

To Probate or Not to Probate: Mineral Interests in Estate Planning and Probate

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Presented By

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TO PROBATE OR NOT TO PROBATE: MINERAL INTERESTS IN ESTATE PLANNING AND PROBATE

I. Introduction

Mineral interests can cause unique problems during estate planning and estate administration. Estate planning, probating and administering mineral interests should be done carefully and thoroughly. Each mineral owner's situation is unique to him or her. This presentation is intended to give a brief overview of estate planning and estate administration issues an attorney may encounter when dealing with a client that owns mineral interests.

II. A Brief Overview of Mineral Interests Under Texas Law.

Real property includes land, and whatever is permanently annexed thereto.¹ Mineral interests are considered real property in Texas.² Once oil and gas is produced, it becomes personal property.³ The term "land" includes oil and minerals in place; however, an owner may also sever the mineral estate from the surface estate.⁴ A severance of the surface estate from the mineral estate occurs by a conveyance of the mineral interests or by conveying the surface and retaining the minerals.

A mineral lease upon its execution and delivery is not a mere option or executory contract, but operates as a present conveyance of the oil and gas in and under the described lands, and vests in the lessee a determinable fee in the oil and gas in place.⁵ Incidents of mineral ownership include (i) the developmental right, the right to lease, and the right to economic benefits under the lease (bonus, delay rentals, and royalty)⁶ The current rules as to the meaning of "minerals" or "other minerals" are set forth in *Moser v. U.S. Steel Corp.*⁷ Courts look to the intent of the parties from the four corners of the instrument, so that the intent of the parties is

¹ *Morris Plan Bank of Fort Worth v. Ogden*, 144 S.W.2d 998, 1002 (Tex.Civ.App. 1940).

² *Renwar Oil Corp. v. Lancaster*, 276 S.W.2d 774, 776 (1955); *Toledo Society for Crippled Children v. Hickok*, 152 Tex. 578 (1953).

³ *Humble Oil & Ref. Co. v. West*, 508 S.W.2d 812 (Tex. 1974).

⁴ *Holloway's Unknown Heirs v. Whatley*, 104 S.W.2d 646, 648 (Tex.Civ.App.1937). See also 3 Fred A. Lange & Aloysius A. Leopold, LAND TITLES AND TITLE EXAMINATION (Texas Practice), 2nd ed., § 331.

⁵ 3 Fred A. Lange & Aloysius A. Leopold, LAND TITLES AND TITLE EXAMINATION (Texas Practice), 2nd ed., § 331.

⁶ Joseph Shade, PRIMER ON THE TEXAS LAW OF OIL AND GAS, 3rd ed., § II.

⁷ *Moser v. U.S. Steel Corp.*, 676 S.W.2d 99 (Tex. 1984). For a more in depth discussion, the author refers you to Joseph Shade, PRIMER ON THE TEXAS LAW OF OIL AND GAS, 3rd ed., § IV.

given effect.⁸ If the intent of the parties is unclear, the date of the mineral severance will determine the type of test used to define “minerals.”⁹

If the severance occurred before June 8, 1983, the court applies the Surface Destruction Test (“SDT”)¹⁰ Under the SDT, minerals did not include substances which cause substantial destruction to the surface estate when removed.¹¹ Surface owners in Texas ended up owning more valuable substances, which in other states would have been considered minerals.¹²

If the severance occurred after June 8, 1983, the court applies the Ordinary and Natural Meaning Test (“O&NM”).¹³ While *Moser* does not explicitly define O&NM, the court seems to define a substance as a mineral if it is generally regarded as a mineral in the community at the time and place where the severance took place.¹⁴ *Moser* seems to apply a scientific definition to a substance, although there is no general acceptance of the definition of “minerals.”¹⁵

A. Some Basic Terms. While these definitions are commonly understood by most attorneys, the author includes these terms simply for reference.

1. **Fee Simple.** It is absolute ownership of real property.
2. **Mineral Interest.** The mineral interest in oil and gas consists of the fee simple ownership of oil and gas in place under a parcel of land and the exclusive right to search for, develop and produce oil and gas from the property.
3. **Surface Interest.** The surface estate interest is what remains in the bundle of rights of land ownership after the mineral interest has been severed. Controversy often arises over whether substances belong to the mineral estate or the surface estate.

