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LEASING LANDS SUBJECT TO THE TEXAS RELINQUISHMENT ACT

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I. INTRODUCTION

Beginning in 1839, the State of Texas appropriated and set aside large quantities of land for the support of public schools and asylums.[1] The state used two approaches in the sale of these lands. When the purchaser acquired title to the surface estate, the state either released the mineral estate to the purchaser, whereby the purchaser acquired title to the minerals,[2] or the state expressly reserved all mineral interest for its own benefit.[3] The Relinquishment Act of 1919 codified the latter approach but

1. For a brief history of the enactments which led to the development of the school land fund in Texas, see 2 TEX. CONST. ANN. art. 7, § 2, Interpretative Commentary, at 379-80 (Vernon 1955).

2. *See* TEX. CONST. art. 14, § 7. *See generally* Cox v. Robison, 105 Tex. 426, 437, 150 S.W.2d 1149, 1155 (1912).

3. *See* Greene v. Robison, 109 Tex. 367, 373, 210 S.W. 498, 499 (1919); TEX. NAT. RES. CODE ANN. § 52.171 (Vernon 1978). All section numbers used herein for the Relinquishment Act of 1919 refer to the Natural Resources Code. The revisor's note provides:

> This subchapter reproduces the law commonly referred to as the Relinquishment Act . . . . Because the meaning and effect of that Act have been almost continuously litigated ever since its enactment and any redrafting might result in a substantive change, its text is reproduced verbatim—the only change being in the numbering of its provisions.

TEX. NAT. RES. CODE ANN. §§ 52.171-52.186, Revisor's Note (Vernon 1978 & Supp. 1982).

allowed the "owner of the soil" to act as agent of the state in leasing the right to extract oil and gas specifically reserved by the state.[4] The Relinquishment Act is designed to ensure the cooperation of the surface owner in the development of state owned oil and gas by providing that the surface owner receive one-half all bonus and royalty over a statutory minimum[5] as compensation for damage to the surface estate caused by drilling operations.[6] The Act thereby encourages active cooperation between the surface owner, lessee of the mineral interest, and the state

II. Background and Purpose of the Relinquishment Act

The Relinquishment Act of 1919 was designed to adequately compensate the surface owner for damages to his land caused by the lessee of the state's mineral interest.[7] Under the former Permit and Lease Act of 1913,[8] as amended in 1917,[9] purchasers of public school lands acquired no interest in the underlying minerals; instead, all mineral interest was reserved to the state and subject to lease upon application to the state.[10] Prior to the Relinquishment Act, the surface owner's remedy for damages resulting from drilling operations was a ten cent per acre annual fee.[11] Surface owners considered this inadequate compensation for the loss of a portion of their property rights. To prevent armed resistance by the landowner against the state's lessee, the legislature enacted the Relinquishment Act of 1919.[12]

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4. *See* Norman v. Giles, 148 Tex. 21, 26, 219 S.W.2d 678, 681 (1949); State v. Magnolia Petroleum Co., 173 S.W.2d 186, 189 (Tex. Civ. App.—San Antonio 1943, writ ref'd w.o.m.).

5. Tex. Nat. Res. Code Ann. § 52.172 (Vernon 1978); *see* Empire Gas & Fuel Co. v. State, 121 Tex. 138, 159, 47 S.W.2d 265, 272 (1932).

6. *See* Greene v. Robison, 117 Tex. 516, 531, 8 S.W.2d 655, 660 (1928).

7. *See id.* at 531, 8 S.W.2d at 659-60; Walker, *The Texas Relinquishment Act*, Sw. Legal Foundation 1st Inst. On Oil & Gas Law & Tax. 245, 256 (1949).

8. 1913 Tex. Gen. Laws, ch. 173, § 9, at 413.

9. 1917 Tex. Gen. Laws, ch. 83, § 4, at 159.

10. *See* Empire Gas & Fuel Co. v. State, 121 Tex. 138, 152-53, 47 S.W.2d 265, 270 (1932); *Texas Land Titles* (pt. 2)—*Relinquishment Of State Owned Minerals—The Agency Relationship Between The "Owner Of The Soil" And The State*, 7 St. Mary's L.J. 58, 64 (1975).

11. *See* 1917 Tex. Gen. Laws, ch. 83, § 4, at 159; 1913 Tex. Gen Laws, ch. 173, § 9, at 413; 3 F. Lange, Land Titles and Title Examination § 234, at 375 (Texas Practice 1961). Under this system, the state was entitled to receive all bonus, royalty, and other consideration paid by the lessee. *See* 1917 Tex. Gen. Laws, ch. 83, § 4, at 159; 1913 Tex. Gen. Laws, ch. 173, § 9, at 413; Walker, *The Texas Relinquishment Act*, Sw. Legal Foundation 1st Inst. On Oil & Gas Law & Tax. 245, 256 (1949).

12. *See* Norman v. Giles, 148 Tex. 21, 26, 219 S.W.2d 678, 681 (1949); Greene v. Robison, 117 Tex. 516, 531, 8 S.W.2d 655, 659-60 (1928); *Texas Land Titles* (pt. 2)—*Relinquishment Of State Owned Minerals—The Agency Relationship Between The "Owner Of The Soil" And The State*, 7 St. Mary's L.J. 58, 64 (1975). The Relinquishment Act was designed

The Act provides that the "owner of the soil" is the state's agent authorized to lease oil and gas under any surveyed and unsurveyed public free school and asylum lands sold with a mineral classification or mineral reservation.[13] In consideration for acting as the state's agent, the owner is entitled to "an undivided fifteen-sixteenths of all oil and gas which has been undeveloped . . . ."[14] The owner and state, however, share equally in bonuses and royalties exceeding ten cents per acre.[15] In addition to compensating the owner for damage to his soil,[16] the Act secures the cooperation of the surface owner in developing state owned minerals by providing that compensation is payable to the owner only when he executes a lease as agent of the state.[17]

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to resolve the conflicting interests of the state and landowners to permit and encourage oil and gas production on lands subject to the Act. *See* 3 F. LANGE, LAND TITLES AND TITLE EXAMINATION § 234, at 275 (Texas Practice 1961); Walker, *The Texas Relinquishment Act*, SW. LEGAL FOUNDATION 1ST INST. ON OIL & GAS LAW & TAX. 245, 256 (1949). *See generally*, T. MILLER, THE PUBLIC LANDS OF TEXAS 1519-1970, at 165-66 (1971).

13. *See* Norman v. Giles, 148 Tex. 21, 26, 219 S.W.2d 678, 681 (1949); State v. Magnolia Petroleum Co., 173 S.W.2d 186, 189 (Tex. Civ. App.—San Antonio 1943, writ ref'd w.o.m.); TEX. NAT. RES. CODE ANN. § 52.171 (Vernon 1978).

14. TEX. NAT. RES. CODE ANN. § 52.171 (Vernon 1978). The remaining 1/16 interest and its value were reserved by the state for the public school and asylum fund. *See id.* § 52.171.

