

MINERAL RECEIVERSHIPS AND BEYOND

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Author/Speaker, Advanced Oil, Gas & Mineral Law Course, "How to Obtain a Receivership Oil and Gas Lease"

Author/Speaker, 2002 Advanced Oil, Gas & Mineral Law Course, "Receiverships Revisited"

Author/Speaker, 2003 Advanced Oil, Gas & Energy Resources Law Course, "Anatomy of a Wind Energy Lease"

Author/Speaker, 2004 Oil, Gas and Wind - Leases and Disputes Seminar, Midland, Texas, sponsored by St. Mary's University School of Law, "Wind Leases in Texas"

Author/Speaker, 2004 Agricultural Law Seminar, Texas Tech School of Law, sponsored by the State Bar of Texas, "Wind Leases in Texas"

Co-Author, "Emerging Issues in Texas Wind Energy Law: Leases, Tax Abatements, and Ownership of Wind Rights" Oil, Gas and Energy Resources Section Report, Vol. 28, No. 3, March 2004 Author/Speaker, Dallas Bar Association, Energy Law Section, October 20, 2004, "Wind Leases and Ownership of Wind Rights in Texas"

Author/Speaker, 2005 Southwest Land Institute, Dallas, Texas, April 7, 2005, "Wind Leases and Ownership of Wind Rights in Texas"

Program Director, 32nd Annual Ernest E. Smith Oil, Gas & Mineral Law Institute, Houston, Texas, 2006, sponsored by The University of Texas School of Law

Author/Speaker, 2006 Agricultural Law Seminar, Texas Tech University School of Law, Lubbock, Texas, April 7, 2006

Co-Author/Speaker, 2006 Wind Energy Institute, Wildcatting for Wind, Texas State Technical College, Sweetwater, Texas, sponsored by The University of Texas School of Law and The Oil, Gas and Energy Resources Law Section of the State Bar of Texas, "Current Issues in Texas Wind Energy Law 2006: Leases, Tax Abatements, Ownership of Wind Rights and Litigation"

Co-Author/Speaker, Ector County Bar Meeting, Odessa, Texas, September 14, 2006, "Current Issues in Texas Wind Energy Law"

Co-Author/Speaker, Midland County Bar Meeting, Midland, Texas, Nov. 16, 2006, "Current Issues in Texas Wind Energy Law"

Co-Author/Speaker, 2007 Wind Energy Institute, The University of Texas School of Law, Austin, Texas, February 26, 2007, "Current Issues in Texas Wind Energy Law 2007: Leases, Ownership of Wind Rights and Litigation"

Co-Author/Speaker, 29th Annual Advanced Real Estate Law Course, State Bar of Texas, San Antonio, Texas, July 12-14, 2007, "Current Issues in Texas Wind Energy Law 2007: Leases, Ownership of Wind Rights and Litigation"

Co-Author/Speaker, 9th Annual West Texas "Fall" Seminar, sponsored by the Ector County and Midland County Bar Associations, January 25, 2008

Co-Author/Speaker, Texas Bar CLE Live Webcast, sponsored by the State Bar of Texas, Austin, Texas, January 31, 2008

Co-Author/Speaker, Wind Energy Institute 2008, The University of Texas School of Law, Austin, Texas, February 19 & 20, 2008, "Current Issues in Texas Wind Energy Law 2008"

Co-Author/Speaker, PBLA Spring Education Seminar, Midland, Texas, April 16, 2008, "Current Issues in Texas Wind Energy Law 2008"

Speaker/Co-Author, University of Houston Law Foundation Oil, Gas and Energy Law (Houston, May 1-2, 2008; Dallas, May 8-9, 2008; Austin Video, June 26-27, 2008), "Current Issues in Texas Wind Energy Law 2008"

Speaker/Co-Author, AAPL Santa Fe Land Institute (Santa Fe, New Mexico, September 15, 2008) "Current Issues in Wind Energy 2008"

Speaker/Co-Author, 2009 Wind Energy Institute, The University of Texas School of Law, Austin, Texas, January 20-22, 2009, "Current Issues in Wind Energy Law 2009"

Speaker/Co-Author, 20th Annual Advanced Real Estate Drafting Course—Texas Bar CLE (Houston, Texas, March 5-6, 2009) "Current Issues in Wind Energy Law 2009"

Co-Speaker, (with Steven K. DeWolf, Bellinger & DeWolf, Dallas, Texas), Texas Bar CLE Live Webcast, April 9, 2009, "Wind Energy Law Update"

Speaker, Lone Star Solar Summit, Sweetwater, Texas, April 21, 2009, "Solar Energy—Toward a Unified Energy Land Lease"

Speaker/Co-Author, AAPL Annual Meeting, Hilton Clearwater Beach Resort, Clearwater, Florida, June 17-20, "Current Issues in Wind Energy Law 2009"

Speaker/Co-Author, 55th Annual Rocky Mountain Mineral Law Institute, San Francisco, California, July 23-25, 2009, "Jousting at Windmills: When Wind Power Development Collides with Oil, Gas, and Mineral Development" Published December 2009

Speaker/Co-Author, 36th Annual NADOA Institute, Washington D.C., Wardman Park Marriott, September 23-25th 2009, "Current Issues In Wind Energy Law 2009"

Speaker/Co-Author, 2010 Wind, Solar and Renewables Institute, February 2-4, 2010, Austin Convention Center, Austin, Texas, "Special Legal Issues When Renewables and Oil and Gas Projects are Jointly Developed" and "Legal Issues Related to Wind, Solar and Geothermal Development"

Speaker/Co-Author, Permian Basin Oil & Gas Law-2010, February 19, 2010, Midland Center, Midland, Texas, "Conflicts Between Wind Leases and Oil, Gas and Mineral Development" Speaker/Co-Author, Permian Area Lease and Title Analysts Spring Seminar, April 8, 2010, Petroleum Club, Midland, Texas, "Conflicts Between Wind Leases and Oil, Gas and Mineral Development"

Speaker/Co-Author, (with Steven K. DeWolf, Bellinger & DeWolf, Dallas, Texas) Texas Bar CLE Live Webcast, June 16, 2010, "Current Issues in Wind Energy Law 2010"

Speaker/Co-Author, 32nd Annual Advanced Real Estate Law Course, July 8-10, 2010, JW Marriot Hill Country Resort & Spa, "Current Issues in Wind Energy Law 2010: Conflicts Between Wind Development and Oil and Gas Development"

Speaker/Panelist, University of Texas 2011 Wind, Solar and Renewables Institute, February 22-24, 2011, AT&T Conference Center, Austin, Texas.