⁸ Joseph Shade, *Primer on the Texas Law of Oil and Gas*, 3rd ed., § IV.

⁹ *Id.*

¹⁰ *Id.*

¹¹ *Id.*

¹² *Id.*

¹³ *Id.*

¹⁴ *Id.*

¹⁵ *Id.*

4. **Mineral Lease.** It is the most common method of creating a mineral estate. A lease may last for “three years and for so long thereafter as oil, gas and other minerals are produced.” “Three years” is just an example. Lease term duration varies on the period of time the lease was executed, the type of minerals being developed, and the geographic location of the mineral interest.

5. **Royalty Interest.**¹⁶ A royalty interest is a real property interest with two distinguishing characteristics: It is nonpossessory and free of production and operating expenses.¹⁷ Types of Royalties:
 - a. **Landowner’s Royalty.** The most common transaction in which a royalty is created is probably the execution of a mineral lease.¹⁸ The landowner who executes the mineral lease retains a right to a specified amount of gross production.¹⁹ A landowner’s royalty varies considerably based on the period of time the lease was executed, the type of minerals being developed, and the geographic location of the mineral interest.

 - b. **Non-Participating Royalty Interest.** The non-participating royalty owner is entitled to a free share of production without regard to the terms of the lease.²⁰ This type of royalty is frequently created in deeds of real estate, by either grant or reservation.²¹

 - c. **Overriding Royalty Interest.** It is carved out of the lessee’s interest under a mineral lease. Assignments of overriding royalties are commonly used to obtain financing and as a method of

¹⁶ Unless the word royalty is defined, a grant “of royalty” may lead to disputes regarding a royalty owner’s right to share in lease benefits. For an in-depth discussion regarding benefits included in a right to a fraction “of royalty,” the author refers you to Ernest E. Smith and Jacqueline Lang Weaver, TEXAS LAW OF OIL AND GAS, 2nd ed., Chapter 2, Subsection 2.4[C].

¹⁷ Ernest E. Smith and Jacqueline Lang Weaver, TEXAS LAW OF OIL AND GAS, 2nd ed., Chapter 2, Subsection 2.4.

¹⁸ *Id.*

¹⁹ *Id.*

²⁰ Joseph Shade, PRIMER ON THE TEXAS LAW OF OIL AND GAS, 3rd ed., Appendix A.

²¹ *Id.*

compensating landmen, geologists, and other individuals or entities for services provided to the oil and gas company.²²

6. **Net Revenue Interest.** Net revenue interest or revenue interest of the working interest partners is the revenue attributable to working interest owners for their share of the well less the royalty.
7. **Bonus.** A payment made to a lessor to induce him or her to execute a mineral lease.
8. **Working Interest, also referred to as a Leasehold Interest.** The working interest is the portion attributable to the working interest partners that are responsible for all costs involved in exploration, production, and completion of a well. It is essentially the rights to the mineral interest acquired by an oil and gas lease.
9. **Depletion.**²³ There is “physical depletion,” which is the exhaustion of a mine or a petroleum reservoir by extracting the minerals. “Economic depletion” is the reduction in the value of a wasting asset by removing the minerals.

III. **Estate Planning for Mineral Interests.**

The focus on mineral ownership rights has substantially increased with the discovery of new areas to explore and develop minerals throughout the State of Texas and other states. Mineral interests become increasingly fractionalized as those assets pass from one generation to the next. Proper estate planning can help reduce the burden on family and loved ones of identifying, locating, and maintaining mineral interests.

A. **Type of Mineral Interest?** Before you discuss transferring mineral interests with your client, it is important to understand what he or she owns.

- Is it the real estate that contains the minerals?
- Is the right to the minerals separate from the land itself?
- Is it an interest in a lease or royalty agreement?

²² *Id.*

²³ Joseph Shade, PRIMER ON THE TEXAS LAW OF OIL AND GAS, 3rd ed., Appendix A.

- Is it a working interest which gives the client the exclusive right to develop the property for minerals at the sole risk and expense of the client?
- Is the mineral interest in fee simple, for life, or for a term of years?

Your client may own a combination of any of the above interests.

