

**KEY ISSUES IN TITLE INVESTIGATION**  
**And other conservation easement hot topics**  
**March 3, 2017**  
**Texas Land Conservation Conference**  
**Allison Elder and Burgess Jackson**

**Land Trust Alliance Standards and Practices, Practice 9H, Title Investigation and Subordination:**

**Indicator Practice 9H. Title Investigation and Subordination**

The land trust investigates title to each property for which it intends to acquire title or an easement to be sure that it is negotiating with the legal owner(s) and to uncover liens, mortgages, mineral or other leases, water rights and/or other encumbrances or matters of record that may affect the transaction. Mortgages, liens and other encumbrances that could result in extinguishment of the easement or significantly undermine the important conservation values on the property are discharged or properly subordinated to the easement.

What is title? Title is ownership.

In Texas, title may be divided between the surface and subsurface (oil, gas, and other minerals).

Surface estate

- Possession
- Development (residential, commercial)
- Agriculture, grazing
- Water
- Hunting, fishing
- Sand, gravel, coal, stone
- Leasing or granting easements

Mineral estate – oil, gas, and other minerals – does not include sand, gravel, coal, stone

Key Point: Grantor of conservation easement must be owner of surface estate

How do you know who owner is?

Pre-Accreditation: Land Trust would get copy of landowner's deed

Accreditation Era: Title investigation

Title reports and title insurance – difference: with title insurance, the insuring company pays if there is a title defect that defeats the grantee's title (subject to title exceptions disclosed in the commitment).

## Commitments for title insurance

### Schedule A

1. Insured party – your land trust
2. Insured interest – conservation easement (unless fee transaction)
3. Record title owner – this is the name of the Grantor in the CE
4. Property description of **conservation easement** property
  - Field notes – Exhibit A property description of CE
  - Survey plat – survey should match field notes

### Schedule B – Exceptions to Coverage

- Boilerplate exceptions – tidelands, navigable waterways, material liens, etc.
- Access easements
- Utility easements
- Mineral leases
- Property access (if CE on portion of a tract, may not connect with public road – need access easement or CE fails)

### Schedule C – Title company requirements prior to closing

- Mortgages – must be paid off or subordinated before or at time conservation easement is recorded

What does title insurance cost?

Why haven't I received my title insurance policy?

Closing the conservation transaction:

Title company can collect signatures

Signature authority – general: authority of a certain person to sign documents.

Board president has authority to sign by law. Executive Director often given right to sign in bylaws. Can also be given by board resolution.

Signature authority – specific: authority of a certain person to sign THIS document – done by board resolution

Closing instructions – don't close until ... This allows land trust to instruct title company not to record documents until certain conditions met (e.g., mortgage paid off, exception for lack of access to public road removed, etc.).

**MORAL: CLOSE WITH TITLE COMPANY**

## Texas Property Law: Surface, Minerals & Groundwater

Understanding severances

## Surface Water in Texas: Texas Water Code 11.021

TCEQ Oversight

Sample Adjudication

## Groundwater in Texas

Rule of Capture

Subject to regulation

Sample Permit

## Minerals in Texas

What is a mineral?

Exceptions

What is a mineral lease?

Components of the mineral estate

The dominant estate

Mechanisms to protect the surface

Drilling regulations in Texas

Accommodation doctrine

Investigating mineral title in Texas

Curing mineral severances

Accommodation doctrine applied to water – 2016

Burgess Jackson  
Law Office of Burgess Jackson  
1206 W Saint Johns Ave  
Austin, TX 78757  
(512) 699-9012  
burgess@conservationlaw.net

Allison Elder  
San Antonio River Authority  
100 E. Guenther Street  
San Antonio, Texas 78204  
(210) 302-3229  
aelder@sara-tx.org

THE FOLLOWING COMMITMENT FOR TITLE INSURANCE IS NOT VALID UNLESS YOUR NAME AND THE POLICY AMOUNT ARE SHOWN IN SCHEDULE A, AND OUR AUTHORIZED REPRESENTATIVE HAS COUNTERSIGNED BELOW.

**COMMITMENT FOR TITLE INSURANCE  
ISSUED BY**

**STEWART TITLE GUARANTY COMPANY**

We, STEWART TITLE GUARANTY COMPANY, will issue our title insurance policy or policies (the Policy) to You (the proposed insured) upon payment of the premium and other charges due, and compliance with the requirements in Schedule C. Our Policy will be in the form approved by the Texas Department of Insurance at the date of issuance, and will insure your interest in the land described in Schedule A. The estimated premium for our Policy and applicable endorsements is shown on Schedule D. There may be additional charges such as recording fees, and expedited delivery expenses.

This Commitment ends ninety (90) days from the effective date, unless the Policy is issued sooner, or failure to issue the Policy is our fault. Our liability and obligations to you are under the express terms of this Commitment and end when this Commitment expires.

In witness whereof, the Company has caused this commitment to be signed and sealed as of the effective date of commitment as shown in Schedule A, the commitment to become valid and binding only when countersigned by an authorized signatory.

Countersigned by:

  
Authorized Countersignature

**stewart**  
title guaranty company



  
Matt Morris  
President and CEO

STEWART TITLE GUARANTY  
COMPANY  
- DIRECT OPERATIONS

  
Denise Carraux  
Secretary

## CONDITIONS AND STIPULATIONS

1. If you have actual knowledge of any matter which may affect the title or mortgage covered by this Commitment, that is not shown in Schedule B, you must notify us in writing. If you do not notify us in writing, our liability to you is ended or reduced to the extent that your failure to notify us affects our liability. If you do notify us, or we learn of such matter, we may amend Schedule B, but we will not be relieved of liability already incurred.
2. Our liability is only to you, and others who are included in the definition of Insured in the Policy to be issued. Our liability is only for actual loss incurred in your reliance on this Commitment to comply with its requirements or to acquire the interest in the land. Our liability is limited to the amount shown in Schedule A of this Commitment and will be subject to the following terms of the Policy: Insuring Provisions, Conditions and Stipulations, and Exclusions.

All notices required to be given the Company and any statement in writing required to be furnished the Company shall be addressed to it at

All notices required to be given the Company and any statement in writing required to be furnished the Company shall be addressed to it at

## STEWART TITLE GUARANTY COMPANY

### IMPORTANT INFORMATION

FOR INFORMATION, OR  
TO MAKE A COMPLAINT  
CALL OUR TOLL-FREE TELE-  
PHONE NUMBER

1-800-729-1902

ALSO  
YOU MAY CONTACT  
THE TEXAS DEPARTMENT  
OF INSURANCE AT

1-800-252-3439

to obtain information on:

1. filing a complaint against an insurance company or agent,
2. whether an insurance company or agent is licensed,
3. complaints received against an insurance company or agent,
4. policyholder rights, and
5. a list of consumer publications and services available through the Department.

YOU MAY ALSO WRITE TO  
THE TEXAS DEPARTMENT OF  
INSURANCE  
P.O. BOX 149104  
AUSTIN, TEXAS 78714-9104  
FAX NO. (512) 490-1007

### AVISO IMPORTANTE

PARA INFORMACION, O  
PARA SOMETER UNA QUEJA  
LLAME AL NUMERO GRATIS

1-800-729-1902

TAMBIEN  
PUEDE COMUNICARSE CON  
EL DEPARTAMENTO DE SEGUROS  
DE TEXAS AL

1-800-252-3439

para obtener informacion sobre:

1. como someter una queja en contra de una compania de seguros o agente de seguros,
2. si una compania de seguros o agente de seguros tiene licencia,
3. quejas recibidas en contra de una compania de seguros o agente de seguros,
4. los derechos del asegurado, y
5. una lista de publicaciones y servicios para consumidores disponibles a traves del Departamento.

TAMBIEN PUEDE ESCRIBIR AL  
DEPARTAMENTO DE SEGUROS DE  
TEXAS  
P.O. BOX 149104  
AUSTIN, TEXAS 78714-9104  
FAX NO. (512) 490-1007

**STEWART TITLE GUARANTY COMPANY**  
**TEXAS TITLE INSURANCE INFORMATION**

Title insurance insures you against loss resulting from certain risks to your title.

The commitment for Title Insurance is the title insurance company's promise to issue the title insurance policy. The commitment is a legal document. You should review it carefully to completely understand it before your closing date.

El seguro de titulo le asegura en relacion a perdidas resultantes de ciertos riesgos que pueden afectar el titulo de su propiedad.

El Compromiso para Seguro de Titulo es la promesa de la compania aseguradora de titulos de emitir la poliza de seguro de titulo. El Compromiso es un documento legal. Usted debe leerlo cuidadosamente y entenderlo completamente antes de la fecha para finalizar su transaccion.

Your commitment for Title Insurance is a legal contract between you and us. The Commitment is not an opinion or report of your title. It is a contract to issue you a policy subject to the Commitment's terms and requirements.

Before issuing a Commitment for Title Insurance (the Commitment) or a Title Insurance Policy (the Policy), the title insurance Company (the Company) determines whether the title is insurable. This determination has already been made. Part of that determination involves the Company's decision to insure the title except for certain risks that will not be covered by the Policy. Some of these risks are listed in Schedule B of the attached Commitment as Exceptions. Other risks are stated in the Policy as Exclusions. These risks will not be covered by the Policy. The Policy is not an abstract of title nor does a Company have an obligation to determine the ownership of any mineral interest.

MINERALS AND MINERAL RIGHTS may not be covered by the Policy. The Company may be unwilling to insure title unless there is an exclusion or an exception as to Minerals and Mineral Rights in the Policy. Optional endorsements insuring certain risks involving minerals, and the use of improvements (excluding lawns, shrubbery and trees) and permanent buildings may be available for purchase. If the title insurer issues the title policy with an exclusion or exception to the minerals and mineral rights, neither this Policy, nor the optional endorsements, ensure that the purchaser has title to the mineral rights related to the surface estate.

Another part of the determination involves whether the promise to insure is conditioned upon certain requirements being met. Schedule C of the Commitment lists these requirements that must be satisfied or the Company will refuse to cover them. You may want to discuss any matters shown in Schedules B and C of the Commitment with an attorney. These matters will affect your title and your use of the land.

