” referred to the entirety of the Captioned Land.**

**However, a second possible interpretation is that the Grantors reserved a two-thirds (2/3) interest in the land being conveyed (being an undivided one-half interest in Captioned Land), thereby resulting in the reservation of an undivided two-thirds (2/3) of one-half (1/2) mineral interest, vesting the Grantee with a one-sixth (1/6) mineral interest.**

**In this case, the reservation is more likely to be treated as having conveyed only a one-sixth (1/6) mineral interest to Carl A. Nelson.**





COMPARED BY JOHNSON &amp; TURNER

No. 271002

## WARRANTY DEED

Oscar W. Gunnerson

Carl A. Nelson

STATE OF COLORADO, } ss.  
COUNTY OF WELD,This Warranty Deed was filed for record  
at 11:30 clock A. M., Mar. 18, 1918.J. E. Smock  
Recorder.  
By Leona Smith  
Deputy.This Deed, Made this fifteenth day of March,  
in the year of our Lord one thousand nine hundred and eighteen, between  
Oscar W. Gunnerson,of the \_\_\_\_\_ County of Boulder and State of Colorado, of the  
first part, andCarl A. Nelson,  
of the \_\_\_\_\_ County of Boulder, and State of Colorado, of the second part:WITNESSETH, That the said part y of the first part, for and in consideration of the sum  
of one Hundred Dollars, and other consideration, DOLLARS,  
to the said part y of the first part in hand paid by the said part y of the second part, the re-  
ceipt whereof is hereby confessed and acknowledged, has granted, bargained, sold and con-  
veyed, and by these presents does grant, bargain, sell, convey and confirm unto the said  
part y of the second part, his heirs and assigns forever, all the following described  
lot \_\_\_\_\_ or parcel \_\_\_\_\_ of land, situate, lying and being in the \_\_\_\_\_

County of Weld and State of Colorado, to-wit:

An undivided one-half ( $\frac{1}{2}$ ) interest in and to the northeast quarter (N.E.  $\frac{1}{4}$ ) of section  
thirty-two (32), in township two (2) north, of range sixty-seven (67) west of the 6th P.M., together  
with a like interest in and to any and all ditch and water rights appertaining to said land, including the water  
right in The Farmers Reservoir & Irrigation Company; except all existing rights of way for highways and  
ditches, and excepting and reserving to said parties, his heirs and assigns, all oil, coal  
and other minerals within or underlying said lands, to the extent of an undivided  
two-thirds therein, but conveying to second party, his heirs and assigns the other  
undivided one-third interest therein, with the right to both parties to prospect in and upon  
said land for coal, oil and other minerals therein or supposed to be therein, and to  
mine or remove from said land all such oil, coal and other minerals found therein  
by anyone, and of ingress, egress and regress upon said land to prospect for, mine  
and remove all such oil, coal or other minerals, and to use so much land as convenient  
or necessary for the right of way to and from such prospect places and mines, and  
for convenient and proper operation of such prospect places and mines and for  
brigade and approaches thereto or for the removal of oil, coal, mineral, machinery or  
other materials.

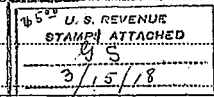
TOGETHER with all and singular the hereditaments and appurtenances thereunto belonging, or in anywise appertaining, and the reversion  
and reversions, remainder and remainders, rents, issues and profits thereof; and all the estate, right, title, interest, claim and demand whatsoever of  
the said part y of the first part, either in law or equity, of, in and to the above bargained premises, with the hereditaments and appurtenances.

TO HAVE AND TO HOLD the said premises above bargained and described, with the appurtenances, unto \_\_\_\_\_

Carl A. Nelson,  
the said part y of the second part, his heirs and assigns forever. And the said  
Oscar W. Gunnerson,  
part y of the first  
part, for himself and his heirs, executors and administrators, do as covenant, grant, bargain and agree to and with the said  
part y of the second part, his heirs and assigns, that at the time of the sealing and delivery of these presents, he is  
well seized of the premises above conveyed, as of good, sure, perfect, absolute and indefeasible estate of inheritance, in law, in fee simple, and has  
good right, full power and lawful authority to grant, bargain, sell and convey the same in manner and form aforesaid, and that the same are free and  
clear from all former and other grants, bargains, sales, liens, taxes, assessments and incumbrances of whatever kind or nature soever:

and the above bargained premises, in the quiet and peaceable possession of the said part y of the second part, his heirs and assigns,  
against all and every person or persons lawfully claiming or to claim the whole or any part thereof, the said part y of the first part shall and  
will WARRANT AND FOREVER DEFEND.IN WITNESS WHEREOF, The said part y of the first part has hereunto set his hand \_\_\_\_\_ and seal \_\_\_\_\_ the day and  
year first above written.

Signed, Sealed and Delivered in Presence of

Oscar W. Gunnerson [SEAL]

[SEAL]

[SEAL]

[SEAL]

STATE OF COLORADO,

COUNTY OF Boulder, } ss.

I, Gray Secor,  
a Notary Public in and for the \_\_\_\_\_ County, in the State aforesaid, do hereby certify that \_\_\_\_\_  
Oscar W. Gunnerson who is personally known  
to me to be the person \_\_\_\_\_ whose name is subscribed to the foregoing Deed, appeared before me this day in person and  
acknowledged that he signed, sealed and delivered the said instrument of writing as his free and voluntary act and deed,  
for the uses and purposes therein set forth.

Given under my hand and Notarial seal, this 15th day of March, A. D. 19 18  
My commission expires November 21st, 1921.Gray Secor  
Notary Public.

Document:	Deed
Date:	December 29, 1975
Grantor:	Joseph Schmidt and wife, Betty Schmidt
Grantee:	Robert J. Winter and wife, Janet A. Winter

### In a Nutshell:

Grantors include a qualification in a deed which may indicate that reservation is to be proportionately reduced to Assignor's interest.

### Problem Language:

Grantor for the sum of ten dollars and other valuable considerations in hand *"hereby grant...unto the parties of the second part...all the following described land..."*

*"The Grantors herein expressly except and reserve unto themselves...one-half (1/2) interest in and to all oil, gas and other minerals and mineral right in, on or under the two parcels of real estate described hereinabove, which are now owned by the Grantors."*

*"The Grantor further except and reserve unto themselves...a one-half (1/2) interest in and to all existing oil and gas leases in which they presently have any interest."*

### Issues with the Instrument's Language:

- *What is the quantum of interest purportedly being reserved?*
- *Are they reserving ½ in all minerals or are they reserving a ½ interest in the minerals they currently own?*

### Examining Attorney's Interpretation:

**The reservation language in this deed opens the door for several possible interpretations as to the quantum of interest purportedly being reserved.**

**A court of competent jurisdiction may conclude that the Grantors reserved a full one-half (1/2) interest in all minerals, and that the use of the phrase *"..., which are now owned by the Grantors"* was an intent to show that they were currently only vested with one-half (1/2) of the minerals.**

**A second possible interpretation is that the Grantors reserved a one-half (1/2) interest in the minerals currently owned by them, being a one-half (1/2) interest, thereby resulting in the reservation of an undivided one-fourth (1/4) mineral interest.**



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JAN--2-76

THIS DEED, Made this 29th day of December, 1975,  
between JOSEPH SCHMIDT AND BETTY J. SCHMIDT,  
husband and wife,

of the County of Weld and State of Colorado,  
of the first part, and

State Documentary Fee  
Date JAN 2 1976  
\$ 22.00

ROBERT J. WINTER AND JANET A. WINTER, in  
joint tenancy,  
of the County of Weld and State of Colorado, of the second part;

WITNESSETH, That the said part ies of the first part, for and in consideration of the sum of Two  
Hundred Twenty Thousand and no/100---- (\$220,000)----- DOLLARS,

to the said part ies of the first part in hand paid by the said part ies of the second part, the receipt whereof is  
hereby confessed and acknowledged, ha ve granted, bargained, sold and conveyed, and by these presents do  
grant, bargain, sell, convey and confirm, unto the said part ies of the second part, their  
heirs and assigns forever, all the following described lot or parcel of land, situate, lying and being in the  
County of Weld and State of Colorado, to-wit:

Parcel 1:

The Northwest Quarter (NW1/4) of Section Fourteen (14), Township Six  
(6) North, Range Sixty-seven (67) West of the 6th P.M., County of  
Weld, State of Colorado, excepting therefrom a strip of land 80 feet  
in width as conveyed to the Northern Construction Company by deed  
recorded in Book 228 at page 58 of the Weld County records and except  
a parcel of land conveyed to Henry Stromberger consisting of 1.82  
acres more or less by deed recorded in Book 1037 at Page 189, Weld  
County, Records.

Doc 4-  
22.00

Parcel 2:

A portion of the Southwest Quarter (SW1/4) of Section Fourteen (14),  
Township Six (6) North, Range Sixty-seven (67) West of the 6th P.M.,  
County of Weld, State of Colorado, beginning at the Quarter Corner  
(1/4 Cor) common to Sections 15 and 14 of said Township and Range,  
thence South 0°30' West along the Section line, 384.4 feet; thence  
North 52°32' East, 178 feet; thence North 32°35' East, 75.5 feet;  
thence North 8°31' East, 214.4 feet; thence North 89°49' West,  
210.3 feet to the place of beginning;

TOGETHER with all water and water rights, ditch and ditch rights,  
reservoir and reservoir rights, including but not by way of limitation,  
the following:

- 100 acre feet of Northern Colorado Water Conservancy District water;
- 2 shares of The Larimer & Weld Irrigation Company;
- 75 shares of Loup Reservoir Company;
- 1 share of The Finley Lateral Ditch Company;

The Grantors herein expressly except and reserve unto themselves,  
their heirs, administrators and assigns, a one-half (1/2) interest  
in and to all oil, gas and other minerals and mineral rights in, on  
or under the two parcels of real estate described hereinabove, which  
are now owned by the Grantors. The Grantors further except and  
reserve unto themselves, their heirs, administrators and assigns, a  
one-half (1/2) interest in and to all existing oil and gas leases  
in which they presently have any interest.

Problem Language

TOGETHER with all and singular the hereditaments and appurtenances thereto belonging, or in anywise  
appertaining, and the reversion and reversions, remainder and remainders, rents, issues and profits thereof; and all  
the estate, right, title, interest, claim and demand whatsoever of the said part ies of the first part, either in law  
or equity, of, in and to the above bargained premises, with the hereditaments and appurtenances.







# NEW MEXICO INSTRUMENTS





Document:	Paid-Up Oil and Gas Lease
Date:	July 1, 2007
Lessor:	Guy Pittman Witherspoon, III
Lessee:	OGX Resources LLC

### In a Nutshell:

New Mexico law requires all community property instruments to be executed by both spouses. If an instrument is executed by only one spouse it becomes a void instrument, but New Mexico legislature recently allowed for the ratification of the instrument by the other spouse.

### Problem Language:

*"THIS AGREEMENT made on 1<sup>st</sup> day of July, 2007 between Guy Pittman Witherspoon, III... and OGX Resources LLC..."*

### Issues with the Instrument's Language:

- *What issues could arise from Lessor's lack of marital designation?*
- *How would this lease be treated if both spouses executed a second lease with a different Lessee?*

### Examining Attorney's Interpretation:

**In New Mexico, any community property instrument that is not executed by both spouses are void.**

**In this instance, the lease does not designate whether Guy Pittman Witherspoon, III is a single man or as a married man and the instrument is only executed by him. So if he were in fact married, this lease would be void unless his spouse ratifies the lease by executing it.**

**It is difficult to tell simply from the face of a lease whether or not it is void. Under New Mexico law, in order for a lease executed by an individual to be void, the Lessor, at the time of lease execution must have been married, the lands covered by said lease must have been community property, and the Lessor's spouse must not have executed a document ratifying the lease. Therefore, investigation beyond the face of the Lease is necessary to determine whether or not said lease is void.**



711/934

OIL & GAS LEASE

THIS AGREEMENT made this 1<sup>st</sup> day of July, 2007, between Guy Pittman Witherspoon, III  
whose address is P.O. Box 100403, Fort Worth, TX 76185

OGX RESOURCES LLC; P.O. Box 2064; MIDLAND, TX 79702

herein called lessor (whether one or more) and

1. Lessor, in consideration of TEN AND OTHER DOLLARS in hand paid, receipt of which is here acknowledged, and of the royalties herein provided and of the agreements of the lessee herein contained, hereby grants, leases and lets exclusively unto lessee for the purpose of investigating, exploring, prospecting, drilling, and operating for and producing oil and gas, injecting gas, waters, other fluids, and air into subsurface strata laying pipelines, storing oil, building tanks, roadways, telephone lines, and other structures and things thereon to produce, save, take care of, treat, process, store and transport said minerals, the following described land in Eddy County, New Mexico, to-wit:

Township 23 South, Range 27 East, N.M.P.M.

Section 31: W/2SW/4 and SE/4SW/4

Said land is estimated to comprise 120 acres, whether it actually comprises more or less. two (2)

2. Subject to the other provisions herein contained, this lease shall remain in force for a term of one-fourth (1/4) years from this date (called "primary term") and as long thereafter as oil or gas is produced from said land or from land with which said land is pooled

3. The royalties to be paid by lessee are: (a) on oil, and other liquid hydrocarbons saved at the well, one-fourth (1/4) of that produced and saved from said land, same to be delivered at the wells or to the credit of lessor in the pipeline to which the wells may be connected; (b) on gas, including casinghead gas or other gaseous substance produced from said land and used on the premises or used in the manufacture of gasoline or other products, the market value of the well of one-fourth (1/4) of the gas used

provided that on gas sold on or off the premises, the royalties shall be one-fourth (1/4) of the amount realized from such sale; (c) and at any time when this lease is not validated by either provisions hereof and there is a gas and/or condensate well on said land, or land pooled therewith, but gas or condensate is not being sold or used and such well is shut in, either before or after production therefrom, then on or before 90 days after said well is shut in, and thereafter at annual intervals, lessee may pay or tender an advance shut-in royalty equal to \$1.00 per net acre of lessor's gas acreage then held under this lease by the party making such payment or tender and so long as said shut-in royalty is paid or tendered, this lease shall not terminate and it shall be considered under all clauses hereof that gas is being produced from the leased premises in paying quantities. Each such payment shall be paid or tendered to the party or parties who at the time of such payment would be entitled to receive the royalties which would be paid under this lease if the well were in fact producing. The payment or tender of royalties and shut-in royalties may be made by check or draft. Any timely payment or tender of shut-in royalty which is made in bona fide attempt to make proper payment, but which is erroneous in whole or in part as to parties or amounts, shall nevertheless be sufficient to prevent termination of this lease in the same manner as though a proper payment had been made if lessee shall correct such error within 30 days after lessee has received written notice thereof by certified mail from the party or parties entitled to receive payment together with such written instrument (or certified copies thereof) as are necessary to enable lessee to make proper payment. The amount realized from the sale of gas on or off the premises shall be the price established by the gas sales contract entered into in good faith by lessee and gas purchaser for such term and under such conditions as are customary in the industry. "Price" shall mean the net amount received by lessee after giving effect to applicable regulatory orders and after application of any applicable price adjustments specified in such contract or regulatory orders. Lessee shall maintain accurate records of the production of oil and gas from the leased premises, and shall make such records available for inspection and audit by lessor or its duly authorized representative at any time upon reasonable notice. Lessee shall also maintain accurate records of the shut-in royalty payments made by lessee and shall make such records available for inspection and audit by lessor or its duly authorized representative at any time upon reasonable notice.

4. This is a paid-up lease and lessee shall not be obligated during the primary term hereof to commence or continue any operations of whatsoever character or to make any payments hereunder in order to maintain this lease in force during the primary term, however, this provision is not extended to relieve lessee of the obligation to pay royalties on actual production pursuant to the provisions of Paragraph 3 hereof

5. Lessee is hereby granted the right and power, from time to time, to pool or combine this lease, the land covered by it or any part or portion thereof with any other land, leases, mineral interests or parts thereof for the production of oil or gas. Units pooled hereunder shall not exceed the standard proration unit fixed by law or by the Oil Conservation Division of the Energy and Minerals Department of the State of New Mexico or by any other lawful authority for the pool or area in which said land is situated, plus a tolerance of ten percent. Lessee shall file written unit designations in the county in which the premises are located and such units may be designated from time to time and either before or after the completion of wells. Drilling operations on or production from any part of any such unit shall be considered for all purposes, except the payment of royalty, as operations conducted upon or production from the land described in the lease. There shall be allocated to the land covered by this lease included in any such unit that portion of the total production of pooled minerals from wells in the unit, after deducting any used in lease or unit operations, which the net oil or gas acreage in the land covered by this lease bears to the total number of acre-feet acres in the unit. The production so allocated shall be considered for all purposes, including the payment or delivery of royalty, to be the entire production of pooled minerals from the portion of said land covered hereby and included in said unit in the same manner as though produced from said land under the terms of this lease. Any pooled unit designated by lessee, as provided herein, may be dissolved by lessee by recording an appropriate instrument in the County where the land is situated at any time after the completion of a dry hole or the cessation of production on said unit.