15. *Id.* § 52.172 (Vernon 1978); *see, e.g.*, Navarro Oil Co. v. Cross, 145 Tex. 562, 567, 200 S.W.2d 616, 618 (1946) (state entitled to one-half bonus money and delay rentals in excess of minimum); Cross v. Shell Oil Co., 144 Tex. 78, 82, 188 S.W.2d 375, 377 (1945) (state and owner entitled to one-half all royalties, bonuses, rentals, or other sums received under lease); Empire Gas & Fuel Co. v. State, 121 Tex. 138, 159, 47 S.W.2d 265, 272 (1932) (state entitled to one-half bonuses or delay rentals under oil and gas lease exceeding ten cents per acre).

16. *See* Greene v. Robison, 117 Tex. 516, 531, 8 S.W.2d 655, 660 (1928). In *Greene v. Robison*, suit was brought to test the constitutionality of the Relinquishment Act. *Id.* at 523, 8 S.W.2d at 656. Immediately after enactment, the Act was thought to vest title to 15/16 of the oil and gas in the landowner. *See* Texas Co. v. State, 134 Tex. 494, 501, 281 S.W.2d 83, 87 (1955). Opponents contended that this was in violation of the constitutional mandate that lands appropriated "to the public free school fund shall be sold under such regulations . . . prescribed by law . . . ." Greene v. Robison, 117 Tex. 516, 526, 8 S.W.2d 655, 657 (1928). In order to uphold the constitutionality of the Act, the court held that no title passed; the owner was merely the agent of the state to lease the state's oil and gas. *Id.* at 531-32, 8 S.W.2d at 660. The compensation received by the owner was not part of the proceeds of a sale, but was regarded as compensation paid to the owner for the lessee's use of the surface estate. Hence, the compensation paid the landowner did not concern passage of title to the minerals, and therefore did not violate the constitution. *See* Walker, *The Texas Relinquishment Act*, SW. LEGAL FOUNDATION 1ST INST. ON OIL & GAS LAW & TAX. 245, 260-61 (1949).

17. *See* Greene v. Robison, 117 Tex. 516, 531, 8 S.W.2d 655, 660 (1928) ("If the joint owners [state and surface owner] do not co-operate, . . . the purposes and efforts of each are jeopardized and destroyed").

III. Land Subject to The Act

In general, surveyed and unsurveyed public free school and asylum lands are subject to the Act, including such lands sold with a mineral classification or reservation.[18] The public free school fund land, described in the Constitution of 1876,[19] consists of more than 42,500,000 acres of land set apart and appropriated for the support of the public schools.[20] Mineral rights were not retained by the state in any lands sold to the public except when the land had been classified as mineral land at the time of sale, or when the land was sold with an express reservation of the minerals by the state.[21] Of the 42,500,000 acres of public free school land, approximately 7,400,000 acres satisfy the above requirements and are subject to the terms of the Relinquishment Act.[22]

Prior to the Relinquishment Act, various mineral release enactments, both constitutional[23] and statutory,[24] were worded as present releases of the minerals to the owners of the soil. These releases, however, operated retrospectively only.[25] The effective date of the last mineral release act, September 1, 1895,[26] therefore, is of extreme importance since it is accepted that title research regarding mineral ownership need go no further back than this date.[27] If the title in question had its origin prior to that date, the State of Texas has no interest in any of the minerals in the

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18. *See* Tex. Nat. Res. Code Ann. § 52.171 (Vernon 1978). Mineral classified land vested title to the minerals in the state if the minerals were expressly reserved when sold. *See* Walker, *The Texas Relinquishment Act*, Sw. Legal Foundation 1st Inst. On Oil & Gas Law & Tax. 245, 250-51 (1949).

19. Tex. Const. art. VII, § 2.

20. *See* Walker, *The Texas Relinquishment Act*, Sw. Legal Foundation 1st Inst. On Oil & Gas Law & Tax. 245, 248 (1949).

21. *See* Greene v. Robison, 109 Tex. 367, 373, 210 S.W. 498, 499 (1919). In *Schendell v. Rogan*, the supreme court held that unless the instruments of sale and land office records clearly classified the land as mineral, the state did not retain ownership of the minerals. *See* Schendell v. Rogan, 94 Tex. 585, 596, 63 S.W. 1001, 1005 (1901). Subsequent to the decision of the supreme court in Cox v. Robison, 105 Tex. 426, 150 S.W. 1149 (1912), the Commissioner of the General Land Office classified all school lands as mineral land. *See* 3 F. Lange, Land Titles and Title Examination § 151, at 273-74 (Texas Practice 1961).

22. *See* T. Miller, The Public Lands of Texas 1519-1970, at 162-63 (1971); Walker, *The Texas Relinquishment Act*, Sw. Legal Foundation 1st Inst. On Oil & Gas Law & Tax. 245, 250 (1949).

23. *See* Tex. Const. art. X, § 9 (1869); Tex. Const. art. VII, § 39 (1866).

24. *See* 1879 Tex. Gen. Laws, ch. 1, § 7, at 545, 7 H. Gammel, Laws of Texas 89 (1898).

25. *See* Buvens v. Robison, 117 Tex. 541, 544, 8 S.W.2d 664, 665 (1928); Cox v. Robison, 105 Tex. 426, 437, 150 S.W. 1149, 1155 (1912).

26. *See* 1879 Tex. Gen. Laws, ch. 4, § 7, at 545, 7 H. Gammel, Laws of Texas 89 (1898).

27. *See* 3 F. Lange, Land Titles and Title Examination § 232, at 364 (Texas Practice 1961); Walker, *The Texas Relinquishment Act*, Sw. Legal Foundation 1st Inst. On Oil & Gas Law & Tax. 245, 246 (1949).

land.[28]

Similarly, the Sales Act of 1931[29] sets forth the state's interest in surveyed and unsurveyed public free school land sold with a mineral reservation after August 21, 1931.[30] Although it did not repeal the Relinquishment Act,[31] the Sales Act of 1931 effectively superseded the Relinquishment Act, so that the Relinquishment Act has no application to any lands sold by the state under the Sales Act of 1931.[32] In short, the Relinquishment Act of 1919 applies only to public free school and asylum lands sold with a mineral classification or reservation during the thirty-six year period between September 1, 1895, and August 21, 1931.[33] If the land was otherwise sold, the purchaser became the absolute owner of all the minerals.[34]

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28. Because the Mineral Release enactments operate retrospectively only, *see* Buvens v. Robison, 117 Tex. 541, 544, 8 S.W.2d 664, 665 (1928); Cox v. Robison, 105 Tex. 426, 437, 150 S.W. 1149, 1155 (1912), purchasers of land before September 1, 1895 acquired title to the minerals as well as the surface estate. Hence, the effect of the Relinquishment Act is limited to that date. *See* Walker, *The Texas Relinquishment Act*, SW. LEGAL FOUNDATION 1ST INST. ON OIL & GAS LAW & TAX. 245, 246 (1949).

29. *See* 1931 Tex. Gen. Laws ch. 271, §§ 1-14, at 452-56. This act, initially codified as article 5421c of the Texas Revised Civil Statutes, has been recodified throughout chapters 51 and 52 of the Natural Resources Code.