When your Policy is issued, the coverage will be limited by the Policy's Exceptions, Exclusions and Conditions, defined below.

- EXCEPTIONS are title risks that a Policy generally covers but does not cover in a particular instance. Exceptions are shown on Schedule B or discussed in Schedule C of the Commitment. They can also be added if you do not comply with the Conditions section of the Commitment. When the Policy is issued, all Exceptions will be on Schedule B of the Policy.
- EXCLUSIONS are title risks that a Policy generally does not cover. Exclusions are contained in the Policy but not shown or discussed in the Commitment.
- CONDITIONS are additional provisions that qualify or limit your coverage. Conditions include your responsibilities and those of the Company. They are contained in the Policy but not shown or discussed in the Commitment. The Policy Conditions are not the same as the Commitment Conditions.

You can get a copy of the policy form approved by the Texas Department of Insurance by calling the Title Insurance Company at 1-800-729-1902 or by calling the title insurance agent that issued the Commitment. The Texas Department of Insurance may revise the policy form from time to time.

You can also get a brochure that explains the policy from the Texas Department of Insurance by calling 1-800-252-3439.

Before the Policy is issued, you may request changes in the Policy. Some of the changes to consider are:

- Request amendment of the "area and boundary" exception (Schedule B, paragraph 2). To get this amendment, you must furnish a survey and comply with other requirements of the Company. On the Owner's Policy, you must pay an additional premium for the amendment. If the survey is acceptable to the Company and if the Company's other requirements are met, your Policy will insure you against loss because of discrepancies or conflicts in boundary lines, encroachments or protrusions, or overlapping of improvements. The Company may then decide not to insure against specific boundary or survey problems by making special exceptions in the Policy. Whether or not you request amendment of the "area and boundary" exception, you should determine whether you want to purchase and review a survey if a survey is not being provided to you.
- Allow the Company to add an exception to "rights of parties in possession". If you refuse this exception, the Company or the title insurance agent may inspect the property. The Company may except to and not insure you against the rights of specific persons, such as renters, adverse owners or easement holders who occupy the land. The Company may charge you for the inspection. If you want to make your own inspection, you must sign a Waiver of Inspection form and allow the Company to add this exception to your Policy.

The entire premium for a Policy must be paid when the Policy is issued. You will not owe any additional premiums unless you want to increase your coverage at a later date and the Company agrees to add an Increased Value Endorsement.

COMMITMENT FOR TITLE INSURANCE  
SCHEDULE A

File No. 16000331513	Effective Date: October 17, 2016 at 8:00 AM
Closer: Deborah Maduzia	Issued October 25, 2016 at 12:06 PM

1. The policy or policies to be issued are:

- (a) OWNER'S POLICY OF TITLE INSURANCE (Form T-1)  
(Not applicable for improved one-to-four family residential real estate)  
Policy Amount: T.B.D.  
PROPOSED INSURED: Texas Land Conservancy
- (b) TEXAS RESIDENTIAL OWNER'S POLICY OF TITLE INSURANCE  
--ONE-TO-FOUR FAMILY RESIDENCES (Form T-1R)  
Policy Amount: \$  
PROPOSED INSURED:
- (c) LOAN POLICY OF TITLE INSURANCE (Form T-2)  
Policy Amount: \$  
PROPOSED INSURED:  
Proposed Borrower:
- (d) TEXAS SHORT FORM RESIDENTIAL LOAN POLICY OF TITLE INSURANCE (Form T-2R)  
Policy Amount: \$  
PROPOSED INSURED:  
Proposed Borrower:
- (e) LOAN TITLE POLICY BINDER ON INTERIM CONSTRUCTION LOAN (Form T-13)  
Binder Amount: \$  
PROPOSED INSURED:  
Proposed Borrower:
- (f) OTHER -  
Policy Amount: \$  
PROPOSED INSURED:

2. The interest in the land covered by this Commitment is:

Easement Estate

3. Record title to the land on the Effective Date appears to be vested in:

KATY PRAIRIE CONSERVANCY, a Texas non-profit corporation



4. Legal description of the land:

**Property 1:**

Conservation Easement as set forth in instrument recorded in/under Clerk's File No. \_\_\_\_\_ of the Real Property Records of [REDACTED] County, Texas, over and across SEGMENT G, TRACT 5, being 11.3338 acres and being more particularly described by metes and bounds as follows:

SEGMENT G, TRACT 5  
11.3338 ACRES OR 493,702 SQUARE FEET

A TRACT OR PARCEL CONTAINING 11.3338 ACRES OR 493,702 SQUARE FEET OF LAND SITUATED IN THE THOS. COGHILL SURVEY, ABSTRACT 203 OF [REDACTED] COUNTY, TEXAS AND BEING A PORTION OF THAT CERTAIN CALLED 4,476.621 ACRES (TRACT 6, THE [REDACTED] RANCH) AS DESCRIBED IN DEED AND RECORDED IN HARRIS COUNTY CLERK'S FILE NUMBERS J433557, W934810, X711017 AND 20070322578, WITH SAID 11.3338 ACRE TRACT BEING MORE PARTICULARLY DESCRIBED BY METES AND BOUNDS AS FOLLOW, WITH ALL BEARINGS BASED ON THE TEXAS STATE PLANE COORDINATE SYSTEM, SOUTH CENTRAL ZONE (NAD83):

BEGINNING AT A SET 5/8 INCH IRON ROD WITH ALUMINUM CAP STAMPED "CONSERVATION EASEMENT BOUNDARY" (X=2,969,578.74 Y=13,908,454.58 NAD83 GRID COORDINATES), FROM WHICH A 5/8 INCH IRON ROD FOUND FOR THE SOUTHEAST CORNER OF THE R. HALL SURVEY, ABSTRACT 349 AND THE NORTHEAST CORNER OF THE SAML. EVERETT SURVEY, ABSTRACT 1015 BEARS NORTH 09° 24' 16" EAST, A DISTANCE OF 7,846.56 FEET AND A 1/2 INCH IRON ROD FOUND FOR THE SOUTHEAST CORNER OF H.T&B.R.R. CO. SURVEY, ABSTRACT 1227, SAME BEING A SOUTHWEST CORNER OF SAID CALLED 4,476.621 ACRE TRACT, BEARS SOUTH 44° 02' 36" WEST, A DISTANCE OF 10,761.70 FEET;

THENCE, THE FOLLOWING COURSES AND DISTANCE AROUND THE BOUNDARY OF SAID 11.3338 ACRE TRACT:

L151. SOUTH 37° 30' 33" EAST, A DISTANCE OF 585.33 FEET TO A SET 5/8 INCH IRON ROD WITH ALUMINUM CAP STAMPED "CONSERVATION EASEMENT BOUNDARY";

L152. SOUTH 20° 02' 32" EAST, A DISTANCE OF 527.99 FEET TO A SET 5/8 INCH IRON ROD WITH ALUMINUM CAP STAMPED "CONSERVATION EASEMENT BOUNDARY";

L153. SOUTH 21° 40' 37" EAST, A DISTANCE OF 322.69 FEET TO A SET 5/8 INCH IRON ROD WITH ALUMINUM CAP STAMPED "SURVEY CONTROL MONUMENT";

L154. SOUTH 61° 00' 14" WEST, A DISTANCE OF 358.46 FEET TO A SET 5/8 INCH IRON ROD WITH ALUMINUM CAP STAMPED "CONSERVATION EASEMENT BOUNDARY";

L155. NORTH 20° 34' 06" WEST, A DISTANCE OF 835.08 FEET TO A SET 5/8 INCH IRON ROD WITH ALUMINUM CAP STAMPED "CONSERVATION EASEMENT BOUNDARY";

L156. NORTH 33° 34' 42" WEST, A DISTANCE OF 583.34 FEET TO A SET 5/8 INCH IRON ROD WITH ALUMINUM CAP STAMPED "CONSERVATION EASEMENT BOUNDARY";

L110. NORTH 58° 40' 46" EAST, A DISTANCE OF 319.57 FEET TO THE POINT OF BEGINNING AND CONTAINING 11.3338 ACRES OR 493,702 SQUARE FEET OF LAND, AS SHOWN ON JOB NO. 49842WC, PREPARED BY WINDROSE LAND SERVICES INC.

**Property 2:**

Access easement and right-of-way as set forth in Easement recorded in/under Clerk's File No. \_\_\_\_\_ of the Real Property Records of [REDACTED] County, Texas.



**SCHEDULE B****EXCEPTIONS FROM COVERAGE**

In addition to the Exclusions and Conditions and Stipulations, your Policy will not cover loss, costs, attorney's fees, and expenses resulting from:

1. ~~The following restrictive covenants of record itemized below (We must either insert specific recording data or delete this exception):~~
2. Any discrepancies, conflicts, or shortages in area or boundary lines, or any encroachments or protrusions, or any overlapping of improvements.
3. Homestead or community property or survivorship rights, if any of any spouse of any insured. (Applies to the Owner's Policy only.)
4. Any titles or rights asserted by anyone, including but not limited to, persons, the public, corporations, governments or other entities,
  - a. to tidelands, or land comprising the shores or beds of navigable or perennial rivers and streams, lakes, bays gulfs or oceans, or
  - b. to lands beyond the line of the harbor or bulkhead lines as established or changed by any government, or
  - c. to filled-in lands, or artificial islands, or
  - d. to statutory water rights, including riparian rights, or
  - e. to the area extending from the line of mean low tide to the line of vegetation, or the rights of access to that area or easement along and across that area.(Applies to the Owner's Policy only.)
5. Standby fees, taxes and assessments by any taxing authority for the year 2016, and subsequent years; and subsequent taxes and assessments by any taxing authority for prior years due to change in land usage or ownership, but not those taxes or assessments for prior years because of an exemption granted to a previous owner of the property under Section 11.13, Texas Tax Code, or because of improvements not assessed for a previous tax year. (If Texas Short Form Residential Loan Policy of Title Insurance (T-2R) is issued, that policy will substitute "which become due and payable subsequent to Date of Policy" in lieu of "for the year 2016 and subsequent years.")
6. The terms and conditions of the documents creating your interest in the land.
7. Materials furnished or labor performed in connection with planned construction before signing and delivering the lien document described in Schedule A, if the land is part of the homestead of the owner. (Applies to the Loan Title Policy Binder on Interim Construction Loan only, and may be deleted if satisfactory evidence to us before a binder is issued.)
8. Liens and leases that affect the title to the land, but that are subordinate to the lien of the insured mortgage. (Applies to Loan Policy only.)
9. The Exceptions from Coverage and Express Insurance in Schedule B of the Texas Short Form Residential Loan Policy of Title Insurance (T-2R). (Applies to Texas Short Form Residential Loan Policy of Title Insurance (T-2R) only). Separate exceptions 1 through 8 of this Schedule B do not apply to the Texas Short Form Residential Loan Policy of Title Insurance (T-2R).
10. The following matters and all terms of the documents creating or offering evidence of the matters (We must insert matters or delete this exception.):
  - a. Rights of parties in possession. **(Owner Title Policy only)**
  - b. An easement for drainage purposes granted to the County of [REDACTED] by instrument recorded in [Volume 1471](#).