6. If at the expiration of the primary term there is no well upon said land capable of producing oil or gas, but lessee has commenced operations for drilling or reworking thereof, this lease shall remain in force so long as operations are prosecuted with no cessation of more than 60 consecutive days, whether such operations be on the same well or on a different or additional well or wells, and if they result in the production of oil or gas, so long thereafter as oil or gas is produced from said land. If, after the expiration of the primary term, all wells upon said land should become incapable of producing for any cause, this lease shall not terminate if lessee commences operations for additional drilling or for reworking within 60 days thereafter. If any drilling, additional drilling, or reworking operations hereunder result in production, then this lease shall remain in full force so long thereafter as oil or gas is produced hereunder.

7. Lessee shall have free use of oil, gas and water from said land, except water from lessor's wells and tanks, for all operations hereunder, and the royalty shall be computed after deducting any so used. Lessee shall have the right at any time during or after the expiration of this lease to remove all property and fixtures placed by lessee on said land, including the right to drill and remove all casing. When required by lessor, lessee will bury all pipe lines on cultivated lands below ordinary plow depth, and no well shall be drilled within two hundred feet (200 ft.) of any residence or barn now on said land without lessor's consent. Lessor shall have the privilege, at his risk and expense, of using gas from any gas well on said land for stoves and incandescent lights in the principal dwelling thereon, out of any surplus gas not needed for operations hereunder.

8. The rights of either party hereunder may be assigned in whole or in part and the provisions hereof shall extend to their heirs, executors, administrators, successors and assigns; but no change in the ownership of the land or in the ownership of, or rights to receive, royalties or shut-in royalties, however accomplished shall operate to enlarge the obligations or diminish the rights of lessor and no such change or division shall be binding upon lessee for any purpose until 30 days after lessee has been furnished by certified mail at lessor's principal place of business with acceptable instruments or certified copies thereof constituting the chain of title from the original lessor. If any such change in ownership occurs through the death of the owner, lessee may, at its option, pay or tender any royalties or shut-in royalties in the name of the deceased or to his heirs, executor or administrator until such time as lessee has been furnished with evidence satisfactory to lessee as to the persons entitled to such sums. An assignment of this lease in whole or in part shall, to the extent of such assignment, release and discharge lessee of any obligations hereunder and, if lessee or assignee of part or parts hereof shall fail or make default in the payment of the proportionate part of royalty or shut-in royalty due from such lessee or assignee or fail to comply with any of the provisions of this lease, such default shall not affect this lease insofar as it covers a part of said lands upon which lessee or any assignee thereof shall properly comply or make such payments.

9. Should lessee be prevented from complying with any express or implied covenant of this lease, or from conducting drilling or reworking operations hereunder, or from producing oil or gas hereunder by reason of scarcity or inability to obtain or use equipment or material, or by operation of force majeure, or by any Federal or state law or any order, rule or regulation of governmental authority, then while so prevented, lessor's duty shall be suspended, and lessee shall not be liable for failure to comply therewith; and this lease shall be extended while and so long as lessee is prevented by any such cause from conducting drilling or reworking operations or from producing oil or gas hereunder; and the time while lessee is so prevented shall not be counted against lessee, anything in this lease to the contrary notwithstanding.

10. Lessor hereby agrees to execute and acknowledge and agree that lessee at its option may mortgage any tax, mortgage or other lien upon said land, and in the event lessee does so it shall be subrogated to such lien with the right to enforce same and to apply royalties and shut-in royalties payable hereunder toward satisfying same. Without impairment of lessor's rights under the warranty, if this lease covers a less interest in the oil or gas in all or any part of said land than the entire and undivided fee simple estate (another lessor's interest is herein specified or not) then the royalties, shut-in royalty, and other payments, if any, accruing from any part as to which this lease covers less than such full interest, shall be paid only in the proportion which the royalty thereon, if any, covered by this lease, bears to the whole and undivided fee simple estate therein. Should any one or more of the parties named above as lessors fail to execute this lease, it shall nevertheless be binding upon the party or parties executing the same.

11. Lessee, its or his successors, heirs and assigns, shall have the right at any time to surrender this lease, in whole or in part, to lessor or his heirs, successors and assigns by delivering or making a release thereof to the lessor, or by placing a release thereof of record in the county in which said land is situated; thereupon lessee shall be relieved from all obligations, expressed or implied, of this agreement as to acreage so surrendered; and thereafter the shut-in royalty payable hereunder shall be reduced in the proportion that the acreage covered hereby is reduced by said release or releases.

Articles 12, 13, 14, 15, 16 & 17 of this OIL & GAS LEASE are attached as Exhibit "A".

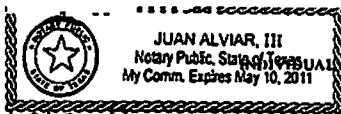
IN WITNESS THEREOF, this instrument is executed on the date first above written.

By: Guy Pittman Witherspoon, III Attn: Katie Anderson  
OGX Resources LLC  
P.O. Box 2064  
Midland TX 79702

Problem Language



STATE OF Texas  
County of Tarrant



ACKNOWLEDGMENT (New Mexico Short Form)

This instrument was acknowledged before me on Sept 21, 2007  
by GUY PITTMAN WITHERSPOON, III

My Commission expires 5-10-2011

Juan Alviar, III  
Notary Public

STATE OF Texas  
County of Tarrant

INDIVIDUAL ACKNOWLEDGMENT (New Mexico Short Form)

This instrument was acknowledged before me on \_\_\_\_\_  
by \_\_\_\_\_

My Commission expires \_\_\_\_\_

Notary Public

STATE OF \_\_\_\_\_  
County of \_\_\_\_\_

INDIVIDUAL ACKNOWLEDGMENT (New Mexico Short Form)

This instrument was acknowledged before me on \_\_\_\_\_  
by \_\_\_\_\_

My Commission expires \_\_\_\_\_

Notary Public

STATE OF \_\_\_\_\_  
County of \_\_\_\_\_

INDIVIDUAL ACKNOWLEDGMENT (New Mexico Short Form)

This instrument was acknowledged before me on \_\_\_\_\_  
by \_\_\_\_\_

My Commission expires \_\_\_\_\_

Notary Public

No. _____	
OIL AND GAS LEASE	
NEW MEXICO	
FROM	TO
Date _____, 19____	
Section _____, Township _____, Range _____	
No. of Acres _____	
County, New Mexico _____	
Term _____	
STATE OF NEW MEXICO	
COUNTY OF _____	
I hereby certify that this instrument was filed for record on _____	
the _____ day of _____, A.D. 19____, at _____ o'clock _____ m., and	
was duly recorded in Book _____ at page _____	
of the Records of said County	
By _____	County Clerk
_____	Deputy

STATE OF \_\_\_\_\_  
County of \_\_\_\_\_

CORPORATION ACKNOWLEDGMENT (New Mexico Short Form)

This instrument was acknowledged before me on \_\_\_\_\_  
by \_\_\_\_\_ as \_\_\_\_\_  
of \_\_\_\_\_ a \_\_\_\_\_ corporation  
on behalf of said corporation.  
My Commission Expires: \_\_\_\_\_ Notary Public

STATE OF \_\_\_\_\_  
County of \_\_\_\_\_

CORPORATION ACKNOWLEDGMENT (New Mexico Short Form)

This instrument was acknowledged before me on \_\_\_\_\_  
by \_\_\_\_\_ as \_\_\_\_\_  
of \_\_\_\_\_ a \_\_\_\_\_ corporation  
on behalf of said corporation.  
My Commission Expires: \_\_\_\_\_ Notary Public

EXHIBIT "A"  
TO THAT CERTAIN OIL AND GAS LEASE  
DATED JULY 1, 2007, BY AND BETWEEN  
GUY PITTMAN WITHERSPOON, III, AS LESSOR AND OGX RESOURCES LLC, AS LESSEE

12. Notwithstanding any language which might appear to the contrary, it is specifically understood and agreed that this lease shall cover only oil, gas, hydrocarbons and other minerals which are customarily produced along with such oil, gas, and hydrocarbons.

13. The payment of shut-in gas royalties shall only serve to extend the lease of the acreage within the specific proration unit as designated by the NMOCC within which the shut-in well is located and such extension shall be for no more than two (2) years in the aggregate after the latter of 1) the date that said well is shut-in or 2) the expiration of the primary term of this lease.

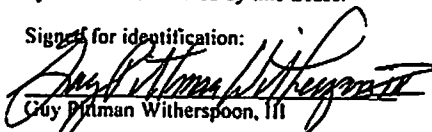
14. Notwithstanding any of the foregoing, and to control over same in the event of conflict, upon the expiration of the primary term of this lease, all acreage not included in a proration unit as designated by New Mexico Oil Conservation Commission (NMOCC) and all depths 100 feet below the deepest producing horizon within each proration unit in which there is then a producing oil or gas well producing from said horizon or a well capable of producing gas from said horizon actually located and where shut-in royalty payments have been timely paid, subject to provisions of Paragraph 13, shall be automatically eliminated from this Lease and revert back to Lessor, unless Lessee is engaged in the actual drilling of a well on the leased premises or lands pooled therewith and thereafter the well is completed as a producer of oil or gas in paying quantities or as a dry hole, in which event, the Lease will be held in its entirety for as long as not more than 120 days elapse between the completion of one well and the commencement of drilling operations on another well. For purposes of interpretation of this provision, "commencement of drilling operations" and "actual drilling" are defined as the actual entry into the soil of the leased premises or lands pooled therewith of the drill bit of a drilling rig, capable of achieving the total depth permitted and the timely prosecution of such actual drilling operations with reasonable diligence to the completion of the same as a dry hole or a well producing oil or gas in paying quantities; and the completion of a well shall occur on the earliest of the following dates: 1) the date on which the initial potential test is run, 2) that date on which a dry hole is plugged, 3) the date on which the Lessee reaches total depth in the well, 4) the date the drilling rig is released from such well, or 5) the date certified by the applicable governing agency as the date a well as been completed as a producing well. Upon the partial or total termination of this lease, Lessee, within thirty (30) days from the date of said termination, hereby agrees to execute and file of record, furnishing Lessor with a recorded copy of same, a proper release in recordable form releasing this lease as to the lands and depths covered by this lease that are not retained or included in a proration unit as defined herein. If Lessee fails to execute and file for record this release or the instrument designating the lands surrounding the producing proration units, Lessor shall notify Lessee and Lessee will have thirty (30) days after receiving a written notice to record the release or the instrument designating the producing proration unit or units. After the thirty (30) day written notice time has expired and Lessee has not filed and recorded the release or designation, Lessor shall have the right to file such release or designation which will have the same force and effect as if executed and filed by Lessee. After the partial termination of this lease, the lease on each proration unit held by a producing well shall, for the purposes of determining its maintenance in force by production or operation, be treated as if each said proration unit were a separate lease from the lease covering the proration unit allocable to each other well, so that this lease shall, thereafter, as to each such proration unit, remain in force only so long as oil and or gas is produced from such proration unit in paying quantities or the lease is otherwise maintained in force under some of the other provisions of this lease as such proration unit.

15. If Lessee assigns all or any portion of the leasehold estate created by this Lease, the assignment shall not be effective as to lessor, in relieving Lessee of its obligations under this Lease until Lessor has been furnished with a certified copy of the assignment by Lessee within thirty (30) days from the date of said assignment.

16. Lessee agrees to notify Lessor fifteen (15) days prior to commencement of any drilling operations and to furnish Lessor with a copy of the drilling permit filed with the NMOCC when a new well is to be drilled. When the well is complete, Lessee shall furnish Lessor with a copy of the completion report filed with the NMOCC. If requested in writing by Lessor, Lessee shall furnish Lessor with copies of the conventional logs, with formation tops marked, and shall furnish copies of all forms of reports filed with government agencies provided, however, Lessee shall not provide interpretive or proprietary data.

17. As an addition to the terms hereof, it is expressly agreed that all royalty to be paid hereunder shall be delivered to Lessor free of all costs of processing, treatment, purification, dehydration, separation, stabilization, manufacturing, measuring, transportation, compression, or marketing the oil, gas, or other hydrocarbons covered by this Lease.

Signatures for identification:

  
Guy Pittman Witherspoon, III

s:\mike\willowlake\sec.31(gustarheuss)\ExhibitAtoOOL (12-17)

RECEPTION NO: 0711801 STATE OF  
NEW MEXICO, COUNTY OF EDDY  
RECORDED 09/27/2007 8:43 AM  
BOOK 0711 PAGE 0934  
DARLENE ROSPRIM, COUNTY CLERK



# MONTANA INSTRUMENTS





Document 1:	Mineral Deed
Date:	March 1, 1993
Grantor:	Rodney Kittleson
Grantee:	Lotus Trust

Document 2:	Mineral Deed
Date:	June 27, 1997
Grantor:	Rodney C. Kittleson and Helen J. Norby, as Trustees of the Lotus Trust
Grantee:	Rodney C. Kittleson

In a Nutshell:

The Trustees were not identified in the 1993 Mineral Deed, but were identified in the 1997 Mineral Deed.

Problem Language:

Document No. 1 recites: *"For a valuable consideration, a receipt of which is hereby acknowledged on this 1<sup>st</sup> day of March, 1993, the undersigned, Rodney Kittleson, ... hereby conveys and grants unto Lotus Trust, ... all of the gas, oil, coal, and other minerals he now owns..."*

Document No. 2 recites: *"The undersigned, Rodney C. Kittleson and Helen J. Norby, as Trustees of the Lotus Trust, hereby convey and grant unto Rodney C. Kittleson...all of the oil, gas, coal, and other minerals owned by said trust..."*

Issues with the Instrument's Language:

- *Did the Trustees have the authority to execute the 2<sup>nd</sup> Mineral Deed?*

***(Examining Attorney's Interpretation on next page.)***



Document 1:	Mineral Deed
Date:	March 1, 1993
Grantor:	Rodney Kittleson
Grantee:	Lotus Trust

Document 2:	Mineral Deed
Date:	June 27, 1997
Grantor:	Rodney C. Kittleson and Helen J. Norby, as Trustees of the Lotus Trust
Grantee:	Rodney C. Kittleson

Examining Attorney's Interpretation:

**Montana provides protection for persons or entities that deal with a Trustee in good faith and obtain a Certification of Trust. Montana Code Annotated Section 72-38-1013 provides that instead of furnishing copy of the trust instrument to a person other than a beneficiary, the trustee may furnish to the person a certification of trust containing the following information: (1) a statement that the trust exists with the date the trust instrument was executed; (2) the identity of the settlor; (3) the identity and mailing address of the acting trustee(s); (4) the relevant powers of the trustee; (5) the revocability or irrevocability of the trust and the identity of any person holding a power to revoke the trust; (6) the authority of co-trustees to sign or otherwise authenticate and whether all or less than all the co-trustees are required in order to exercise powers of the trustee; and (7) a statement that the trust has not been revoked, modified, or amended in any manner that would cause the representations contained in the certification to be incorrect.**

**A person or entity who acts in reliance on a Certification of Trust without knowledge that the representations contained therein are incorrect is not liable to any person for the action and may assume, without inquiry, the existence of the facts contained in the Certification.**

**In this case, an assumption can be made that the Trustees named in Document No. 2 had the authority to execute said Deed, subject to the Certification of Trust.**





E237-929

Document No. 1

BOOK 2237 PAGE 929

BOOK 2238 PAGE 157

## MINERAL DEED

FOR A VALUABLE CONSIDERATION, receipt of which is hereby acknowledged on this 1<sup>st</sup> day of March, 1992, the undersigned, RODNEY KITTLESON, of P.O. Box 296, Sidney, MT 59639, hereby conveys and grants unto LOTUS TRUST, of 702 South McGillen, Red Lodge, Montana 59068, and to its successors and assigns forever, all of the gas, oil, coal and other minerals he now owns on, in, and under, or that may be produced from the following described lands situated in Richland County, Montana, to-wit:

Problem Language

Twp. 25 N., Range 59 E.M.P.M., Richland County, Montana

Sec. 4: Lot 4, (NW1/4NW1/4); SW1/4NW1/4; NW1/4SW1/4  
(119.65 Mineral Acres)

Sec. 5: Lot 1 (NE1/4NE1/4); SE1/4NE1/4; E1/2SE1/4;  
SW1/4SE1/4  
(199.73 Mineral Acres)

Sec. 5: Lot 2, otherwise described as NW1/4NE1/4,  
(containing 39.75 Mineral Acres)  
Lot 3, otherwise described as NE1/4NW1/4, (containing 39.77 Mineral Acres)

Minerals under Lots 2 and 3 are subject to 3-1/8% royalty reservation to Mildred V. Bachmeier, formerly Mildred V. Carlson of Conrad, Montana, per Release of All Claims recorded Book E-94, Page 123, records of Richland County.

Twp. 26 North, Range 59 E.M.P.M., Richland County, Montana,

\*\*\* NW1/4NE1/4

Sec. 20: ~~SW1/4NE1/4~~; SE1/4NE1/4, E1/2SE1/4, containing 160 Mineral Acres

Minerals subject to 6 1/4% royalty reservation to Richland County per deed recorded Book A-53, Page 162, of the records of the Clerk and Recorder.