B. What is the Nature of the Mineral Interests? It is important to determine whether a particular interest is classified as a mineral interest or royalty interest. A mineral interest includes the right to develop, lease, and receive the economic benefits of leasing, while bearing the costs of exploration and development. A royalty interest owner on the other hand is not responsible for costs of exploration or development, and the royalty owner has no power to grant leases. Your client may not know whether he or she owns a mineral interest or royalty. Due to ambiguous language in conveyances, it is often difficult to determine the type of interest.

C. What is the Character of the Mineral Interests of Married Clients? The separate or community character of a mineral interest is determined by marital property rules. The Texas Constitution defines separate property as “[a]ll property, both real and personal, of a spouse owned or claimed before marriage, and that acquired afterward by gift, devise or descent.”²⁴ The Texas Family Code provides that separate property consists of: (1) the property owned or claimed by the spouse before marriage; (2) the property acquired by the spouse during the marriage by gift, devise, or descent; and (3) the recovery for personal injuries sustained by the spouse during the marriage, except any recovery for loss or earning capacity during the marriage.²⁵ Community property consists of the property, other than separate property, acquired by either spouse during marriage.²⁶ [Note: These rules may be changed by agreement between spouses, either by a pre-marital or post-marital agreement.]

Delay rentals of oil and gas leases constitute “personal property” and belong to the community estate.²⁷ The general rule in Texas is that rents and revenue of a spouse’s separate estate belong to the community. Royalties,” including a bonus paid on a Texas oil and gas lease represent proceeds from sale of land and are not considered “rents.”²⁸ This is because royalties “royalties” are not paid for time, but for oil and gas taken out, and represent actual removal and

²⁴ Texas Const. Art. 16, §15.

²⁵ Tex. Fam. Code § 3.001.

²⁶ Tex. Fam. Code § 3.002.

²⁷ *McGarraugh v. McGarraugh*, 177 S.W.2d 296, (Civ.App. 1943).

²⁸ *C.I.R. v. Wilson*, 76 F.2d 766 (5th Cir. 1935).

disposal of contents.²⁹ Thus, royalty income on a mineral interest that is separate property is treated as separate property because the royalty payment is for the extraction or waste of the separate property, as opposed to separate property income.³⁰

D. Location of Mineral Interests. It is important to determine the location of the mineral interests. For example, you will want to determine the jurisdiction to make sure you follow the appropriate process under applicable state law for transferring mineral interests and/or funding your client's ownership rights into the name of a trust.

E. Transfer of Mineral Interests in Texas.

1. **Deeded Mineral Interests.** If a client owns deeded mineral interests, he or she will have to sign a new deed transferring ownership of the mineral interests to the individual, entity, or trust. You will then need to record the deed with the appropriate land records department in the state where the mineral interests are located.
2. **Non-Deeded Mineral Interests.** If a client owns non-deeded mineral interests, which is the right to the minerals that is separate from the land itself such as a lease or royalty agreement, he or she will have to assign his or her separate or lease or royalty mineral interest to the individual, entity or trust.
3. **Transferring Mineral Interests to a Revocable Trust or Legal Entity.** If a client has several mineral interests or has invested in mineral development, you will want to consider transferring those mineral interests to a revocable trust or legal entity for the following reasons:
 - It is a desirable way to uniformly keep record title.
 - It is easier to identify and locate mineral interests.
 - It is a way to keep the mineral interests within the family without further fractionalizing the minerals in multiple or successive deeds.
 - Provides a method from central management of royalty payments and working interests.
 - Protection from creditors (with some entities).

²⁹ *Id.*

³⁰ *Welder v. Welder*, 794 S.W.2d 420, 425 (Tex. App.—Corpus Christi 1990).

- Liability protection with working interests (with a limited liability entity).
 - Potentially reduce gift and estate taxes.
- a. **Transferring Mineral Interests to a Revocable Trust.** A revocable trust is usually ignored for federal income tax purposes, passing all income to the grantor. A revocable trust avoids probate administration of the assets owned by the estate. If a client owns mineral interests outside of the State of Texas, transferring the interest into a revocable trust will eliminate the necessity for ancillary probate of those interests in those other states upon his or her death conveying the interest to a revocable trust. Can avoid guardianship to manage minerals when an owner becomes incapacitated (and in some ways is an easier transaction than a power of attorney).
- b. **Transferring Mineral Interests to a Legal Entity.** Various legal entities have both pros and cons for holding mineral interests. There are numerous requirements to qualify for the tax benefits associated with different legal entities that exceed the scope of this paper. Estate planners must carefully consider the tax attributes of entities in certain situations to ensure the client obtains the maximum tax benefit. It is also important to consider the tax deductions and incentives that are available in the Internal Revenue Code to encourage investment in and development of minerals. For complex estates, it is advisable to consult with a tax attorney when transferring mineral interests to a legal entity to ensure the client obtains the maximum tax benefit from the transfer.