**SCHEDULE B****EXCEPTIONS FROM COVERAGE**

Page 593 of the Deed Records of [REDACTED] County, Texas.

- c. Easement for the Conveyance of Flood, Storm, and Surface Runoff Water from the Overflow of Cypress Creek recorded under Clerk's File No. 20060252077 of the Real Property Records of [REDACTED] County, Texas.
- d. All mineral interests as set forth in Mineral Deed to [REDACTED] Company recorded in Volume 171, Page 598 of the Contract Records, and confirmed in volume 1295, Page 11 of the Deed Records of [REDACTED] County, Texas. The Company makes no representation as to the present ownership of any such interests. There may be leases, grants, exceptions or reservations of interests that are not listed.
- e. Reservation of all interests in minerals unto Nan J. Hillyer, as set forth in Deed to Katy Prairie Conservancy recorded under Clerk's File No. W934810 of the Real Property Records of [REDACTED] County, Texas. The Company makes no representation as to the present ownership of any such interests. There may be leases, grants, exceptions or reservations of interests that are not listed. (As to an undivided 22.45962% interest)
- f. Reservation of all interests in minerals unto Tom Jordan, Jr., et al, as reflected by conveyance of surface only in Deed to Katy Prairie Conservancy recorded under Clerk's File No. X711017 of the Real Property Records of [REDACTED] County, Texas. An undivided 50% interest in said mineral interests conveyed to Katy Prairie Conservancy by Mineral Deed and Mineral Deed of Interest in Salt recorded under Clerk's File Nos. X711018 and X711019, respectively, of the Real Property Records of [REDACTED] County, Texas, with waiver of surface rights as set forth therein. The Company makes no representation as to the present ownership of any such interests. There may be leases, grants, exceptions or reservations of interests that are not listed. (As to an undivided 51.35672% interest)
- g. Reservation of all interests in minerals unto Katy Prairie Conservancy, as reflected by conveyance of surface only in Deed to [REDACTED] et al, recorded under Clerk's File No. 20070322578 of the Real Property Records of [REDACTED] County, Texas. The Company makes no representation as to the present ownership of any such interests. There may be leases, grants, exceptions or reservations of interests that are not listed. (As to an undivided 2.58288% interest)
- h. Texas Water Commission Permit No. 1637, as amended by Permit dated June 14, 1962, recorded at Clerk's File No. B523401 in Volume 4775, Page 196 of the Deed Records of [REDACTED] County, Texas.
- i. Agreement recorded under Clerk's File No. X615547 of the Real Property Records of [REDACTED] County, Texas.
- j. Rights of tenants, and assigns, as tenants only, under currently effective lease agreements.
- k. All leases, grants, exceptions or reservations of coal, lignite, oil, gas and other minerals, together with all rights, privileges, and immunities relating thereto, appearing in the Public Records whether listed in Schedule B or not. There may be leases, grants, exceptions or reservations of mineral interests that are not listed.
- l. Lack of a right of access to and from the Land. Covered Risk number 4 is hereby deleted. (Applies to Owner's Policy (T-1) and/or Loan Policy (T-2) only.)
- m. Subject to any easements, rights-of-way, roadways, encroachments, etc., which a survey or physical inspection of the premises might disclose.
- n. Terms, conditions and stipulations of Conservation Easement recorded in/under Clerk's File No. \_\_\_\_\_ of the Real Property Records of [REDACTED] County, Texas. (As to Property 1)
- o. Terms, conditions and stipulations of Easement recorded in/under Clerk's File No. \_\_\_\_\_ of the Real Property Records of [REDACTED] County, Texas. (As to Property 2)

**SCHEDULE B**  
**EXCEPTIONS FROM COVERAGE**

## SCHEDULE C

Your Policy will not cover loss, costs, attorneys' fees, and expenses resulting from the following requirements that will appear as Exceptions in Schedule B of the Policy, unless you dispose of these matters to our satisfaction, before the date the Policy is issued:

1. Documents creating your title or interest must be approved by us and must be signed, notarized and filed for record.
2. Satisfactory evidence must be provided that:
  - a. no person occupying the land claims any interest in that land against the persons named in paragraph 3 of Schedule A,
  - b. all standby fees, taxes, assessments and charges against the property have been paid,
  - c. all improvements or repairs to the property are completed and accepted by the owner, and that all contractors, subcontractors, laborers and suppliers have been fully paid, and that no mechanic's, laborer's or materialman's liens have attached to the property,
  - d. there is legal right of access to and from the land,
  - e. (on a Loan Policy only) restrictions have not been and will not be violated that affect the validity and priority of the insured mortgage.
3. You must pay the seller or borrower the agreed amount for your property or interest.
4. Any defect, lien or other matter that may affect title to the land or interest insured, that arises or is filed after the effective date of this Commitment.
5. Note: Procedural Rule P-27 as provided for in Section 2561.202, Texas Insurance Code requires that "Good Funds" be received and deposited before a Title Agent may disburse from its Trust Fund Account. Procedural Rule P-27 provides a list of the types of financial documents and instruments which satisfy this requirement. Please be advised that we reserve the right to determine on a case-by-case basis what form of good funds is acceptable.
6.
7. The Company requires for its review a copy of the articles of incorporation, a satisfactory corporate resolution of the Board of Directors authorizing the proposed transaction, Shareholders Resolution where applicable, and satisfactory evidence that the corporation is in good standing in the state of its incorporation. At the time the Company is furnished these items, the Company may make additional requirement or exceptions.
8. The proposed transaction involves the creation of a Conservation Easement over Segment G, Tract 5 as shown on the survey dated August 7, 2013, last revised October 12, 2015, prepared by Glen H. Freeland, RPLS No. 5758, Windrose Land Services, Inc., under Job No. 49842. A Conservation Easement over Segment G, Tracts 1, 2, 3 and 4 as shown on said survey was granted by instrument recorded under Clerk's File No. [20130491801](#) of the Real Property Records of [REDACTED] County, Texas. An Access Easement was granted in connection with such Conservation Easement by instrument recorded under Clerk's File No. [20130491802](#) of the Real Property Records of [REDACTED] County, Texas, specifically affording access to Segment G, Tracts 1, 2, 3 and 4. Segment G, Tract 5 is subject to a lack of a right of access to and from the land. An Access Easement specifically granting access to and from Segment G, Tract 5 is required for the removal of Schedule B, Item 10L.
9. We will require satisfactory Affidavit as to Debts, Liens and Possession. We reserve the right to make additional requirements on the basis of this affidavit.

## SCHEDULE C

10. If a boundary deletion is required, we must be furnished with a new survey showing a plat and containing the correct metes and bounds description of the property to be insured, made by a Licensed Public Surveyor of the State of Texas, acceptable to this company. When same is submitted, it is to be returned to the Examiner for inspection and approval. If prior survey is acceptable, we will require a survey affidavit stating no improvements have been added.

**NOTE:** Title by virtue of Deeds recorded under Clerk's File Nos. [J433557](#) and [N477076](#) of the Real Property Records, and as evidenced by unrecorded Surface Ownership Agreement dated January 1, 1992, and as evidenced by Affidavit of Heirship recorded under Clerk's File No. [W137742](#), and by virtue of Deeds recorded under Clerk's File Nos. [W137743](#), [W934810](#), [X711017](#) and [20070322578](#) of the Real Property Records of  County, Texas.

# COMMITMENT SCHEDULE D

Policy Commitment No.: 16000331513

The information contained in this Schedule (D) does not affect title to or the lien upon the land described in Schedule A hereof, to be insured in any policy(ies) of title insurance to be issued in accordance with this Commitment.

As to Stewart Title Guaranty Company, the Underwriter herein, the following disclosures are made as of December 31, 2013:

A-1. Shareholders owning, controlling or holding, either personally or beneficially, 10% or more of the shares of Stewart Title Guaranty Company as of the last day of the year preceding the date hereinabove set forth are as follows:

Stewart Information Services Corporation -100%

A-2. The members of the Board of Directors of Stewart Title Guaranty Company as of the last day of the year preceding the date hereinabove set forth are as follows: Malcolm Morris, Charles F. Howard, Matthew Morris, Stewart Morris, Stewart Morris, Jr., John Killea and Allen Berryman.

A-3. The fifteen designated officers of Stewart Title Guaranty Company as of the date hereinabove set forth are as follows: Matthew Morris, Chief Executive Officer & President; Allen Berryman, Chief Financial Officer & Assistant Secretary-Treasurer; Murshid Khan, Chief Information Officer; Susan McLauchlan, Chief Human Resources Officer; Stewart Morris, Jr., Senior Chairman of the Board; Malcolm S. Morris, Chairman of the Board & Counsel; Glenn Clements, Group President – Direct Operations; George Houghton, Group President – Agency Operations; Jason Nadeau, Group President – Mortgage and Title Services; John Killea, General Counsel & Chief Compliance Officer; Bruce Hawley, Executive Vice President – National Title Services; Mark Winter, Executive Vice President – Public Policy; Richard Black, Senior Vice President – Underwriting Counsel; James Gosdin, Senior Vice President – Chief Underwriting Counsel & Associate General Counsel; John Rothermel, Senior Vice President – Regional Underwriting Counsel.