Sec. 28: N1/2NW1/4, containing 80 Mineral Acres

Minerals subject to 6 1/4% royalty reservation to Richland County per deed recorded Book A-59, Page 124, records of Clerk and Recorder, Richland County

Sec. 32: S1/2SE1/4, containing 80 Mineral Acres

Minerals subject to a royalty reservation at 3-1/8% to Mildred V. Bachmeier, Conrad, Montana, per Release of All Claims recorded Book E-94, page 123, records of County Clerk and Recorder, Richland County.

Sec. 33: SW1/4, containing 160 Mineral Acres.

Sec. 34: NW1/4, containing 160 Mineral Acres

TOGETHER with the exclusive right of ingress and egress at all times for the purpose of mining, drilling, and exploring such lands for oil and gas and other minerals and producing and removing them therefrom.

IN WITNESS WHEREOF, the Grantor has executed this instrument the day and year first above written.

Rodney Kittleson  
RODNEY KITTLESON

STATE OF Montana  
County of Lewis & Clark ss.

BOOK E237 PAGE 930

BOOK E236 PAGE 158

On this 1<sup>st</sup> day of March, 1993, before me, the undersigned, a Notary Public for the State of Montana, personally appeared RODNEY KITTLESON, known to me to be the person whose name is subscribed to the within instrument and acknowledged to me that he executed the same.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed my Official Seal the day and year in this certificate first above written.

(SEAL)

Charles P. Fisher  
Notary Public for the State of Montana  
Residing at Helena, MT  
My Commission Expires 2-2-95

465412

STATE OF MONTANA  
COUNTY OF RICHLAND

Filed for record this 12th day of  
April A.D. 1993 at 10:02 A.M.  
and recorded in Book E-236 at page  
157-158 of Miscellaneous records.

Eliminary Cook  
Clerk and Recorder  
by Sharon McMillen

Fee: \$12.00

Return:

Rodney Kittleson  
Z Helen J. Norby  
P.O. Box 468  
Red Lodge, MT 59068

\*\*\* Re-recorded to correct legal description in Section 20.

467489

STATE OF MONTANA  
COUNTY OF RICHLAND

Filed for record this 4th day of  
August A.D. 1993 at 10:18 A.M.  
and recorded in Book E-237 at page  
929-930 of Miscellaneous records.

Sharon McMillen  
Clerk and Recorder  
by Sharon McMillen

Fee: \$12.00

Return:

Pedersen & Hardy  
1645 Avenue D  
Plaza One  
Billings, MT 59102

## MINERAL DEED

The undersigned,

RODNEY C. KITTLESON and HELEN J. NORBY,  
as Trustees of the Lotus Trust

hereby convey and grant unto:

RODNEY C. KITTLESON  
P.O. Box 2071  
Clancy, Montana 59634

real property in Richland County, Montana described as:

All of the oil, gas, coal, and other minerals owned by said trust on, in, and under, or that may be produced from the following described lands:

TOWNSHIP 25 NORTH, RANGE 59 E.M.M.

Section 4: Lot 4, (~~NW~~~~NW~~); ~~SW~~~~NW~~; ~~NW~~~~SW~~  
(119.65 Mineral Acres)

Section 5: Lot 1 (~~NE~~~~NE~~); ~~SE~~~~NE~~; ~~E~~~~SE~~;  
~~SW~~~~SE~~ (199.73 Mineral Acres)

Section 5: Lot 2, otherwise described as  
~~NW~~~~NE~~, (containing 39.75 Mineral  
Acres)  
Lot 3, otherwise described as  
~~NE~~~~NW~~, (containing 39.77 Mineral  
Acres)

Minerals under Lots 2 and 3 are  
subject to 3-1/8% royalty  
reservation to Mildred V. Bachmeier,  
formerly Mildred V. Carlson of  
Conrad, Montana, per Release of All  
Claims recorded Book E-94, Page 123,  
records of Richland County.

TOWNSHIP 26 NORTH, RANGE 59 E.M.P.M.

Section 20: ~~NW~~~~NE~~, ~~SE~~~~NE~~, ~~E~~~~SE~~, containing  
160 Mineral Acres

Minerals subject to 6 1/4% royalty  
reservation to Richland County per  
deed recorded Book A-53, Page 162,  
of the records of the Clerk and  
Recorder.

Section 28: ~~N~~~~NW~~, containing 80 Mineral Acres

Minerals subject to 6 1/4% royalty  
reservation to Richland County per  
deed recorded Book A-59, Page 124,  
records of Clerk and Recorder,  
Richland County

Section 32: ~~S~~~~SE~~, containing 80 Mineral Acres

Minerals subject to a royalty  
reservation at 3 1/8% to Mildred V.  
Bachmeier, Conrad, Montana, per  
Release of All Claims recorded Book  
E-94, Page 123, Records of County  
Clerk and Recorder, Richland County.

Problem Language



Section 33: SWN, containing 160 Mineral Acres

Section 34: NWN, containing 160 Mineral Acres.

Together with the exclusive right of ingress and egress at all times for the purpose of mining, drilling, and exploring such lands for oil and gas and other minerals and producing and removing them therefrom.

The undersigned hereby certify that we are all of the trustees of the above-named trust, and that our respective addresses are set forth hereinafter, and that we are fully empowered to execute and deliver this instrument.

DATED: 6-27, 1997.

Rodney C Kittleson  
 RODNEY C. KITTLESON  
 P.O. Box 2071  
 Clancy, Montana 59634

Helen J. Norby  
 HELEN J. NORBY  
 P. O. Box 468  
 Red Lodge, Montana 59068

ALL OF THE TRUSTEES OF THE  
 LOTUS TRUST

STATE OF MONTANA )  
 County of Simons Clark ) ss.

This document was acknowledged before me on the date last above written by RODNEY C. KITTLESON

Kenneth D. St. Louis  
 Notary Public for the State of Montana  
 Residing at Bozeman, Montana  
 My commission expires Aug 6, 1999

STATE OF MONTANA )  
 County of Yellowstone ) ss.

This document was acknowledged before me on the date last above written by HELEN J. NORBY.

James M. Thompson  
 Notary Public for the State of Montana  
 Residing at Billings, Montana  
 My commission expires July 26, 1999

STATE OF MONTANA } ss.  
 COUNTY OF RICHLAND }

DOCUMENT NO. 489656

FILED for record this 30th day of June A.D. 1997 at 11:06 O'clock A.  
 and duly recorded in Book E-262 Page 598-599 of Miscellaneous Records  
 Fee Paid \$ 12.00

Return to Rodney C. KittlesonP.O. Box 2071Clancy Mt 59634

Colmina J. Cook  
 Clerk and Recorder

BY Lois R. Olson

Document:	Deed
Date:	March 4, 1946
Lessor:	County of Richland
Lessee:	Henry Kittleson

### In a Nutshell:

The conveyance resulting from a tax sale reserved an NPRI in the amount of 6.25%, however, documents necessary to confirm the compliance of all statutory procedures were not provided.

### Problem Language:

*"There is hereby reserved unto the grantor, its successors and assigns, a royalty interest of six and one-fourth percent (6-1/4%) of all oil, gas and minerals recovered and saved from the lands above described, which in the case of oil or gas, shall be delivered, free of cost..."*

### Issues with the Instrument's Language:

- *Did Richland County have the authority to reserve the 6-14% non-participating royalty interest?*

### Examining Attorney's Interpretation:

**The courts have routinely held that the tax foreclosure procedures must be strictly complied with and failure to do so renders the tax title void. Further, Section 27-2-210(3)(a) of the Montana Code Annotated allows an action against a county to recover a royalty interest in land acquired by the county by tax deed to be brought within 3 years after the commencement of commercial production of oil, gas, or other minerals from the land.**

**However, Montana Courts have also repeatedly held, in cases concerning royalty reservations in favor of counties contained in tax deeds issued in the 1930's and 1940's, that a claim by the heirs of the pre-tax sale deed owners to a royalty reservation in favor of the County contained in a tax sale deed is barred by laches even where the Tax Sale itself was defective due to the County's failure to satisfy all statutory requirements**

**The examining attorney must assume that all statutory procedures were satisfied prior to the holding of the tax sale which resulted in the above described Tax Deed. It cannot be presumed that the County of Richland has marketable title to the royalty interest reserved in the Richland County Deed. The typical curative would be to obtain a quit claim deed from the vested owner prior to the Tax Deed, or initiate a quiet title action.**



## DEED

THIS DEED, Made this 4th day of March A. D., 1946 by and between the County of Richland, a political subdivision of the state of Montana, the party of the First Part, and Henry Kittleson of Nohly, Montana the party of the Second Part,

## WITNESSETH:

WHEREAS, the Board of County Commissioners of Richland County, Montana, by an order entered upon its minutes on the 18th day of December, A. D., 1945 ordered sold at public auction at the front door of the Court House, the property herein-after described; and,

WHEREAS, due notice of such sale was given by the Board of County Commissioners as required by law; and

WHEREAS, on the day of said sale no bids were made for or upon the property herein below described and that on the 4th day of March, 1946, the Board of County Commissioners of Richland County, Montana, by an order entered upon its minutes, ordered the said property herein below described sold at private sale to the said party of the Second Part.

NOW, THEREFORE, the party of the First Part, for and in consideration of the sum of Twenty and no/100 (\$20.00) Dollars, cash in hand paid, receipt whereof being hereby acknowledged, does by these presents, grant, bargain, sell, convey, and quit claim unto the party of the Second Part, his heirs, executors, administrators and assigns, all the right, title and interest of the party of the First Part in and to the following described real property situate, lying and being in the County of Richland, State of Montana, and more particularly described as follows, to-wit:

NORTH HALF (N $\frac{1}{2}$ ) OF NORTHWEST QUARTER (NW $\frac{1}{4}$ ) OF SECTION TWENTY-EIGHT (28), TOWNSHIP TWENTY-SIX (26) NORTH, RANGE FIFTY-NINE (59)  
E. M. P. M.

TOGETHER with all and singular the hereinbefore described premises, together with all tenements, hereditaments and appurtenances thereto belonging or in any-wise appertaining, and the reversion and reversions, remainder and remainders, rents, issues and profits thereof, and also all the estate, right, title, interest, possession, claim and demand whatsoever, as well in law as in equity of the said party of the First Part, of, in and to the premises and every part and parcel thereof, with the appurtenances thereunto belonging;

The County hereby reserved the right to ingress and egress to any of said land for the purpose of reaching any coal mine located thereon.

The County hereby reserved the right of way for any County highway that it may be necessary to establish on any of said land.

There is hereby reserved unto the grantor, its successors and assigns, a royalty interest of six and one-fourth per cent (6 $\frac{1}{4}$ %) of all oil, gas and minerals recovered and saved from the lands above described, which in the case of oil or gas, shall be delivered, free of cost, to the credit of this grantor, its successors or assigns, into the pipe line to which the operator or producer shall connect his wells, or, at the option of the operator, this grantor, its successors or assigns, shall be paid the six and one-fourth per cent (6 $\frac{1}{4}$ %) of the market value of all such oil or gas produced and saved from said land, at the time of production and in the field where produced, without deduction of operating or other costs

Problem Language



whatsoever.

TO HAVE AND TO HOLD, all and singular, the above described premises and the appurtenances thereunto belonging unto the party of the Second Part and to his heirs, executors, administrators and assigns.

This property is conveyed free from all liens by judgments of record in the office of the Clerk of the District Court of the Seventh Judicial District of the State of Montana, in and for the County of Richland, against the County of Richland, a municipal and political subdivision of the State of Montana.

IN WITNESS WHEREOF, said County of Richland of the State of Montana, the grantor herein, has caused this Deed to be executed and signed by its duly constituted and authorized officers and sealed with its official seal this 4th day of March A. D., 1946.

ATTEST:

E. L. Kooker  
Deputy County Clerk.

(RICHLAND COUNTY SEAL)

RICHLAND COUNTY, MONTANA,  
By J. J. Sanderson  
Chairman, Board of County  
Commissioners.

STATE OF MONTANA }  
County of Richland } ss.

On this 4th day of March, 1946, before me, the undersigned, Clerk of the District Court in and for Richland County, Montana, personally appeared J. J. Sanderson, Chairman of the Board of County Commissioners of Richland County, Montana, and E. L. Kooker, Deputy County Clerk and Recorder of said Richland County, Montana, to me personally known, and who did each acknowledge to me that they did respectively, execute the within instrument, by authority of the resolution of the Board of County Commissioners, duly made and entered..

(DISTRICT COURT SEAL)

F. W. Wilder  
Clerk of District Court in and for  
Richland County, Montana

-dpp-

STATE OF MONTANA, ss  
County of Richland

Filed for Record this 4 day of March A. D. 1946 at 1:16 o'clock P. M. and duly recorded in volume A-59 at page 124, Deed Records of Richland County, Montana.

*E. L. Kooker*  
County Recorder.

E. L. Kooker  
Deputy.

Fee \$1.50

Compared by *DP*

Read by *Jm*

Document 1:	Assignment of Overriding Royalty Interest
Date:	October 1, 1987
Grantor:	Westburne Exploration Inc.
Grantee:	DKM Resources, Inc. and Kanaly Trust Company, as Trustee of the DKM Resources, Inc. Employee Incentive Trust

Document 2:	Reassignment of Overriding Royalty Interest
Date:	February 1, 1990
Grantor:	Kanally Trust Company, as Trustee of the DKM Resources, Inc. Employee Incentive Trust
Grantee:	DKM Resources, Inc.

Document 3:	Assignment of Oil, Gas, and Mineral Leases
Date:	June 22, 1990
Lessor:	Westburne Exploration Inc.
Lessee:	DKM Resources, Inc.

### In a Nutshell:

By means of the above conveyances, DKM Resources, Inc. was vested with a royalty estate and a mineral estate.

### Problem Language:

Document No. 1: *"...Assignor has transferred, assigned and conveyed, and subject to the terms and provisions hereinafter stated, does hereby transfer, assign, and convey, without warranty, express or implied, unto Assignee, an overriding royalty interest of 1% of 8/8ths of all the oil, gas and other minerals that may be produced, saved and marketed..."*

Document No. 2: *"...The Trust hereby transfers, reassign and reconveys without warranty...unto DKM an overriding royalty interest of 1% of 8/8ths of all oil, gas, and other minerals that may be produced, saved and marketed... It is the intention of The Trust to reassign all of its right, title and interest in those certain oil, gas and mineral leases..."*

Document No. 3: *"...hereby bargain, sell, transfer and convey unto DKM Resources, Inc.,...all Assignor's interest in and to the oil, gas and mineral leases described on Exhibit "A", attached hereto and the mineral leasehold estates created thereby..."*

***(Interpretation Issues and Examining Attorney's Interpretation on next page.)***



Document 1:	Assignment of Overriding Royalty Interest
Date:	October 1, 1987
Grantor:	Westburne Exploration Inc.
Grantee:	DKM Resources, Inc. and Kanaly Trust Company, as Trustee of the DKM Resources, Inc. Employee Incentive Trust

Document 2:	Reassignment of Overriding Royalty Interest
Date:	February 1, 1990
Grantor:	Kanally Trust Company, as Trustee of the DKM Resources, Inc. Employee Incentive Trust
Grantee:	DKM Resources, Inc.

Document 3:	Assignment of Oil, Gas, and Mineral Leases
Date:	June 22, 1990
Lessor:	Westburne Exploration Inc.
Lessee:	DKM Resources, Inc.

#### Issues with the Instrument's Language:

- *DKM Resources is vested with an overriding royalty interest and vested with a working interest – do these estates merge?*

#### Examining Attorney's Interpretation:

**Under the doctrine of merger, when a greater estate and lesser estate coincide and meet in one and the same person, without any intermediate estate, the lesser is immediately merged with and into the greater estate. *Dilts v. Brooks*, 213 P. 600, 602 (MT 1923).**

**Accordingly, the overriding royalty interest vested in DKM Energy Inc. merged with the working interest vested in DKM Energy Inc.**



## Document No. 1

ASSIGNMENT OF OVERRIDING ROYALTY INTEREST

WHEREAS, by agreement dated January 31, 1987, between DKM Resources, Inc., with mailing address of 1100 Louisiana Street, Suite 4550, Houston, TX. 77002, and DKM Resources, Inc. Employee Incentive Trust, hereinafter referred to as "Assignee", with mailing address c/o Kanaly Trust Company, 4550 Post Oak Place Drive, Suite 139, Houston, TX. 77027, Assignee is entitled to an overriding royalty interest upon Assignor's acquisition of certain properties as defined under said agreement.

WHEREAS, by Stock Purchase Agreement dated July 6, 1987 by and between DKM Resources, Inc., Westburne Exploration Inc., hereinafter referred to as "Assignor", and Westburne International Industries Ltd., with mailing address of 999-18th Street, Suite 1600, Denver, Colorado 80202, whereas Assignor acquired certain working interests in the leases set out and described in Exhibit "A", attached hereto and made a part hereof.