Estate plans involving transfers of mineral interests to legal entities usually involve one, or a combination, of the following legal entities:³¹

³¹ For in-depth discussion regarding choice of entity, the author refers you to Byron F. Eagon and John R. Williford, Choice of Entity Including Recent Changes to Business Organizations, Advanced Oil and Gas Short Course, Dallas, Texas, January 25-26, 2007.

Limited Liability Companies (“LLC”). An LLC can provide liability and asset protection. It is often used to obtain the same advantages of a corporation while being taxed like a partnership (for multiple members) or a sole proprietorship (for a single member). If the LLC is classified as a partnership for income tax purpose, losses incurred by the LLC will be passed through and to the extent possible, deducted by the members.

Limited Partnerships (“LP”). An LP is often used to take advantage of gift and estate tax valuation discounts and to facilitate continuous ownership of assets within a family for future generations. An LP can pool together a family's assets into one single family-owned business partnership in which family members own shares and often restrict transfers to outsiders.

C Corporations. Profits of a C Corporation are taxed separately from its owners. One layer of tax occurs first at the corporate level. When the profits are passed on to the shareholders in the form of a dividend, there is a second layer of tax, often referred to as a double tax of income. It provides liability protection but not asset protection. This type of entity can also result in tax on liquidation.

S Corporations. Under this form of corporate entity, income, losses, deductions and credit through to the shareholders similar to a partnership. Shareholders report the flow-through of income and losses on their personal tax returns, thus avoiding the double taxation on corporate income. It provides liability protection but not asset protection. It is limited to 100 shareholders and other limits may apply making it less attractive to some types of shareholders, like trusts.

IV. Probating and Administering Mineral Interests.

When probating or administering mineral interests, it becomes necessary to identify mineral interests for purposes of preparing a probate inventory, preparing a federal estate tax return (Form 706), if applicable, and to transfer legal ownership to the distributees of the estate. An Inventory, Appraisal and List of Claims identifying the estate property, must be filed

within ninety (90) days following the appointment of the Executor or Administrator, and must provide the fair market value of the various probate assets on the date of death.

A. Where is the Property? The first step is to obtain from the client sufficient information to identify the location and type of mineral interests. In many instances, the client may not have that information readily available. A few ways to determine the type and location of mineral interests is to request the following from the client:

- Mineral Deeds and Leases;
- Stubs from Royalty Checks and/or Division Orders for Producing Royalty Interests;
- Property Tax Records;
- Previous Income Tax Returns; and
- Inventory, Appraisement & List of Claims from a predecessor estate showing previously inherited mineral interests.

B. Producing vs. Non-Producing Mineral Interests. If a client can only provide where the minerals are located, such as the county, some basic research will need to be conducted. This starts with distinguishing whether the mineral interests are producing or non-producing.

1. **Producing Mineral Interests.** Producing mineral interests can be researched in the property tax records by searching the owner's name to locate the operator, or oil and gas company. For example, records may be found at the following websites: Fort Worth (www.tad.org/); Dallas (www.dallascad.org/); and small counties (<http://appraisaldistrict.net/>). The operator, along with the name of the well and unit, is usually listed on the tax statement. With this information, you can contact the operator to obtain copies of mineral deeds, assignments, conveyances, or unit designations. You may also research the Railroad Commission of Texas records online at <http://www.rrc.state.tx.us/> to obtain additional information. It is advisable to contact the operator before contacting the Railroad Commission because the information the operator provides you will be more detailed.
2. **Non-Producing Mineral Interests.** Non-producing mineral interests can be researched in real property records by the grantor/grantee name. Many local county websites allow you to search records for free, such as Dallas County (<http://roamdallaspropertyrecords.com/ailis/search.do>); Collin County (<http://countyclerkrecords.co.collin.tx.us/webinquiry>); and Tarrant County (<http://ccanhem.co.tarrant.tx.us/RealEstate/SearchEntry.aspx?e=newSessi>