As to Stewart Title Guaranty Company - Commercial Services (Title Insurance Agent), the following disclosures are made:

B-1: Shareholders, owners, partners or other persons having, owning or controlling 1% or more of Title Insurance Agent are as follows: **Stewart Title Guaranty Company - 100%**

B-2: Shareholders, owners, partners, or other persons having, owning or controlling 10% or more of any entity that has, owns, or controls 1% or more of Title Insurance Agent are as follows: **Stewart Information Services Corporation - 100%**

B-3: If Title Insurance Agent is a corporation, the following is a list of the members of the Board of Directors:  
Matthew W. Morris, Allen Berryman, John L. Killea

B-4: If Title Insurance Agent is a corporation, the following is a list of its officers:

Matthew W. Morris	Chairman, Chief Executive Officer and President
Allen Berryman	Chief Financial Officer, Assistant Secretary-Treasurer
John L. Killea	General Counsel
Denise Carraux	Secretary & Assistant Treasurer
Ken Anderson, Jr.	Treasurer and Assistant Secretary

C-1. You are entitled to receive advance disclosure of settlement charges in connection with the proposed transaction to which this commitment relates. Upon your request, such disclosure will be made to you. Additionally, the name of any person, firm or corporation receiving a portion of the premium from the settlement of this transaction will be disclosed on the closing or settlement statement.

You are further advised that the estimated title premium\* is:

Owner's Policy	
Loan Policy	
Endorsement Charges	\$0.00
Other	
<b>Total</b>	<b>\$0.00</b>

Of this total amount 15% will be paid to Stewart Title Guaranty Company; 85% will be retained by Title Insurance Agent; and any remainder of the estimated premium will be paid to other parties as follows:

Amount	To Whom	For Services
or	%	
or	%	
or	%	

"The estimated premium is based upon information furnished to us as of the date of this Commitment for Title Insurance. Final determination of the amount of the premium will be made at closing in accordance with the Rules and Regulations adopted by the Commissioner of Insurance."



# STEWART TITLE GUARANTY COMPANY

## DELETION OF ARBITRATION PROVISION

(Not applicable to the Texas Residential Owner's Policy)

ARBITRATION is a common form of alternative dispute resolution. It can be a quicker and cheaper means to settle a dispute with your Title Insurance Company. However, if you agree to arbitrate, you give up your right to take the Title Insurance Company to court and your rights to discovery of evidence may be limited in the arbitration process. In addition, you cannot usually appeal an arbitrator's award.

**Your policy contains an arbitration provision (shown below). It allows you or the Company to require arbitration if the amount of insurance is \$2,000,000 or less. If you want to retain your right to sue the Company in case of a dispute over a claim, you must request deletion of the arbitration provision before the policy is issued. You can do this by signing this form and returning it to the Company at or before the closing of your real estate transaction or by writing to the Company.**

The arbitration provision in the Policy is as follows:

"Either the Company or the Insured may demand that the claim or controversy shall be submitted to arbitration pursuant to the Title Insurance Arbitration Rules of the American Land Title Association ("Rules"). Except as provided in the Rules, there shall be no joinder or consolidation with claims or controversies of other persons. Arbitrable matters may include, but are not limited to, any controversy or claim between the Company and the Insured arising out of or relating to this policy, any service in connection with its issuance or the breach of a policy provision, or to any other controversy or claim arising out of the transaction giving rise to this policy. All arbitrable matters when the Amount of Insurance is \$2,000,000 or less shall be arbitrated at the option of either the Company or the Insured, unless the Insured is an individual person (as distinguished from an Entity). All arbitrable matters when the Amount of Insurance is in excess of \$2,000,000 shall be arbitrated only when agreed to by both the Company and the Insured. Arbitration pursuant to this policy and under the Rules shall be binding upon the parties. Judgment upon the award rendered by the Arbitrator(s) may be entered in any court of competent jurisdiction."

---

SIGNATURE

---

DATE

# STG Privacy Notice Stewart Title Companies

## WHAT DO THE STEWART TITLE COMPANIES DO WITH YOUR PERSONAL INFORMATION?

Federal and applicable state law and regulations give consumers the right to limit some but not all sharing. Federal and applicable state law regulations also require us to tell you how we collect, share, and protect your personal information. Please read this notice carefully to understand how we use your personal information. This privacy notice is distributed on behalf of the Stewart Title Guaranty Company and its title affiliates (the Stewart Title Companies), pursuant to Title V of the Gramm-Leach-Bliley Act (GLBA).

The types of personal information we collect and share depend on the product or service that you have sought through us. This information can include social security numbers and driver's license number.

All financial companies, such as the Stewart Title Companies, need to share customers' personal information to run their everyday business—to process transactions and maintain customer accounts. In the section below, we list the reasons that we can share customers' personal information; the reasons that we choose to share; and whether you can limit this sharing.

Reasons we can share your personal information.	Do we share	Can you limit this sharing?
<b>For our everyday business purposes</b> — to process your transactions and maintain your account. This may include running the business and managing customer accounts, such as processing transactions, mailing, and auditing services, and responding to court orders and legal investigations.	Yes	No
<b>For our marketing purposes</b> — to offer our products and services to you.	Yes	No
<b>For joint marketing with other financial companies</b>	No	We don't share
<b>For our affiliates' everyday business purposes</b> — information about your transactions and experiences. Affiliates are companies related by common ownership or control. They can be financial and non-financial companies. <i>Our affiliates may include companies with a Stewart name; financial companies, such as Stewart Title Company</i>	Yes	No
<b>For our affiliates' everyday business purposes</b> — information about your creditworthiness.	No	We don't share
<b>For our affiliates to market to you</b> — For your convenience, Stewart has developed a means for you to opt out from its affiliates marketing even though such mechanism is not legally required.	Yes	Yes, send your first and last name, the email address used in your transaction, your Stewart file number and the Stewart office location that is handling your transaction by email to <a href="mailto:optout@stewart.com">optout@stewart.com</a> or fax to 1-800-335-9591.
<b>For non-affiliates to market to you.</b> Non-affiliates are companies not related by common ownership or control. They can be financial and non-financial companies.	No	We don't share

We may disclose your personal information to our affiliates or to non-affiliates as permitted by law. If you request a transaction with a non-affiliate, such as a third party insurance company, we will disclose your personal information to that non-affiliate. [We do not control their subsequent use of information, and suggest you refer to their privacy notices.]

## SHARING PRACTICES

<b>How often do the Stewart Title Companies notify me about their practices?</b>	We must notify you about our sharing practices when you request a transaction.
<b>How do the Stewart Title Companies protect my personal information?</b>	To protect your personal information from unauthorized access and use, we use security measures that comply with federal law. These measures include computer, file, and building safeguards.
<b>How do the Stewart Title Companies collect my personal information?</b>	<p>We collect your personal information, for example, when you</p> <ul style="list-style-type: none"> <li>▪ request insurance-related services</li> <li>▪ provide such information to us</li> </ul> <p>We also collect your personal information from others, such as the real estate agent or lender involved in your transaction, credit reporting agencies, affiliates or other companies.</p>
<b>What sharing can I limit?</b>	Although federal and state law give you the right to limit sharing (e.g., opt out) in certain instances, we do not share your personal information in those instances.

**Contact us:** If you have any questions about this privacy notice, please contact us at: Stewart Title Guaranty Company, 1980 Post Oak Blvd., Privacy Officer, Houston, Texas 77056



Deborah Maduzia  
Commercial Unit Supervisor

Stewart Title Guaranty Company -  
Commercial Services



October 25, 2016

File No.: 16000331513  
Title Insurance Commitment and Title Data, Inc.

Dear Customer:

The attached title insurance commitment contains information which has been obtained or derived from records and information owned by Title Data, Inc. or one of its subsidiaries (collectively "Title Data"). Title Data owns and maintains land title plants for various Texas counties. Title Data created its title plants through the investment of extensive time, labor, skill and money. **The information contained in the title plants is protected by federal copyright law and Texas common law on trade secrets and contract.**

Title Data has granted our company a license to use one or more of its title plants. Our company's right to access and use Title Data's title plants is governed by our contract with Title Data. Our contract with Title Data restricts who can receive and/or use a title insurance commitment which is based, in whole or in part, upon Title Data's records and information.

Under the terms of our contract with Title Data, we are permitted to provide you with the attached title insurance commitment **for limited use and distribution only**. Specifically, you are sublicensed to deliver, exhibit, or furnish the attached title insurance commitment (or any copies thereof) **ONLY** to your bona fide employees and a third party who is playing a bona fide role in this proposed real estate transaction, including a lawyer, a lender, a surveyor, a real estate broker or agent, and the parties to this proposed transaction.

For purposes of our agreement with Title Data, "deliver, exhibit, or furnish" includes, without limitation, copying this title insurance commitment (whether such copying be by means of a photocopier, facsimile machine, another electronic scanning device, or any other method of reproduction) and providing such copy to any third party.

Your furnishing of the attached title insurance commitment to anyone not specifically enumerated above is not permitted by our contract with Title Data and constitutes a breach of our sublicense to you. Your furnishing of the attached title insurance commitment to anyone not specifically enumerated above is also a violation of federal copyright law and Texas common law.

Therefore, as an express condition of us providing you with the attached title insurance commitment, you specifically agree to limit its uses to those set forth herein, and to provide a copy of this letter to any party to whom you deliver, exhibit, or furnish the attached title insurance commitment (or any copies thereof).

In the event you are unable or unwilling to comply with these conditions, immediately return the attached title insurance commitment to our company, without reviewing, copying or otherwise utilizing in any way the information contained therein.

