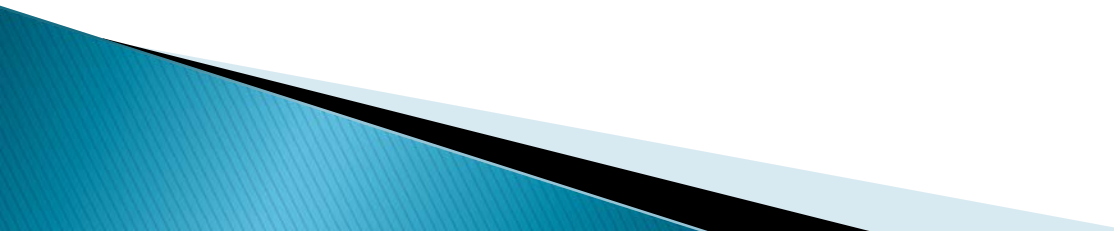


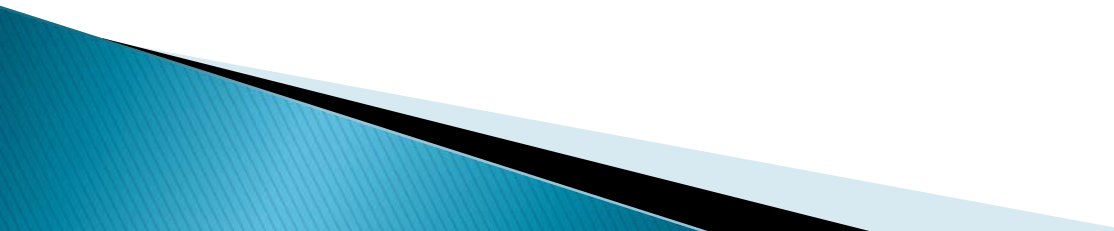
# Oil and Gas Receiverships and Leases

Far West Texas  
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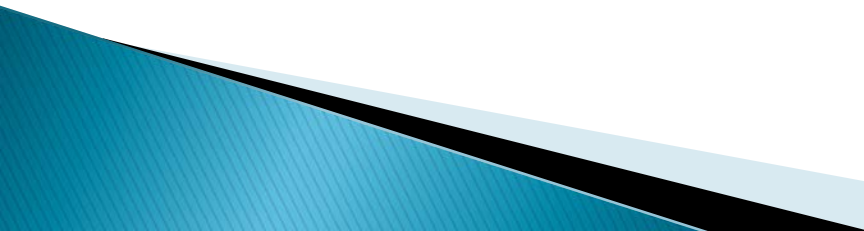
# Overview

- ▶ Brief Overview of Oil and Gas Law
  - ▶ Discussion of Receiverships
  - ▶ Discussion of Oil and Gas Leases
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# Owner of the Fee Simple

- ▶ Owns the entire “bundle of sticks”
  - ▶ Can explore for and develop the minerals
  - ▶ Bears 100% of costs (and risks)
  - ▶ Enjoys 100% of the net profits
- 

# Basic Premise of Leasing

- ▶ Owner of the mineral estate transfers, for a period of time, the right to explore for and develop the minerals
  - ▶ Lessee bears 100% of the costs (and risks)
  - ▶ Parties share in the rewards, if successful
    - Lessor – bonus and royalties
    - Lessee – net profits – after costs, royalties, etc.
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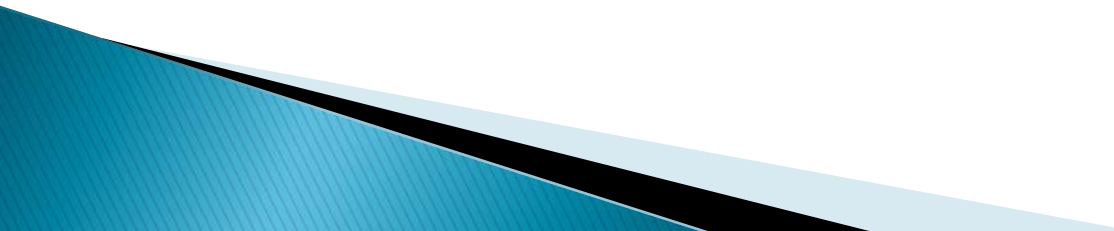
# Term of Lease

- ▶ “Three (3) years and for so long thereafter as oil or gas is produced in paying quantities”
- ▶ Primary term
  - No obligation to explore, drill, etc.
- ▶ Secondary term
  - Held by production in paying quantities

# Term of Lease (cont'd)

- ▶ Termination of Lease Once Production Begins
  - Generally held by production on the lease
  - Partial terminations as to acreage and/or depths
  - Can be “pooled” with other acreage
    - If pooled, lessors share throughout the unit, proportionately reduced
    - If pooled, lease is held by production within the unit