Speaker/Author, 37th Annual Ernest E. Smith Oil, Gas and Mineral Law Course, April 7-8, 2011, Hyatt Regency, Houston, Texas, "Mineral Receiverships and Beyond," sponsored by The University of Texas School of Law

Co-Author with Ernest E. Smith and Steven K. DeWolf, *Texas Wind Law* (published in April 2011 by LexisNexis Matthew Bender).

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TABLE OF CONTENTS

I. INTRODUCTION	7
II. PREREQUISITES TO FILING A RECEIVERSHIP SUIT	7-10
A. Statutory Requirements	7
1. <u>Jurisdiction and Venue</u>	7
2. <u>Parties</u>	7
3. <u>The Defendant</u>	8
4. <u>The Petition, Allegations and Proof</u>	8
III. THE RECEIVERSHIP SUIT	10-15
A. Petition and Bond	10
B. Notice	10
1. <u>Affidavit for Citation by Publication</u>	10
2. <u>Issuance of Citation; Form and Requisites</u>	10
3. <u>Service of Citation by Publication</u>	10
a. Appointment of Process Server	11
b. Instructions to the Newspaper	11
4. <u>Return of Citation by Publication</u>	11
C. Selection of Receiver	11
D. Setting the Hearing Date	12
E. Pre-hearing	12
1. <u>Preparation of Receivership Oil and Gas Lease or Ratification</u>	12
2. <u>Preparing Witnesses for the Hearing</u>	13
3. <u>Selection of Attorney Ad Litem</u>	13
F. The Hearing	13
1. <u>Statement of Facts</u>	13
2. <u>Evidence; Testimony</u>	13
3. <u>Order Appointing Receiver</u>	14
G. Post-hearing	14
1. <u>Payment of Bonus</u>	14
2. <u>Oath of Receiver</u>	14
3. <u>Report of Receiver</u>	15
4. <u>Order Approving Report of Receiver</u>	15
5. <u>Recording of Lease or Ratification</u>	15
H. Duration of Receivership; Payment of Royalty	15
IV. MOTION FOR NEW TRIAL AND OTHER ATTACKS ON THE JUDGMENT; CASE LAW	15-17

A.	Motion for New Trial.....	16
B.	Direct and Collateral Attacks	16
C.	Case Law	16
V.	THE FUTURE: THE MINERAL AND ROYALTY RECEIVERSHIP AND THE NEED FOR A SIMILAR STATUTE IN RENEWABLE ENERGY	17-18
A.	Continued Need for Mineral and Royalty Receiverships	17
B.	Rise of the Wind and Solar Industries in Texas	17
C.	Ownership of Wind and Solar Rights; Leases	17
D.	Co-tenancy Issues	17
E.	The Missing Surface Co-tenant	18
F.	Need for a Surface Receivership Statute	18
VI.	CONCLUSION	18
	APPENDIX.....	19-42
	APPENDIX 1: Application for Appointment of Receiver for [Mineral][Royalty] Interests.....	20
	APPENDIX 2: Affidavit for Citation by Publication.....	24
	APPENDIX 3: Citation by Publication	25
	APPENDIX 4: Publisher’s Affidavit.....	26
	APPENDIX 5: Sample Letter to Editor of the Newspaper.....	27
	APPENDIX 6: Sample Letter to Selected Receiver	28
	APPENDIX 7: Appointment of Attorney Ad Litem after Publication.....	30
	APPENDIX 8: Order Setting Hearing	31
	APPENDIX 9: Order Appointing Receiver for [Mineral][Royalty] Interests	32
	APPENDIX 10: Oath of Receiver for [Mineral][Royalty] Interests	35
	APPENDIX 11: Report of Receiver for [Mineral][Royalty] Interests	36
	APPENDIX 12: Oil, Gas and Mineral Lease.....	37
	APPENDIX 13: Ratification of Oil, Gas and Mineral Lease	40
	APPENDIX 14: Ratification of Pooling Agreement	41
	APPENDIX 15: Order Approving Receiver’s Report.....	42

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MINERAL RECEIVERSHIPS AND BEYOND

A. INTRODUCTION

In 1995, the author presented a paper at the Advanced Oil, Gas and Mineral Law Course entitled: “How to Obtain a Receivership Oil and Gas Lease.” The primary purpose of the article was to provide a complete set of forms for a mineral receivership suit, as none existed at that time. Then, in 1999, the Texas Legislature amended Chapter 64, Subchapter F of the Texas Civil Practice and Remedies Code to add Section 64.093, “Receiver for Royalty Interest Owned by Non-resident or Absentee.” The amendment resolved the long-standing issue as to whether the mineral receivership statute (Section 64.091 of the Texas Civil Practice and Remedies Code) could be utilized to obtain a lease of a nonparticipating royalty interest owned by a “non-resident or absentee” in a pooled unit. Thereafter, in 2002, the author revised the paper under the heading “Receiverships Revisited” for the 2002 Advanced Oil, Gas and Mineral Law Course. Since then, Section 64.091 has been amended only once, in 2009, and the amendment was a very minor one.¹ Although over fifteen years have passed, there remain no published forms for a mineral receivership in Texas.²

The resurgence of the oil and gas industry in 2010 and early 2011 has resulted in the filing of many receivership suits. To meet the need for current forms, the author has revised the prior paper and updated the appendices, in order to provide practitioners with a step-by-step approach as to how to obtain a receivership under both the mineral and royalty statutes. Since the procedure for obtaining a receivership under each statute is almost identical, the requirements are set forth together.³

The paper concludes with a look toward the future for the mineral and royalty receivership statutes and discusses the need for a similar statute in renewable energy.

I. PREREQUISITES TO FILING A RECEIVERSHIP SUIT

A. Statutory Requirements

1. Jurisdiction and Venue

Suit must be brought in the district court of the county in which the land is located.⁴

2. Parties

Suit is brought by a person claiming or owning an undivided mineral interest in land in this state, or an undivided leasehold interest under a mineral lease of land in this state.