**A COPY OF THIS LETTER MUST ACCOMPANY THE ATTACHED TITLE INSURANCE COMMITMENT AT ALL TIMES. ALL DOWNSTREAM RECIPIENTS MUST PROVIDE A COPY OF THIS LETTER TO ANY OTHER AUTHORIZED USERS OF THE ATTACHED TITLE INSURANCE COMMITMENT.**

Thank you for your business.

Sincerely,  
Stewart Title Guaranty Company - Commercial Services

  
Authorized Countersignature



Closing Agent

Title Company

Address

San Antonio Texas 78209

RE: Your GF# 1-XXXXXX

Purchase of Property Address

NAME (Seller) to NAME (Buyer)

Dear Mr. Agent,

I represent the San Antonio River Authority ("SARA"), the Buyer, in connection with the purchase of the above referenced property. Name, Director of Facilities, presented this purchase to the Board of Directors of the San Antonio River Authority on January 20, 2016, and the purchase was approved by the Board at that time. We request to close this transaction on Friday, January 29, 2016.

#### **GENERALLY**

Unless expressly directed by Name, General Manager of the San Antonio River Authority, please do not deviate in any way adverse to Buyer from the Settlement Statement you provided to me on January 15, 2016, showing the net payable at Closing by SARA, as buyer, as being \$Dollar Amount from HUD statement.

#### *Funds*

Please determine that all ancillary documents are fully and properly executed and acknowledged. Please confirm that all blanks are completed before execution.

Before you disburse any of the funds or otherwise advise that this transaction has closed, please deliver to me a current down dated and effective Commitment for Title Insurance or a certified copy of the Owner Policy of Title Insurance, as of the Closing Date.

We do not expect any new liens filed of record from the above-referenced Commitment date until the date of Closing. Please notify me immediately if any new matters of record are filed that effect the subject property.

The effective date of the Owner Policy must be the date of Closing.

The real property described in the Owner Policy must be the same property described in the Survey dated January 6, 2016 by Surveyor of Name Survey Company. Please make sure that the Survey has the correct date.

At your earliest convenience please provide me with any and all forms used by the title company for internal purposes which require the signature of Buyer (e.g. arbitration deletion request, whatever documents deemed necessary to satisfy the requirements of identification associated with the U.S. Patriots Act, etc.)

## **REQUESTED CORRECTIONS TO THE FINAL TITLE INSURANCE POLICY**

Before you disburse any funds or otherwise advise Buyer or Seller that this transaction has closed, please be certain that the title insurer is in a position to issue, and will issue, to Buyer an Owner Policy in the form prescribed by the Texas Department of Insurance and written by the same underwriter issuing the Commitment. The Owner Policy must conform to the Commitment, except as follows:

### **Schedule B:**

2: Please amend this item to read “shortages in area,” upon payment by Seller of the required premium for deletion of the “Survey” exception. This is a condition of our contract.

10b: Please delete this exception regarding rights of tenants in possession upon receipt of a signed affidavit of possession and use.

### **Schedule C:**

Please confirm that all documents establishing title have met with your approval and acceptance.

Please confirm that all elements under this section have been satisfactorily established.

Please delete the arbitration provision from the final policy.

Please be advised that SARA is not a taxable entity, therefore all provisions in the final policy referencing tax obligations on the part of the Buyer should be removed.

Your disbursement of funds certifies to Buyer that all matters disclosed in Schedule C of the Commitment have been or will be paid, satisfied, or otherwise resolved to the complete satisfaction of the title insurer before the date of issuance date of the Owner Policy and that no exceptions for any item on Schedule C will be contained in the Owner Policy.

## **RECORDING**

Please make sure the deed in the form sent to me January 15, 2016 is immediately recorded in the Official Public Records of Bexar County, Texas.

## **ESCROW**

You will be serving as escrow agent pursuant to our escrow agreement. Please be advised that only Allison Elder and Suzanne Scott are authorized by SARA to provide direction to you regarding the distribution or termination of the escrow funds.

If you will comply with these instructions, please return the Acknowledgement of Instructions on the following page, reflecting your agreement by e-signature and respond to my email address: [aelder@sara-tx.org](mailto:aelder@sara-tx.org). If for any reasons you cannot comply strictly with these instructions, then immediately notify me, and return to Buyer the Funds and the other items deposited by Buyer in connection with this transaction.

Thank you in advance for your time and careful attention to these matters. Please do not hesitate to contact me if you have any questions regarding the above.

Very Truly Yours,

Name

### **Acknowledgement of Instructions**

To: San Antonio River Authority

We will (1) comply with the instructions contained in the above letter, (2) provide written assurance from our title underwriter that a closing will, in fact, take place, (3) close the transaction, (4) record and file the deed as instruction, and (5) provide written assurance that Name Title, by and through our title underwriter, will issue or deliver the Owner Policy in the form described in the letter.

Name Title

By: \_\_\_\_\_

Title : \_\_\_\_\_

Printed Name : \_\_\_\_\_

Date: \_\_\_\_\_

CERTIFICATE OF ADJUDICATION

CERTIFICATE OF ADJUDICATION NO: 19-1171      OWNER: Ross Owen Scull  
Route 1, Box 107  
La Vernia, Texas 78121

COUNTY: Wilson      PRIORITY DATE: January 1, 1952

WATERCOURSE: Cibolo Creek      BASIN: San Antonio River

WHEREAS, by final decree of the 57th District Court of Bexar County in Cause No. 74-CI-11635, In Re: The Adjudication of Water Rights in the Cibolo Creek Watershed of the San Antonio River Basin, dated July 28, 1977, as affirmed by the San Antonio Court of Civil Appeals on May 24, 1978, a right was recognized authorizing Ross Owen Scull to appropriate waters of the State of Texas as set forth below:

NOW, THEREFORE, this certificate of adjudication to appropriate waters of the State of Texas in the San Antonio River Basin is issued to Ross Owen Scull, his heirs and assigns, subject to the following terms and conditions:

1. USE

Owner is authorized to divert and use not to exceed 80 acre-feet per annum from Cibolo Creek to irrigate a maximum of 80 acres of land in Wilson County, Texas in Survey No. 6, Abstract No. 15 and Survey No. 7, Abstract No. 7, said tract of land being described as follows:

1. BEGINNING at a point on the southwest bank of Cibolo Creek which is S 88° 30' E, 2,600 feet from the NW corner of the Juan Delgado Survey No. 7, Abstract No. 7, Wilson County, Texas;
2. THENCE S 60° 30' W, 1,120 feet to a corner;
3. THENCE N 29° 45' W, 1,172 feet to a corner;
4. THENCE N 59° 30' W, 117 feet to a corner;
5. THENCE N 40° 30' W, 1,133 feet to a corner;
6. THENCE N 59° 30' E, 1,533 feet to a stake on the southwest bank of Cibolo Creek;
7. THENCE down Cibolo Creek with its meanders to the place of beginning, containing 80.25 acres of land, more or less.

2. DIVERSION

- (a) Point of Diversion: At a point on the southwest bank of Cibolo Creek which is N 62° 00' E, 2,520 feet from the NW corner of the Juan Delgado Survey No. 7, Abstract No. 7, Wilson County, Texas.
- (b) Point of Diversion: At a point on the southwest bank of Cibolo Creek which is N 71° 00' E, 2,725 feet from the NW corner of the Juan Delgado Survey No. 7, Abstract No. 7, Wilson County, Texas.
- (c) Maximum Diversion Rate: 1.34 cfs (600 gpm)

3. PRIORITY

The time priority of owner's right is January 1, 1952.

The locations of pertinent features related to this certificate are shown on Page No. 5 of the Cibolo Creek Certificates of Adjudication Maps, copies of which



CERTIFICATE OF ADJUDICATION NO. 19-1171

are located in the offices of the Texas Department of Water Resources and the office of the County Clerk.

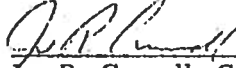
This certificate of adjudication is issued subject to all terms, conditions and provisions provided for in the final decree of the 57th District Court of Bexar County, in Cause No. 74-CI-11635, In Re: The Adjudication of Water Rights in the Cibolo Creek Watershed of the San Antonio River Basin, dated July 28, 1977, as affirmed by the San Antonio Court of Civil Appeals on May 24, 1978, and supersedes all rights of the owner asserted in that cause.

This certificate of adjudication is issued subject to the Rules of the Texas Water Commission and the Texas Department of Water Resources and their continuing right of supervision of State water resources consistent with the public policy of the State set forth in Texas Water Code §1.003.

This water right is appurtenant to and is an undivided part of the above-described land within which irrigation is authorized. A transfer of any portion of the land described includes, unless otherwise specified, a proportionate amount of the water right owned by the owners or sellers at the time of the transaction.

TEXAS WATER COMMISSION

DATE ISSUED:

  
Joe R. Carroll, Commissioner  
For the Commission

September 28, 1978

ATTEST:

  
Mary Ann Hefner, Chief Clerk

A-15

COUNTY

BRL-2JJ-72

Aerial photograph showing a grid overlay on a rural landscape. The grid is labeled with letters A through M and numbers 1 through 10. A road is visible in the lower right corner. The text "BRL-2JJ-72" is printed in the top right corner.

129 A-8

CIBOLA

Cavernia

THIS MAP IS A PORTION OF PAGE  
NO. 5 OF 8 PAGES OF THE CIBOLA  
CREEK WATERSHED CERTIFICATES  
OF ADJUDICATION MAPS

SCALE 1" = 1715' APPROX.

SCALE 1" = 1715' APPROX.

PERMIT TO  
APPROPRIATE STATE WATER

APPLICATION NO. 3911

PERMIT NO. 3619

TYPE: Section 11.12

Permittee : Ross Owen Scull

Address : Route 1, Box 182  
LaVernia, Texas

Received : June 13, 1978

Filed : September 5, 1978

Granted : November 20, 1978

County : Guadalupe

Watercourse: Cibolo Creek, tributary  
of San Antonio River

Watershed: San Antonio  
River Basin

WHEREAS, the Texas Water Commission finds that jurisdiction of the application is established; and

WHEREAS, a public hearing has been held and Ross Owen Scull named as a party; and

WHEREAS, by law the Executive Director and the Public Interest Advocate of the Texas Department of Water Resources are parties; and

WHEREAS, no person appeared to protest the granting of this application; and

WHEREAS, the Commission has assessed the effects of this permit on the bays and estuaries in Texas; and

WHEREAS, the issuance of this permit granting this application is not adverse to any party.