30. *See* Wintermann v. McDonald, 129 Tex. 275, 285-86, 102 S.W.2d 167, 172-73, *reh. denied*, 129 Tex. 286, 104 S.W.2d 4 (1937); Tex. Rev. Civ. Stat. Ann. art. 5421c (Vernon 1962); 3 F. LANGE, LAND TITLES AND TITLE EXAMINATION § 232, at 368-69 (Texas Practice 1961).

31. *See* Wintermann v. McDonald, 129 Tex. 275, 285, 102 S.W.2d 167, 172, *reh. denied*, 129 Tex. 286, 104 S.W.2d 4 (1937).

32. *See id.* at 386, 102 S.W.2d at 173; *Texas Land Titles* (pt. 2)—*Relinqishment Of State Owned Minerals—The Agency Relationship Between The "Owner Of The Soil" And The State*, 7 ST. MARY'S L.J. 58, 67 (1975).

33. 3 F. LANGE, LAND TITLES AND TITLE EXAMINATION § 234, at 375 (Texas Practice 1961); Walker, *The Texas Relinquishment Act*, SW. LEGAL FOUNDATION 1ST INST. ON OIL & GAS LAW & TAX. 245, 249 (1949); *see* Buvens v. Robison, 117 Tex. 541, 544, 8 S.W.2d 664, 665 (1928); Cox v. Robison, 105 Tex. 426, 437, 150 S.W. 1149, 1156 (1912).

34. *Texas Land Titles* (pt. 2)—*Relinquishment Of State Owned Minerals—The Agency Relationship Between The "Owner Of The Soil" And The State*, 7 ST. MARY'S L.J. 58, 67 (1975). In Magnolia Petroleum Co. v. Walker, 125 Tex. 430, 83 S.W.2d 929, *cert. denied*, 296 U.S. 623 (1935), land was forfeited for failure to pay interest. The Texas Supreme Court held that upon repurchase, the land remained subject to the Relinquishment Act, the state retaining title to the oil and gas. *See id.* at 441-42, 83 S.W.2d at 935. The repurchaser was still designated an agent to lease the lands for the state. *Id.* at 441-42, 83 S.W.2d at 935. Of 7,400,000 acres of public free school and asylum land forfeited and repurchased, 3,900,000 acres was land sold with a mineral classification and remains subject to the Relinquishment Act. *See* Walker, *The Texas Relinquishment Act*, SW. LEGAL FOUNDATION 1ST INST. ON OIL & GAS LAW & TAX. 245, 251 (1949).

IV. POWER OF THE OWNER

As agent for the state, the owner of the soil is vested with authority to lease oil and gas on certain lands.[35] The question of who is considered the "owner of the soil" was decided in *Humble Oil & Ref. Co. v. Lloyd*,[36] in which the court equated the power to alienate land with ownership of the soil for purposes of the Act.[37] Thus, one who has purchased free school land from the state, paying only part of the purchase price, is the "owner of the soil" within the terms of the Act.[38] Similarly, individuals who own undivided interests in land subject to the Act are considered "owners of the soil" with individual authority to lease oil and gas.[39]

Immediately following passage of the Act, the landowner was thought to have fee title to fifteen-sixteenths of the oil and gas beneath his land.[40]

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35. *See* TEX. NAT. RES. CODE ANN. § 52.171 (Vernon 1978).

36. 108 S.W.2d 213 (Tex. Civ. App.—Beaumont 1937, writ ref'd). In *Humble Oil & Ref. Co. v. Lloyd*, the spouse died intestate leaving children to whom her community one-half interest in a tract of land descended. The surviving husband had the power to lease the tract of land as community survivor. *Id.* at 214-15.

37. *See id.* at 218. While *Humble Oil* dealt with marital property rights, the principle announced would seem to be applicable to other title situations as well. *See* Walker, *The Texas Relinquishment Act*, SW. LEGAL FOUNDATION 1ST INST. ON OIL & GAS LAW & TAX. 245, 280 (1949). As Walker notes, this principle is supported by both policy and logic. Whoever has the ability to alienate the land has the power to create in his grantee, as owner of the soil, the authority to lease land pursuant to the Act and receive compensation. It may be argued that he himself should therefore have the power to lease. This would permit the owner to retain his surface estate and share in the bonuses, rentals, and royalties arising from an oil and gas lease, together with the possibility of enjoying similar rights in the future under subsequent leases, without conveying the surface estate. The landowner may thereby avoid selling the property in order to realize the value of the property rights attached to the land by virtue of the Act. *Id.* at 280-81; *see, e.g.*, Empire Gas & Fuel Co. v. State, 121 Tex. 138, 147-48, 47 S.W.2d 265, 267 (1932) (lease executed by husband as community survivor valid); Sheldon v. Robison, 117 Tex. 537, 538, 8 S.W.2d 662, 663 (1928) (lease executed by husband for deceased wife valid); Humble Oil & Ref. Co. v. Lloyd, 108 S.W.2d 213, 217 (Tex. Civ. App.—Beaumont 1937, writ ref'd) (agency that vested in husband as contract purchaser prior to death of wife remained after her death).

38. *See* Sheldon v. Robison, 117 Tex. 537, 539, 8 S.W.2d 662, 663 (1928); Humble Oil & Ref. Co. v. Lloyd, 108 S.W.2d 213, 218 (Tex. Civ. App.—Beaumont 1937, writ ref'd).

39. *See* Holt v. Giles, 150 Tex. 351, 357, 240 S.W.2d 991, 994 (1951); Walker, *The Texas Relinquishment Act*, SW. LEGAL FOUNDATION 1ST INST. ON OIL & GAS LAW & TAX. 245, 289-91 (1949); GENERAL LAND OFFICE, FORM 5367—GENERAL LAND OFFICE LEASE FORM UNDER RELINQUISHMENT ACT, ¶ 17 (revised September 1981). As a general rule, the owner of an undivided interest may execute an oil and gas lease without joinder of the other owners. *See* White v. Smyth, 147 Tex. 272, 292, 214 S.W.2d 967, 979 (1948).

40. *See* Texas Co. v. State, 154 Tex. 494, 501, 281 S.W.2d 83, 87 (1955); 3 F. LANGE, LAND TITLES AND TITLE EXAMINATION § 151, at 275 (Texas Practice 1961); Walker, *The Texas Relinquishment Act*, SW. LEGAL FOUNDATION 1ST INST. ON OIL & GAS LAW & TAX. 245, 259 (1949).

The supreme court, however, in *Greene v. Robison*,[41] held that the landowner had no title or interest in oil and gas on lands subject to the Act.[42] Although he performs many of the functions of a fee owner, the surface owner cannot convey title in the oil and gas under his property.[43]

A. *Attempted Sales of Mineral Classified Land*

The Texas courts reached inconsistent results in reforming attempted sales of property interests in oil and gas under Relinquishment Act land. In *Permian Oil Co. v. State*,[44] the instrument was in the form of an ordinary deed worded as an absolute grant of seven-eighths of the oil and gas to the grantee.[45] The Austin Court of Civil Appeals, however, held that the instrument "must be construed as being in effect an oil and gas lease by the owners . . . subject to the terms of the act."[46] Because the provisions of the Act could be read into the agreement, the instrument was held valid.[47]

In contrast, the San Antonio Court of Civil Appeals, in *State v. Magnolia Petroleum Co.*,[48] held void an instrument, also in the form of an absolute deed, conveying 15/16, of the oil, gas, and other minerals in the land.[49] Distinguishing *Permian Oil*, the *Magnolia* court stated that to read the provisions of the Act into the instrument would create a contract not intended by the parties.[50] Thus, the owners of the soil had exceeded their authority as agents of the state and the contract was void.[51]

The problem of attempted sales of the mineral interests, however, has been virtually eliminated since the General Land Office has authority to

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41. 117 Tex. 516, 8 S.W.2d 655 (1928).