¹ TEX.CIV.PRAC. & REM. CODE ANN. § 64.091(b) and (d)(3), as amended, 2009 (Vernon Supp. 2010).

² See W. V. Dorsaneo III, *Texas Litigation Guide*, §§ 43.04 and 43.120 (2001).

³ This article does not address the procedure for obtaining a receivership for contingent interests in minerals set out in Section 64.092 of the Texas Civil Practice and Remedies Code. See *Kemp v. Hughes*, 557 S.W.2d 139 (Tex.Civ.App.-Eastland 1977, no writ).

⁴ TEX. CIV. PRAC. & REM. CODE ANN. § 64.091(b), TEX. CIV. PRAC. & REM. CODE ANN. § 64.093(a) and TEX. CIV. PRAC. & REM. CODE ANN. § 15.011 (Vernon Supp. 2010).

Additionally, the suit must include one or more defendants who have, claim, or own an undivided mineral (or royalty) interest in that property.⁵

The mineral receivership statute also covers an action brought by a person claiming or owning an undivided leasehold interest under a mineral lease of land in this state that has one or more defendants who have, claim or own an undivided leasehold interest under a mineral interest of the same property.⁶ Thus, the mineral receivership statute applies not only to the missing mineral owner, but also to the missing lessee of an undivided mineral interest.

Under both statutes, the plaintiff is almost always the oil and gas lessee, and the defendant is the owner or purported owner of an undivided mineral or royalty interest in the same property.

3. The Defendant

The defendant for whom a receiver is sought must be a person whose residence or identity is unknown, or a nonresident, and not have paid taxes on the interest or rendered the property for taxes during the five-year period immediately preceding the filing of the action.⁷

Most often, the defendant in a receivership suit is identified from the deed, probate proceedings, or other document of record by which he acquired title. As a result, his or her current address or county of residence is often not available. In this regard, it is interesting to note that the statutes require that the defendant “be a person whose residence or identity is unknown or a nonresident.” Although it is not specifically stated, it is clear that the address of the nonresident must also be unknown.

Compliance with the second part of this requirement necessitates checking the ad valorem tax records in the county in which the land is located for a period of at least five years prior to filing suit. Unless the land is currently productive of oil and gas or has been in the recent past, it is unlikely that the defendant will have either paid taxes or rendered the interest for taxes during that period. This is also an opportunity to check and see if the defendant owns other mineral or royalty interests in the county which are currently producing oil and gas, where his address might be located.

4. The Petition, Allegations and Proof

The plaintiff must allege by verified petition and prove that he has made a diligent, but unsuccessful, effort to locate the defendant, and that he will suffer substantial damage or injury unless the receiver is appointed.⁸

At a minimum, the landman, or other person charged with fulfilling the requirement of making a “diligent but unsuccessful effort to locate the defendant,” should do the following:

⁵ TEX.CIV.PRAC. & REM.CODE ANN. §§ 64.091(b)(1) and 64.093(a)(1)(2) (Vernon Supp. 2010).

⁶ TEX. CIV. PRAC. & REM. CODE ANN. § 64.091(b)(2) (Vernon Supp. 2010).

⁷ TEX. CIV. PRAC. & REM. CODE ANN., §§ 64.091(b-1) and 64.093(b) (Vernon Supp. 2010).

⁸ TEX.CIV.PRAC. & REM.CODE ANN. §§ 64.091(c) and 64.093(c) (Vernon Supp. 2010).

- a. Check the grantor and grantee indices in the offices of the county and district clerks.
- b. Check the county clerk's register book for the time period of the conveyance. The register will show the name and address of the person to whom the original instrument was returned.
- c. Check the tax rolls in the office of the central appraisal district or county tax office.
- d. Check current and prior voter registration lists, if the person lived in the county where the interest is found.
- e. Check the telephone records and city directory for the city or town of the defendant's last known residence. White and yellow page listings for all 50 states with addresses, are available free of charge on www.switchboard.com. (This site does not cover unlisted telephone numbers.) See also www.skipease.com.
- f. Check the internet for websites offering searches for missing persons. Suggestions are westlaw.com "people-find" and social networking sites like "facebook."
- g. Check the probate records of the county and state of the last known address of the defendant.
- h. Check the death records in the county or state where the person died, or is believed to have died, as well as the past obituaries in local newspapers.

In addition, and if the above efforts prove futile, the landman should attempt to locate the grantor from whom the defendant acquired title, who might have information as to the defendant's whereabouts.

Due to the fact that the minimum standards for a "diligent but unsuccessful effort" may vary from county to county, a question of ethics may arise. Clearly, the attorney has a duty both to his client and to the court to ensure that due diligence is exercised in the search for the defendant. It is important, therefore, that the endeavor be a legitimate effort by a person capable of conducting the proper investigation, such as an experienced landman. This person should be prepared to testify at the receivership hearing.

The plaintiff must also prove that he "will suffer substantial damage or injury." This showing is often made by the plaintiff alleging that if he is unable to drill, his mineral or leasehold interest in the tract will suffer drainage or potential drainage from an offset operator or operators. He may also be able to show that if the interest in question is not leased, he will not be able to drill and as a result will lose his leasehold interest in the property. Since the matter is not contested, normally the only proof of these allegations will be through the testimony of the

plaintiff or his landman. The expert testimony of a geologist or petroleum engineer would be helpful, but is probably unnecessary in most cases.

It is important to note that the plaintiff does not need to prove that the mineral or royalty interest in question is in danger of being lost, moved, or materially injured, or that the appointment of a receiver is ancillary to other relief.⁹

III. THE RECEIVERSHIP SUIT

A. Petition and Bond

The verified petition must name as the defendant the last known owner or the last record owner of the interest.¹⁰ As shown above, the last known or record owner is most often identified through the document by which he or she acquired title. Neither the plaintiff nor the receiver is required to post bond.¹¹

B. Notice

The plaintiff must serve notice upon the defendant by publication, as provided by the Texas Rules of Civil Procedure.¹² The statute does not identify the appropriate rule or rules in the Texas Rules of Civil Procedure to follow.¹³

The procedure recommended by most practitioners is as follows:

1. Affidavit for Citation by Publication

An affidavit should be prepared which states that the residence of the defendant is unknown, that the defendant is a resident or nonresident of the state, and that the affiant has made a diligent but unsuccessful effort to locate the defendant. This affidavit should be filed in the cause.¹⁴

2. Issuance of Citation; Form and Requisites

The citation should be prepared in accordance with Rules 114 and 115 of the Texas Rules of Civil Procedure. It must contain the names of the parties, a brief statement of the nature of the suit, a legal description of the land involved, a statement of the interest of the named defendant, and shall command the defendant to appear and answer at or before 10:00 a.m. on the first Monday after the expiration of 42 days from the date of issuance thereof, specifying the day of the week, the date, and the time of day the defendant is required to answer.¹⁵

3. Service of Citation by Publication

⁹ *Scott v. Sampson*, 333 S.W.2d 220, 222 (Tex. Civ. App.-Fort Worth 1960, writ ref'd n.r.e.).