NOW, THEREFORE, this permit to appropriate and use State water is issued to Ross Owen Scull, subject to the following terms and conditions:

1. USE

Permittee is authorized to directly divert and use not to exceed 250 acre-feet of water per annum from Cibolo Creek to irrigate 250 acres of land out of 301.7 acres in two tracts in the M. Ximenes Survey, Abstract No. 38, and the E. Smith Survey, Abstract No. 5, Guadalupe County, Texas, the first tract being more fully described in the deed of conveyance dated October 9, 1959, from W. Cecil McKinney and wife to Ross Scull and of record in Volume 327, pages 194-196 of the Deed Records of Guadalupe County, Texas, and the second tract being more fully described in the deed of conveyance dated March 17, 1960, from Fred H. Nicholson and wife to Ross Scull and referred to therein as "FIRST TRACT," and of record in Volume 330, pages 314-317 of the Deed Records of Guadalupe County, Texas, to which records reference is made for all purposes.

2. DIVERSION

(a) Point of Diversion: Permittee is authorized to divert along the left or east bank of Cibolo Creek between a point on permittee's property which is N 41° 10' W, 565 feet from the NW corner of the aforesaid M. Ximenes Survey and a point which is S 22° E, 1680 feet from the aforesaid survey corner approximately 16 miles SW of Seguin, Texas.

(b) Maximum Diversion Rate: 2.7 cfs (1200 gpm).

3. SPECIAL CONDITIONS

(a) Diversions during the months May through August are authorized only when the remaining flow of Cibolo Creek immediately downstream of the most downstream point of diversion is 11 cfs or greater and permittee shall not reduce the streamflow below 11 cfs by his diversions.

(b) Permittee shall establish a permanent reference marker, which is S 22° E, 1680 feet from the NW corner of the aforesaid M. Ximenes Survey, immediately downstream of the most downstream point of diversion and would indicate when the streamflow equals or exceeds 11 cfs.

This permit is issued subject to all superior and senior water rights in the San Antonio River Basin.

Permittee agrees to be bound by the terms, conditions and provisions contained herein and such agreement is a condition precedent to the granting of this permit.

All other matters requested in the application which are not specifically granted by this permit are denied.

This permit is issued subject to the Rules of the Texas Department of Water Resources and to the right of continual supervision of State water resources exercised by the Department.

TEXAS WATER COMMISSION

/s/ Felix McDonald  
Felix McDonald, Chairman

DATE ISSUED:

/s/ Joe R. Carroll  
Joe R. Carroll, Commissioner

November 30, 1978

/s/ Dorsey B. Hardeman  
Dorsey B. Hardeman, Commissioner

ATTEST:

/s/ Mary Ann Hefner  
Mary Ann Hefner, Chief Clerk

**EDWARDS AQUIFER AUTHORITY  
STATE OF TEXAS  
REGULAR PERMIT No. P100-646 (BE00310)**

**THIS CERTIFIES THAT:**      **San Antonio River Authority  
100 East Guenther  
San Antonio, TX 78204**

has been issued this Regular Permit by the Board of Directors of the Edwards Aquifer Authority to withdraw groundwater from the Edwards Aquifer. This Permit is issued without a term. All prior permits or other approvals are superceded by this Permit.

**Permit Derivation:** BE00310      **Purpose:** Irrigation      **Pool:** San Antonio

**Authorized Annual Groundwater Withdrawal Amount:** 141.359 acre-feet per calendar year of which 0.000 acre-feet are unrestricted irrigation groundwater and 141.359 acre-feet are base irrigation groundwater.

**Place of Use:** The tract(s) of land more fully described in Deed Without Warranty dated 9/5/2013 as recorded with Clerk as Document # 20130187399, Volume 16326, Pages 2085 - 2100, Official Public Records, Bexar County, Texas.


**Withdrawal Point(s); Metering; Maximum Withdrawal Rate:**

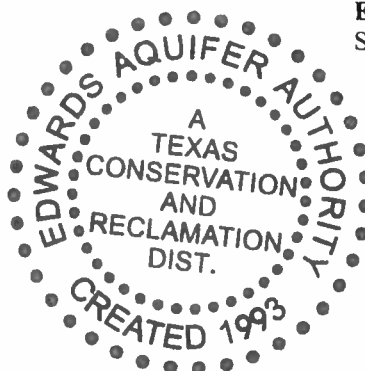
EAA WELL NO.	LOCATION	MEASURING METHOD	WITHDRAWAL RATE
W100-694 (BE00310-001)	29-17.00-48.00 / 98-39.00-40.00	Meter	10 gpm

**Conditions:** Edwards Aquifer groundwater may be withdrawn only under the terms and conditions of this Permit, the Edwards Aquifer Authority Act (Act of May 30, 1993, 73<sup>rd</sup> Leg., R.S., ch. 626, 1993 Tex. Gen. Laws 2350), other applicable general law, and Authority rules, as these may be amended from time to time. This permit is subject to the continuing jurisdiction and supervision of the Authority, and may be amended from time to time consistent with applicable law.

**THIS REGULAR PERMIT IS ISSUED, EXECUTED, AND EFFECTIVE THIS** 30th **day of** Sept, 2013.

  
**LUANA BUCKNER**  
Chairman, Board of Directors

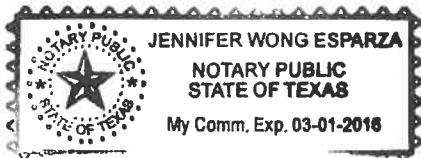
**ATTEST:**  
  
**ENRIQUE VALDIVIA**  
Secretary, Board of Directors

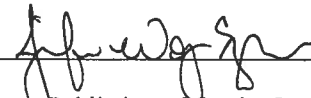


ACKNOWLEDGMENT

STATE OF TEXAS     )  
COUNTY OF BEXAR    )

ON BEHALF OF THE AUTHORITY, THIS PERMIT WAS ACKNOWLEDGED before me on Sept. 30, 2013, by LUANA BUCKNER, Chairman, and ENRIQUE VALDIVIA, Secretary, Board of Directors, Edwards Aquifer Authority, a conservation and reclamation district created pursuant to Art. XVI, Sec.59, Texas Constitution.



  
Notary Public in and for the State of Texas

AFTER RECORDING RETURN TO:


Docket Clerk  
Edwards Aquifer Authority  
900 E. Quincy  
San Antonio, Texas 78215

Any provision herein which restricts the sale, rental or, use of the described REAL PROPERTY because of Color or Race is Invalid and unenforceable under FEDERAL LAW

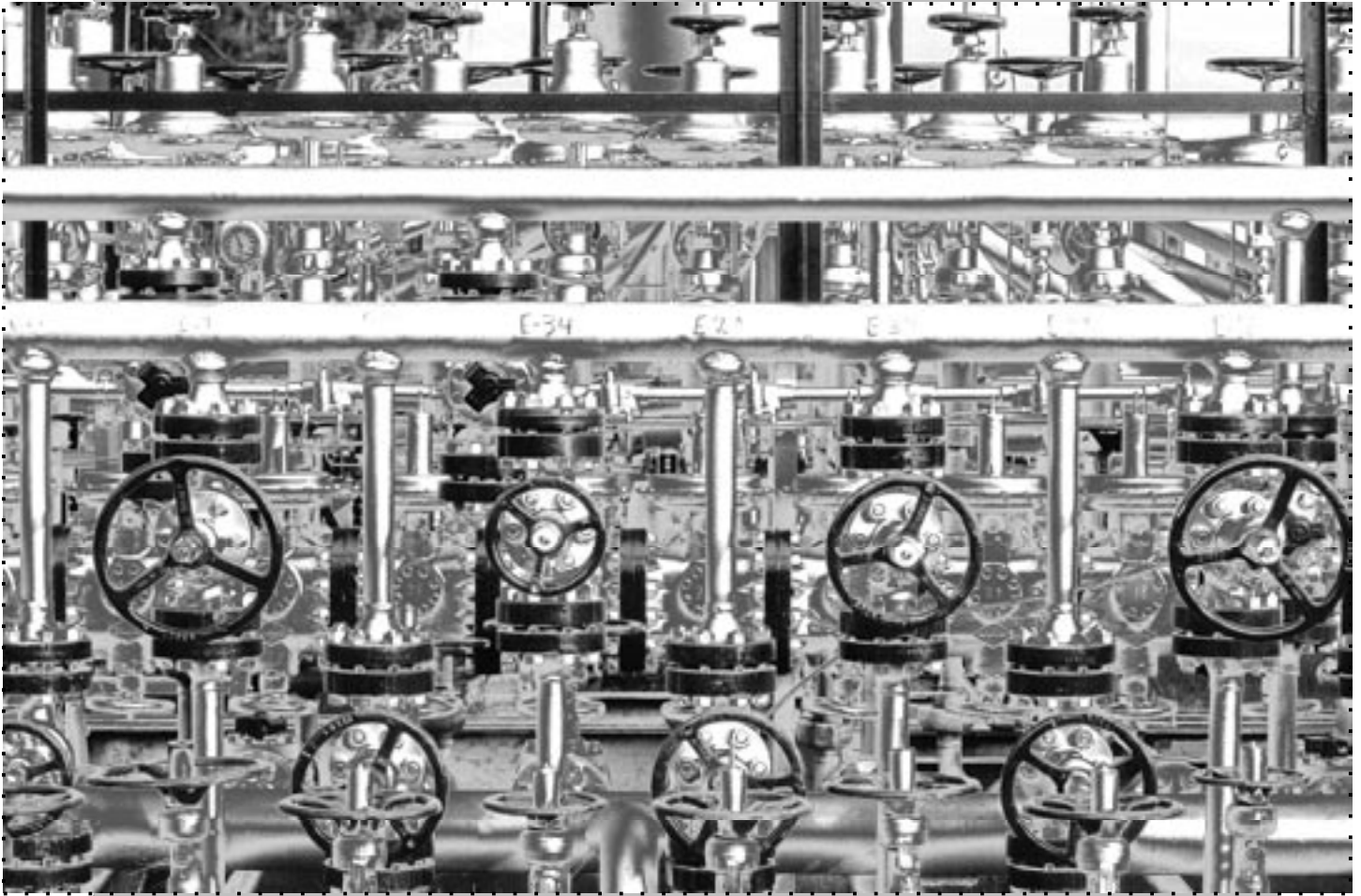
STATE OF TEXAS  
COUNTY OF BEXAR **WATER Permits**