42. *Id.* at 531-32, 8 S.W.2d at 660. The court stated that the Act, taken as a whole, clearly evidenced a legislative intent that the owner merely act as agent of the state, having no title or interest in the oil and gas. *See id.* at 527, 8 S.W.2d at 658.

43. *See* Texas Co. v. State, 267 S.W.2d 456, 462 (Tex. Civ. App.—San Antonio 1954), *aff'd in part and rev'd in part on other grounds*, 154 Tex. 494, 281 S.W.2d 83 (1955).

44. 161 S.W.2d 568 (Tex. Civ. App.—Austin 1942, no writ).

45. *Id.* at 569. The court stated that the seller attempted to "grant, sell and convey that oil and gas in the north ⅞ of the land to Pure Oil Company by virtue of the title acquired thereto under said special warranty deed, in consideration of $6000 paid in cash . . . . " *Id.* at 569.

46. *Id.* at 569.

47. *Id.* at 570.

48. 173 S.W.2d 186 (Tex. Civ. App.—San Antonio 1943, writ ref'd w.o.m.).

49. *Id.* at 190.

50. *Id.* at 190-91. The court distinguished *Permian Oil Co.* on the basis that a rental had been agreed upon in *Permian Oil Co.*, evidencing a meeting of the minds between the parties. There was no such agreement in *Magnolia Petroleum Co. See id.* at 190-91.

51. *Id.* at 190.

reject any lease which violates a provision of the Act.[52] An attempted sale of a mineral interest owned by the state is such a violation.[53]

B. Assignments

Section 52.172 of the Relinquishment Act, as presently codified, provides that the owner may "sell or lease" the oil and gas subject to the terms of the Act, and "[a]ll leases and sales so made shall be assignable."[54] The validity of an assignment depends upon whether the assignment of rentals and royalties is to accrue under an existing lease or a lease to be executed in the future.[55] Until a lease is executed, an owner has no interest or property right in the oil and gas.[56] As a result, any attempted assignment of compensation paid under a future lease is invalid.[57]

In *Lemar v. Garner*,[58] for example, the owner of the soil executed an oil and gas lease, and thereafter executed a mineral deed to a third party assigning all of the rents and royalties under the existing lease.[59] The owner then conveyed the surface estate.[60] Upholding the assignment of all the unaccrued rentals and royalties under the existing lease,[61] the *Lemar* court reasoned that once the owner executed the lease, he acquired property rights in his share of the rentals and royalties. As such, these rights were freely alienable.[62] When the existing lease terminates, however, the power to make future leases and receive the accompanying rentals and royalties necessarily follows the ownership of the land and cannot be severed.[63]

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52. *See* TEX. ATT'Y GEN. OP. No. 0-6233 (1944).

53. *See generally* TEX. NAT. RES. CODE ANN. § 52.171 (Vernon 1978).

54. *Id.* § 52.172.

55. *See* Lemar v. Garner, 121 Tex. 502, 513, 50 S.W.2d 769, 773 (1932); Walker, *The Texas Relinquishment Act*, SW. LEGAL FOUNDATION 1ST INST. ON OIL & GAS LAW & TAX. 245, 268 (1949).

56. *See* Lemar v. Garner, 121 Tex. 502, 513, 50 S.W.2d 769, 773 (1932).

57. *Cf. id.* at 513, 50 S.W.2d at 773 (owner has no right to assign or convey until lease executed).

58. 121 Tex. 502, 50 S.W.2d 769 (1932).

59. *Id.* at 506, 50 S.W.2d at 769-70.

60. *Id.* at 506, 50 S.W.2d at 770.

61. *Id.* at 513-14, 50 S.W.2d at 773-74. If an oil and gas lease is approved by the General Land Office and agreed to by the lessee, his assignee is bound by and cannot challenge the lease provision as violative of the Relinquishment Act. *See* Phillips Petroleum Co. v. Ham, 228 F.2d 217, 219 (5th Cir. 1955) (applying Texas law).

62. *See* Lemar v. Garner, 121 Tex. 502, 513, 50 S.W.2d 769, 773 (1932). The court stated that when a valid and binding lease is made by the owner of the land, his share of the compensation derived from the lease "become[s] property rights during the period of time for which the lease runs." *Id.* at 513, 50 S.W.2d at 773.

63. *See id.* at 513, 50 S.W.2d at 773. Whenever a mineral lease executed by a prior

V. DUTIES OF THE "OWNER OF THE SOIL"

As an agent of the state, the surface owner has three basic duties and obligations pursuant to the Relinquishment Act. First, the owner is obligated to obtain the best possible price for the lease over and above the statutory minimum of ten cents per acre, per year.[64] To be binding on the state, the lease must recite the actual consideration paid or promised.[65] Since no mineral lease executed by the owner "is effective until a certified copy of the lease is filed in the land office,"[66] the Commissioner may refuse to file a lease if the amount recited is not comparable to current market value.[67]

Second, the surface owner is obligated to pay the state one-half of all bonuses and royalties received in excess of the statutory minimum.[68] In the event the lessee has paid the entire amount to the surface owner, the lessee is entitled to indemnity should the state sue the lessee for its half.[69] Regardless of the disposition of the surface owner's benefits, however, the state is entitled to its bonuses and royalties accrued under the lease.[70]

Finally, in an effort to protect the state's mineral rights, section 52.173 requires the owner to begin drilling a well within 100 days upon discovering that land not subject to the Act, but located within 1000 feet of land

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owner terminates, the owner of the land at the time of termination becomes the agent of the state with authority to sell or lease, as provided for in the Act. *See id.* at 513, 50 S.W.2d at 773.

64. *See* State v. Magnolia Petroleum Co., 173 S.W.2d 186, 189-90 (Tex. Civ. App.—San Antonio 1943, writ ref'd w.o.m.). Market value, satisfying the requirement of best possible price, was defined in *Exxon Corp. v. Middleton* as the price property would bring when it is offered for sale by one who desires, but is not obligated to sell, and bought by one who is under no necessity of buying it. Exxon Corp. v. Middleton, 613 S.W.2d 240, 246 (Tex. 1981).

65. TEX. NAT. RES. CODE ANN. § 52.184 (Vernon 1978).

66. *Id.* § 52.183.

67. It is the duty of the Commissioner of the General Land Office to examine and approve, before filling, leases on lands subject to the Relinquishment Act. TEX. ATT'Y GEN. OP. No. 0-6233 (1944); *see Texas Land Titles* (pt. 2)—*Relinquishment Of State Owned Minerals—The Agency Relationship Between The "Owner Of The Soil" And The State*, 7 ST. MARY'S L.J. 58, 74 (1975).