on). You may also research records for a fee at www.texaslandrecords.com. However, most small county real property records are not accessible via the Internet. Even many large county real property records only go back to the late 1980s on the Internet. In those situations, you can contact the county clerk and request a record search of the grantor/grantee indices for a particular name and time period for a nominal fee. In some cases, it may be necessary to hire a landman to locate mineral interests; however, this method can be costly (especially if mineral interests are located in numerous counties).

C. Leasehold and Working Interests. An estate may include working interests or a leasehold interests. Care should be taken to distinguish between a working interest and a leasehold interest.³² The leasehold refers to a specific lease or specific part of a lease, whereas the working interest is a share of gross production subject to the risk and expense of exploration and production.³³ A leasehold interest may be separate and apart from the working interest.³⁴ An assignee of an oil and gas interest owns a working interest.³⁵ An overriding royalty interest is an interest in the oil and gas produced at the surface that is carved out of the working interest.³⁶

D. Valuation of Mineral Interests.³⁷ Mineral interests must be described and valued at fair market value on an estate inventory and its estate tax return. Fair market value is the price that a willing buyer and a willing seller would pay for the property. Time of valuation for the inventory and estate tax return is date of death.³⁸ A rule of thumb with respect to royalty interest is that the fair market value of minerals is three times the cash flow. In other words, a twelve month payout from the date of a decedent's death would be divided by twelve and then multiplied by three or a thirty-six month or three-year payout would be divided by thirty-six.³⁹

³² Roger E. Beecham, Assigning Oil and Gas Leases, 27th Annual Advanced Oil, Gas and Energy Resources Law Course, Houston, Texas, October 8-9, 2009.

³³ *Id.*

³⁴ *Id.*

³⁵ *Id.*

³⁶ *Id.*

³⁷ For an in-depth discussion regarding valuation of mineral interests, the author refers you to Alan B. Harp, Estate Planning with Mineral Interests: Valuation Issues, Fort Worth Club, Fort Worth, Texas, September 23, 2010.

³⁸ For federal estate tax purposes, there is an alternate valuation option. All assets may be valued on the date of death that is six months after the date of any distribution, sale, exchange, or disposition, whichever is earlier. *See* IRC, Section 2032.

³⁹ James E. Brill, Editor and Project Director, TEXAS PROBATE SYSTEM, State Bar of Texas, 3rd ed, Worksheet 7.

Again, this is just a rule of thumb and is not binding upon the IRS. If production is declining, there has been trouble with the well(s), or there are other adverse factors, the rate can be reduced.⁴⁰ An appraisal by a petroleum engineer is probably the best evidence of value, especially when dealing with overriding royalty interests, working interests, and non-producing mineral interests.⁴¹

E. Transferring Title. There are several methods available for transferring title to minerals depending on the circumstances.

1. **No Administration.** If there is no administration of the estate, such as muniment of title or small estate affidavit, certified copies of the will/order or affidavit should be recorded with the county clerk in all the counties where the mineral interests are located.
2. **Appointed Personal Representative.** For estates where an administrator or executor has been appointed, the personal representative can execute a mineral deed or assignment⁴² conveying the mineral interests to beneficiaries. If you do not have sufficient information to describe the location and type of mineral interests, the administrator or executor can execute a general blanket deed to transfer ownership. An example of a general blanket deed is attached as Exhibit A, hereto. Even though you may have very little information to describe the mineral interests, you will want to include as much property identification information as possible in the deed. Deeds executed by an administrator or executor should be recorded with the county clerk in all the counties where mineral interests are located. With a general blanket deed, you will want to record the deed in all counties where you have identified that decedent may have owned mineral interests.⁴³

⁴⁰ *Id.*

⁴¹ *Id.*

⁴² Different rules apply to assignments of oil and gas leases and overriding royalty interests. For further analysis of the rules and issues associated with assignments, the author refers you to Roger E. Beecham, Assigning Oil and Gas Leases, 27th Annual Advanced Oil, Gas and Energy Resources Law Course, Houston, Texas, October 8-9, 2009.

