

Oil, Gas & Mineral Conveyances in the Shale Era:

Perennial Interpretation Problems
(and how to avoid them)

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Oil, Gas & Mineral Titles



Titusville, Pennsylvania 1859 –

“Colonel” Edwin Drake oversaw the drilling of the 69 foot well that launched the first oil boom:

“Drake’s first job was simply to perfect the title to the prospective oil land, which was a farm.”

Daniel Yergin, The Prize: The Epic Quest for Oil, Money and Power 26 (1991)

Reality: Perfecting mineral titles is not simple.

Perfecting Mineral Titles in the Shale Era

- ▶ *“Long before the full frenzy of the boom, you could see its harbingers at the Mountrail County courthouse in Stanley, N.D. Geologists had pored over core samples and log signatures and had made their educated guesses, and now it was **the hour of the “landmen,”** the men and women whose job was to dig through courthouse books for the **often-tangled history of mineral title and surface rights.**”*

“North Dakota Went Boom,” New York Times Magazine February 3, 2013

Who “Perfects” Title:

- ▶ Not “TITLE COMPANIES”
- ▶ Landmen and Lawyers create title opinions

WHEN?

Prior to leasing the land

Prior to drilling on the land
(drilling title opinion)

Prior to paying royalties due under the lease.
(division order title opinion)

How?: Search and Interpret

Stand Up Title Search:

- examiner searches the official records of the county records and other county offices where land is located

Sit-Down Search:

- examiner reviews an abstract (from abstract company or prior opinion) of all instruments affecting title to the property

Examiners Interpret Mineral and Royalty Deeds:

- examiners review deeds to determine interests created and reserved and in the process encounter a familiar list of problems and issues

I. Rules of Deed Interpretation

A. **Generally presented as 3 step process:**

- 4 Corners Approach: Ascertain parties' intent from deed
- Canons of Construction
- Ambiguous or Unambiguous?

B. **Role of Extrinsic Evidence:** Restrictive (plain meaning) vs. Lenient (let it all in). Texas tends to = "Four Corners." Four Corners = Title Certainty

C. **Summary:**

- Deceptively simple rules that lead to unpredictable and inconsistent results; variations among courts and states
- Courts' Interpretations = guidance for **drafting** and **form** selection

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Title search: Oil, Gas & Mineral Conveyances in the Shale Era: Perennial Interpretation Problems (And How to Avoid Them)

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