# Factors That Complicate Leasing

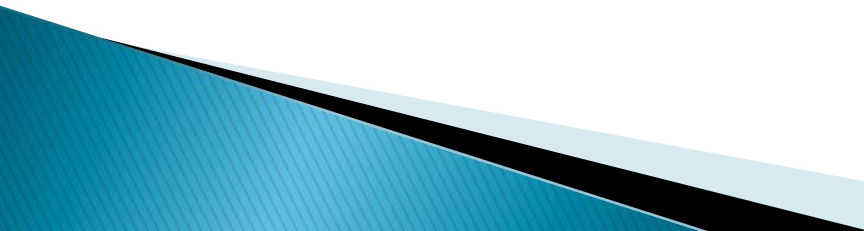
- ▶ Minerals “severed” from the surface
  - ▶ Mineral estate with multiple owners
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# Issues When Estate is Severed

- ▶ Different owners – surface and minerals
- ▶ Mineral estate is the “dominant estate”
  - Right to use as much of the surface as is “reasonably necessary” to develop the minerals
- ▶ Surface use agreements
  - Agreed-upon damages for specified uses of surface



# Issues with Multiple Owners

- ▶ Often, MANY owners in a particular tract
  - ▶ Lessee desires to lease entire estate
  - ▶ Don't want any "carried interests"
    - These don't share the risks, but share in profits
  - ▶ What if some owners can't be found?
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# Rule of Capture

- ▶ You own what you “capture” (what comes up)
- ▶ Creates risk of drainage, of course

# Receiverships

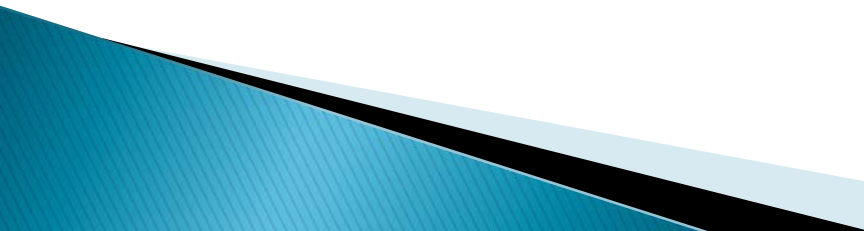
- ▶ Missing (unlocated) owners
- ▶ Reasons for receiverships for these
  - Economics – no “carried interests”
  - Encourage development of the land
  - Prevent Drainage

# Establishing a Receivership

(64.091, Civil Practice and Remedies Code)

- ▶ (b-1) and (c) – applicant must show
  - Unlocated (unlocatable) mineral owners – no taxes
  - Diligent but unsuccessful efforts to locate them
  - Substantial damage or injury – usually drainage
- ▶ (d)(2) – service by publication – atty ad litem
- ▶ (d)(3) – receiver appointed (judge or other)
- ▶ (d)(5) – no bond required

# Duties of Receiver

- ▶ By statute, or as authorized by the court
    - 64.091 (f) – “as ordered by the court...”
  - ▶ Statutory duties – 64.091 (f) and (g)
    - Execute leases and pooling agreements
  - ▶ Common court-ordered duties
    - Receive and deposit bonus and royalties
    - Pay (cause to be paid) ad valorem taxes
  - ▶ No authorization to execute division orders.
- 

# Negotiating Lease Terms

- ▶ Make sure they're reasonable.
- ▶ Bonus
  - Payment for primary term – paid per mineral acre
- ▶ Royalty
  - Payment as a percentage of production – often  $\frac{1}{4}$
- ▶ Primary Term
  - Grace period before operations – 3 years is plenty

# Special Situations / Issues

- ▶ Operators requesting tax ID #'s
  - How would you get one of these?
  - Just tell them they're ordered to pay, and if they don't (or if they deduct), they can explain to the district judge why they aren't complying.
- ▶ Executing subsequent leases
  - 64.091(f) speaks of leases and subsequent lessees

# Payments

- ▶ Payments under the lease (bonus, royalty)
  - 64.091(h) – paid to district clerk, into registry
  - If sent to you, endorse as “\_\_\_\_\_, Receiver” and deliver to the clerk.
- ▶ Payments for receiver’s services
  - At execution of lease
    - Usually agreed – some pay 5% (352.002, Estates Code)
  - At closing of receivership
    - Also usually agreed – based on service, # of years, etc.



# Closing the Receivership

- ▶ Owners found – purpose no longer exists
- ▶ Alleged owner must prove up his ownership in district court – motion, hearing, etc.
  - Court can even determine heirship if no pending proceeding in county court.
- ▶ Role of receiver
  - Not to agree, but to test the proof of ownership.
- ▶ Receivership closed, and funds distributed

# Oil and Gas Leases – County

- ▶ County-owned minerals
- ▶ Necessary for similar reasons as receiverships
  - Economics – no “carried interests”
  - Encourage development of the land
  - Prevent Drainage

# Guidelines for Leasing

- ▶ Taxpayers' property
  - Sale or lease governed by statute
- ▶ Chapter 71, Natural Resources Code
  - 71.002 – authority to lease
  - 71.003 – governing body (commissioners court)

# Process for Leasing

- ▶ 71.004 - notice and hearing
- ▶ 71.005 - newspaper notice of intent lease
- ▶ 71.006 - bids considered
- ▶ 71.007 - can reject bids and seek again
- ▶ 71.008 - public auction is an alternative
- ▶ 71.009 - no less than one-eighth royalty ( $\frac{1}{8}$ )
- ▶ 71.010 - no primary term  $>$  10 years (3)
- ▶ 71.052 - ok to include pooling provisions

# Contact Information

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