¹⁰ TEX. CIV. PRAC. & REM. CODE ANN. §§ 64.091(d)(1) and 64.093(d)(1) (Vernon Supp. 2010).

¹¹ TEX. CIV. PRAC. & REM. CODE ANN. §§ 64.091(d)(4)(5) and 64.093(d)(4)(5) (Vernon Supp. 2010).

¹² TEX. CIV. PRAC. & REM. CODE ANN. §§ 64.091(d)(2) and 64.093(d)(2) (Vernon Supp. 2010).

¹³ See, *Gray v. PHI Resources, Ltd.*, 710 S.W.2d 566 (Tex. 1986), *infra*.

¹⁴ TEX. R. CIV. P. 109.

¹⁵ TEX. R. CIV. P. 114, 115.

The citation, when issued, shall be served by the sheriff or any constable of any county of the State of Texas or by the clerk of the district court of the county in which the case is pending, by having the same published once each week for four (4) consecutive weeks, the first publication to be at least twenty-eight (28) days **before** the return day of the citation. The publication shall be made in the county where the land, or a portion thereof, is situated, if there be a newspaper in such county, but if not, then in an adjoining county to the county where the land or a part thereof is situated, where a newspaper is published.¹⁶

a. Appointment of Process Server

Although Rule 116 of the Texas Rules of Civil Procedure states that the citation, when issued, shall be served by the “sheriff or any constable” or “by the clerk of the court in which the case is pending,” it appears nevertheless that a process server may be appointed by the district judge.¹⁷ The primary advantage of using a private process server is to ensure that the newspaper receives proper instructions for publication at the time of service. In rural counties, the same advantage may be had by direct contact with the sheriff’s office.

b. Instructions to the Newspaper

It is advisable that written instructions be given to the newspaper as to how and when the citation should be published, so as to lessen the chances for error. A form to use for this purpose is attached as Appendix 5. The cautious practitioner should make arrangements with the newspaper in advance and should monitor the publication each week until it is completed.

4. Return of Citation by Publication

The return of the officer executing the citation shall be endorsed or attached to the same, and shall show how and when the citation was executed, specifying the dates of publication. It should be signed by him or her officially, and must be accompanied by a printed copy of the publications.¹⁸ Note that the return must be dated more than 28 days **after** the date of first publication in the newspaper.¹⁹

C. Selection of Receiver

The receiver may be the county judge or any other resident of the county in which the land is located.²⁰ It is not required that the receiver post bond.²¹ A good practice is to select the county

¹⁶ TEX.R.CIV.P. 116.

¹⁷ TEX.R.CIV.P. 103; See *Mayfield v. Dean Witter Financial Services, Inc.*, 894 S.W.2d 502, 505 (Tex. App. – Austin 1995, writ denied).

¹⁸ TEX.R.CIV.P. 117.

¹⁹ TEX.R.CIV.P. 116.

²⁰ TEX. CIV. PRAC. & REM. CODE ANN. §§ 64.091(d)(3) and 64.093(d)(3) (Vernon Supp. 2010). This portion of the statute was amended in 2009 to delete reference to “the county clerk and his successors,” following “the county judge and his successors.” Although arguably the county clerk would still fall into the category of “any other resident of the county,” the legislative intent of the amendment appears to define the duties of the county clerk so as to eliminate the possibility of the clerk serving as a mineral receiver. (H.B. 3002, “Bill Analysis” www.capitol.state.tx.us (last visited February 27, 2011).

judge, if he or she is willing to undertake the job. In most rural counties, this is the common practice.²² Since in most counties the county judge will usually be unfamiliar with mineral receiverships, it is recommended that you contact him or her in advance to discuss the proceedings.

D. Setting the Hearing Date

Once the receiver is selected, set the hearing date at a time when the receiver is available, which is after the return date of the citation, and which is on or after the appearance date (i.e., the first Monday after the expiration of 42 days from the date of issuance of the citation). Further, the order setting the hearing should be signed by the district judge and filed in the cause, with a copy delivered to the receiver.

E. Pre-hearing

1. Preparation of Receivership Oil and Gas Lease or Ratification

The oil and gas lease or ratification of the pooling agreement should be prepared in proper form prior to the hearing. The lease or ratification should be dated as of the date of the hearing. The lessor or grantor will be the county judge or other person selected, acting in his or her capacity as receiver for mineral or royalty interests under appointment by the district court in the cause, for the named mineral or royalty owner defendant. In the case of a mineral receivership, the following procedures are recommended:

- a. The receivership lease should be prepared on the same form, with the same terms, as leases taken from the other mineral owners in the tract. A separate lease for each defendant is not required.
- b. The royalty reserved in the lease should be the same as the royalty given to other mineral lessors in the same tract. For example, if the average royalty reserved by the other lessors in the same tract is three-sixteenths (3/16), the receivership lease should reserve a 3/16 royalty. If in that instance, the receivership lease reserved a one-eighth (1/8) royalty, obvious legal and ethical concerns could arise if the proceedings are later brought under attack.
- c. Like the royalty, the amount of bonus money paid for the receivership lease should be set by an average of the bonuses paid to the other mineral lessors in the tract.
- d. Similarly, the primary term of the lease should be consistent with the other leases taken by the plaintiff/lessee in the same tract.

