

PRESENTED AT
45th Annual Ernest E. Smith
Oil, Gas and Mineral Law Institute and Fundamentals

March 26-27, 2020
Houston, TX

**RELINQUISHMENT ACT LANDS, LEASING AND DEVELOPMENT:
THE WEST TEXAS REVIVAL**

Davin McGinnis
Ross Sutherland

Davin McGinnis
Ross Sutherland
Scott Douglass & McConnico LLP
Austin, TX

dmcginnis@scottdoug.com
rsutherland@scottdoug.com

RELINQUISHMENT ACT LANDS, LEASING AND DEVELOPMENT: THE WEST TEXAS REVIVAL

This paper aims to provide an understanding of oil and gas leasing of lands (“Relinquishment Act Lands”) subject to the Relinquishment Act of 1919 (the “Act” or “Relinquishment Act”). The Act provides unique challenges for practitioners because of its unusual judicial history and the unique statutory rights and obligations of the various stakeholders: the State of Texas as the mineral owner, and the owner of the soil as the State’s agent.

First, this paper provides a brief history of the Relinquishment Act, which is necessary to understand how and why the Act functions the way it does. Second, it discusses the rights and obligations of the owner of the soil, who acts as the agent for the State to lease the minerals under Relinquishment Act Lands. Finally, this paper discusses several unique leasing, development, and pooling issues arising under leases covering Relinquishment Act Lands.

Understanding the Relinquishment Act, the resulting rights and obligations of the owner of the soil and the State of Texas on Relinquishment Act Lands, and the unique requirements and obligations encountered by an oil and gas lessee under leases covering Relinquishment Act Lands has taken on increased importance in recent years with the explosion of oil and gas activity in the Delaware Basin, where a substantial portion of Relinquishment Act Lands are located. Fully half of Culberson County and more than one-third of Reeves County is comprised of lands subject to the Relinquishment Act. In addition, there are a substantial number of Relinquishment Act acres in Ward, Loving, and Pecos County that also fall within the Delaware Basin footprint.¹ The table below reflects the royalties paid to the State of Texas in each of these counties over the past six years. It illustrates both the magnitude – and the unprecedented increase – in oil and gas activity on Relinquishment Act Lands in the Delaware Basin during this most recent boom:²

¹ Table 1. This chart reflects all royalties paid to the State for production attributable to from each of the listed counties. While these figures include royalties paid on leases covering lands owned in fee by the State of Texas, the vast majority of these royalties were paid on Relinquishment Act Lands. These statistics were provided by Robert Hatter - Deputy Director of Energy Resources for the Texas General Land Office. The authors would like to extend their thanks to him for his assistance with this paper.

² Statistics provided by Robert Hatter, GLO.

Year	Reeves	Culberson	Ward	Loving	Pecos	Total
2014	\$153,910,829.08	\$24,083,694.37	\$21,003,398.01	\$22,191,285.09	\$34,904,179.57	\$224,679,386.12
2015	\$183,925,480.01	\$29,633,065.07	\$11,948,982.91	\$43,246,971.62	\$19,470,927.01	\$288,225,426.62
2016	\$181,115,338.21	\$51,580,603.92	\$11,040,027.62	\$77,598,557.05	\$19,145,021.84	\$340,479,548.64
2017	\$302,017,300.95	\$65,079,502.00	\$16,342,874.00	\$87,909,570.07	\$27,054,316.51	\$498,403,563.53
2018	\$519,711,652.38	\$83,201,506.18	\$23,335,526.67	\$89,399,357.99	\$47,236,562.96	\$762,884,606.18
2019	\$500,656,333.19	\$80,821,162.78\$	\$21,690,562.16	\$86,530,672.17	\$65,093,025.05	\$765,791,755.35

I. History of the Relinquishment Act of 1919

The Relinquishment Act is codified at Texas Natural Resources Code, Chapter 52, Subchapter F, §§ 52.171 – 52.190. To understand and appreciate the unique aspects of the Act, it is best to analyze the Act with a working knowledge of the history of Texas as it relates to land ownership in mind.

A. The Texas Revolution until the 1900s

In 1836, at the end of the Texas Revolution, the newly formed Republic of Texas held a sizeable amount of sovereign lands, 251,579,800 acres.³ The war with Mexico, however, had left Texas with a considerable debt of approximately \$10 million.⁴ When Texas began annexation negotiations with the United States in 1845, it sought the assistance of the United States to pay off the liability.⁵ Texas offered 175 million acres of its land in exchange for the federal government assuming its obligations.⁶ The United States rejected the offer, and Texas eventually entered the Union as the only state with both public debt and public land.⁷

While Texas had fought and won its independence from Mexico, some aspects of Mexican property law remained. Relevant here is the legal concept that the sovereign retained title to all minerals in land granted by the sovereign.⁸

In 1866, Texas began to deviate from this relic of Mexican influence and turned towards the current state of property ownership as it relates to mineral rights. The Constitution of 1866 gave private surface owners the rights to all minerals underlying their property, providing that “the State of Texas hereby releases to the owners of the soil all mines and mineral substances.”⁹ The Constitutions of 1869 and 1876,¹⁰ and the land sales

³ Ingrid K. Hansen, *Dusting off the Relinquishment Act*, 28 Ernest E. Smith Oil, Gas and Mineral Law Inst., 2 (2002).

⁴ \$10,000,000 in 1845 is approximately \$340,000,000 in 2020.

⁵ Hansen, *supra* note 3, at 2.

⁶ *Id.*

⁷ *Id.*

⁸ A.W. Jr. Walker, *The Texas Relinquishment Act*, 1 Proc. Ann. Inst. on Oil & Gas L. & Tax’n 245, 245 (1949).

⁹ *Id.*, see also Cox v. Robinson, 105 Tex. 426, 150 S.W. 1149, 1152 (1912).

¹⁰ Tex. Const. art. XIV, § 7 (1876) and Tex. Const. art. IX, § 9 (1869).

Find the full text of this and thousands of other resources from leading experts in dozens of legal practice areas in the [UT Law CLE eLibrary \(utcle.org/elibrary\)](http://utcle.org/elibrary)

Title search: Relinquishment Act Lands, Leasing, and Development: The West Texas Revival

Also available as part of the eCourse

[Relinquishment Act Lands, Leasing, and Development](#)

First appeared as part of the conference materials for the
46th Annual Ernest E. Smith Oil, Gas and Mineral Law Institute session
"Relinquishment Act Lands, Leasing, and Development"