68. *See, e.g.*, Cross v. Shell Oil Co., 144 Tex. 78, 82, 188 S.W.2d 375, 377 (1945); Lemar v. Garner, 121 Tex. 502, 512, 50 S.W.2d 769, 773 (1932); Empire Gas & Fuel Co. v. State, 121 Tex. 138, 159, 47 S.W.2d 265, 272-73 (1932); *see* TEX. NAT. RES. CODE ANN. § 52.172 (Vernon 1978).

69. *See* Shell Oil Co. v. Lutz, 155 S.W.2d 392, 394 (Tex. Civ. App.—Forth Worth 1941, writ ref'd w.o.m.); Shell Petroleum Corp. v. Tippett, 103 S.W.2d 448, 452 (Tex. Civ. App.—Austin 1937, writ ref'd).

70. *See* Cross v. Shell Oil Co., 144 Tex. 78, 83, 188 S.W.2d 375, 378 (1945). Although the lessor can agree to reduce the annual rentals paid to him, he may not reduce the amount due the state under the terms of the original lease. *Id.* at 83, 188 S.W.2d at 378.

subject to the Act, is producing oil and gas in commercial quantities.[71] By requiring the owner to drill, the state is protecting its oil and gas interest against drainage by wells on adjacent land.[72]

VI. Statutory Forfeiture of Rights

Section 52.174 of the Natural Resources Code provides that if any lessee of land subject to the Act should fail or refuse to drill an offset well upon discovering that adjacent land not subject to the Act is producing oil or gas in commercial quantities, the lease may be forfeited.[73] Prior to 1949, the parties to the lease were charged with notice of their own default.[74] Thus, if the lessee failed to drill the offset well, the agent's leasing authority automatically terminated at the same time as the forfeiture of the lease.[75] As a result of a 1949 Amendment to the Act,[76] however, the lease may be terminated only when the Land Office Commissioner officially declares a forfeiture,[77] notice of which must be given to both the owner of the surface and the owner of the forfeited lease.[78]

Within 30 days after the declaration of the forfeiture, the lease may be reinstated at the discretion of the Commissioner, who must notify the owner that the land is again available for leasing.[79] The forfeiture is not permanent; rather, the forfeited agency rights are automatically reinstated upon the termination of any existing lease subject to the Act.[80]

VII. Identifying the "Owner of the Soil": Who Can Lease

As discussed above, the "owner of the soil" who has power to alienate the land becomes the agent of the State with authority to lease the oil

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71. Tex. Nat. Res. Code Ann. § 52.173 (Vernon 1978).

72. *Id.* § 52.173.

73. *Id.* § 52.174.

74. *See* Norman v. Giles, 148 Tex. 21, 33, 219 S.W.2d 678, 686 (1949) (no notice required before forfeiture, parties are "doubtless charged with notice of their own default").

75. *Id.* at 33, 219 S.W.2d at 686.

76. 1949 Tex. Gen. Laws, ch. 559, § 1, at 1096-97 (presently codified as Tex. Nat. Res. Code Ann. § 52.174 (Vernon 1978)).

77. Tex. Nat. Res. Code Ann. § 52.174 (Vernon 1978). The Commissioner has discretion in forfeiting leases for failure to drill an offset well as required by law. *See* Tex. Att'y Gen. Op. No. 0-1730 (1940). The Commissioner, however, must take some action amounting to a re-entry or its equivalent before forfeiture is effective. *See id.*

78. Tex. Nat. Res. Code Ann. § 52.174 (Vernon 1978). Notice to both the lessor and lessee is required because failure to drill an offset well entails not only a forfeiture of the lease, but also forfeiture of the surface owner's right to act as leasing agent for the state. *Id.* § 52.174; *see* Norman v. Giles, 148 Tex. 21, 31, 219 S.W.2d 678, 683 (1949).

79. Tex. Nat. Res. Code Ann. § 52.174 (Vernon 1978); *see also* Tex. Att'y Gen. Op. No. 0-1730 (1940).

80. Tex. Nat. Res. Code Ann. § 52.174 (Vernon 1978).

and gas.[81] The authority of the possessor of land to lease as agent, however, may be questioned when the possessor is not fee simple owner of the surface.[82] In *Holt v. Giles*,[83] the supreme court refused to allow the grantee of a reservation for ninety-nine years to act as agent, holding that the fee owner of the surface estate was to act as agent in executing a lease for minerals.[84] According to the court, the Act did not intend that a mere possessor, as opposed to the fee simple owner, should have authority to act as agent for the State.[85]

In *Glass v. Skelly Oil Co.*,[86] however, oil and gas leases executed by life tenants were upheld.[87] The life tenants were entitled to receive all income from the property as their own, and were thus owners of the soil within the meaning of the Act.[88] Moreover, since the remainderman could not be

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81. *See* Empire Gas & Fuel Co. v. State, 121 Tex. 138, 147-48, 47 S.W.2d 265, 267 (1932); Sheldon v. Robison, 117 Tex. 537, 538, 8 S.W.2d 662, 663 (1928); Humble Oil & Ref. Co. v. Lloyd, 108 S.W.2d 213, 217 (Tex. Civ. App.—Beaumont 1937, writ ref'd). Generally, a political subdivision is considered "owner of the soil," empowered to lease Relinquishment Act lands as agent of the State. TEX. NAT. RES. CODE ANN. § 71.002 (Vernon 1978). In *Guaranty Petroleum Corp. v. Armstrong*, the supreme court recognized a navigation district as a political subdivision, as distinguished from a state department, board, or agency, with authority to execute an oil and gas lease. *See* Guaranty Petroleum Corp. v. Armstrong, 609 S.W.2d 529, 530-31 (Tex. 1980).

82. *See Texas Land Titles* (pt. 2)—*Relinquishment Of State Owned Minerals—The Agency Relationship Between The "Owner Of The Soil" And The State*, 7 ST. MARY'S L.J. 58, 68 (1975).

83. 150 Tex. 351, 240 S.W.2d 991 (1951).

84. *Id.* at 357, 240 S.W.2d at 994. The Relinquishment Act did not intend that a "person who holds a lease on land . . . should share with the 'owner of the soil' in his compensation for executing a mineral lease on the land, . . . nor that by refusing to execute a mineral lease he could prohibit the owner from executing a mineral lease . . . . " *Id.* at 358, 240 S.W.2d 994.

85. *Id.* at 358, 240 S.W.2d at 994. Because of the nature and length of the surface lease, the dissenting opinion argued that the majority decision denied the surface lessees the "benefits that the Relinquishment Act was intended to confer . . . and defeats one of the purposes of the Act . . . . " *Id.* at 361, 240 S.W.2d at 996 (Smedley, J., dissenting). The use of the land for oil and gas production would damage the lessees in their right to exclusive use of the land, and "it is for damages thus suffered that the Relinquishment Act . . . gives compensation . . . . " *Id.* at 362, 240 S.W.2d at 997 (Smedley, J., dissenting). It must be noted that in *Holt v. Giles* the division of rentals and royalties according to undivided interest in the property was an express provision in the lease agreement. *See* Holt v. Giles, 150 Tex. 351, 357-58, 240 S.W.2d 991, 994 (1951). The Commissioner, however, is authorized to file and accept an oil and gas lease executed by a surface owner who owns only an undivided interest. *See* TEX. ATT'Y GEN. OP. No. 0-975 (1939).