With regard to a royalty receivership, note that Section 64.093(g) provides that a lease ratified by a receiver under this section may authorize the lessee to pool and unitize land subject to the lease with adjacent land into a unit not to exceed 160 acres for an oil well or 640 acres for

²¹ TEX. CIV. PRAC. & REM. CODE ANN. §§ 64.091(d)(5) and 64.093(d)(5) (Vernon Supp. 2010).

²² In most counties, the district clerk is often reluctant to serve as a receiver, so the county judge is the best choice.

a gas well, plus 10% tolerance, or into a unit that substantially conforms to a larger unit prescribed or permitted by governmental rule. It states that a pooling agreement ratified by a receiver under this section may allow a pooled unit not to exceed 160 acres for an oil well or 640 acres for a gas well, plus 10% tolerance, or into a unit that substantially conforms to a larger unit prescribed or permitted by governmental rule.²³ Note, however, that these acreage restrictions should not apply to a unitization agreement approved by the Railroad Commission of Texas, which is executed by a receiver under Section 64.093(f)(3).²⁴

2. Preparing Witnesses for the Hearing

Normally the only witnesses will be the landman and, perhaps, the plaintiff. The landman will testify as to the due diligence used by him in seeking to locate the defendant mineral or royalty owner. He will also testify as to the interests owned by the plaintiff and the defendant in the subject property. In the case of a mineral receivership, he will need to show that the bonus paid and the royalty reserved, as well as the other terms of the receivership lease, are reasonable. In a royalty receivership, he should be prepared to testify concerning ratification of the pooling provisions in the lease or the terms of the pooling agreement, as well as that the pooled unit is within the acreage restrictions set out in Section 64.093(g), *supra*.²⁵

The plaintiff or the landman, as the case may be, will also need to testify in some detail that the plaintiff will suffer substantial damage or injury unless the receiver is appointed.²⁶ In a royalty receivership, the testimony of a geologist or engineer might also be helpful to the court on this issue.

3. Selection of Attorney Ad Litem

An attorney ad litem should be selected to represent the defendant mineral or royalty owner at the hearing. Usually, the plaintiff nominates an attorney ad litem to be appointed by the court. The attorney ad litem is typically a member of the local bar familiar with courthouse procedures, such as the county attorney. The fee charged by the attorney ad litem, like the filing fee and the publication cost, is paid by the plaintiff. The fee should be agreed upon in advance of the hearing. Although neither the mineral nor royalty statute requires the appointment of an attorney ad litem, this additional step may prevent future problems if the proceedings are attacked.

F. The hearing

1. Statement of Facts

The proceedings should be transcribed by a court reporter. The lack of statement of facts may have serious consequences if the case is appealed.²⁷

2. Evidence; Testimony

²³ TEX.CIV.PRAC.&REM.CODE. ANN. § 64.093(g) (Vernon Supp. 2010).

²⁴ TEX.CIV.PRAC.&REM.CODE. ANN § 64.093(f)(3) (Vernon Supp. 2010).

²⁵ TEX.CIV.PRAC.&REM.CODE. ANN § 64.093(g), *supra*.

²⁶ TEX. CIV. PRAC. & REM. CODE ANN. §§ 64.091(c)(2) and 64.093(c)(2) (Vernon Supp. 2010).

²⁷ See *Helton v. Kimball*, 621 S.W.2d 675, 677 (Tex.App.—Fort Worth 1981, no writ).

Introduce certified copies of the leases held by the plaintiff in the subject property to show his undivided interest in the leasehold. In a royalty receivership, also introduce copies of the leases and the pooling agreement, if any, to be ratified by the receiver. Present the testimony of the landman, the plaintiff and the geologist or engineer, if necessary. As previously stated, the landman must testify concerning his “diligent but unsuccessful effort” to locate the defendant, and the landman, plaintiff, geologist or engineer must also show that the plaintiff “will suffer substantial damage or injury” if the receiver is not appointed.

3. Order Appointing Receiver

At the conclusion of the hearing, have an order appointing receiver signed by the district judge.²⁸

G. Post-hearing

1. Payment of Bonus

In a mineral receivership, immediately following the hearing, the plaintiff should pay the bonus money to the district clerk. It must be paid to the clerk of the court in which the case is pending before the receiver executes the lease.²⁹

The royalty receivership statute also requires that the monetary consideration, if any, due for the execution of a ratification, pooling agreement, or unitization agreement be paid to the clerk of the court in which the case is pending before the receiver executes the instrument. That statute goes on to state, however, that “because ratifications, pooling agreements and unitization agreements are typically entered into in consideration of the future benefits accruing to the grantor thereof, an initial monetary consideration is not typically paid for the execution of such instruments.”³⁰

In both instances, the court shall apply the bonus money to the costs accruing in the case, and retain any balance for the use and benefit of the defendant mineral or royalty owner. Payments made at a later time under the lease, assignment, or unitization agreement (in the case of a mineral receivership), or under the lease, pooled unit, or unitization agreement (in the case of a royalty receivership) shall be paid into the registry of the court and impounded for the owner of the interest.³¹ “Costs accruing in the case” should include the filing fee, publication cost, and the ad litem fee, some or all of which may have been paid in advance by the plaintiff.

2. Oath of Receiver

²⁸ See Appendix 9. Some attorneys include language in the order which extends the receivership to cover any land owned by the defendant in the county in an effort to prevent the necessity of bringing a separate receivership application for the interest of the same defendant in other lands in the same county.

²⁹ TEX. CIV. PRAC. & REM. CODE ANN. § 64.091(h) (Vernon Supp. 2010).

³⁰ TEX. CIV. PRAC. & REM. CODE ANN. § 64.093(h) (Vernon Supp. 2010).

³¹ TEX. CIV. PRAC. & REM. CODE ANN. §§ 64.091(h) and 64.093(h).

The receiver should execute an oath of receiver, which is filed with the district clerk.³²

3. Report of Receiver

After taking the oath, the receiver then executes the oil and gas lease or leases, or the ratification, as the case may be, along with a report of receiver. The report of receiver recites that after the bonus money, if any, was paid to the district clerk of the county, the receiver, acting pursuant to the authority granted, executed the receivership oil, gas and mineral lease or the ratification of a mineral lease or pooling agreement covering the described land, on behalf of the defendant or defendants. Copies of the oil and gas lease, ratification and/or unitization agreement are attached to the report. Once signed by the receiver, the report is filed in the cause.