NOW, THEREFORE, for and in consideration of the sum of Ten Dollars and other valuable consideration (\$10.00 and OVC), the receipt of which is hereby acknowledged, Assignor has transferred, assigned and conveyed, and subject to the terms and provisions hereinafter stated, does hereby transfer, assign and convey, without warranty, express or implied, unto Assignee, an overriding royalty interest of 1% of 8/8ths of all the oil, gas and other minerals that may be produced, saved and marketed under the terms and provisions of those certain oil, gas and mineral leases listed and described in Exhibit "A" hereof.

Such overriding royalty interest herein assigned to be free and clear of all costs and expenses of operation, development and production, except that said interest shall bear its proportionate part of all taxes, production,

Problem Language  
Document No. 1



ad valorem and others, levied against the same. The said overriding royalty interest assigned herewith shall be paid, calculated and determined in accordance with the terms and provisions of the oil, gas and mineral leases herein described, insofar as said leases provide for the payment of the lessor's royalties reserved and retained therein, except that the interest herein assigned shall not participate in or be paid any part of any shut-in royalty as provided in the herein described leases.

TO HAVE AND TO HOLD the said overriding royalty interest unto Assignee, his heirs, successors and assigns, subject, however, to the following, to-wit:

Fuel oil and gas for operating the premises, and for treating and handling the production therefrom (and the proportionate part of fuel oil and gas consumed in a central plant, should said leases be operated jointly with other premises through the use of such plant) shall be deducted before said overriding royalty is computed. If the leases out of which the interest is assigned cover an interest in the oil, gas and other minerals in and under the lands described therein less than the full and undivided mineral fee interest in said lands, then as to such leases, the overriding royalty payable to Assignee shall be that proportion of said overriding royalty that the mineral interest in said lands covered by such leases bears to the full and undivided mineral fee interest in such lands.

Inasmuch as this instrument covers leases and lands located in various states and counties, in order to facilitate the recording of the instrument, this instrument, as forwarded to the appropriate County/Parish Clerks may contain only that portion of Exhibit "A" that describes property located in that county/parish. Assignor and Assignee have each retained a counterpart of this assignment with a complete Exhibit "A" attached.

IN WITNESS WHEREOF, this instrument is executed and delivered this 1<sup>st</sup>  
day of October, 1987, but shall be effective as of April 1, 1987  
(the effective date of the acquisition).

WITNESSES:

Sherry Holmes  
Richard B. Hopper

ATTEST:

Julie E. Bank

(ASSIGNOR)  
WESTBURNE EXPLORATION INC.

By: E. Strode Pennebaker, III  
Vice President

WITNESSES:

Sherry Holmes  
Richard B. Hopper

ATTEST:

Julie E. Bank

DKM RESOURCES, INC.

By: E. Strode Pennebaker, III  
Vice President

WITNESSES:

Lynn Beckham  
Harold B. Barnes

ATTEST:

Catherine E. Colburn

(ASSIGNEE)  
DKM Resources, Inc. Employee  
Incentive Trust by Kanaly Trust  
Company, as Trustee

By: E. Deane Kanaly  
Chairman of the Board



STATE OF TEXAS )  
COUNTY OF HARRIS ) SS.

28<sup>th</sup> day of September, 1987, personally appeared E. Strode Pennebaker, III, to me known to be the identical person who subscribed the name of WESTBURNE EXPLORATION INC. to the foregoing instrument as its Vice President and acknowledged to me that he executed the same as his free and voluntary act and deed and as the free and voluntary act and deed of such company for the uses and purposes therein set forth.

Witness my hand and official seal the day and year first above written.

My Commission Expires: 11/10/90

Maria Benditz  
Notary Public

STATE OF TEXAS )  
COUNTY OF HARRIS ) SS.

28<sup>th</sup> day of September, 1987, personally appeared E. Strode Pennebaker, III, to me known to be the identical person who subscribed the name of DKM RESOURCES, INC. to the foregoing instrument as its Vice President and acknowledged to me that he executed the same as his free and voluntary act and deed and as the free and voluntary act and deed of such company for the uses and purposes therein set forth.

Witness my hand and official seal the day and year first above written.

My Commission Expires: 11/10/90

Maria Benditz  
Notary Public

STATE OF Texas )  
COUNTY OF Harris ) SS.

Before me, a Notary Public in and for said County and State, on this 1st day of October, 1987, personally appeared E. Deane Kanaly, to me known to be the identical person who subscribed the name of DKM Resources, Inc. Employee Incentive Trust by Kanaly Trust Company, as Trustee to the foregoing instrument as its Chairman of the Board and acknowledged to me that he executed the same as his free and voluntary act and deed and as the free and voluntary act and deed of such company for the uses and purposes therein set forth.

Witness my hand and official seal the day and year first above written.

My Commission Expires: 11/1/89

Karen J. Allen  
Notary Public

## Document No. 2

## REASSIGNMENT OF OVERRIDING ROYALTY INTEREST

day of

WHEREAS, by agreement dated December 31, 1988, between DKM Resources, Inc. (DKM), with mailing address at 1100 Louisiana Street, Suite 4550, Houston, Texas 77002, and UKM Resources, Inc. Employee Incentive Trust (The Trust), with mailing address c/o Kanaly Trust Company, 4550 Post Oak Place Drive, Suite 139, Houston, Texas 77027, The Trust is entitled to an overriding royalty interest upon DKM's acquisition of certain properties as defined under said agreement.

ATTEST:



Problem Language  
Document No. 2

NOW, THEREFORE, for and in consideration of the sum of Ten Dollars and other valuable consideration (\$10.00 & OVC), the receipt of which is hereby acknowledged, The Trust hereby transfers, reassigns and reconveys without warranty, express or implied, unto DKM an overriding royalty interest of 1% x 8/8ths of all oil, gas and other minerals that may be produced, saved and marketed under the terms and provisions of those certain oil, gas and mineral leases listed and described in Exhibit "A" hereof. It is the intention of The Trust to reassign all of its right, title and interest in those certain oil, gas and mineral leases listed and described on Exhibit "A" hereof.

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Fuel oil and gas for operating the premises, and for treating and handling the production therefrom (and the proportionate part of fuel oil and gas consumed in a central plant, should said leases be operated jointly with other premises through the use of such plant) shall be deducted before said overriding royalty is computed. If the leases out of which the interest is assigned cover an interest in the oil, gas and other minerals in and under the lands described therein less than the full and undivided mineral fee interest in said lands, then as to such leases, the overriding royalty payable to DKM shall be that proportion of said overriding royalty interest that the mineral interest in said lands covered by such leases bears to the full and undivided mineral fee interest in such lands.

IN WITNESS WHEREOF, this instrument is executed and delivered this 12  
day of June, 1990, but effective as of February 1, 1990.

ATTEST:

John Kanaly

DKM RESOURCES, INC. EMPLOYEE INCENTIVE  
TRUST by:  
KANALY TRUST COMPANY, AS TRUSTEE

By:

Jeffrey C. Kanaly  
Executive Vice President

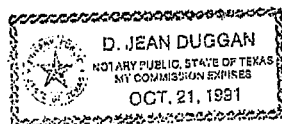
STATE OF TEXAS )  
COUNTY OF HARRIS ) SS

BEFORE ME, the undersigned authority, on this day personally appeared Jeffrey C. Kanaly, known to me to be the person whose name is subscribed to the foregoing instrument as Exec. Vice President of Kanaly Trust Company, a company, and acknowledged to me that he executed the same for the purposes and consideration therein expressed, in the capacity stated, and as the act and deed of said company as Trustee for DKM Resources, Inc. Employee Incentive Trust.

GIVEN under my hand and seal of office this 12 day of June, 1990.

My Commission Expires:  
10-21-91

D. Jean Duggan  
Notary Public in and for the State of  
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LESSEE:

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SEC. 22

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LESSOR:  
LESSEE:

Prospect  
County

-----Lea  
St Pros

MT 0010

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SEC. 15:  
SEC. 21:  
SEC. 22:  
SEC. 27:  
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SEC. 22:  
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LESSOR:  
LESSEE:

Prospect  
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Land De  
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SEC. 15:  
SEC. 21:  
SEC. 22:  
SEC. 27:  
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SEC. 22:  
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LESSEE:



Document No. 3

ASSIGNMENT OF OIL, GAS AND MINERAL LEASES

THE STATE OF MONTANA S  
COUNTY OF RICHLAND S  
KNOW ALL MEN BY THESE PRESENTS:

THAT, WESTBURNE EXPLORATION INC., whose address is 999-18th Street, Suite 1600, Denver, Colorado 80202, hereinafter referred to as "Assignor", for and in consideration of the sum of Ten Dollars (\$10.00) and other good and valuable consideration, all in hand paid to Assignor by Assignee hereinafter named, the receipt and sufficiency of which is hereby acknowledged, has bargained, sold, transferred and conveyed, and by these presents does hereby bargain, sell, transfer and convey unto DKM RESOURCES, INC., whose address is 1100 Louisiana, Suite 4550, Houston, Texas 77002, hereinafter referred to as "Assignee", all Assignor's interest in and to the oil, gas and mineral leases described on Exhibit "A", attached hereto, and the mineral leasehold estates created thereby, including the respective gross working interest, net revenue interest, and overriding royalty interest, if any, set forth and described in Exhibit "A" attached hereto, in and to the well or wells drilled upon the leasehold estates described in Exhibit "A" subject to the reservations, exceptions, limitations and conditions hereinafter set forth and subject to the terms and provisions hereinafter stated.

Reference is here made to the leases described on Exhibit "A", and any amendments thereto, of record in the office of the County Clerk of Richland County, Montana, for a more particular description of the acreage covered thereby and for the terms and provisions of said leases and any amendments.

Problem Language  
Document No. 3

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And for the same consideration Assignor does hereby sell, assign, transfer and convey unto Assignee a like interest in and to all of Assignor's right, title and interest in and to all improvements now owned or hereafter acquired by Assignor and located on the lands and leases including all oil, gas and water wells now or hereafter located thereon; all rights, privileges and appurtenances thereto with all reversions and remainders; all equipment, apparatus, machinery and fixtures of whatever kind, nature and description belonging to Assignor which are or may be used in the conduct of operations on said land and leases, whether the same be considered real, personal or mixed property, including, but not limited to, all casing, tubing, rods, pumps, derricks, separators, engines, motors, tanks, flow lines, valves, meters, loading racks, processing equipment, water disposal equipment, power and lighting plants, power and utility lines, leaseholds, sheds and warehouses, all pipelines, rights-of-way, franchises, licenses, tenements and easements owned by Assignor as are pertinent to such leases or used or useful in the operation thereof.

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TO HAVE AND TO HOLD unto Assignee, its successors and assigns forever, in accordance with the terms and provisions of said oil, gas and mineral leases, and any amendments thereto, and subject to the following reservations, exceptions, conditions and covenants, to wit:

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1. Subject to any and all reservations of record in Richland \_\_\_\_\_ County, Montana, relating to overriding royalty interest and/or net profits interest burdening the leases described on Exhibit "A", and any and all other agreements referenced or described on Exhibit "A", which would affect the title to the leases described on Exhibit "A", and reference is hereby made to the records in the offices of the County Clerk of Richland County, Montana for all purposes.

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2. Assignor does hereby represent and warrant that this assignment conveys to Assignee all of Assignor's interest in and to the gross and net working interests and overriding royalty interests, if any, in the lands and leases set forth on Exhibit "A" and the various wells located on said lands and leases.
3. It is understood and agreed that the interests assigned herein include all of Assignor's present right, title and interest in and to the working interest, net revenue interest and overriding royalty interest in the leases and the wells and production therefrom described on Exhibit "A" whether or not same is referred to specifically on Exhibit "A".
4. This Assignment shall be effective from and after the first day of September 1, 1989, at 7:00 a.m.

And for the same consideration, this Assignment is made and accepted without Warranty of Title, either express or implied, except that Assignor does hereby bind itself to warrant good and defensible title to the leasehold interest and overriding royalty interest unto Assignee against every person whomssoever lawfully claiming or to claim the leasehold interest and overriding royalty interest, or a part thereof, By, Through or Under Assignor only, and is made with full substitution and subrogation in and to all of the rights and actions of Warranty which Assignor has or may have against predecessors in title; provided, however, Assignee, agrees that any claim which has been asserted by a third party of which Assignee has not given written notice to Assignor prior to



November 30, 1991, relating to a defect or burden affecting the leasehold interest and overriding royalty interest shall not be the subject of any claim, demand, or cause of action against Assignor by Assignee or Assignee's successors or assigns.

EXECUTED this 22nd day of June, 1990, but effective as of the date set forth above.

WITNESS:

WESTBURNE EXPLORATION INC.

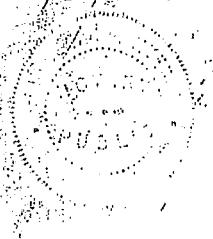
Alma A. Guernsey  
John H. Hill

By: Alan B. Nicol  
Name: Alan B. Nicol  
Title: Attorney-in-Fact

THE STATE OF COLORADO  
COUNTY OF DENVER

§  
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§

THIS instrument was acknowledged before me on the 22nd day of June, 1990, by Alan B. Nicol, Attorney-in-Fact of Westburne Exploration Inc., a Montana corporation, on behalf of said corporation.



Linda Carol Myers  
Notary Public in and for the  
State of C O L O R A D O

My Commission Expires:  
September 8, 1991

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Document 1:	Corrective Oil and Gas Lease
Date:	May 20, 2004
Grantor:	Connie Meldahl Anderson
Grantee:	BTC Oil Properties LLC

Document 2:	Assignment of Oil and Gas Lease
Date:	April 13, 2005
Grantor:	BTC Oil Properties
Grantee:	Orion Energy Properties

Document 3:	Amendment and Extension of Oil and Gas Lease
Date:	November 4, 2010
Lessor:	Connie Meldahl Anderson
Lessee:	Brigham Oil & Gas, LP (assignee of BTC Oil Properties LLC)

### In a Nutshell:

A 19% overriding royalty interest reservation in an Oil and Gas Lease Assignment is deemed as a fixed 4% overriding royalty interest in order to prevent increase in the overriding royalty interest when the original lease is later amended to increase the Lessor's royalty from 15% to 18.75%.

### Problem Language:

Document No. 1: *"In consideration of the premises the said Lessee covenants and agrees: 1<sup>st</sup> To deliver to the credit of Lessor, free of cost, in the pipe line...the equal 15% part of all oil produced and saved... 2<sup>nd</sup> To pay Lessor 15% of the gross proceeds each year...for the gas from each well...3<sup>rd</sup> To pay Lessor for gas produced from any oil well...a royalty of 15% of the proceeds..."*

Document No. 2: *"The Assignor...reserves and retains title to an overriding royalty interest equal to the difference between existing burdens of record...and 19% of all the oil, gas and casinghead gas, and other minerals..."*

Document No. 3: *"NOW, THEREFORE, for a good and valuable consideration... Lessor and Lessee agrees to the following:...Amend the Lessors royalty from 15% to a 18.75% royalty."*

***(Interpretation Issues and Examining Attorney's Interpretation on next page.)***



Document 1:	Corrective Oil and Gas Lease
Date:	May 20, 2004
Grantor:	Connie Meldahl Anderson
Grantee:	BTC Oil Properties LLC

Document 2:	Assignment of Oil and Gas Lease
Date:	April 13, 2005
Grantor:	BTC Oil Properties
Grantee:	Orion Energy Properties

Document 3:	Amendment and Extension of Oil and Gas Lease
Date:	November 4, 2010
Lessor:	Connie Meldahl Anderson
Lessee:	Brigham Oil & Gas, LP (assignee of BTC Oil Properties LLC)

Issues with the Instrument's Language:

- *Does the Amendment change the quantum of overriding royalty interest vested in BTC Oil Properties?*

Examining Attorney's Interpretation:

**The examining attorney credited Document No. 2 as reserving a fixed 4.00% overriding royalty interest, being 19% LESS 15%, in and under the Oil and Gas Lease, and thus the increase in lessors royalty would not decrease the overriding royalty interest reserved in Document No. 2.**

**The typical curative would be to obtain a Stipulation of Interest by and between the current working interest owners and the overriding royalty interest owners.**





## Document No. 1

528815 BOOK: 300 MISC REC PAGE: 523 Pages: 3  
 STATE OF MONTANA RICHLAND COUNTY  
 RECORDED: 02/10/2005 4:08 KOI: CORRECTO/G  
 PENNY D. LEWIS CLERK AND RECORDER  
 FEE: \$18.00 BY: Stephanie Vermeuse  
 TO: CODY OIL & GAS PO BOX 597, C/O JACK PARIS, BISMARCK, ND

PRODUCERS #1 - PAID UP  
 Rev. 5-60, No.2-4-89

### Corrective OIL AND GAS LEASE

THIS AGREEMENT is made and entered into as of May 20, 2004, by and between Connie Anderson aka Connie Meldahl Anderson, a single woman of PO Box 52, McLeod, Montana 59052 hereinafter called Lessor, and .BTC Oil Properties LLC, 2203 Losekamp Street, Billings, Montana, 59102, hereinafter called Lessee.