86. 469 S.W.2d 237 (Tex. Civ. App.—El Paso 1971, writ ref'd n.r.e).

87. *See id.* at 240.

88. *Id.* at 240-41. The court distinguished *Holt v. Giles* on the basis that *Holt* involved a tenant for a term of years, which exists subservient to the fee owner, while *Glass* involved a life estate, which exists independent of the estate in remainder. *Id.* at 240.

determined until the expiration of the life estates, any attempt to ascertain the fee owners would be speculative.[89]

If both a life tenant and a vested remainderman own fee title to Relinquishment Act land, the better practice requires the joinder of both in execution of the lease.[90] A further problem is presented, however, when the owner of the remainder cannot be ascertained at the time the lease is executed. In this situation, the state, as principal and owner of the oil and gas to be leased, can protect its own interest by requesting the court to execute a lease by the life tenant.[91] The state receives its share of the compensation, while the proceeds payable to the unascertained remainderman are set aside until the remainderman is ascertained.[92]

Court approval may also be required when two or more individuals hold an undivided interest in land subject to the Act. If able to agree, the desirable policy is for all owners of undivided interests to join in the execution of the lease.[93] If unable to agree, however, the owners may seek a partition of the land, and then execute leases individually.[94]

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89. *Id.* at 240. The reasoning in *Glass v. Skelly Oil Co.* is more in line with the objectives of the Relinquishment Act; since the long-term possessor of the surface is damaged by oil and gas production, he should receive compensation. *See Texas Land Titles* (pt. 2)—*Relinquishment Of State Owned Minerals—The Agency Relationship Between The "Owner Of The Soil" And The State*, 7 ST. MARY'S L.J. 58, 69 (1975).

90. *See* Walker, *The Texas Relinquishment Act*, SW. LEGAL FOUNDATION 1ST INST. ON OIL & GAS LAW & TAX. 245, 287 (1949). While the execution of a Relinquishment Act lease by a life tenant is valid, it does not satisfy the principle established in Humble Oil & Ref. Co. v. Lloyd, 108 S.W.2d 213 (Tex. Civ. App.—Beaumont 1937, writ ref'd), that the individual who has power to alienate the property is considered "owner of the soil" to act as agent for the state. *See id.* at 218. The joinder of the life tenant with the remainderman in the execution of an oil and gas lease would seem the most practical solution to satisfy this principle. *Compare* Humble Oil & Ref. Co. v. Lloyd, 108 S.W.2d 213, 218 (Tex. Civ. App.—Beaumont 1937, writ ref'd) (person with power to alienate the property is considered "owner of the soil") *with* Glass v. Skelly Oil Co., 469 S.W.2d 237, 240 (Tex. Civ. App.—El Paso 1971, writ ref'd n.r.e.) (execution of Relinquishment Act lease by life tenant valid).

91. *See* Walker, *The Texas Relinquishment Act*, SW. LEGAL FOUNDATION 1ST INST. ON OIL & GAS LAW & TAX. 245, 288 (1949). The state should be allowed to protect its own interest as principal and as actual owner of the oil and gas. *See* Lewis v. Oates, 145 Tex. 77, 92, 195 S.W.2d 123, 132 (1946) (state is party at interest whenever agent executes lease of state's mineral interest). To further protect the state's interest, section 52.186 of the Natural Resources Code permits leasing land subject to the Act when the owner of the soil, or owner of an undivided interest therein, cannot be located. The Commissioner, however, must be satisfied that reasonable diligence was used in the attempt to find the surface owner. This section also provides for the reinstatement of rights if the owner subsequently appears. *See* TEX. NAT. RES. CODE ANN. § 52.186 (Vernon Supp. 1982).

92. *See* Walker, *The Texas Relinquishment Act*, SW. LEGAL FOUNDATION 1ST INST. ON OIL & GAS LAW & TAX. 245, 287-88 (1949).

93. *See generally id.* at 289.

94. Generally, any joint owner may compel a partition between the other joint owners. *See* TEX. REV. CIV. STAT. ANN. art. 6082 (Vernon 1970). A cotenant, however, may lease his

It is clear that an owner of the soil who executes a lease as agent of the state is entitled to one-half of the rentals and royalties above the statutory minimum for the life of the lease.[95] In the event the owner sells the surface land during the term of an existing lease, he may lose the right to receive royalties, which will pass with title to the surface land. The owner may convey title to the surface land and still retain the opportunity to benefit from future oil and gas development by expressly reserving the right to receive rentals and royalties to accrue during the life of the lease.[96] The conveyance, however, should be made only after a certified copy of the lease is recorded and has been actually filed with the General Land Office[97] since the former landowner is only entitled to benefits accruing under a lease executed while he was still the owner of the soil.[98]

VIII. Leasing Under The Act

Initially, the prospective purchaser of Relinquishment Act land must determine the status of the land. If the land was minerally classified[99] and

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undivided interest in the property without consent of fellow cotenants. *See, e.g.*, White v. Smyth, 147 Tex. 272, 292, 214 S.W.2d 967, 979 (1948) (undivided mineral interest extends ownership rights of each cotenant to all minerals); Willson v. Superior Oil Co., 274 S.W.2d 947, 950 (Tex. Civ. App.—Texarkana 1954, writ ref'd n.r.e.) (each cotenant may explore, drill, and develop the oil and gas on premises); Powell v. Johnson, 170 S.W.2d 273, 277 (Tex. Civ. App.—Texarkana) (cotenant may produce oil subject to other cotenant's rights), *aff'd sub nom.* Rancho Oil Co. v. Powell, 142 Tex. 63, 175 S.W.2d 960 (1943). *See generally* Jones, *Problems Presented by Joint Ownership of Oil, Gas and Other Minerals*, 32 Texas L. Rev. 697, 708 (1954). The owners of such undivided interests share in the royalties and rentals to be paid in the proportion their percentage of ownership bears to the whole and undivided surface estate. *See* Smith v. Sabine Royalty Corp., 556 S.W.2d 365, 367 (Tex. Civ. App.—Amarillo 1977, no writ); Willson v. Superior Oil Co., 274 S.W.2d 947, 950 (Tex. Civ. App.—Texarkana 1954, writ ref'd n.r.e.).

95. *See, e.g.*, Cross v. Shell Oil Co., 144 Tex. 78, 82, 188 S.W.2d 375, 377 (1945); Navarro Oil Co. v. Cross, 139 Tex. 272, 275-76, 162 S.W.2d 677, 679 (1942); Empire Gas & Fuel Co. v. State, 121 Tex. 138, 159, 47 S.W.2d 265, 272-73 (1932).

96. *See* Walker, *The Texas Relinquishment Act*, Sw. Legal Foundation 1st Inst. On Oil & Gas Law & Tax. 245, 272 (1949). The landowner has the right to profit from a lease executed prior to the sale of the surface land because, upon execution of the lease, the landowner acquires valuable property rights in the oil and gas, which rights continue for the duration of the lease. *See* Lemar v. Garner, 121 Tex. 502, 513, 50 S.W.2d 769, 773 (1932).