I hereby Certify that this Instrument was FILED on the date and at the time stamped hereon by me and was duly RECORDED in the Volume and Page of the RECORDS of BEXAR COUNTY, TEXAS as stamped hereon by me



  
COUNTY CLERK  
BEXAR COUNTY, TEXAS

Doc# 20130209003 Fees: \$24.00  
10/04/2013 2:26PM # Pages 3  
Filed & Recorded in the Official  
Public Records of BEXAR COUNTY  
GERARD C. RICKHOFF COUNTY CLERK



# Rights and Responsibilities of Mineral Cotenants

Judon Fambrough

Senior Lecturer and Attorney at Law

Special Report 843



# **Rights and Responsibilities of Mineral Cotenants**

**Judon Fambrough**  
Senior Lecturer and Attorney at Law



Revised May 2005  
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# Rights and Responsibilities of Mineral Cotenants

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- 1** Summary
  - Right of Possession
- 2** Accounting Among Cotenants
  - Revenue After Payment
- 3** Leasing to Different Oil Companies
  - Partitioning
  - Fiduciary Duty of the Executive Owner
- 4** Unknown Cotenants
  - Conclusion
- 5** Table 1: Four Leasing and Nonleasing Cotenants
  - Table 2: Six Leasing and Nonleasing Cotenants

Creation of a cotenancy in mineral property poses issues to both co-owners and mineral lessees (oil companies). Many questions can be resolved by recognizing that the rules of possession and accounting that govern ownership and use of the surface apply to the minerals.

The rule of possession permits the mineral lessee to drill anywhere on the property from a legal location with a lease from one mineral cotenant. A mineral lease from all cotenants is not required.

The duty of accounting dictates the manner of distributing the proceeds from the well among the consenting and nonconsenting cotenants before and after payout. The rules vary depending on whether the tract serves as a drill site or as a corridor tract of a horizontal borehole.

In Texas, a mineral lessee may partition the mineral estate among the consenting and nonconsenting cotenants and avoid the duty of accounting.

The following scenario serves as the example throughout this report:

George and his sister Harriet inherited 500 acres from their parents. The inheritance included both the surface and minerals. Recently, several oil companies approached the two seeking to lease their mineral interest.

George, who farms the surface, does not want to lease because of the possible interference with his farming operations. Harriet, who lives in the city, does not care about the surface and wants the revenue from leasing and possible production. George informs his sister that he would negate her efforts by refusing to sign any oil and gas lease.

In Texas, real property is generally divided into three estates, the surface, the minerals and more recently the groundwater. Each may be owned by the same person or entity or separately by different persons or entities. Division of the surface and minerals generally occurs when the person or entity owning both estates sells the surface and retains the minerals.

Texas courts have ruled that any type of estate that can be created in the surface can be created in the minerals. Texas courts also recognize that the same types of cotenancies or co-ownerships can be created in either.

Disagreement among mineral cotenants is a common problem. What happens if one or more cotenants refuse to sign a mineral lease? What affect does this have on the cotenants who sign?

Two rules of law set precedent regarding the rights of cotenants in either surface or minerals. One relates to the right of possession, the other to the duty of accounting.

## Right of Possession

It is well established in Texas that each cotenant has a right to occupy any part of the jointly owned property. One cotenant's right of possession is not exclusive. The possession must be shared.

The rule of possession, when applied to adverse possession, has interesting implications. Can one cotenant adversely possess another? The answer is no, unless one cotenant informs the other that he or she intends to exercise exclusive possession to

all or a part of the property. (This is sometimes referred to as repudiating the other cotenant's title to the land.)

Regarding the second rule, each cotenant must account to the other for all the income and expenses arising from projects conducted on the property by one cotenant without the other's consent. In the opening example, if George is farming the surface, he must account to Harriet each year for farming expenses and divide any resulting profits. However, George has the right to recoup Harriet's share of the farming expenses, if not paid in advance, before dividing the profits.

A review of the mineral estate is helpful in understanding the rules of possession and accounting. Five separate and distinct interests comprise the mineral estate. These include: (1) the right to lease the minerals, sometimes called the *executive right*; (2) the right to develop and produce the minerals; (3) the right to receive bonus; (4) the right to receive delay rentals; and (5) the right to receive royalties.

Generally, when a cotenancy is created in the minerals, each of the five interests is divided equally among the cotenants. The magnitude of the division depends on the number of cotenants.

In the opening example, George and Harriet own an undivided one-half interest in each of the five rights. If there had been ten surviving children, each child could have received an undivided 10 percent interest in each of the mineral rights. At the same time, the parents may have left one child an undivided one-half interest with the remaining nine children sharing the other half.

The five interests do not necessarily have to be divided equally among the cotenants. The mineral interests, sometimes referred to as a bundle of sticks, are capable of being divided or separated in infinite combinations just as five sticks could be physically divided or separated.

For example, what if George and Harriet were just two of five children who inherited the land? Legally, but not practically, the parents could have structured the devise so that each child received one mineral right (or stick) and nothing else. George could have received all the executive rights and Harriet the right to receive all the delay rentals. Each of the other three children could have received one of the remaining three interests.

Going back to the opening example, though, suppose an oil company offers Harriet a three-year lease, \$100-an-acre bonus, a one-sixth royalty and \$5-per-acre annual delay rentals. What impact would it have on George's mineral interest if Harriet signs the lease? The answer is very little, if any.

Harriet owns an undivided right to 50 percent of all the mineral interests. She does not need George's consent to exercise these rights. Thus, the oil company gets a valid lease by paying Harriet a \$25,000 bonus ( $1/2 \times 500 \text{ acres} \times \$100$ ). The oil company would owe her a one-twelfth royalty from production ( $1/2 \times 1/6$ ) and \$1,250 annual delay rentals for each year there are no operations conducted during the primary term ( $1/2 \times 500 \text{ acres} \times \$5$ ).

**Note.** Most oil companies now use "paid-up" leases. This means oil companies tender all delay rentals at the beginning of the lease with the bonus. This avoids subsequent annual payments for delay rentals.

If Harriet signs the lease, on which part of the 500 acres can the oil company drill? The oil company may drill anywhere where seismic tests indicate is a prime location as long as the drill site conforms to the spacing requirements of the Railroad Commission of Texas. Generally, this requires a minimum of 467 feet from a property or lease line. Harriet's right of possession to any portion of the land as a cotenant is transferred to the mineral lessee via the mineral lease.

The same rule applies regardless of the number of co-owners. Only one co-owner needs to enter a mineral lease in order for the oil company to drill anywhere on the property as long as the spacing requirements of the Railroad Commission of Texas are met. Consequently, George cannot block drilling activity on the land by refusing to sign the lease.

## Accounting Among Cotenants

The rule that allows an oil company to drill on the leased premises with one cotenant's consent is tempered by the rule of accounting. Here is how it works.

Suppose Harriet possessed sufficient resources to drill an oil or gas well. She opts to drill her own well rather than enter an oil and gas lease. Can she drill without George's consent?

The answer is yes. By owning half of the minerals, she possesses one half of the right to explore and produce. Her right of possession as a cotenant gives her the right to locate the well wherever she chooses as long as it is a legal location.

Suppose Harriet's test well costs \$500,000. Is George liable for one half of the costs? Again, the answer is yes. George's ownership of one-half the minerals imposes one-half of the reasonable and necessary exploration and drilling costs. However, Texas law does not require any out-of-pocket costs from a nonconsenting mineral cotenant. Instead, the drilling cotenant (Harriet) must recoup George's share of the well costs from his share of future revenue from the well.

In other words, the drilling cotenant must bear all costs in connection with the test well. The drilling cotenant is entitled to reimbursement but only from the nonconsenting cotenant's pro rata share of subsequent revenue. If the drilling venture does not result in production, or does not yield sufficient revenue to cover the nonconsenting cotenant's well costs, the nonconsenting cotenant has no legal or personal obligation

to pay the balance. This is sometimes referred to as a *carried interest*.

If Harriet drills a \$500,000 test well, she has the right to recoup \$250,000 from George's share of future production. Because George owns an undivided one-half of the minerals, the \$250,000 comes from one-half of the first \$500,000 of the well's revenue, taking into account necessary and reasonable marketing costs. If the total revenue never reaches \$500,000, George has no personal liability for the balance.

## Revenue After Payout When One Cotenant Drills

But what happens when Harriet gets reimbursed from George's share of production? What happens to George's interest after payout? In this case, George participates in the well according to his undivided interest. Because George owns an undivided one-half of the minerals, he has the right to receive one-half of the production after payout; again, taking into account reasonable costs of production and marketing.

## Revenue After Payout When Cotenant Leases Drill Site Tract or Tract Serving as Corridor for a Horizontal Borehole

But what happens if Harriet does not drill, but instead leases her half interest to an oil company? According to Texas law, the same rules of accounting apply, except the leasing oil company shoulders the initial drilling costs and assumes the duty of accounting.

Assume Harriet reserves a one-sixth royalty in the lease. George refuses to sign. As before, he becomes liable for one-half the reasonable and necessary exploration and production costs payable from his share of future production. The oil company enters and drills a well for \$500,000. When the company recoups the well costs, George would receive one-half of the well's revenue less reasonable marketing costs until the well ceases to produce, just as before.

