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**Classification of State Lands
and
Recent Changes to the General Land Office Lease**

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Not all Minerals are Created Equal or Is a State Lease Really all That Different?

The General Land Office manages more than 13 million acres of state mineral lands. However, not all of the lands are classified in the same manner. There are three main classifications of land involving state owned minerals. First, there are state fee lands. These are lands in which the state owns both the mineral and surface estate. These lands are leased for oil and gas production under the procedures outlined in Texas Natural Resources Code 52.011.

The focus of this paper will be on land often referred to as either Relinquishment Act tracts or Free Royalty tracts. A history of both the Relinquishment Act and the 1931 Sales Act that led to the Free Royalty classification will be discussed, as well as the implications in leasing such lands today.

Background

To understand the current state of affairs when leasing state land from the General Land office, we have to take a brief look back at the original classifications of state land, and the legislation governing the original conveyances from the sovereign.

I am in no way attempting to brush aside the history of Texas prior to entering the union, nor the mineral reservations that coincide with that era. However, we have to begin somewhere, so the Constitution of 1876 is a good place to start.

Texas did two important things regarding mineral reservations in the 1876 Constitution, and at first glance they might appear contradictory. However, these apparent contradictions would be cleared up by the Supreme Court...eventually.

The Permanent School Fund

Article VII, Section 2 of The 1876 Constitution established the perpetual public school fund, stating the following:

All funds, lands and other property heretofore set apart and appropriated for the support of public schools; all the alternate sections of land reserved by the State out of grants heretofore made or that may hereafter be made to railroads, or other corporations, or any nature whatsoever; one-half of the public domain of the State, and all sums of money that may come to the State from the sale of any portion of the same, shall constitute a perpetual public school fund.¹

Texas recognized early on that public education was a necessity of this rapidly expanding state, and took important steps to make sure that it was adequately funded. As a practical matter, when the above referenced language was put in place, it set aside more than 42

¹ Tex. Const. of 1876, art. VII, § 2.

million acres of public free school land.² Today, that has led to more than \$11 billion dollars being deposited into the permanent school fund from production of oil and gas on state lands.

Looking back, it's easy to see that securing the mineral rights was a brilliant move by the early legislature. However, it's not as cut and dry as it might appear at first glance. In fact, the constitution had one key provision that seemed to fly in the face of protecting the state's interest in its minerals.

Give it Away

In the very same constitution of 1876, the legislature made another move regarding mineral ownership. Article XIV, Section 7 declared the following:

The State of Texas hereby releases to the owner or owners of the soil all mines and minerals that may be on the same, subject to taxation as other property.

This provision would lead to some confusion as to the extent of the release. Was it prospective or retrospective? What would be the practical effect in the management of state owned lands? This would all be taken up by the Supreme Court in *Cox v. Robison*, but not until a number of years later.

A statutory flurry...

Not long after the Constitution of 1876, the Texas Legislature began passing, amending, and amending again a number of acts that dealt with the classification and sale of Public Free School Land. Some appeared contradictory, some were called into question by the courts, and some were just downright unclear. Nonetheless, these were the laws in effect at the time of the conveyances, and a brief rundown will prove useful in understanding how we got to where we are today.

1883 and 1895 Land Sales Acts.

As early as 1883 the legislature began passing sales acts that classified state lands. The 1883 Sales Act provided for land to be classified as either agricultural, pasture, or timber. In addition, it contained an express provision that all minerals under lands sold under that Act would be reserved to the State.³

This act was amended by the Land Sales Act of 1895, which again required the commissioner to classify lands as agricultural, pasture, timber. There was no reference to the reservation of minerals. There was however, one statement that sounded eerily familiar:

² A.W. Walker, Jr., The Texas Relinquishment Act, in First Annual Institute on Oil and Gas Law, 245 (1949).

³ Acts 1883, 18th Leg., R.S. ch. 88 § 14.

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