97. *See* Walker, *The Texas Relinquishment Act*, Sw. Legal Foundation 1st Inst. On Oil & Gas Law & Tax. 245, 272 (1949). The conveyance should be made only after actual filing with the land office, because a lease is not effective until filed. *See* Tex. Nat. Res. Code Ann. § 52.183 (Vernon 1978).

98. *See* Walker, *The Texas Relinquishment Act*, Sw. Legal Foundation 1st Inst. On Oil & Gas Law & Tax. 245, 272 (1949).

99. Land which was minerally classified vested title to the minerals in the state if the minerals were expressly reserved when sold. *See* Tex. Nat. Res. Code Ann. § 52.171 (Vernon 1978); Walker, *The Texas Relinquishment Act*, Sw. Legal Foundation 1st Inst.

sold by the state within the 36 year period subject to the Act, the state, not the landowner, holds title to the minerals.[100] It is important to distinguish minerally classified land sold by the state after 1931, because that land is subject to the "Free Royalty Act,"[101] not the Relinquishment Act. To determine if the land is minerally classified land, the owner of the land should examine the classification records of the General Land Office.[102]

If the history of the land or the chain of title is unclear, the purchaser may order a certificate of facts from the General Land Office.[103] A certificate of facts is simply a statement of significant title facts, as shown by the Land Office records, that relates to a tract of land, lease, or legal instrument.[104] The certificate, moreover, records transactions back to when the State sold the land.[105] The certificate of facts, however, only supplements a title search of the property.

Once it is established the land is subject to the Act, the purchaser and lessee of the oil and gas must be aware of the minimum amounts payable to the landowner and the state.[106] If the amount of delay rental is not specified in the lease, the rental is one dollar per acre in addition to the statutory minimum rental of ten cents per acre.[107] The Land Office must receive the delay rental "on or before the rental anniversary date of the

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ON OIL & GAS LAW & TAX. 245, 250-51 (1949).

100. *See* Greene v. Robison, 117 Tex. 516, 531-32, 8 S.W.2d 655, 660 (1928); TEX. NAT. RES. CODE ANN. § 52.171 (Vernon 1978). To ascertain whether the state reserved the minerals in the sale of public school or asylum land after 1895, an examination of the General Land Office records is necessary to determine if the land is formally classified or designated as mineral. *See* 3 F. LANGE, LAND TITLES AND TITLE EXAMINATION § 151, at 274 (Texas Practice 1961). For the sake of accuracy, this information should be obtained from the classification records, not the application or sales register. *See id.* at 274.

101. *See* TEX. NAT. RES. CODE ANN. § 52.054 (Vernon 1978). The "Free Royalty Act" provided that minerals produced on school land subject to the Act and reserved to the state must not bear any part of the expense of production, sale, or delivery thereof; hence the royalty paid to the state is in effect "free." *See* Wintermann v. McDonald, 129 Tex. 275, 282, 102 S.W.2d 167, 170-71, *reh. denied*, 129 Tex. 286, 104 S.W.2d 4 (1937).

102. It is important to examine the classification records, because it is by operation of law, not the language of the application or the recitations of the patent, that reserves the minerals to the state. *See* 3 F. LANGE, LAND TITLES AND TITLE EXAMINATION § 234, at 376-77 (Texas Practice 1961).

103. TEX. ADMIN. CODE ANN. tit. 31, § 11.3 (McGraw-Hill 1981). The order for a certificate of facts should specify the type of certificate desired, the legal description of the land involved, and a detailed description of the particular lot, subdivision, or other tract desired. *Id.* tit. 31, § 11.1.

104. *Id.* tit. 31, § 11.1.

105. *See generally id.* tit. 31, § 11.3.

106. TEX. NAT. RES. CODE ANN. § 52.172 (Vernon 1978).

107. *See* GENERAL LAND OFFICE, FORM 5367—GENERAL LAND OFFICE LEASE FORM UNDER RELINQUISHMENT ACT, ¶ 10 (revised September 1981).

lease."[108] If the delay rental is not received timely, the lease terminates[109] and all rights thereunder revert to the state.[110]

Similarly, if a minimum royalty is not provided in the lease, the royalty may not be less than an amount equal to the total annual delay rental provided in the lease.[111] If the royalty is not paid within thirty days of the due date, the Commissioner may declare a forfeiture.[112] In the event of forfeiture, to secure payment of royalties or other sums due, the oil and gas produced from the leased premises is subject to a first lien in favor of the state.[113]

If there is no production at the end of the primary term of the lease, the lease will expire of its own terms.[114] The lease, however, remains in force if the lessee is engaged in drilling operations which result in the production of oil and/or gas in paying quantities, or if the lease provides payment of shut-in royalties.[115]

The General Land Office recommends the following procedure for executing and filing leases for the production of oil and gas on Relinquish-

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108. *See* TEX. ADMIN. CODE ANN. tit. 31, § 3.31 (McGraw-Hill 1979).

109. *Id.* tit. 31, § 3.31. It is important to note that the General Land Office need not take affirmative action for a lease to terminate; a lease will automatically terminate by operation of its own terms for two reasons. First, a cessation of production will terminate the lease, unless the lessee commences re-working operations within 60 days. *See* GENERAL LAND OFFICE, FORM 5367—GENERAL LAND OFFICE LEASE FORM UNDER RELINQUISHMENT ACT, ¶ 12 (revised September 1981). Second, failure to timely pay delay rentals will terminate the lease. *See* TEX. ADMIN. CODE ANN. tit. 31, § 3.31 (McGraw-Hill 1981). *See generally* H. Williams & C. Meyers, MANUAL OF OIL AND GAS TERMS 597 (1976). Because a lease will terminate by operation of its own terms, failure of the Land Office to send notice of termination does not invalidate or nullify the termination. *See* TEX. ADMIN. CODE ANN. tit. 31, § 3.14 (McGraw-Hill 1980).

110. *Id.* tit. 31, § 3.31.

111. *See* GENERAL LAND OFFICE, FORM 5367—GENERAL LAND OFFICE LEASE FORM UNDER RELINQUISHMENT ACT, ¶ 10 (revised September 1981).

112. *See* TEX. ADMIN. CODE ANN. tit. 31, § 3.12 (McGraw-Hill 1980). While the Land Office permits parties other than the lessee to remit royalties as a matter of convenience, the lessee bears all responsibility for the proper and timely payment of royalties and the proper and timely filing of reports and documents. *Id.* tit. 31, § 3.5(a). A forfeiture, distinguished from a termination, is a discretionary act by the Commissioner of the Land Office predicated on the occurrance or nonoccurrance of some event. *See* TEX. ATT'Y GEN. OP. NO. 0-1730 (1940) (Commissioner has discretion in forfeiting leases for failure to drill offset well).

113. *See* TEX. ADMIN. CODE ANN. tit. 31, § 3.12 (McGraw-Hill 1981); GENERAL LAND OFFICE, FORM 5367—GENERAL LAND OFFICE LEASE FORM UNDER RELINQUISHMENT ACT, ¶ 7 (revised September 1981).