Harriet, on the other hand, bears no direct or indirect exploration and production costs and no duty to account. She would receive 1/12th of the production as a royalty ( $1/2 \times 1/6$ ) commencing with the well's first production until it ends.

George may choose to alter his position as a nonconsenting cotenant by ratifying the lease. Ratification occurs when George accepts benefits under the lease or by executing a division order. Ratification allows George to participate in the revenue in the same manner as his sister. There would be no change after payout.

## Revenue After Payout When Cotenant Leases Non-Drill Site Tract or One Not Serving as a Corridor for a Horizontal Borehole

Texas case law recognizes an exception to the rule of accounting when the lease tract does not serve as a drill site nor a corridor tract for a horizontal borehole. The Texas Supreme Court announced the rule in *Superior v. Roberts*, 398 S.W. 2d 276.

In this case, one cotenant, who owned half the minerals, leased to Superior Oil Company. The other cotenant did not lease to anyone. Superior drilled a vertical well, but not on the tract. The tract was included in the pooled unit, though.

When the well reached payout, the nonconsenting cotenant (Roberts) asked Superior for an accounting. Superior refused, and Roberts sued. The Texas Supreme Court ruled that Superior had no duty to account to Roberts in this situation.

Basically, the leasing oil company has no duty to account to a nonconsenting cotenant when:

- One or more of the cotenants lease their undivided interest to an oil company and the lease permits the oil company to pool or unitize the tract.
- The premises are not used as a drill site, but the tract is placed in a pooled unit.
- No contractual relationship exists between the leasing oil company and the nonconsenting cotenant.
- The nonconsenting cotenant has made no attempt to ratify the lease.
- The leasing oil company has not prevented the nonconsenting cotenant from developing the property.

**Note.** The Texas Supreme Court rendered the *Superior* decision in 1966 before the advent of horizontal drilling. The majority of wells at the time were vertical wells. Today, most wells are horizontal wells. The Railroad Commission of Texas views a tract serving as a corridor tract in the same manner as a drill site tract. Hence, legal precedent exists to apply the *Superior* decision to corridor tracts as well as drill site tracts.

## Leasing to Different Oil Companies

Suppose George decides to lease his undivided interest to a different oil company. In other words, Harriet leases to the ABC oil company, and George leases to the XYZ oil company. If ABC enters and drills a producing well, does the XYZ company owe George a royalty from production even though XYZ did not participate in the well?

In Texas, the answer is yes. XYZ must pay royalties to George just as if George had signed with the same oil company as Harriet. Had George signed a lease for a 1/5 royalty, XYZ is liable to George for 1/10 ( $1/2 \times 1/5$ ) of the production or its monetary equivalent.

## Partitioning

However, assume George will not sign a lease with any oil company. If the nonconsenting cotenant's interest is particularly large, as is the case with George, the oil company may lose all desire to take a lease from any other cotenant. The reason is the drastic cut in the oil company's revenue interest (50 percent) once payout is achieved (see table on page 5).

In Texas, the mineral lessee has an alternative. Section 23.001 of the Texas Property Code permits an oil company to partition the rights of the leased mineral cotenants. Partitioning is done according to the number of undivided mineral acres the oil company has leased, assuming the minerals are equally distributed under the tract.

Assume the oil company gets Harriet to sign an oil and gas lease. George absolutely refuses. Furthermore, it is economically infeasible for the oil company to have a 5/12 revenue interest after payout. (See table.) In this case, the oil company may wish to proceed under Section 23.001 of the Texas Property Code and partition 250 mineral acres for Harriet. This

gives Harriet 100 percent of the minerals under 250 acres, and George owns 100 percent of the minerals under the remaining 250 acres. The oil company may then drill on Harriet's 250 partitioned mineral acres. It would have a 5/6 revenue interest before and after payout. George would have no interest in a well drilled on Harriet's partitioned acreage and vice versa.

The partitioning may not be according to the cotenant's undivided interest in the tract. Texas courts seek to ensure the partitioned tracts have equal value, not equal area. Texas case law presumes that any minerals under a tract are distributed equally in the absence of proof to the contrary.

## Fiduciary Duty of the Executive Owner

In the scenario discussed so far, each cotenant owned a part of all five interests comprising the mineral estate. A cotenancy may exist without this arrangement. It is quite common for the five interests to be separated as well as divided among several individuals.

For example, when one cotenant owns all of the surface and a part of the minerals, the surface owner attempts to acquire all the executive rights to fully protect the surface in the event of drilling. The other four interests may be equally divided among the rest of the cotenants.

In the opening example, assume the parents left all the executive rights to George who farms the surface and gives Harriet one-half of the bonus and one-half of the royalties. (This means Harriet receives one-half of whatever royalty George negotiates in the lease.)

Because Harriet acquired no executive rights, she is at George's mercy concerning:

- When a lease is entered,
- The magnitude of the bonus payments,
- The size of the royalty reserved,
- The length of the primary term and
- Other lease terms and provisions.

Texas law recognizes a unique relationship when the executive rights are stripped from one or more of the mineral cotenants who then own only the right to receive royalty. The law imposes a duty of utmost fair dealing (or a fiduciary duty) on the holder of the executive rights when leasing the mineral property. The executive owners must negotiate the best terms possible on behalf of the nonexecutive owners. The executive owner cannot structure a transaction to benefit himself or herself at the nonexecutive owner's expense.

The following represent a few of the examples where the Texas courts have held that the executive owners breached their fiduciary duty by:

- Failing to lease when the land is being drained
- Failing to enter a lease when it was possible to do so, thus depriving the nonexecutive owners of potential revenue
- Developing the property personally when it was possible to do so under a leasing arrangement at greater revenue to the nonexecutive owners
- Failing to share all possible royalties with the nonexecutive owners by negotiating an overriding royalty

Cotenancy does not in itself create the fiduciary duty. It results only when one or more of the mineral cotenants who own a royalty interest are stripped of executive rights.

## Unknown Cotenants

Finally, examination of the rights of cotenants in the mineral estate would not be complete without considering the possibility of an unknown, unascertainable or missing cotenant. Suppose George and Harriet's parents owned an undivided 90 percent of the minerals. The other 10 percent was reserved in 1890. No one can determine who or where the heirs reside today.

The Texas Legislature enacted special rules for missing mineral owners. Section 64.091 of the Texas Civil Practice and Remedies Code provides for the appointment of a receiver to act vicariously on behalf of the missing mineral cotenant(s). The lease proceeds are paid to and retained by the clerk of the district court where the receiver is appointed. The funds are used for the benefit of the unknown owner or owners. However, any unclaimed royalties escheat to the state of Texas after three years.

## Conclusion

The rights of mineral co-owners in Texas are well defined. Because Texas mineral production has occurred more than 100 years, Texas courts have addressed many of the issues that arise.

Basically, Texas courts apply the same rules that govern surface cotenancies to those created in the minerals. In each instance, the courts strive to protect the individual co-owner's rights, yet allow society to benefit from mineral production.

*This report is a revision of reprint 463, which first appeared in Tierra Grande. The overview of the rights of cotenants is for information only and is not intended to substitute for legal counsel. Those concerned about specific aspects of the law involving cotenancy and mineral estates should contact an attorney.*

The Real Estate Center offers additional publications related to mineral leasing:

*Hints on Negotiating an Oil and Gas Lease*, <http://recenter.tamu.edu/pdf/229.pdf>

*Termination of an Oil and Gas Lease*, <http://recenter.tamu.edu/pdf/601>

"Subdivision Drill Sites," <http://recenter.tamu.edu/pdf/690>  
*Minerals, Surface Rights and Royalty Payments*, <http://recenter.tamu.edu/pdf/840>

"Recent Rulings Affecting Oil and Gas Interests," <http://recenter.tamu.edu/pdf/1140>

"Scrutinizing Royalty Payments," <http://recenter.tamu.edu/pdf/1559>

**Table 1. Four Leasing and Nonleasing Cotenants**

Situation One: Four Cotenants – A, B, C and D						
Col. 1	Col. 2	Col. 3	Col. 4	Col. 5	Col. 6	Col. 7
Cotenants and Oil Company	Cotenant's Undivided Interest	Royalty Reserved in Lease	(Col. 2 x Col. 3)  Royalty Received Before Payout	(Col. 2–Col. 4)  Oil Company's Revenue Before Payout	(Same as Col. 4 when lease entered)  Royalty Received After Payout	(Same as Col. 5 when lease entered)  Oil Company's Revenue After Payout
A	1/4	1/6	1/24	5/24	1/24	5/24
B	1/4	1/5	1/20	1/5	1/20	1/5
C	1/4	1/4	1/16	3/16	1/16	3/16
D	1/4	unleased	0*	<u>1/4**</u>	1/4*	<u>0</u>
Oil company	na	na	na	203/240	na	143/240

Source: Real Estate Center at Texas A&M University

**Table 2. Six Leasing and Nonleasing Cotenants**

Situation Two: Six Cotenants – A, B, C, D E and F						
Col. 1	Col. 2	Col. 3	Col. 4	Col. 5	Col. 6	Col. 7
Cotenants and Oil Company	Cotenant's Undivided Interest	Royalty Reserved in Lease	(Col. 2 x Col. 3)  Royalty Received Before Payout	(Col. 2–Col. 4)  Oil Company's Revenue Before Payout	(Same as Col. 4 when lease entered)  Royalty Received After Payout	(Same as Col. 5 when lease entered)  Oil Company's Revenue After Payout
A	1/6	1/6	1/36	5/36	1/36	5/36
B	1/6	1/8	1/48	7/48	1/48	7/48
C	1/6	3/16	1/32	13/96	1/32	13/96
D	1/6	unleased	0*	1/6**	1/6*	0
E	1/6	unleased	0*	1/6**	1/6*	0
F	1/6	unleased	0*	<u>1/6**</u>	1/6*	<u>0</u>
Oil company	na	na	na	265/288	na	121/288

\*Illustrates a nonconsenting cotenant's participation in the revenue of the well before and after payout.

\*\*Illustrates the recoupment of the nonconsenting cotenant's share of costs before payout.

Source: Real Estate Center at Texas A&M University