4. Order Approving Report of Receiver

The district judge signs an order approving the receiver's report. In the case of a mineral receivership, the order should state, among other things, that the terms of the receivership lease are fair and reasonable. It should direct the receiver to deliver the lease to the plaintiff for filing in the county. With regard to a royalty receivership, the order should state that the lease or pooling agreement ratified by the receiver complies with the acreage restrictions set out in Section 64.093(g) of the Code, or that the unitization agreement executed by the receiver has been authorized by the Railroad Commission of Texas. It should direct the receiver to deliver the ratification or unitization agreement to the plaintiff for filing in the county.

5. Recording of Lease or Ratification

The receivership lease or ratification is filed for record in the county clerk's office. This final step must be followed. It is not sufficient for the lease or ratification to simply be of record in the district clerk's office as part of the receivership proceedings.

H. Duration of Receivership; Payment of Royalty

The receivership continues as long as the defendant or his heirs, assigns or personal representatives fail to appear in court in person or by agent or attorney to claim the defendant's interest.³³ Both the mineral and royalty receivership statutes provide that royalty payments shall be paid into the registry of the district court and impounded for the use and benefit of the owner of the interest.³⁴

IV. MOTIONS FOR NEW TRIAL AND OTHER ATTACKS ON THE JUDGMENT; CASE LAW

³² TEX. CIV. PRAC. & REM. CODE ANN. §64.022 (Vernon Supp. 2010).

³³ TEX. CIV. PRAC. & REM. CODE ANN. §§ 64.091(e) and 64.093(e) (Vernon Supp. 2010). Citing this provision and Section 64.091(f)(1), some practitioners have questioned whether a receiver has the continuing authority to execute a renewal lease after the expiration of the original lease. There appears to be no authority on this issue. If appropriate language is added to the order appointing the receiver, it would seem that the receiver would have such authority. On the other hand, some attorneys argue that concerns about additional notice to the defendant require the filing of a new proceeding.

³⁴ TEX. CIV. PRAC. & REM. CODE ANN. §§ 64.091(h) and 64.093(h) (Vernon Supp. 2010).

A detailed discussion pertaining to attacks upon receivership proceedings is beyond the scope of this article. The following brief discussion of these issues, however, should be helpful to the attorney who seeks and obtains a mineral or royalty receivership.

A. Motion for New Trial

The time period for filing a motion for new trial in a mineral or royalty receivership proceeding is two (2) years from the date of judgment.³⁵

B. Direct and Collateral Attacks

An order appointing a mineral or royalty receiver must be attacked directly in the cause in which the appointment was made. It may be collaterally attacked only where the court was without jurisdiction to issue the order, or where the order is void on its face.³⁶

C. Case Law

The Texas courts hold that every reasonable presumption will be indulged by the appellate court in support of an order appointing a receiver for a mineral or royalty interest, and in the absence of some contrary showing, it will be presumed that the judge acted fairly, properly and according to law, and that the petition and evidence were sufficient, and that proper and sufficient grounds existed for the order.³⁷

Although there are few reported cases, it appears that most attacks upon mineral or royalty receiverships concern improper notice. In this regard, it should be noted that the absence of proper notice merely makes the appointment of the receiver voidable, but not void.³⁸ In *Gray v. PHI Resources, Ltd.*,³⁹ on the date the petition for receivership was filed, the trial court, acting under the provisions of Section 695 of the Texas Rules of Civil Procedure,⁴⁰ signed an order requiring posting of a copy of the petition at the county courthouse for a period of three (3) days

³⁵ TEX.R.CIV.P. 329; *Domain Exploration v. Mitchell Energy Company*, 71 S.W.3d 469 (Tex.App.-Waco 2002, no pet.).

³⁶ *Johnson v. Barnwell Production Company*, 391 S.W.2d 776 (Tex.Civ.App.-Texarkana 1965, writ ref'd n.r.e.); See also *Zarate v. Sun Operating Ltd., Inc.*, 40 S.W.3d 617 (Tex.App.-San Antonio 2001, pet denied).

³⁷ *Scott*, 333 S.W.2d at 222; *Johnson*, 391 S.W.2d at 782.

³⁸ See *Helton*, 621 S.W.2d at 678.

³⁹ *Gray v. PHI Resources, Ltd.*, 710 S.W.2d 566 (Tex.1986).

⁴⁰ Rule 695 of the Texas Rules of Civil Procedure provides as follows:

“Except where otherwise provided by statute, no receiver shall be appointed without notice to take charge of property which is fixed and immovable. When an application for appointment of a receiver to take possession of property of this type is filed, the judge or court shall set the same down for hearing and notice of such hearing shall be given to the adverse party by serving notice thereof not less than three days prior to such hearing. If the order finds that the defendant is a nonresident or that his whereabouts is unknown, the notice may be served by affixing the same in a conspicuous manner and place upon the property or if that is impracticable it may be served in such other manner as the court or judge may require.”

prior to a hearing on the matter. No citation was issued. Although the case was decided on other grounds, the Texas Supreme Court stated:

“It is a fundamental tenet of our law that a plaintiff must properly invoke the jurisdiction of a trial court by valid service of citation on a defendant...Furthermore, the notice provision of Rule 695 will not confer jurisdiction absent some type of citation or appearance by the named defendant(s).”⁴¹

In 1989, subsection (k) was added to Section 64.091 of the Code, which provided that to the extent that subsection (d)(2) (requiring notice on the defendant by publication as provided in the Texas Rules of Civil Procedure) conflicts with the Texas Rules of Civil Procedure, subsection (d)(2) controls. An identical provision also appears in subsection (k) of Section 64.093. Thus, it now seems clear that notice by publication in a mineral or royalty receivership proceeding should be in accordance with Tex.R.Civ.P.109 et seq. (as described above in this article), rather than as provided in Tex.R.Civ.P.695.

V. THE FUTURE: THE MINERAL AND ROYALTY RECEIVERSHIP AND THE NEED FOR A SIMILAR STATUTE IN RENEWABLE ENERGY

A. Continued Need for Mineral and Royalty Receiverships

Despite technological advances in our society in recent years that have made it easier to find missing persons, there are still many mineral and royalty owners in Texas that cannot be located. With oil prices continuing to rise in 2011, it appears that receivership suits will continue to be filed on a regular basis in oil producing regions of the state.