⁴³ Careful drafting is required for a blanket conveyance. In *J. Hiram Moore, Ltd. v. Greer*, 172 S.W.3d 609 (Tex. 2005), the Court concluded that the combination of the ambiguous specific grant when read with the general grant in the legal description rendered the deed itself ambiguous. For in-depth discussion on the importance of language used in legal descriptions, the author refers you to George Snell, III, and Ana Maria Marsland – Griffith, Legal Descriptions – A Little Background and A Few New Issues, State Bar of Texas Oil, Gas and Energy Resources Law Section Report, March 2011.

3. **Affidavit of Heirship.** If a person dies without will (intestate), an Affidavit of Heirship may be used to establish heirship of persons that have title to property. An Affidavit of Heirship is a statement of facts concerning the family history, genealogy, marital status, or the identity of the heirs of a decedent. Affidavits of Heirship are also used in a proceeding to declare heirship or in a suit involving title to real or personal property.⁴⁴ Probate Code Sec. 52A provides a form for an Affidavit of Heirship, although this form is only a guideline. A copy of this form is attached as Exhibit B, hereto. The next step after preparation of the Affidavit of Heirship, is a deed that usually conveys title into a single heir who may then keep the property or sell it. A special warranty deed or deed without warranties, but not a quitclaim deed, is usually used to convey title. Title companies generally do not insure property conveyed by quitclaim deeds. All heirs named in the Affidavit of Heirship must sign the a conveyance to a single heir. Both Affidavit of Heirship and deed are filed in the real property records in the county in which the property is located - the affidavit first, and then the deed. Most title companies and oil landmen have traditionally relied on Affidavits of Heirship to clear gaps in title (unless there is some reason to suspect an Affidavit of Heirship's authenticity).⁴⁵

F. **Getting the Money.** In the case of an estate involving producing mineral interests, you will need to contact the operator, or oil and gas company, to request a new division order be prepared. The division order is the document that is signed by the owner (the beneficiary) that reflects new ownership as to how royalty payments are to be distributed. Depending on the type of administration, the operator usually requires evidence as to probate or the administration of the estate. You will want to verify with the operator what type of documentation it requires to issue a new division order. A new division order does not transfer title.

V. **Conclusion.**

There are numerous issues involved with estate planning, probating and administering mineral interests. To endeavor to explain all the different situations to consider when advising a client with mineral interests is beyond the scope of this paper. Hopefully, this paper provides a reference point for possible estate planning and estate administration problems that may be encountered with a client who owns mineral interests.

⁴⁴ Tex. Prob. Code § 52.

⁴⁵ Tex. Prob. Code Ann. § 52, 2011 ed., Commentary.

EXHIBIT A

WHEN RECORDED, RETURN TO:

NOTICE OF CONFIDENTIALITY RIGHTS: IF YOU ARE A NATURAL PERSON, YOU MAY REMOVE OR STRIKE ANY OF THE FOLLOWING INFORMATION FROM THIS INSTRUMENT BEFORE IT IS FILED FOR RECORD IN THE PUBLIC RECORDS: YOUR SOCIAL SECURITY NUMBER OR YOUR DRIVER’S LICENSE NUMBER.

DISTRIBUTION CONVEYANCE AND ASSIGNMENT OF
MINERAL AND ROYALTY INTERESTS WITHOUT WARRANTY

STATE OF TEXAS §
 § KNOW ALL MEN BY THESE PRESENTS, THAT:
COUNTY OF _____ §

THAT, the undersigned, _____, acting as Independent Executor of the Estate of _____, Deceased (the “Grantor and Assignor”), pursuant to Cause No. _____ in the _____ Court of _____ County, Texas, for and in consideration of Ten Dollars and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, and as distribution from the Estate of _____, Deceased, pursuant to his Last Will and Testament dated _____, does hereby GRANT, BARGAIN, SELL, CONVEY, ASSIGN, and DELIVER unto _____, whose address is _____, (hereinafter called the “Grantee and Assignee”), subject to the matters stated below, ALL (100%) OF GRANTOR’S AND ASSIGNOR’S RIGHTS, TITLES, CLAIMS AND INTERESTS, OF ANY AND EVERY KIND, NATURE AND/OR CHARACTER, IN AND TO ALL OF THE FOLLOWING:

A. all of the oil, gas, and other minerals in, and under, and that may be produced, saved, sold and/or marketed from ANY AND ALL LANDS LOCATED IN _____, _____, and _____ COUNTIES TEXAS, OWNED OR CLAIMED BY, OR STANDING OF RECORD IN THE NAME OF GRANTOR AND ASSIGNOR, including but not limited to the properties described in Exhibit "A" attached hereto and made a part hereof, effective as of the date hereof, which lands are hereinafter referred to collectively as the "Lands," including all mineral interests, royalty interests, overriding royalty interests, working interests, production payment interests, oil, gas, and mineral leasehold estate interests, and all of Grantor's and Assignor's rights, titles, claims and interests in and to the following described units:

(1) County of _____, Texas
Units:

(2) County of _____, Texas
Unit:

(3) County of _____, Texas
Units:

B. For the same consideration, Grantor and Assignor also sell, transfer, assign, and convey to Grantee and Assignee all of Grantor's and Assignor's rights (i) of ingress, egress and possession at all times to mine, drill and explore the Lands for oil, gas or other minerals, and to produce, store, dehydrate, compress, treat, process, transport, market, and remove all or any of them from the Lands, and to exercise all other rights lawfully belonging or pertaining thereto; (ii) to each valid and subsisting oil, gas, and/or other mineral lease (the "Lease," whether one or more), if any, evidenced in the public records of the above-named counties, insofar as each Lease covers any of the Lands (and this instrument is made subject to each such Lease, insofar as it covers any of the Lands), together with all bonus, rents, royalties, shut-in royalties, delay rentals paid to extend the term within which operations may be conducted on any of the Lands, and other rights and interests under each such Lease, insofar as it covers any of the Lands; (iii) to all bonus, rents, royalties, revenues, payments, accounts, proceeds, suspended funds, refunds, interest on overdue payments and other things of value, if any, payable by any lease, operator, purchaser of production, seller of production, governmental agency and/or tribunal or other person, entity, tribunal or party with respect to any oil, gas and/or other minerals produced from, or attributable to, any of the Lands before, on or after the date of this instrument (including all such production currently in any tank, rail car or pipeline, if any, and all liens and security interests securing the payment of such sums, if any, and all rights, claims, and causes of action of Grantor and Assignor with respect to such sums, including claims for the underpayment of past royalties, if any); (iv) to all claims, demands, suits, causes of action, obligations and damages, of whatsoever kind or character, known or unknown, that are owned or unknown, that are owned or claimed by

Grantor and Assignor or to which Grantor and Assignor are otherwise entitled, and any proceeds, settlements and distributions relating thereto, which are attributable or relate to: (a) the interests in the Lands conveyed hereby; (b) Grantor's and Assignor's prior ownership of Grantor's and Assignor's interests in the Lands conveyed hereby; (c) the oil, gas, or other minerals produced from the interests in the Lands conveyed hereby; or (d) the oil, gas or other minerals which could have been produced from the interests in the Lands conveyed hereby, whether arising or accruing before, on or after the date of this conveyance. All of the foregoing matters described in items (i) through (iv), inclusive above, being hereinafter referred to collectively as the "Interests."

- C. Grantor and Assignor acknowledge that because this is a conveyance of Lands and Interests in numerous counties as identified herein there may be other Lands and Interests not particularly described above. Grantor and Assignor, therefore, agree to execute such other and further written instruments deemed by Grantee and Assignee, or Grantee's and Assignee's heirs or successors and assigns, as being necessary, advisable or appropriate to carry out the purposes of this instrument, without limitation, those instruments necessary to vest title to the Lands and Interests in Grantee and Assignee.
- D. In this instrument, the term "other minerals" covers/includes coal, lignite, uranium, sulphur, iron ore and every other "mineral" now or hereafter recognized as such under the laws of the State of Texas.
- E. Unless otherwise stated to the contrary herein, this instrument does not cover any interest of Grantor and Assignor in the surface estate of any of the Lands.

TO HAVE AND TO HOLD the herein conveyed and assigned rights unto Grantee and Assignee, their successors and assigns, subject to the following terms and conditions:

This Distribution Conveyance and Assignment of Mineral and Royalty Interests is delivered by Grantor and Assignor without express or implied warranty. All warranties that might arise by common law as well as the warranties in Section 5.023 of the Texas Property Code (or its successor) are excluded.