WITNESSETH, That the Lessor, for and in consideration of Ten and More Dollars, cash in hand paid, the receipt of which is hereby acknowledged, and covenants and agreements herein contained, has granted, demised, leased, and by these presents does grant, demise, lease and let exclusively unto the said Lessee, the land hereinafter described, with the exclusive right for the purpose of mining, exploring by geophysical and other methods, and operating for and producing therefrom, oil and gas of whatsoever nature or kind, with rights of way and easements for laying pipe lines, and erection of structures thereon to produce, save and take care of said products, all that certain tract of land situated in the County of Richland, State of Montana, described as follows, to wit:

#### Township 26 North, Range 59 East, MPM

Section 28: S2SW  
 Section 29: All  
 Section 30: N2NE, SESE, NENW, E2SE  
 Section 31: NENE  
 Section 32: NWNW

and containing 1,040 acres, more or less.

1. It is agreed that this lease shall remain in force for a term of (4) four years from this date (herein called "primary term") and as long thereafter as oil or gas is of whatsoever nature or kind is produced from said leased premises or on acreage pooled therewith or drilling operations are continued as hereinafter provided. If, at the expiration of the primary term of this lease, oil or gas is not being produced on said leased premises or on acreage pooled therewith but Lessee is engaged in drilling or re-working operations thereon, then this lease shall continue in full force so long as operations are being continuously prosecuted on the leased premises or on acreage pooled therewith; and operations shall be considered to be continuously prosecuted if not more than ninety (90) days shall elapse between the completion or abandonment of one well and the beginning of operations for the drilling of a subsequent well. If after discovery of oil or gas on said land or on acreage pooled therewith the production should cease from any cause after the primary term, this lease shall not terminate if Lessee commences additional drilling or re-working operations within ninety (90) days from date of cessation of production or from date of completion of dry hole. If oil or gas shall be discovered and produced as a result of such operations at or after the expiration of the primary term of this lease, this lease shall continue in force so long as oil or gas is produced from said leased premises or on acreage pooled therewith.

2. This is a PAID-UP LEASE. In consideration of the down cash payment, Lessor agrees that Lessee shall not be obligated, except as otherwise provided herein, to commence or continue any operations during the primary term. Lessee may at any time or times during or after the primary term surrender this lease as to all or any portion of said land and as to any strata or stratum by delivering to Lessor or by filing for record a release or releases, and be relieved of all obligation thereafter accruing as to the acreage surrendered.

3. In consideration of the premises the said Lessee covenants and agrees:

1<sup>st</sup>. To deliver to the credit of Lessor, free of cost, in the pipe line to which Lessee may connect wells on said land, the equal 15% part of all oil produced and saved from the leased premises.

2<sup>nd</sup>. To pay Lessor 15% of the gross proceeds each year, payable quarterly, for the gas from each well where gas only is found, while the same is being used off the premises, and if used in the manufacture of gasoline a royalty of 15% payable monthly at the prevailing market rate for gas.

3<sup>rd</sup>. To pay Lessor for gas produced from any oil well and used off the premises or in the manufacture of gasoline or any other product a royalty of 15% of the proceeds, at the mouth of the well, payable monthly at the prevailing market rate.

4. Where gas from a well capable of producing gas is not sold or used, Lessee may pay or tender as royalty to the royalty owners One Dollar per year per net royalty acre retained hereunder, such payment or tender to be made on or before the anniversary date of this lease next ensuing after the expiration date of 90 days from the date such well is shut in and thereafter on or before the anniversary date of this lease during the period such well is shut in. If such payment or tender is made, it will be considered that gas is being produced within the meaning of this lease.

5. If Lessor owns less interest in the above described land than the entire and undivided fee simple estate therein, then the royalties (including any shut-in gas royalty) herein provided for shall be paid the said Lessor only in proportion which Lessor's interest bears to the whole and undivided fee.

Problem Language  
Document No. 1

6. Lessee shall have the right to use, free of cost, gas, oil and water produced on said land for Lessee's operation thereon, except water from the wells of Lessor.
7. When requested by Lessor, Lessee shall bury Lessee's pipe lines below plow depth.
8. No well shall be drilled nearer than 200 feet from the house or barn now on said premises without written consent of Lessor.
9. Lessee shall pay for damages caused by Lessee's operations to growing crops on said land.
10. Lessee shall have the right at any time to remove all machinery and fixtures on said premises, including the right to draw and remove casing.
11. The rights of Lessor and Lessee hereunder may be assigned in whole or part. No change in ownership in Lessor's interest (by assignment or otherwise)

shall be binding on Lessee until Lessee has been furnished with notice, consisting of certified copies of all recorded instruments or documents and other information necessary to establish a complete chain of record title from Lessor, and then only with respect to payments thereafter made. No other kind of notice, whether actual or constructive, shall be binding on Lessee. No present or future division of Lessor's ownership as to different portions or parcels of said land shall operate to enlarge the operations or diminish the rights of Lessee, and all Lessee's operations may be conducted without regard to any such division. If all or any part of this lease is assigned, no leasehold owner shall be liable for any act or omission of any other leasehold owner.

12. Lessee, at its option, is hereby given the right and power at any time and from time to time as a recurring right, either before or after production, as to all or any part of the land described herein and as to any one or more of the formations hereunder, to pool or unitize the leasehold estate and the mineral estate covered by this lease with other land, lease or leases in the immediate vicinity for the production of oil and gas, or separately for the production of either, when in Lessee's judgement it is necessary or advisable to do so, and irrespective of whether authority similar to this exists with respect to other such land, lease or leases. Likewise, units previously formed to include formations not producing oil or gas, may be reformed to exclude such non-producing formations. The forming or reforming of any unit shall be accomplished by Lessee executing and filing of record a declaration of any unitization or reformation, which declaration shall describe the unit. Any unit may include land upon which a well has theretofore been completed or upon which operations for drilling have theretofore been commenced, production, drilling or reworking operations or a well shut in for want of a market anywhere on a unit which includes all or part of this lease shall be treated as if production, drilling or reworking operations or a well shut in for want of a market under this lease. In lieu of the royalties elsewhere herein specified, including shut-in gas royalties, Lessor shall receive on production from the unit so pooled royalties only on the portion of such production allocated to this lease; such allocation shall be that proportion of the unit production that the total number of surface acres covered by this lease and included in the unit bears to the total number of surface acres in such unit. In addition to the foregoing, Lessee shall have the right to unitize, pool or combine all or any part of the above described lands as to one or more of the formations thereunder with other lands in the same general area by entering into a cooperative or unit plan of development or operation approved by governmental authority and, from time to time, with like approval, to modify, change or terminate any such plan or agreement and, in such event, the terms, conditions, and provisions of this lease shall be deemed modified to conform to terms, conditions, and provisions of such approved cooperative or unit plan of development or operation and, particularly, all drilling and development requirements of this lease, express or implied, shall be satisfied by compliance with the drilling and development requirements of such plan or agreement, and this lease shall not terminate or expire during the life of such plan or agreement. In the event that said above described lands or any part thereof, shall hereafter be operated under any such cooperative or unit plan of development or operation whereby the production therefrom is allocated to different portions of the land covered by said plan, then the production allocated to any particular tract of land shall, for the purpose of computing the royalties to be paid hereunder to Lessor, be regarded as having been produced from the particular tract of land to which it is allocated and not to any other tract of land; and the royalty payments to be made hereunder to Lessor shall be based upon production only as so allocated. Lessor shall formally express Lessor's consent to any cooperative or unit plan of development or operation adopted by Lessee and approved by governmental agency by executing the same upon request of Lessee.

13. All express or implied covenants of this lease shall be subject to all Federal and State Laws, Executive Orders, Rules or Regulations, and this lease shall

not be terminated, in whole or in part, nor Lessee held liable for damages, for failure to comply therewith, if compliance is prevented by, or if such failure is the result of any such Law, Order, Rule or Regulation.

14. Lessor hereby warrants and agrees to defend the title to the lands herein described, and agrees that the Lessee shall have the right at any time to redeem

for Lessor, by payment, any mortgages, taxes or other liens on the above described lands, in the event of default of payment by Lessor, and be subrogated to the rights of the holder thereof, and the undersigned Lessors, for themselves and their heirs, successors and assigns, hereby surrender and release all right of dower and homestead in the premises described herein, insofar as said right of dower and homestead may in any way affect the purposes for which this lease is made, as recited herein.

15. Should any one or more of the parties hereinabove named as Lessor fail to execute this lease, it shall nevertheless be binding upon all parties who do execute it as Lessor. The word "Lessor," as used in this lease shall mean any one or more or all of the parties who execute this lease as Lessors. All the provisions of this lease shall be binding on the heirs, successors and assigns of Lessor and Lessee.

16. Notwithstanding anything contained herein to the contrary, this lease shall terminate at the end of the primary term as to all lands except those within each separate section on which is located a well producing or capable of producing oil and/or gas or on which lessee is engaged in the drilling or reworking operations if not more than one hundred and eighty days (180) shall elapse between the completion of one well and the beginning of another.

Connie Anderson  
Connie Anderson aka Connie Meldahl Anderson

## ACKNOWLEDGMENT FOR INDIVIDUALS

STATE OF California §

§§§:

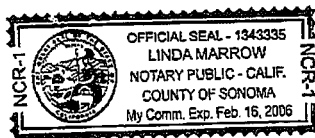
COUNTY OF Sonoma §

On this 27th day of January, <sup>2005</sup>~~2004~~ before me personally appeared Connie Anderson aka Connie Meldahl Anderson, A single woman, known to me to be the persons described in and who executed the foregoing instrument of writing, and who acknowledged to me that they duly executed the same as their free and voluntary act and deed for the uses and purposes therein set forth.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed my official seal the day and year last above written.

My Commission Expires: 2/16/06

Linda Marrow Notary Public State of California  
Linda Marrow Printed name Santa Rosa, CA  
Residing at Billings, MT





312-369

BOOK E 312 PAGE 369

Document No. 2

534351 BOOK: 312 MISC REC PAGE: 369 Pages: 15  
STATE OF MONTANA RICHLAND COUNTY  
RECORDED: 12/15/2005 11:41 KOT: ASSIGN O/G  
PENNI D. LEWIS CLERK AND RECORDER  
FEE: \$105.00 BY: Brian Kurth  
TO: ORION ENERGY PARTNERS LP 1675 BROADWAY SUITE 2000, DENVER.

ASSIGNMENT OF OIL AND GAS LEASE

KNOW ALL MEN BY THESE PRESENTS:

That the undersigned, BTC Oil Properties, LLC 2203 Losekamp Street, Billings, Montana 59102, hereinafter called Assignor, for and in consideration of One Dollar (\$1.00), the receipt where of is hereby acknowledged, does hereby sell, assign, transfer and set over unto Orion Energy Partners LP of 1675 Broadway, Suite 2000, Denver, Colorado 80202, hereinafter called Assignee, all of its right, title and interest in and to the oil and gas leases described and set out in the Exhibit A, which is attached hereto and made a part of this Assignment.

The Assignor, its successors and assigns, herein expressly excepts, reserves and retains title to an overriding royalty interest equal to the difference between existing burdens of record including landowner's royalty interests, overriding royalty interests, production payments and other similar burdens on production and 19% of all of the oil, gas and casinghead gas, and all other minerals, whether of a similar or dissimilar nature, produced, saved and marketed from the described land under the provisions of the aforesaid lease, or any extensions or renewals thereof, as an overriding royalty, free and clear of any cost and expenses of the development and operations thereof, excepting taxes applicable to said interest and the production therefrom.

In the event the interest in oil, gas and other minerals covered by said lease herein assigned is less than the entire undivided fee simple estate in and to the oil, gas and other minerals, the overriding royalty interest herein reserved shall be reduced in the proportion that the interest in oil, gas and other minerals covered by the lease bears to the entire undivided fee simple estate in the oil, gas and other minerals. Should any of the leases set out in Exhibit A be pooled pursuant to the terms of said leases, then the overriding royalty reserved by Assignor, insofar as it is included within such pooled area, shall be pooled and paid on a proportional pooled basis.

Assignee herein, by accepting this assignment, agrees to comply with all the terms, provisions and obligations of the lease herein assigned.

IN WITNESS WHEREOF, The undersigned owner and Assignor has signed and sealed this instrument this 13<sup>th</sup> day of April, 2005.

BTC OIL PROPERTIES, LLC

By: Brian Kurth  
Brian Kurth, Managing Member

STATE OF MONTANA )  
 ) ss.  
COUNTY OF YELLOWSTONE )

On this 13<sup>th</sup> day of April, 2005, before me, the undersigned, a Notary Public, personally appeared Brian Kurth, known to me to be the Managing Member of BTC Oil Properties, LLC that executed the within instrument and acknowledged to me that he executed the same as his free and voluntary act and deed of such corporation for the purpose and consideration therein expressed.

Notary Public for the State of Montana  
My Commission Expires: March 16, 2006  
Residing at: Billings, MT

Kevin F. Kurth  
Printed name Kevin F. Kurth

Problem Language  
Document No. 2

STATE OF MONTANA RICHLAND COUNTY

RECORDED: 03/25/2011 2:40 KOI: AMEND O/G

STEPHANIE VERHASSELT CLERK AND RECORDER

FEE: \$22.00

BY:

*Renee Young*

TO: BRIGHAM OIL &amp; GAS LP 6300 BRIDGE POINT PARKWAY, BLDG. 2,

BOOK E 365 PAGE 648

## AMENDMENT AND EXTENSION OF OIL AND GAS LEASE

THE STATE OF MONTANA

COUNTY OF RICHLAND

Document No. 3

PROR 449-08

WHEREAS, Connie Anderson aka Connie Meldahl Anderson, a single woman (as Lessor), and BTC Oil Properties LLC (as Lessee), entered into that certain Oil and Gas Lease dated May 20, 2004 as same may have been amended from time to time, (hereinafter referred to as the "Oil and Gas Lease"), duly recorded in Book E 300, Page 523 of the County Records of Richland County, Montana, covering the following described lands (the "Subject Lands"):

Township 26 North, Range 59 East

Section 28: S/2SW/4

Section 31: NE/4NE/4

Section 32: NW/4NW/4

WHEREAS, the Oil and Gas Lease is now owned by Brigham Oil & Gas, L.P. ("Brigham"), as Lessee, and Meldahl, LLC, Connie Anderson, Manager, now owns all rights as Lessor; and

WHEREAS, Lessor and Brigham now wish Lessor to extend the Oil and Gas Lease, as provided herein.

NOW, THEREFORE, for a good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, Lessor and Lessee hereby agree to the following:

1. Extend the primary term of the Oil and Gas Lease to May 20, 2014, and hereby amend the Oil and Gas Lease such that the words "4 years with a 3 year extension", as found in the paragraph of the Oil & Gas Lease that refers to the term of the lease, shall be replaced with the words, "10 years".
2. Amend the Lessors royalty from a 15% royalty to a 18.75% royalty.

All other terms and conditions of the Oil and Gas Lease shall remain in full force and effect.

Lessor and Lessee do hereby expressly join in, ratify and confirm the Oil and Gas Lease, insofar as the Oil and Gas Lease covers the Subject Lands, and acknowledge that the Oil and Gas Lease, as herein amended, is valid and in full force and effect, and Lessor does hereby grant, lease and let unto Lessee the entire interest of Lessor in the Subject Lands upon the terms, conditions and provisions contained in the Oil and Gas Lease, as herein amended.

Executed and effective this 2<sup>nd</sup> day of April, 2010.

LESSOR:  
Meldahl LLC

*Connie Anderson*  
By: Connie Anderson  
Title: Manager

LESSEE:  
BRIGHAM OIL & GAS, L.P.  
By: Brigham, Inc.  
Its Managing General Partner

By: *David T. Brigham*  
Name: David T. Brigham  
Title: Executive Vice President

Problem Language  
Document No. 3

## ACKNOWLEDGEMENT

STATE OF Montana }  
 COUNTY OF Park }

On this 2<sup>nd</sup> day of November, 2010, before me personally appeared Connie Anderson, as Manager for Meldahl LLC known to me to be the person described in and who executed the within instrument, and acknowledged to me that he/she executed and delivered as his/her free and voluntary act for the purposes therein set forth. In witness whereof I hereunto set my hand and official seal as of the date hereinabove stated.



Pamela Peltier  
 Notary Public

State of Montana

My Commission Expires: May 22, 2013

**PAMELA J. PELTIER**  
 NOTARY PUBLIC for the State of Montana  
 Residing at Livingston, Montana  
 My Commission Expires May 22, 2013

STATE OF TEXAS }  
 COUNTY OF TRAVIS }

This instrument was acknowledged before me on this \_\_\_\_\_ day of \_\_\_\_\_, 2010, by David T. Brigham as Executive Vice President of Brigham, Inc., a Nevada corporation, on behalf of said corporation in its capacity as Managing General Partner of BRIGHAM OIL & GAS, L.P., a Delaware limited partnership, on behalf of said limited partnership.