B. Rise of the Wind and Solar Industries in Texas

Along with the continued growth of the oil and gas business since this paper was last published in 2002, has been the explosive development of the wind and solar industries in Texas. During the period from 2003 to 2008, developers constructed wind farms throughout the western half of the state, with the three largest wind farms in the world being built in Nolan and Taylor Counties. By 2009, Texas became the world leader in the production of electricity from wind power.⁴² By the end of the decade, developers also began to acquire land in far West Texas for solar leases.

C. Ownership of Wind and Solar Rights; Leases

In Texas, the right to harvest wind or solar energy from the land is vested in the surface owner. Depending on the instrument, the lease of this right to a developer may be in the form of a tenancy for years (containing a grant of multiple easements on the land) or simply as an easement. In either case, it is given for a long term of usually 30 to 50 years.⁴³

⁴¹ See *Gray*, 710 S.W.2d at 567.

⁴² Ernest E. Smith, Steven K. DeWolf, and Roderick E. Wetsel, Texas Wind Law (to be published by Lexis Nexis Matthew Bender, 2011).

⁴³ Smith, DeWolf and Wetsel, *supra*,

D. Co-tenancy Issues

In a surface lease transaction, each owner in a co-tenancy acts for himself and no one is the agent of another or has any authority to bind him merely because of the relationship.⁴⁴

Likewise, with an easement, absent consent or subsequent ratification by the other co-tenants, the general rule is that one co-tenant cannot impose an easement upon the common property in favor of third persons.⁴⁵

E. The Missing Surface Co-tenant

Incredible as it may seem, in some instances, just as with oil and gas interests, there are owners of undivided surface interests that cannot be found. Since there is no receivership statute for wind or solar leases, developers have found that it is difficult, if not impossible, to finance the building of a wind or solar farm unless all of the owners are located and leased. In this regard, because a wind lease is typically classified as an easement or as a lease which grants multiple easements, many developers fear that a lease of less than 100% of the surface is not a valid lease.⁴⁶

F. Need for a Surface Receivership Statute

The rapid growth of the wind and solar industries in Texas over the last ten year years has opened new horizons for energy development. Currently Texas has over 9,000 megawatts of installed renewable energy systems, and within only a few years should be able to double that amount.⁴⁷ These new industries, however, will need the tools with which to facilitate further exploration and development. It thus appears that the time has arrived for Texas to enact a surface receivership statute, using the mineral and royalty statutes as a model.

VI. CONCLUSION

Obtaining a mineral or royalty receivership under the provisions of Section 64.091 or Section 64.093 of the Texas Civil Practice and Remedies Code is a relatively simple process. As shown, however, the requirements of the statutes must be strictly followed. The lack of case law in this area suggests that if the proceedings are conducted fairly, with proper notice, and with due regard to the legal and ethical issues involved, the chances of a successful attack upon the judgment are remote. Hopefully, this paper will serve as a guide in the successful preparation and prosecution of mineral and royalty receivership suits in Texas. It is also hoped that Texas will enact a surface receivership statute for renewable energy in the near future.

* * *

⁴⁴ *Lander v. Wedell*, 493 S.W.2d 271, 273 (Tex.Civ.App.-Dallas 1973, writ ref'd n.r.e.).

⁴⁵ *Elliott v. Elliott*, 597 S.W.2d 795, 802 (Tex.Civ.App.-Corpus Christi 1980, no writ). See also, *Wilderness Cove, Ltd. v. Cold Spring Granite Co.*, 62 S.W.3d 844 (Tex.App.-Austin 2001, no pet.).

⁴⁶ See *Elliott v. Elliott*, *supra*; *Wilderness Cove, Ltd. v. Cold Spring Granite Co.*, *supra*.

⁴⁷ Smith, DeWolf and Wetsel, *supra*, at 8.

The author gratefully acknowledges the assistance of his associates, Jeffrey L. Allen and Faith E. Feaster, in the preparation of this article.

APPENDIX

FORMS AND INSTRUCTIONS

Insofar as the author is aware, there is no complete set of published forms for a mineral or royalty receivership suit. The following forms have been developed and used by the author.

As with all forms, these forms are included for illustrative purposes only and should not be used unless independent analysis and consideration is given by a licensed attorney as to the applicability to a given fact situation.

APPENDIX 1

LUCKY OIL COMPANY	NO. _____	
	§	IN THE 32ND JUDICIAL
	§	
VS.	§	
	§	DISTRICT COURT OF
JOSEPH R. DOAKES, ET AL., AND THEIR	§	
HEIRS, KNOWN OR UNKNOWN, IF ANY OF	§	
SAID PERSONS ARE DECEASED	§	NOLAN COUNTY, TEXAS

**APPLICATION FOR APPOINTMENT
OF RECEIVER FOR [MINERAL] [ROYALTY] INTERESTS**

TO THE HONORABLE JUDGE OF SAID COURT:

Now comes LUCKY OIL COMPANY, hereinafter referred to as Plaintiff, complaining of JOSEPH R. DOAKES, WILLIAM A. (BILL) BECK, FORREST GUMP and WILLIAM BONEY and THEIR HEIRS, KNOWN OR UNKNOWN, IF ANY OF SAID PERSONS BE DECEASED, hereinafter referred to as the Defendants, and for cause of action would show this Honorable Court the following:

I.

Plaintiff, LUCKY OIL COMPANY, is a Texas corporation, whose principal offices are located at 1712 Country Club Drive, Sweetwater, Texas 79556.

Defendants, JOSEPH R. DOAKES, ET AL., are former residents of the State of Texas, the State of New York, Georgia, Illinois, and perhaps other states, all of whose residences and present whereabouts, as hereinafter described, are unknown to Plaintiff.

II.

Plaintiff is engaged in oil and gas exploration and development in Nolan County, Texas, and is the owner of certain undivided leasehold interests in and under the following described lands in Nolan County, Texas, to-wit:

A tract of 160 acres, more or less, being the Southeast Quarter (SE/4) of Section ABC, Block XYZ, T&P Ry. Co. Surveys, Nolan County, Texas.

III.