Grantee and Assignee shall have, receive, and enjoy the interest in all bonus, rents, royalties, and other benefits which may accrue to the Lands and Interests conveyed by this Distribution Conveyance and Assignment of Mineral and Royalty Interests, from and after the

execution date, as if Grantee and Assignee had been, at the date of making any currently and subsisting lease, the owner of the conveyed Lands and Interests.

This Distribution Conveyance and Assignment of Mineral and Royalty Interests is subject to all instruments of record affecting the Lands and Interests.

EXECUTED this _____ day of _____, 2011.

_____,
Independent Executor of the
Estate of _____, Deceased

STATE OF TEXAS §
 §
COUNTY OF _____ §

BEFORE ME, the undersigned authority, on this day personally appeared _____, known to me to be the person whose name is subscribed to the foregoing instruments, and acknowledged to me that she executed the same for the purposes and considerations therein expressed.

GIVEN UNDER MY HAND AND SEAL OF OFFICE, this _____ day of _____, 2011.

Notary Public, State of Texas

My Commission Expires: _____

EXHIBIT B

NO. _____

IN RE ESTATE OF

§
§
§
§
§

IN THE PROBATE COURT

NO. ____ OF

DECEASED

_____ COUNTY, TEXAS

AFFIDAVIT OF HEIRSHIP – STATUTORY FORM

Affidavit of Facts Concerning the Identity of Heirs

Before me, the undersigned authority, on this day personally appeared _____ (“Affiant”) (insert name of affiant) who, being first duly sworn, upon his/her oath states:

1. My name is _____ (insert name of affiant), and I live at _____ (insert address of affiant’s residence). I am personally familiar with the family and marital history of _____ (“Decedent”) (insert name of decedent), and I have personal knowledge of the facts stated in this affidavit.

2. I knew decedent from _____ (insert date) until _____ (insert date). Decedent died on _____ (insert date of death). Decedent’s place of death was (insert place of death). At the time of decedent’s death, decedent’s residence was _____ (insert address of decedent’s residence).

3. Decedent’s marital history was as follows: _____ (insert marital history and, if decedent’s spouse is deceased, insert date and place of spouse’s death).

4. Decedent had the following children: _____ (insert name, birth date, name of other parent, and current address of child or date of death of child and descendants of deceased child, as applicable, for each child).

5. Decedent did not have or adopt any other children and did not take any other children into decedent's home or raise any other children, except: _____ (insert name of child or names of children, or state "none").

6. (Include if decedent was not survived by descendants.) Decedent's mother was: _____ (insert name, birth date, and current address or date of death of mother, as applicable).

7. (Include if decedent was not survived by descendants.) Decedent's father was: _____ (insert name, birth date, and current address or date of death of father, as applicable).

8. (Include if decedent was not survived by descendants or by both mother and father.) Decedent had the following siblings: _____ (insert name, birth date, and current address or date of death of each sibling and parents of each sibling and descendants of each deceased sibling, as applicable, or state "none").

9. (Optional.) The following persons have knowledge regarding the decedent, the identify of decedent's children, if any, parents, or siblings, if any: _____ (insert names of persons with knowledge, or state "none").

10. Decedent died without leaving a written will. (Modify statement if decedent left a written will.)

11. There has been no administration of decedent's estate. (Modify statement if there has been administration of decedent's estate.)

12. Decedent left no debts that are unpaid, except: _____ (insert list of debts, or state "none").

13. There are no unpaid estate or inheritance taxes, except: _____ (insert list of unpaid taxes, or state “none”).

14. To the best of my knowledge, decedent owned an interest in the following real property: _____ (insert list of real property in which decedent owned an interest, or state “none”).

15. (Optional.) The following were the heirs of decedent: _____ (insert names of heirs).

16. (Insert additional information as appropriate, such as size of the decedent’s estate.)

Signed this _____ day of _____, 20__.

(signature of affiant)

STATE OF TEXAS §
 §
COUNTY OF _____ §

Sworn to and subscribed to before me on _____ (date) by
_____ (insert name of affiant).

Notary Public, State of Texas

My Commission Expires:

(print Notary’s name)