Frida Randall  
 Notary Public, State of Texas  
 My Commission Expires: \_\_\_\_\_





# PENNSYLVANIA INSTRUMENTS





Document:	Oil and Gas Lease
Date:	June 7, 2006
Lessor:	Roy C. Preston and Nancy L. Preston
Lessee:	Elexco Land Services

### In a Nutshell:

The acreage “called” for in an instrument may not accurately reflect the actual acreage of the property due to possible discrepancies between an old “call” and a modern survey.

### Problem Language:

*“...in the township(s) of Herrick, in the County of Bradford, Commonwealth of Pennsylvania, containing **5.34** gross acres, more or less...for the purpose of exploring for, developing, producing, and marketing oil and gas, along with all hydrocarbon and nonhydrocarbon substances produced in association therewith...”*

### Issues with the Instrument’s Language:

- *If the lease calls for 5.34 gross acres, but the map only accounts for 4.856 acres, where did the remaining acreage “called” for in the oil and gas lease go?*

### Examining Attorney’s Interpretation:

**In Pennsylvania, tax parcels are often “called” a certain amount, but when it’s surveyed, it may be over or under.**

**Here, there are 3 units that should account for the entire 5.34 gross acres called for in the lease. The acreage calculations are as follows: 3.032 acres for the Whipple Unit; 0.363 for the Behrend-Ross North Unit; and 1.461 for the Behrend-Ross South Unit. These 3 units total 4.856 gross acres.**

**If so, where is the .484 acres remaining from the 5.34 gross acres as called for in the lease?**

**Simple, the discrepancy exists because the acreage being called for in the lease is an old “call” compared to a modern survey showing a more accurate assessment of the acreage.**



THIS LEASE AGREEMENT is made as of the 7 day of June, 2008  
 between Roy C. Preston and Nancy L. Preston, husband and wife of RR 3 Box 144, Wyalusing, Pennsylvania 18853 as Lessor (whether one or more), and Elexco Land Services, Inc. of P.O. Box 383, Olean, NY 14760, as Lessee.  
 All printed portions of this lease were prepared by the party hereinabove named as Lessee, but all other provisions (including the completion of blank spaces) were prepared jointly by Lessor and Lessee.

**1. Grant of Leased Premises.** In consideration of one (\$1.00) dollar in hand paid and the covenants herein contained, Lessor hereby grants, leases and lets exclusively to Lessee the following described land, hereinafter called leased premises (use Exhibit "A" for long description):

Tax Map No(s): \_\_\_\_\_ and is bounded substantially by lands now or formerly owned as follows:

On the North By: \_\_\_\_\_;

On the East By: \_\_\_\_\_;

On the South By: \_\_\_\_\_;

On the West By: \_\_\_\_\_;

See Exhibit "A" - Additional Leaseholds - Attached

in the township(s) of Herrick, in the County of Bradford, Commonwealth of Pennsylvania,

containing 5.34 gross acres, more or less (including any interests therein which Lessor may hereafter acquire by reversion, prescription or otherwise), for the purpose of exploring for, developing, producing and marketing oil and gas, along with all hydrocarbon and nonhydrocarbon substances produced in association therewith (collectively, the "Oil and Gas Substances"). The term "gas" as used herein includes helium, carbon dioxide, gaseous sulfur compounds, methane produced from coal formations (including coalbed methane gas, gob gas, occluded natural gas in any formation or any other naturally occurring gases contained in or associated with any coal seam and all communicating zones) and other commercial gases, as well as normal hydrocarbon gases. In addition to the above-described land, this lease and the term "leased premises" also covers accretions and any small strips or parcels of land now or hereafter owned by Lessor which are contiguous or adjacent to the above-described land, and, in consideration of the aforementioned cash bonus, Lessor agrees to execute at Lessee's request any additional or supplemental instruments for a more complete or accurate description of the land so covered. For the purpose of determining the amount of any payments based on acreage hereunder, the number of gross acres above specified shall be deemed correct, whether actually more or less.

The rights granted to Lessee hereunder shall include the right of ingress and egress on the leased premises or lands pooled or unitized therewith, along with such rights as may be reasonably necessary to conduct operations for exploring, developing, producing, storing and marketing Oil and Gas Substances, including, but not limited to, geophysical operations, the drilling of wells, and the construction and use of roads, pipelines, tanks, water wells, disposal wells, injection wells, pits, electric and telephone lines, fiber optics and other communications facilities, power stations, and other facilities deemed necessary by Lessee to explore, discover, produce, store, (including storage in subsurface strata), treat and/or transport Oil and Gas Substances and water produced from the leased premises or other lands that share central facilities and are jointly operated with the leased premises for gathering, treating, compression and water disposal. Lessee may use in such operations, free of cost, any oil, gas, water and/or other substances produced from the leased premises, except water from Lessor's wells or ponds. In exploring, developing, producing or marketing from the leased premises or lands pooled or unitized therewith, the rights granted herein shall apply (a) to the entire leased premises, notwithstanding any partial release or other partial termination of this lease; and (b) to any other lands in which Lessor now or hereafter has authority to grant such rights in the vicinity of the leased premises or lands pooled or unitized therewith. When requested by Lessor in writing, Lessee shall bury its pipelines below ordinary plow depth on cultivated lands. No well shall be located less than 200 feet from any house or barn now on the leased premises or other lands of Lessor used by Lessee hereunder, without Lessor's consent, and Lessee shall pay for damage caused by its operations to buildings and other improvements now on the leased premises or such other lands, and to commercial timber and growing crops thereon. Lessee shall have the right at any time to remove its fixtures, equipment and materials, including well casing, from the leased premises or such other lands during the term of this lease or within a reasonable time thereafter.

**2. Term of Lease.** This lease shall be in force for a primary term of Five (5) years from the date hereof, and for as long thereafter as oil or gas or other substances covered hereby are produced in paying quantities from the leased premises or from lands pooled or unitized therewith or this lease is otherwise maintained in effect pursuant to the provisions hereof. This lease is a "Paid-Up Oil and Gas Lease", all rental payments having been paid in advance. No rental payments are necessary in order to maintain this lease in full force and effect during the primary term.

**3. Royalty Payment.** For all Oil and Gas Substances that are produced and sold from the leased premises, Lessor shall receive as its royalty one eighth (1/8th) of the sales proceeds actually received by Lessee from the sale of such production, less this same percentage share of all Post Production Costs, as defined below, and this same percentage share of all production, severance and ad valorem taxes. As used in this provision, Post Production Costs shall mean (i) all losses of produced volumes (whether by use as fuel, line loss, flaring, venting or otherwise) and (ii) all costs actually incurred by Lessee from and after the wellhead to the point of sale, including, without limitation, all gathering, dehydration, compression, treatment, processing, marketing and transportation costs incurred in connection with the sale of such production. For royalty calculation purposes, Lessee shall never be required to adjust the sales proceeds to account for the purchaser's costs or charges downstream of the point of sale.

Lessee or its affiliate shall have the right to construct, maintain and operate any facilities providing some or all of the services identified as Post Production Costs. If this occurs, the rates charged by Lessee for such services shall not exceed the prevailing rates in the area for services of similar quality.

If Lessee uses the Oil and Gas Substances (other than as fuel in connection with the production and sale thereof) in lieu of receiving sale proceeds, the price to be used under this provision shall be based upon arm's-length sale(s) to unaffiliated parties for the applicable month that are obtainable, comparable in terms of quality and quantity, and in closest proximity to the leased premises. Such comparable arm's-length sales price shall be less any Post Production Costs applicable to the specific arm's-length transaction that is utilized.

Problem Language

**4. Shut-in Royalty.** If after the primary term one or more wells on the leased premises, or lands pooled or unitized therewith are capable of producing Oil and Gas Substances in paying quantities, but such well or wells are either shut in or production therefrom is not being sold by Lessee, such well or wells shall nevertheless be deemed to be producing in paying quantities for the purpose of maintaining this lease. If for a period of 90 consecutive days such well or wells are shut in or production therefrom is not sold by Lessee, then Lessee shall pay an aggregate shut-in royalty of five (\$5.00) dollars per acre then covered by this lease. The payment shall be made to Lessor on or before the first anniversary date of the lease following the end of the 90-day period and thereafter on or before each anniversary while the well or wells are shut in or production therefrom is not being sold by Lessee; provided that if this lease is otherwise being maintained by operations under this lease, or if production is being sold by Lessee from another well or wells on the leased premises or lands pooled or unitized therewith, no shut-in royalty shall be due until the first anniversary date of the lease following the end of the 90-day period next following the cessation of such operations or production, as the case may be. Lessee's failure to properly pay shut-in royalty shall render Lessee liable for the amount due, but shall not operate to terminate this lease.

**5. Operations.** If Lessee drills a well on the leased premises, or lands pooled or unitized therewith, that is incapable of producing in paying quantities (hereinafter called "dry hole"), or if all production (whether or not in paying quantities) permanently ceases from any cause, including a revision of unit boundaries pursuant to the provisions of this lease or the action of any governmental authority, then in the event this lease is not otherwise being maintained in force it shall nevertheless remain in force if Lessee commences further operations for reworking an existing well or for drilling an additional well or for otherwise obtaining or restoring production on the leased premises or lands pooled or unitized therewith within 90 days after completion of operations on such dry hole or within 90 days after such cessation of all production. If after the primary term this lease is not otherwise being maintained in force, but Lessee is then engaged in Operations, as defined below, this lease shall remain in force so long as any one or more of such Operations are prosecuted with no interruption of more than 90 consecutive days, and if any such Operations result in the production of Oil and Gas Substances, as long thereafter as there is production in paying quantities from the leased premises or lands pooled or unitized therewith. As used herein, the term Operations shall mean any activity conducted on or off the leased premises that is reasonably calculated to obtain or restore production, including without limitation, (i) drilling or any act preparatory to drilling (such as obtaining permits, surveying a drill site, staking a drill site, building roads, clearing a drill site, or hauling equipment or supplies); (ii) reworking, plugging back, deepening, treating, stimulating, refitting, installing any artificial lift or production-enhancement equipment or technique; (iii) constructing facilities related to the production, treatment, transportation and marketing of substances produced from the lease premises; and (iv) construction of water disposal facilities and the physical movement of water produced from the leased premises.

**6. Pooling.** Lessee shall have the right, but not the obligation, to pool all or any part of the leased premises or any interest therein with any other lands or interests, as to any or all depths or zones, and as to any or all substances covered by this lease, either before or after the commencement of drilling or production, whenever Lessee deems it necessary or proper to do so in order to prudently develop or operate the leased premises, whether or not similar pooling authority exists with respect to such other lands or interests. The creation of a unit by such pooling shall be based on the following criteria (hereinafter called "pooling criteria"): A unit for an oil well (other than a horizontal completion) shall not exceed 40 acres plus a maximum acreage tolerance of 10%, and for a gas well or a horizontal completion shall not exceed 640 acres plus a maximum acreage tolerance of 10%; provided that a larger unit may be formed for an oil well or gas well or horizontal completion to conform to any well spacing or density pattern that may be prescribed or permitted by any governmental authority having jurisdiction over such matters. In exercising its pooling rights hereunder, Lessee shall file of record at the County Recorder's Office a written declaration describing the unit and stating the effective date of pooling. Production, drilling or reworking operations anywhere on a unit which includes all or any part of the leased premises shall be treated as if it were production, drilling or reworking operations on the leased premises, except that the production on which Lessor's royalty is calculated shall be that proportion of the total unit production which the net acreage covered by this lease and included in the unit bears to the total acreage in the unit, but only to the extent such proportion of unit production is sold by Lessee. In the event a unit is formed hereunder before the unit well is drilled and completed, so that the applicable pooling criteria are not yet known, the unit shall be based on the pooling criteria Lessee expects in good faith to apply upon completion of the well; provided that within a reasonable time after completion of the well, the unit shall be revised if necessary to conform to the pooling criteria that actually exist. Pooling in one or more instances shall not exhaust Lessee's pooling rights hereunder, and Lessee shall have the recurring right, but not the obligation, to revise any unit formed hereunder by expansion or contraction or both, either before or after commencement of production, in order to conform to the well spacing or density pattern prescribed or permitted by the governmental authority having jurisdiction, or to conform to any productive acreage determination made by such governmental authority. To revise a unit hereunder, Lessee shall file of record at the County Recorder's Office a written declaration describing the revised unit and stating the effective date of revision. To the extent any portion of the leased premises is included in or excluded from the unit by virtue of such revision, the proportion of unit production on which royalties are payable hereunder shall thereafter be adjusted accordingly.

**7. Unitization.** Lessee shall have the right, but not the obligation, to commit all or any part of the leased premises or any interest therein to one or more unit plans or agreements for the cooperative development or operation of one or more oil and/or gas reservoirs or portions thereof, if in Lessee's judgment such plan or agreement will prevent waste and protect correlative rights, and if such plan or agreement is approved by the federal, commonwealth or local governmental authority having jurisdiction. When such a commitment is made, this lease shall be subject to the terms and conditions of the unit plan or agreement, including any formula prescribed therein for the allocation of production from a unit. Upon permanent cessation thereof, Lessee may terminate the unit by filing of record at the County Recorder's Office a written declaration describing the unit and stating the date of termination. Pooling hereunder shall not constitute a cross-conveyance of interests.

**8. Payment Reductions.** If Lessor owns less than the full Oil and Gas/Mineral estate in all or any part of the leased premises, payment of royalties and shut-in royalties hereunder shall be reduced as follows: royalties and shut-in royalties for any well on any part of the leased premises or lands pooled therewith shall be reduced to the proportion that Lessor's interest in such part of the leased premises bears to the full Oil and Gas/Mineral estate in such part of the leased premises. To the extent any royalty or other payment attributable to the Oil and Gas/Mineral estate covered by this lease is payable to someone other than Lessor, such royalty or other payment shall be deducted from the corresponding amount otherwise payable to Lessor hereunder.



9. **Ownership Changes.** The interest of either Lessor or Lessee hereunder may be assigned, devised or otherwise transferred in whole or in part, by area and/or by depth or zone, and the rights and obligations of the parties hereunder shall extend to their respective heirs, devisees, executors, administrators, successors and assigns. No change in Lessor's ownership shall have the effect of reducing the rights or enlarging the obligations of Lessee hereunder, and no change in ownership shall be binding on Lessee until 60 days after Lessee has been furnished the original or duly authenticated copies of the recorded documents establishing such change of ownership to the satisfaction of Lessee or until Lessor has satisfied the notification requirements contained in Lessee's usual form of division order. In the event of the death of any person entitled to shut-in royalties hereunder, Lessee may pay or tender such shut-in royalties to the credit of decedent or decedent's estate. If at any time two or more persons are entitled to shut-in royalties hereunder, Lessee may pay or tender such shut-in royalties to such persons either jointly or separately in proportion to the interest which each owns. If Lessee transfers its interest hereunder, in whole or in part, Lessee shall be relieved of all obligations thereafter arising with respect to the transferred interest, and failure of the transferee to satisfy such obligations with respect to the transferred interest shall not affect the rights of Lessee with respect to any interest not so transferred. If Lessee transfers a full or undivided interest in all or any portion of the area covered by this lease, the obligation to pay or tender shut-in royalties hereunder shall be divided between Lessee and the transferee in proportion to the net acreage interest in this lease then held by each.

10. **Release of Lease.** Lessee may, at any time and from time to time, deliver to Lessor or file of record at the County Recorder's Office a written release of this lease as to a full or undivided interest in all or any portion of the area covered by this lease or any depths or zones thereunder, and shall thereupon be relieved of all obligations thereafter arising with respect to the interest so released. If Lessee releases less than all of the interest or area covered hereby, Lessee's obligation to pay or tender shut-in royalties shall be proportionately reduced in accordance with the net acreage interest retained hereunder.

11. **Regulation and Delay.** Lessee's obligations under this lease, whether express or implied, shall be subject to all applicable laws, rules, regulations and orders of any governmental authority having jurisdiction, including restrictions on the drilling and production of wells, and regulation of the price or transportation of oil, gas and other substances covered hereby. When drilling, reworking, production or other operations are prevented or delayed by such laws, rules, regulations or orders, or by inability to obtain necessary permits, equipment, services, material, water, electricity, fuel, access or easements, or by fire, flood, adverse weather conditions, war, sabotage, rebellion, insurrection, riot, strike or labor disputes, or by inability to obtain a satisfactory market for production or failure of purchasers or carriers to take or transport such production, or by any other cause not reasonably within Lessee's control, this lease shall not terminate because of such prevention or delay, and, at Lessee's option, the period of such prevention or delay shall be added to the term hereof. Lessee shall not be liable for breach of any provisions or implied covenants of this lease when drilling, production or other operations are so prevented or delayed.

12. **Breach or Default.** No litigation shall be initiated by Lessor for damages, forfeiture or cancellation with respect to any breach or default by Lessee hereunder, for a period of at least 90 days after Lessor has given Lessee written notice fully describing the breach or default, and then only if Lessee fails to remedy the breach or default within such period. In the event the matter is litigated and there is a final judicial determination that a breach or default has occurred, this lease shall not be forfeited or cancelled, in whole or in part, unless Lessee is given a reasonable time after said judicial determination to remedy the breach or default and Lessee fails to do so.