114. The expiration will occur unless the lessee is then engaged in drilling or reworking operations. *See* GENERAL LAND OFFICE, FORM 5367—GENERAL LAND OFFICE LEASE FORM UNDER RELINQUISHMENT ACT ¶¶ 12, 13 (revised September 1981). An expiration, distinguished from a termination, occurs when the primary term of the lease has run and does not cut short the amount of time the lease runs. *See id.* ¶ 13.

115. *See id.* ¶ 13.

ment Act lands.[116] The General Land Office should first examine and approve a copy of an unexecuted, unrecorded lease. This is to prevent the necessity of obtaining a release and re-execution or re-recordation of the lease in the event the lease is disapproved as to form or consideration.[117] When the lease is approved as to both form and consideration, a certified copy of the lease, together with any bonus or filing fee owed the State, should be forwarded to the General Land Office for filing.[118]

Before the lease will be accepted for filing by the Commissioner, the lease must recite the true and actual consideration paid.[119] This requirement is designed to protect the state's interest in the oil and gas, because the Commissioner must be satisfied that the consideration is reasonable in relation to current market value.[120] The lease must also recite the full or undivided fractional interest of the surface owner; the amount of bonus per acre; the lease term, not to exceed five years in the primary term; the royalty; and the rental, either per acre or the total amount.[121]

The Land Office will not accept for filing a lease executed by an attorney-in-fact for the owner of the soil, a person of unsound mind, or by a

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116. *See* GENERAL LAND OFFICE, SUGGESTED PROCEDURE FOR FILING LEASES IN THE GENERAL LAND OFFICE (1980).

117. A lease will be disapproved as to form if the lease includes a provision which violates a section of the Relinquishment Act, such as providing additional consideration in which the state does not share, *cf.* Cross v. Shell Oil Co., 144 Tex. 78, 82, 188 S.W.2d 375, 377 (1945) (parol agreement that landowner should receive all annual rental payments contradicts written instrument), or an attempted sale of the mineral interest by the surface owner. *See* State v. Magnolia Petroleum Co., 173 S.W.2d 186, 190 (Tex. Civ. App.—San Antonio 1943, writ ref'd w.o.m.) (landowner as agent not authorized to execute deed absolute to oil and gas under Relinquishment Act land).

118. *See* GENERAL LAND OFFICE, SUGGESTED PROCEDURE FOR FILING LEASES IN THE GENERAL LAND OFFICE (1980). Because a lease is not effective until filed, TEX. NAT. RES. CODE ANN. § 52.183 (Vernon 1978), if the Commissioner refuses to accept a lease for filing, the lease is ineffective. In this situation, a direct mandamus proceeding in the supreme court is the lessor's remedy against the Commissioner. *See* Standard v. Sadler, 383 S.W.2d 391, 393 (Tex. 1964).

119. TEX. NAT. RES. CODE ANN. § 52.184 (Vernon 1978). A lease will be disapproved as to consideration if the consideration is not stated in the lease, *id.* § 52.184, or if the compensation provided is unreasonably below current market value. *See* State v. Magnolia Petroleum Co., 173 S.W.2d 186, 189-90 (Tex. Civ. App.—San Antonio 1943, writ ref'd w.o.m.); TEX. ADMIN. CODE ANN. tit. 31, § 11.11(c) (McGraw-Hill 1979).

120. The Land Office will test the adequacy of the consideration by the "market value existing at the time a certified copy of the lease is offered for filing in the land office." TEX. ADMIN. CODE ANN. tit. 31, § 11.11(c) (McGraw-Hill 1979).

121. *See* TEX. GEN. LAND OFFICE, NOTICE: REQUIREMENTS FOR RELINQUISHMENT ACT OIL & GAS LEASES. The primary term of the lease may be for a period longer than five years if permitted by the Commissioner. *See* TEX. ADMIN. CODE ANN. tit. 31, § 11.11(f) (McGraw-Hill 1979). While the primary lease term may only exceed 5 years with the Commissioner's approval, the Commissioner may accept an extension contract as a new lease and file as such. *See* TEX. ATT'Y GEN. OP. No. 0-7269 (1946).

minor.[122] All terms of the agreement must be incorporated in the lease instrument, not in a collateral contract or agreement.[123] The Land Office, moreover, will not approve a contract to execute a Relinquishment Act lease.[124] Except as permitted by the Commissioner, a lease may not contain more than 2560 acres of land.[125] The lease may not include both land subject to the Act and land not subject to the Act.[126]

The Relinquishment Act provides only one method of statutory termination of the landowner's rights. Section 52.174 requires the owner, lessee, or other agent in control of the land to begin drilling an offset well upon discovering the land is being drained by production on land not subject to the Act.[127] Without a statutory violation, however, the landowner's rights may also terminate upon a showing of fraud or intentional noncompliance with the provisions of the Act.[128]

IX. CONCLUSION

The agency concept employed under the Relinquishment Act provides the most practical solution to development of state owned oil and gas. Although the surface owner has no title to the oil and gas,[129] he benefits as if he were fee owner. Conversely, the state receives valuable revenue from the proceeds of production.[130] The Act, moreover, facilitates the leasing process by giving the surface owner discretion in choosing the lessee, while relieving the state of the burden of executing leases. By compensating the landowner for damages to the surface estate caused by oil and gas production, the Act promotes and encourages the execution of leases, thereby supporting the public school land fund.[131] Finally, the leasing procedures and requirements have developed into the most effi-

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122. *See* TEX. ADMIN. CODE ANN. tit. 31, § 11.11(d) (McGraw-Hill 1979).

123. *See id.* tit. 31, § 11.11(e).

124. *See id.* tit. 31, § 11.11(e).

125. A full section is 640 acres; thus, a lease may not contain more than four full sections, or 2560 acres. *See id.* tit. 31, § 11.11(g).

126. *See id.* tit. 31, § 11.11(g); TEX. ATT'Y GEN. OP. NO. 0-5700 (1943). A certified copy of the lease must be provided from each county if the land lies in more than one county. *See* TEX. ADMIN. CODE ANN. tit. 31, § 11.11(c) (McGraw-Hill 1981).

127. TEX. NAT. RES. CODE ANN. § 52.174 (Vernon 1978).

128. *See* State v. Standard, 414 S.W.2d 148, 153 (Tex. 1967). The Act presumes a continuing agency unless forfeited on the statutory ground, or "perhaps on equitable grounds . . . such as fraud of the agent, or his failure or inability to act." *Id.* at 153.

129. *See* Greene v. Robison, 117 Tex. 516, 531-32, 8 S.W.2d 655, 660 (1928).

130. *See* Navarro Oil Co. v. Cross, 145 Tex. 562, 567, 200 S.W.2d 616, 618 (1946); TEX. NAT. RES. CODE ANN. § 52.172 (Vernon 1978).

131. *See* Greene v. Robison, 117 Tex. 516, 526, 8 S.W.2d 655, 657 (1928).

cient and practical means of carrying out the purposes of the Relinquishment Act.[132]

132. *See generally* TEX. ADMIN. CODE ANN. tit. 31, §§ 11.11-11.14 (McGraw-Hill 1981).