13. **Warranty of Title.** Lessor hereby warrants and agrees to defend title to the leased premises conveyed to Lessee hereunder. Lessor also agrees that Lessee may, at Lessee's option, pay and discharge any taxes, mortgages or liens existing, levied or assessed on or against the leased premises. If Lessee exercises such option, Lessee shall be subrogated to the rights of the party to whom payment is made, and, in addition to its other rights, may reimburse itself out of any royalties or shut-in royalties otherwise payable to Lessor hereunder. In the event Lessee is made aware of any claim inconsistent with Lessor's title, Lessee may suspend the payment of royalties and shut-in royalties hereunder, without interest, until Lessee has been furnished satisfactory evidence that such claim has been resolved.

14. **Indemnity.** Lessee will indemnify and hold Lessor, harmless from any and all claims, demands, suits, losses, damages, and costs (including, without limitation, any attorney fees) incurred by the Lessor which may be asserted against the Lessor by reason of or which may arise out of or which may be related to Lessee's activities on the leased premises.

15. **Right of First Refusal.** If, at any time within the primary term of this lease or any continuation thereof, or within six (6) months thereafter, Lessor receives any bona fide offer, acceptable to Lessor, to grant an additional lease (top lease) covering all or part of the afore described lands, Lessee shall have the continuing option, by meeting any such offer, to acquire such a lease. Any offer must be in writing and must set forth the proposed Lessee's name, bonus consideration and royalty consideration to be paid for such lease, and include a copy of the lease form to be utilized reflecting all pertinent and relevant terms and conditions of the top lease. Lessee shall have fifteen (15) days after receipt from Lessor of a complete copy of any such offer to advise Lessor in writing of its election to enter into an oil and gas lease with Lessor on equivalent terms and conditions. If Lessee fails to notify Lessor within the aforesaid fifteen (15) day period of its election to meet any such bona fide offer, Lessor shall have the right to accept said offer. Any top lease granted by Lessor in violation of this provision shall be null and void.

16. SEE ADDENDUM ATTACHED TO AND MADE A PART OF THIS LEASE <sup>24</sup> <sub>R.P.</sub>

IN WITNESS WHEREOF, this lease is executed to be effective as of the date first written above, but upon execution shall be binding on the signatory and the signatory's heirs, devisees, executors, administrators, successors and assigns, whether or not this lease has been executed by all parties hereinabove named as Lessor.

WITNESSES AND/OR ATTESTATIONS:

LESSOR (WHETHER ONE OR MORE)

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

Roy C. Preston  
Roy C. Preston  
Nancy L. Preston  
Nancy L. Preston

**EXHIBIT "A" - ADDITIONAL LEASEHOLDS**

between  
 Roy C. Preston and Nancy L. Preston, as Lessor  
 and  
 Elexco Land Services, Inc., as Lessee  
 dated the 7 day of June, 2008

2K  
 AP

- 1). The Leasehold is located, all or in part, in the Township of Herick in the County of Bradford, in the State of Pennsylvania, and is bounded substantially formerly or currently as follows:
- On the North by lands of Roy Preston, 20-76.01-3;  
 On the East by lands of Herrickville Road;  
 On the South by lands of Herrickville Road;  
 On the West by lands of Reuben Kinney, 20-76.01-1;
- Tax ID# 20-76.01-2  
 Deed or other instrument by which the Lessor acquired title \_\_\_\_\_
- 2). The Leasehold is located, all or in part, in the Township of Herick in the County of Bradford, in the State of Pennsylvania, and is bounded substantially formerly or currently as follows:
- On the North by lands of Roy Preston, 20-76.01-4;  
 On the East by lands of George Pickering, 20-76.01-9;  
 On the South by lands of Leon Houghtaling, 20-77-62;  
 On the West by lands of Leon Houghtaling, 20-77-62;
- Tax ID# 20-76.01-3  
 Deed or other instrument by which the Lessor acquired title \_\_\_\_\_
- 3). The Leasehold is located, all or in part, in the Township of Herick in the County of Bradford, in the State of Pennsylvania, and is bounded substantially formerly or currently as follows:
- On the North by lands of Herrickville Road;  
 On the East by lands of Herrickville Road;  
 On the South by lands of Reuben Kinney, 20-76.01-1;  
 On the West by lands of Reuben Kinney, 20-76.01-1;
- Tax ID# 20-76.01-4  
 Deed or other instrument by which the Lessor acquired title \_\_\_\_\_

Problem Language  
 (continued)

ADDENDUM1. General

This Addendum is attached to and forms part of the Lease dated JUNE 7, 2008 <sup>BNP</sup> <sub>RP</sub>  
 from Roy C. Preston and Nancy L. Preston, Lessor, to Elexco Land Services, Inc., Lessee.

- (a) In the event of a conflict between a provision contained in this Addendum and a provision contained in the Lease, the provision contained in this Addendum prevails.
- (b) Unless expressly indicated otherwise, all capitalized words used in this Addendum have the same meaning attributed to them in the Lease.
- (c) The Lease continues in full force and effect and is amended only to the extent necessary to give force and effect to this Addendum and the Lease is ratified, approved and confirmed as so amended. The Lease may be further amended only by a subsequent writing executed by both Lessor and Lessee.

The following additional terms are added to the Lease:

- 2. The Lessor reserves the right to approve the location of all well sites, access roads, pipelines and related appliances constructed or installed on the leased premises. Said approval shall not be unreasonably withheld and shall be granted in a timely manner.
- 3. The Lessee's operations on the leased premises shall be in accordance with regulations set forth by the Pennsylvania Department of Environment Protection.
- 4. The Lessee shall test the Lessor's domestic water supply (as to the quality and quantity) prior to the commencement of and following drilling operations. In the event it is determined that said operations have adversely affected said water supply, then the Lessee, at its own expense, shall take all steps necessary to return said water supply to pre-drilling conditions.
- 5. The Lessee shall construct or install all well sites, access roads and pipe line right-of-way in a manner which would minimize any related soil erosion. Further, any related surface reclamation shall be done in a manner which restores said land as nearly to original contours as reasonably possible.
- 6. The Lessee agrees to hold the Lessor harmless from any claims which may arise as a result of the lessee's operations on the said lands including any third party damage done to the Lessee's operation or property.
- 7. Notwithstanding anything to the contrary contained in the Lease, the Lessee is not granted any right what so ever to use the leased premises or any portion thereof, for gas storage purposes.
- 8. The Lessee agrees that no well shall be located within four hundred feet (400') of existing building located on the leased premises without the prior written consent from the Lessor.
- 9. The Lessee agrees that upon completion of seismic work on the leased premises that all shot holes will be filled and the land will be returned to as close to original contours as reasonably possible within a reasonable amount of time.
- 10. The Lessee agrees that if a well is drilled on the leased premises that the Lessee shall pay the Lessor, in addition to royalties, an annual payment of Two Thousand (\$2,000.00) dollars for as long as the well is located on the leased premises. Two Thousand (\$2,000.00) dollar payments to be adjusted annually by the rate of inflations, if any.
- 11. Royalties shall be paid without deductions for the costs of producing, gathering, storing, separating, treating, dehydrating, compressing, transporting, or otherwise making the oil and / or gas produced from the lease premises ready for sale or use. All oil and / or gas royalty shall be delivered free of cost into the tank or pipeline (for oil) and into the pipeline (for gas), with the exception of Lessor's prorated share of taxes, measured by volume, on the oil and / or gas royalty.



12. The Lessee acknowledges that any lands acquired by the Lessor after effective date of this lease would require a separate lease agreement.
13. Lessee shall promptly replace any barriers, including but not limited to, fences and stone walls removed by Lessee during its operations on the leased premises and further, shall construct gates and fences around the Lessee's operation in the event that the Lessee's operations necessitates a change in Lessor's livestock pasture locations and will also provide gates on all access road on leased premises created by the Lessee, upon written request by Lessor.
14. If, at any time within the primary term of this lease or any continuation thereof, or within six (6) months thereafter, Lessor receives any bona fide offer, acceptable to Lessor, to grant an additional lease (top lease) covering all or part of the afore described lands, Lessee shall have the continuing option, by meeting any such offer, to acquire such a lease. Any offer must be in writing and must set forth the proposed Lessee's name, bonus consideration and royalty consideration to be paid for such lease, and include a copy of the lease form to be utilized reflecting all pertinent and relevant terms and conditions of the top lease. Lessee shall have fifteen (15) days after receipt from Lessor of a complete copy of any such offer to advise Lessor in writing of its election to enter into an oil and gas lease with Lessor on equivalent terms and conditions. If Lessee fails to notify Lessor within the aforesaid fifteen (15) day period of its election to meet any such bona fide offer, Lessor shall have the right to accept said offer. Any top lease granted by Lessor in violation of this provision shall be null and void.
15. The Lessee agrees that if a well is drilled by the Lessee on lands within a reasonable distance from the leased premises and the Lessee has contiguous acreage with the Lessor's from the said well site then the Lessor's lands will be pooled or unitized with the property that was drilled upon.

## ACKNOWLEDGEMENTS

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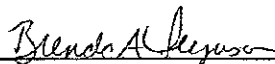
COMMONWEALTH OF PENNSYLVANIA

County of

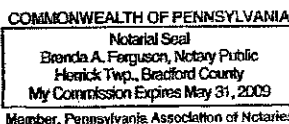
Bradford

) SS.

On this 7 day of June, 2008, before me, the undersigned Notary Public in and for said county and state, personally appeared Roy C. Preston and Nancy L. Preston known to me to be the person or persons whose names are subscribed to the foregoing instrument, and acknowledged that the same was executed and delivered as their free and voluntary act for the purposes therein set forth. In witness whereof I hereunto set my hand and official seal as of the date hereinabove stated.

My Commission Expires May 31, 2009


Notary Public



State / Commonwealth of \_\_\_\_\_

) SS.

County of \_\_\_\_\_

INDIVIDUAL  
(For use in all states)

On this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_, before me, the undersigned Notary Public in and for said county and state, personally appeared \_\_\_\_\_ known to me to be the person or persons whose names are subscribed to the foregoing instrument, and acknowledged that the same was executed and delivered as their free and voluntary act for the purposes therein set forth. In witness whereof I hereunto set my hand and official seal as of the date hereinabove stated.

My Commission Expires \_\_\_\_\_

Notary Public

## RECORDING INFORMATION

COMMONWEALTH OF PENNSYLVANIA

County of \_\_\_\_\_

) SS.

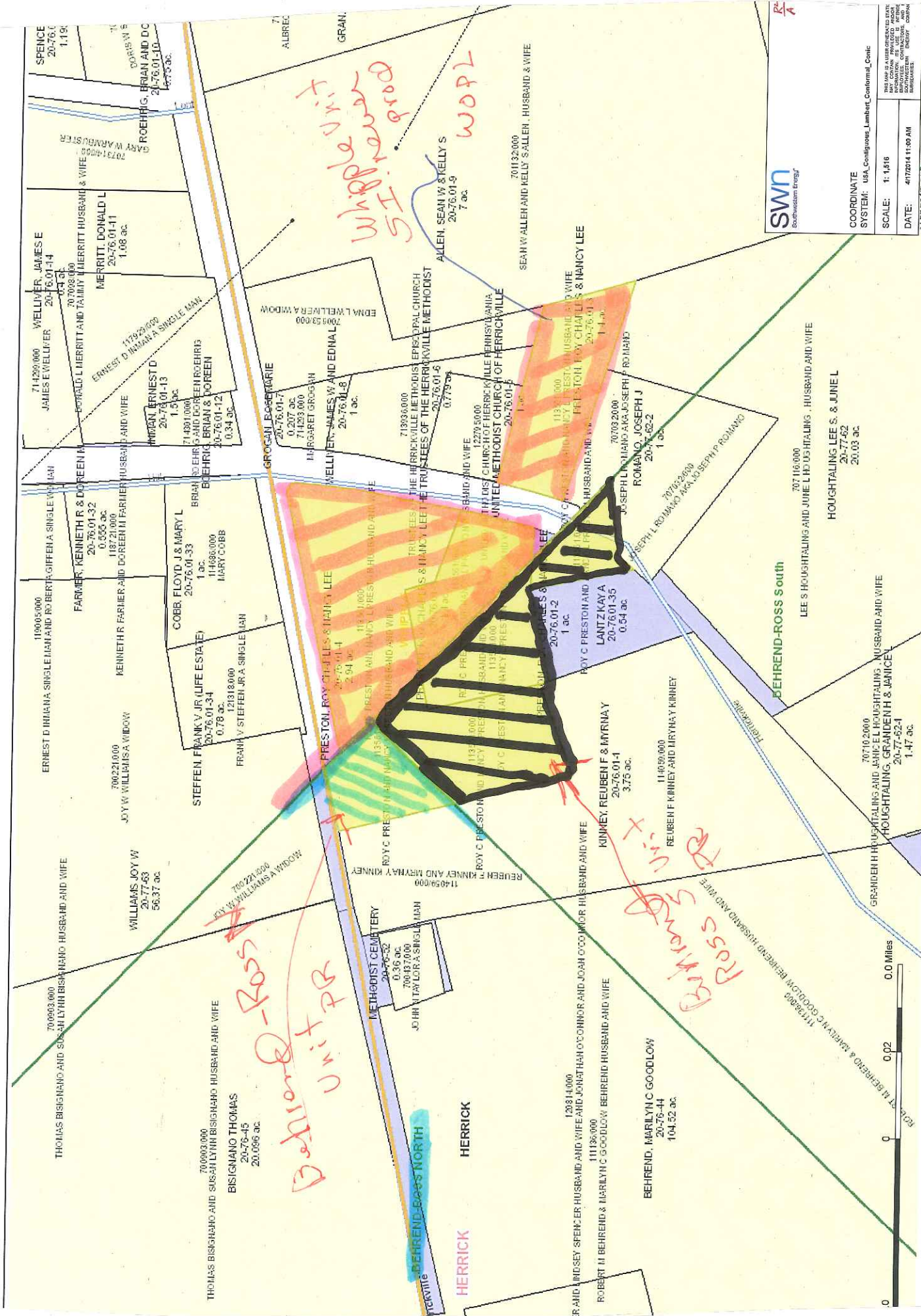
This instrument was filed for record on the \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_, at \_\_\_\_\_ o'clock \_\_\_\_\_ M., and duly recorded in Book \_\_\_\_\_, Page \_\_\_\_\_, of the \_\_\_\_\_ records of this office.

By \_\_\_\_\_

Clerk (or Deputy)

This document prepared by: ELEXCO LAND SERVICES, INC., P.O. Box 383, Olean, NY 14760-0383  
When recorded return to: ELEXCO LAND SERVICES, INC., P.O. Box 383, Olean, NY 14760-0383

Acknowledgement Page to Oil and Gas Lease dated the 7 day of June, 2008 between Roy C. Preston and Nancy L. Preston, husband and wife and Elexco Land Services, Inc.



**SWN**  
Southwestern Energy

COORDINATE SYSTEM: USA, Contiguous, Lambert Conformal, Conic  
SCALE: 1:1518  
DATE: 4/17/2014 11:00 AM  
ALBERTA, CANADA

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Roy C and Nancy L Preston Lease		
	Acres	Parcels
	0.046	20-76-1-2
	1.300	20-76-1-3
	1.686	20-76-1-4
<b>Total in Whipple Unit</b>	<b>3.032</b>	
<b>Total in Producing Behrend-Ross North Unit</b>	<b>0.363</b>	20-76-14
	0.248	20-76-1-2
	0.473	20-76-1-3
	0.740	20-76-1-4
<b>Total in Producing Behrend-Ross South Unit</b>	<b>1.461</b>	
<b>Total Unitized</b>	<b>4.856</b>	
<b>Lease Total</b>	<b>5.34</b>	

Acreage  
Discrepancies

Where is the  
other  
.484 acs?

Document:	Oil and Gas Lease
Date:	May 18, 2010
Lessor:	John Richard Neal and Mary Carol Neal
Lessee:	Cabot Oil & Gas Corporation

### In a Nutshell:

Lessor includes a Favored Nations provision in their Oil and Gas Lease.

### Problem Language:

*“Lessee hereby agrees that if at any time prior to Lessee’s establishment of economic production on any portion of the leased premises or on land pooled therewith, should Lessee lease or otherwise acquire any interest in any lease within a distance of one (1) mile from any tract comprising a portion of the leased premises, and such lease provides per net mineral acre bonus consideration or reserved royalty more favorable than that realized by this Lessor for this lease, then Lessee shall forthwith tender, without the necessity of notice or demand, to Lessor an additional amount of bonus consideration and/or a recordable lease amendment increasing the reserved royalty applicable hereunder, as the case may be, sufficient to match such more favorable bonus and/or royalty. The execution and acceptance of this lease by Lessee shall constitute Lessee’s certification that it has not heretofore acquired any interest in any lease or option to lease within such distance at a more favorable bonus or royalty consideration than that provided to Lessor as consideration for this lease. This provision shall not apply as to other leases less than 20 gross acres in size...”*

### Issues with the Instrument’s Language:

- *What is the effect of the Favored Nations provision?*

### Examining Attorney’s Interpretation:

**The Favored Nations provision consists of the following qualities:**

- **Only applies to and until “economic production”**
- **Geographical limitations**
- **Applies to newly acquired leases or the acquisition of an interest in a lease**
- **Limited to bonus and “reserved royalty”**
- **Automatically applicable**
- **Retrospective**
- **Limited in leased acreage**



commencing from the date of first production, notwithstanding the effective date of such unit designation. Drilling and reworking operations and production on any part of the pooled acreage shall be treated as if such drilling or reworking operations were upon or such production from the land described in this lease, whether the well or wells be located on the land covered by this lease or not. The entire acreage pooled into a unit shall be treated for all purposes, except the payment of royalties on production from the pooled unit, as if it were included in this lease. In lieu of the royalties provided within this lease, Lessor shall receive on production from a pooled unit only such portion of the royalty stipulated herein as the amount of Lessor's acreage placed in the unit bears to the total acreage so pooled in the particular unit involved

Problem Language

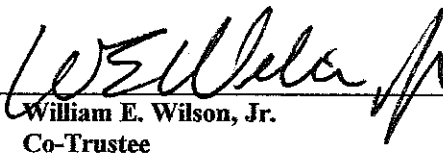
*Amended New Lease*

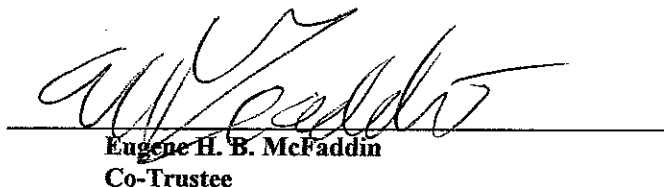
**18. FAVORED NATIONS:** Lessee hereby agrees that if at any time prior to Lessee's establishment of economic production on any portion of the leased premises or on land pooled therewith, should Lessee lease or otherwise acquire any interest in any lease within a distance of one (1) mile from any tract comprising a portion of the leased premises, and such lease provides per net mineral acre bonus consideration or reserved royalty more favorable than that realized by this Lessor for this lease, then Lessee shall forthwith tender, without the necessity of notice or demand, to Lessor an additional amount of bonus consideration and/or a recordable lease amendment increasing the reserved royalty applicable hereunder, as the case may be, sufficient to match such more favorable bonus and/or royalty. The execution and acceptance of this lease by Lessee shall constitute Lessee's certification that it has not heretofore acquired any interest in any lease or option to lease within such distance at a more favorable bonus or royalty consideration than that provided to Lessor as consideration for this lease. This provision shall not apply as to other leases less than 20 gross acres in size.

**IN WITNESS WHEREOF**, this lease is effective as of the date first above written and is executed as of the date on which each signature hereto is acknowledged.

**LESSOR**

**ROSINE BLOUNT MCFADDIN MINERAL TRUST, by and through James L. C. McFaddin, Jr., William E. Wilson, Jr., and Eugene H. B. McFaddin, Co-Trustees**

  
\_\_\_\_\_  
William E. Wilson, Jr.  
Co-Trustee

  
\_\_\_\_\_  
Eugene H. B. McFaddin  
Co-Trustee

**ANNA MARY TRAINER REVOCABLE TRUST, by and through Rosine V. Turner and Eugene A. Vance, Co-Trustees**

\_\_\_\_\_  
Rosine V. Turner  
Co-Trustee





Texas | North Dakota | Colorado | New Mexico | Oklahoma | Montana | Wyoming | Mississippi | West Virginia

## **FIRM RESUME**

Kirby, Mathews & Walrath is a professional limited liability company which was founded on the idea that the oil and gas industry is best served by a firm that understands their needs and fulfills these needs efficiently, cost-effectively, and in a timely manner.

The firm's practice is devoted to representation of oil, gas and energy companies (upstream, midstream and downstream), financial institutions, and service companies, with operations/assets in Texas, North Dakota, Colorado, New Mexico, Oklahoma, Montana, Wyoming, Mississippi, and West Virginia, by assisting in the following areas:

❖ **Acquisitions and Divestitures:**

Negotiating and drafting purchase and sale agreements, assignments of interest, joint operating agreements, and other ancillary agreements

❖ **Due Diligence:**

Directing and participating in due diligence exercises related to asset acquisition, financing transactions, or bankruptcy

❖ **Litigation:**

Representing clients in litigation matters including receivership, interpleader, trespass to try title, condemnation, breach of contract and other disputes incident to oil and gas exploration

❖ **Title Opinions:**

Preparing title opinions for various purposes, including drilling, division order, distribution of proceeds, financing, and acquisitions

❖ **Documents Incident to Oil and Gas Operations:**

Preparing and reviewing all aspects of agreements involving producing properties, such as mineral leases, surface or subsurface agreements, indemnity agreements, pooling or unitization agreements, communitization agreements, exploration agreements, seismic agreements, farmin/farmout agreements, participation agreements, drilling contracts, net profits agreements or overriding royalty/production payment agreements, transportation agreements, processing agreements, storage and marketing agreements, and preparation of curative documentation

❖ **Advice and Counsel:**

Advising clients concerning various issues which may arise during the course of their business including relationships with lessors, operators, non-operators, and contractors

815 Walker, Suite 240  
Houston, Texas 77002

Telephone: (713) 489-4620  
Telecopier: (713) 489-4619

[www.kmwenergylaw.com](http://www.kmwenergylaw.com)

The attorney members of the firm are:



**M. RYAN KIRBY**  
**PARTNER**  
*Texas*

Mr. Kirby attended The University of Texas at Dallas, graduated with a Bachelor of Arts in Government and Politics in 1998, and attended South Texas College of Law, graduating in 2002 with a Juris Doctorate. Thereafter, Mr. Kirby worked for several litigation firms until 2006, focusing on toxic torts, products liability, personal injury, fraud, and general civil litigation. From 2006, until founding Kirby, Mathews & Walrath, PLLC, he worked as an Attorney, then Section Manager for the Texas and New Mexico group and Partner of a large Houston-based oil and gas firm.

Mr. Kirby has conducted title examination for a variety of conventional and unconventional plays in Texas, and has negotiated and drafted numerous contracts, purchase and sale agreements, communitization agreements, oil and gas leases, pipeline land acquisitions and surface use, and other similar documents for oil and gas companies. Mr. Kirby has continued to litigate matters concerning oil and gas matters at the appellate court and district court levels, and has several reported decisions.

Mr. Kirby is a frequent speaker at seminars, both with Landman's groups and Continuing Legal Education seminars. His most recent presentation was Difficult Lease Provisions, presented to the Association of Lease and Title Analysts. Mr. Kirby is also an Adjunct Professor with South Texas College of Law, where he lectures the popular Texas Oil, Gas and Land Titles course.

Mr. Kirby is a member of the Oil, Gas and Energy Resources Law section of the State Bar of Texas.



**BRYAN L. MATHEWS**  
**PARTNER**  
*Texas*  
*North Dakota*  
*Colorado*

Mr. Mathews attended Lamar University, graduating with a Bachelor of Arts degree in Criminal Justice with a minor in Psychology, and an Associate of Arts degree in Psychology in 1999, and attended South Texas College of Law graduating with his Juris Doctorate in 2002. Thereafter, Mr. Mathews worked for Brent Coon and Associates. Following a stint with that office, Mr. Mathews began to transition to the practice of real property and oil and gas law, first with Beaumont Title Company as a staff attorney and subsequently with J. Mark

Smith & Associates as a field landman. From 2006, until founding Kirby, Mathews & Walrath, PLLC, he worked as an Attorney, then Section Manager for the Rockies group and Partner of a large Houston-based oil and gas firm.

Mr. Mathews has conducted title examination for a variety of conventional and unconventional plays in Texas, and has supervised the generation of complex unit title opinions in Colorado, Wyoming, and Utah.

Mr. Mathews is certified by the Texas Board of Legal Specialization in Oil and Gas Law, a distinction achieved by less than one-half of one percent of attorneys licensed in Texas. He is also a member of the College of the State Bar of Texas and the Oil, Gas and Energy Resources Law sections of the State Bar of Texas.



**GERALD W. WALRATH**

**PARTNER**

*Texas*

*North Dakota*

*Oklahoma*

Mr. Walrath began his professional career as an Associate Clinical Psychologist following his graduation from University of Houston in 1989 with a Bachelor of Sciences in Psychology and from Sam Houston State University in 1991 with a Master of Arts in Clinical Psychology. In 1997, Mr. Walrath received his Juris Doctorate from the University of Houston Law Center and commenced his legal career the following year. Since that time he has been in solo practice, served as Counsel and Vice President of Project Development for the now-defunct

Cygnus Oil and Gas, Inc., and most recently served as Section Manager for the High Plains section and Partner of a large Houston-based law firm.

Mr. Walrath has conducted title examination for a variety of conventional and unconventional plays in North Dakota and Texas, and has negotiated and drafted numerous contracts, purchase and sale agreements, joint operating agreements, oil and gas leases, pipeline land acquisitions and surface use, and other various and sundry documents for oil and gas operators.

In addition to his oil and gas title experience, Mr. Walrath has appeared before the Railroad Commission of Texas and in various Texas district courts on behalf of oil and gas operators. He has been involved in oil and gas projects ranging from the development of New Zealand Crown Minerals to the Louisiana Shelf.

Mr. Walrath is a member of the Oil, Gas and Energy Resources Law and Corporate Counsel sections of the State Bar of Texas and the Section of Real Property, Probate and Trust Law of the State Bar Association of North Dakota.





**ANDREW R. POTTS**

**ASSOCIATE**

*Texas*

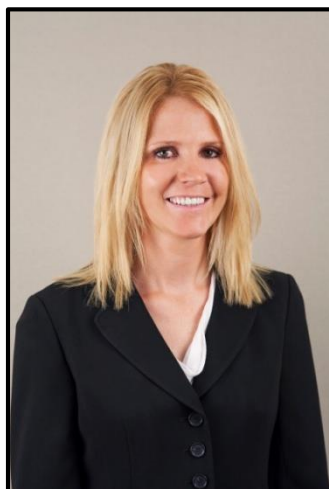
*New Mexico*

Mr. Potts received his Bachelor of Arts from Texas A&M University, graduating Magna Cum Laude with a double major in Political Science and History. Following his graduation from A&M, he enrolled at St. Mary's University School of Law. He received his Juris Doctorate from St. Mary's in 2009, where he served as a staff writer for the St. Mary's Law Journal and was recognized as a member of the Dean's List.

Following his licensure in Texas, Mr. Potts clerked at The Supreme Court of Texas for Justice Scott Brister, where he composed study memoranda comprising the arguments of the parties and multiple amicus curiae, and conducted a fifty-state survey of law applicable to a petition under consideration by the Court. Subsequent to this, he has devoted his practice to energy law, first working as an associate for an oil and gas firm in Floresville, Texas, and later as an associate with a large Houston-based oil and gas firm.

Mr. Potts has conducted title examination in various plays throughout Texas and in the Permian region of New Mexico, drafting Drilling Title Opinions and Division Order Title Opinions for exploration and production companies.

Mr. Potts is certified by the Texas Board of Legal Specialization in Oil and Gas Law, as well as a member of the Oil, Gas and Energy Resources Section of the State Bar of Texas, the Texas Young Lawyers Association, the State Bar of Texas, and the State Bar of New Mexico.



**AMANDA R. DAVENPORT**

**ASSOCIATE**

*Montana*

*Wyoming*

*Texas*

Ms. Davenport received her Bachelor of Sciences in Business Administration from the University of Montana in 2004. Following her graduation from UMT, she enrolled at Gonzaga University School of Law. She received her Juris Doctorate from Gonzaga in 2007, where she was a member of the Gonzaga Law Review.

Following her licensure in Montana, Ms. Davenport clerked at The State of Montana Thirteenth Judicial Branch for Judge Gregory R. Todd, where she analyzed motions, responses and reply briefs, drafted bench briefs, prepared orders, and conducted omnibus hearings. Subsequent to her clerkship, she joined a small general practice in Billings, Montana where she worked until 2010, focusing on natural resources law, real estate law, regulation, and miscellaneous business transactions. Following her relocation to the Houston area, Ms. Davenport served as an associate with a large Houston-based oil and gas firm until joining Kirby, Mathews and Walrath in 2013.

Ms. Davenport has conducted title examination in the Bakken and Three Forks plays in Montana, and various plays in Texas, drafting Drilling Title Opinions and Drilling and Division Order Title Opinions for exploration and production companies.

Ms. Davenport is a member of the Young Professionals in Energy, the Women's Energy Network, the State Bar of Montana, and the State Bar of Wyoming.



**JUAN R. HEROLD**  
**ASSOCIATE**

*Texas*  
*North Dakota*  
*Mississippi*

Mr. Herold received his Bachelor of Sciences in Business Commerce - Accounting from the University of Houston in 1989. Following his graduation from UH, Mr. Herold first worked as an accountant, then enrolled at the University of Detroit - Mercy School of Law, receiving his Juris Doctorate in 1997.

Prior to focusing his practice on oil and gas law, Mr. Herold engaged in securities litigation, and privilege reviews for large, complex litigation concerning oil, gas and environmental matters and governmental affairs. Immediately prior to his employment by Kirby, Mathews and Walrath in 2013, Mr. Herold served as an associate with a large Houston-based oil and gas firm.

Mr. Herold has conducted title examination in the Bakken play in North Dakota and a variety of plays in Texas, drafting title opinions for exploration and production companies. He has also been involved in several large oil and gas transactions and due diligence exercises involving producing and non-producing assets.

Mr. Herold is a member of the Oil and Gas Section of the State Bar of Texas, and the West Houston Association of Professional Landmen. In addition to his admissions to practice law in Texas and North Dakota, he is admitted to practice before the U.S. District & Bankruptcy Courts in the Southern District of Texas.



**J. BRIAN DAVIS**

**ASSOCIATE**

*Texas*

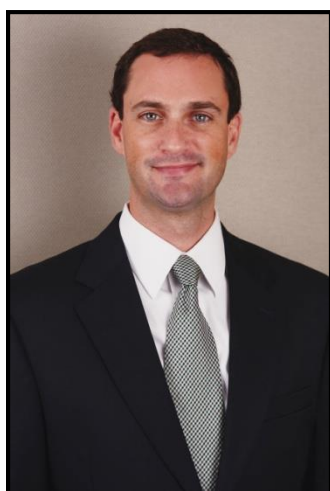
*New Mexico*

Mr. Davis received his Bachelor of Business Administration in Management Information Systems from the University of Texas at Austin in 2000. Following his graduation from UT, Mr. Davis worked in the telecommunications industry for multiple Fortune 500 companies as a business analyst and consultant. Mr. Davis subsequently enrolled at St. Mary's School of Law, where he was a staff writer for *The Scholar*, and received his Juris Doctorate in 2009.

Following his graduation from St. Mary's, Mr. Davis volunteered with the San Antonio Bar Association - Community Justice program, before securing employment with a small San Antonio-based oil and gas firm. Immediately prior to his employment by Kirby, Mathews and Walrath in 2013, Mr. Davis served as an associate and Assistant Team Manager with a large Houston-based oil and gas firm.

Mr. Davis has conducted title examination for a variety of plays in Texas and the Permian Basin region of New Mexico, drafting title opinions for exploration and production companies. He has also been involved in several large oil and gas transactions and due diligence exercises involving producing and non-producing assets, and has represented clients in mineral receivership hearings.

Mr. Davis is certified by the Texas Board of Legal Specialization in Oil and Gas Law, as well as a member of the Oil and Gas Section of the State Bar of Texas, the San Antonio Bar Association, the American Association of Petroleum Landmen, and the Permian Basin Landmen's Association.



**Evan H. Block**

**Associate**

*Texas*

*West Virginia*

Mr. Block received his Bachelor of Science in Communication Studies from the University of Texas at Austin in 2000, and his M.A. in Communication Studies from San Diego State University in 2002. Following his graduation from San Diego State, Mr. Block worked for a web marketing firm in Denver, Colorado. Mr. Block subsequently enrolled at South Texas College of Law and received his Juris Doctorate in 2006.

Following his graduation from South Texas, Mr. Block worked as a Landman, conducting due diligence review and field examination. Mr. Block then worked as an Assistant District Attorney in Midland, Texas and Fort Bend County, Texas. Following his two year hiatus from energy law, Mr. Block went to work as an Associate at a large Houston based oil and gas firm and a New Orleans based firm, conducting title examination and drafting Original,



Supplemental and Division Order Title Opinions. He has also been involved in several large scale acquisitions, involving both offshore and onshore assets, on behalf of sellers and purchasers.

Mr. Block is a member of the Oil and Gas Section of the State Bar of Texas, the Houston Bar Association and the Houston Association of Professional Landmen.