Plaintiff would show that the interests owned by the Defendants and their heirs, if any of them is deceased, in the [oil, gas and other minerals] [royalty] in and under the above described lands, and their last known addresses, if any, are as follows:

(A) Defendant JOSEPH R. DOAKES, whose last known address is Room 1313 in the Baker Hotel, Commerce Street, Dallas, Texas, and whose interest is 9/2560;

(B) Defendant WILLIAM A. (BILL) BECK, whose last known address was 1001 Fifth Avenue, New York, New York 00000, whose interest is 9/512;

(C) Defendant FORREST GUMP, whose last known address is Atlanta, Georgia, and whose interest is 9/512; and

(D) Defendant WILLIAM BONNEY, whose last known address is _____ and whose interest is 18/512.

IV.

Plaintiff would show that the present residences of all of the above named Defendants, some of whom are non-residents of this state, are unknown. Plaintiff would further show that none of the Defendants or their heirs, have paid taxes on the [mineral] [royalty] interests owned by them, nor have they rendered said interests for taxes during the five-year period immediately preceding the filing of this action.

V.

Plaintiff would show that for a period in excess of _____ [time period], its landmen and attorneys have made diligent but unsuccessful efforts to locate each of the above named Defendants, or their heirs.

VI.

Plaintiff seeks to explore and develop the above described lands for the production of oil and/or gas [which can only be accomplished by the creation of a pooled unit].

Unless Plaintiff can secure a valid [oil and gas lease of the mineral interests] [ratifications of the nonparticipating royalty interests] owned by each of the Defendants listed above, or their heirs, Plaintiff will not be able to properly explore and develop said land [by creation of a pooled unit] and, therefore, will suffer substantial injury and damage thereby. Plaintiff has invested substantial sums in purchasing leasehold interests in said land, which sums will be lost if Plaintiff is unable to proceed. Further, Plaintiff would show that activities for the exploration and development of oil and gas are now being conducted in the vicinity of the above described lands, which activities may give rise to a possibility that the above described lands will suffer drainage therefrom. Such drainage will result in substantial damage or injury not only to Plaintiff, but also to Defendants, or their heirs, unless the [mineral/royalty interests of the Defendants are properly leased to Plaintiff] [ratifications of the pooled unit are obtained from the Defendants] so that Plaintiff may explore and develop said lands.

VII.

Plaintiff would show that in accordance with the provisions of Section [64.091(d)(3)] [64.093(d)(3)] of the Texas Civil Practice and Remedies Code, it is in the best interests of both Plaintiff and Defendants, and their heirs, if any be deceased, that the County Judge of Nolan County, Texas, and his successors, be appointed receiver for the undivided [mineral] [royalty] interests owned by the Defendants herein, with the following powers:

[AS TO A MINERAL RECEIVERSHIP]

[1. To negotiate, execute and deliver to the Plaintiff oil, gas and mineral leases, with pooling and unitization clauses, under such terms and conditions as may be prescribed and approved by this Court, and as are set out in Section 64.091 of the Texas Civil Practice and Remedies Code; and to execute any renewals or extensions thereof;

2. To manage the above described mineral interests for the duration of the receivership;

3. To render the mineral interests for taxation purposes and to pay any taxes upon the same as they become due.]

[AS TO A ROYALTY RECEIVERSHIP]

[1. To negotiate, execute and deliver to the Plaintiff ratifications of mineral interests executed by persons owning an undivided mineral interest in the above described property, or ratifications of a pooling agreement covering the property, or enter into a unitization agreement authorized by the Railroad Commission of Texas;

2. To manage the above described royalty interests for the duration of the receivership;

3. To render the royalty interests for taxation purposes and to pay any taxes upon the same as they become due.]

VIII.

Plaintiff respectfully requests that the [oil and gas leases] [ratifications] granted by the receiver appointed herein cover the entire [mineral] [royalty] interests owned by the Defendants, or their heirs, in the above described lands (or County). Plaintiff further requests under the provisions of Section [64.091(e)] [64.09(e)] of the Texas Civil Practice and Remedies Code that the receivership, once created, continue as long as said Defendants, or their respective heirs, assigns or personal representatives, fail to appear in this Court in person or by agent or attorney to claim their interests.

WHEREFORE, premises considered, Plaintiff prays that the Defendants be cited to appear and answer herein by publication, as provided by the Texas Rules of Civil Procedure and Section [64.091] [64.093] of the Texas Civil Practice and Remedies Code, and that upon final hearing hereof, Plaintiff have the following:

1. Judgment appointing the County Judge of Nolan County, Texas, and his successors, or such other person that the Court deems qualified, as receiver of Defendants' [mineral] [royalty] interests, as specified above, with the powers specified above;

2. Judgment directing the receiver to execute and deliver to Plaintiff, as Lessee, [oil, gas and mineral leases containing pooling and unitization clauses] [ratifications of Plaintiff's mineral lease or leases and/or ratifications of a pooling agreement covering the described property], and other provisions as are prescribed by this Court and by law covering the lands described in this petition;

3. [If appropriate] Judgment directing the receiver to enter into a unitization agreement covering the described property authorized by the Railroad Commission of Texas.

4. Judgment that all money consideration paid for the execution of said [leases] [ratifications] be paid to the Clerk of this Court before the receiver executes said [leases] [ratifications], which funds shall be applied by the Court to the costs accruing in this case, and the balance retained for the use and benefit of said Defendants and/or their respective heirs; and further, that any payments made at a later time under said [leases] [ratifications] shall also be paid into the registry of this Court and impounded for the use and benefit of such Defendants, and/or their heirs; and

5. Judgment providing that the Plaintiff have such other and further relief to which it may show itself justly entitled, at law or in equity.

Respectfully submitted,

WETSEL & CARMICHAEL, L.L.P.

207 Oak Street, P. O. Box 78

Sweetwater, Texas 79556

(325) 235-3999

Telecopier: (325) 235-3526

By: _____

ROD E. WETSEL

State Bar No. 21235400

ATTORNEYS FOR PLAINTIFF,

LUCKY OIL COMPANY

VERIFICATION

THE STATE OF TEXAS)

COUNTY OF NOLAN)

BEFORE ME, the undersigned authority, on this day personally appeared HERMAN PACE, who after being by me duly sworn, upon his oath stated the following:

"My name is Herman Pace. I am the President of Lucky Oil Company, the Plaintiff in the above styled and numbered cause. I have read the foregoing Application for Appointment of Receiver for [Mineral] [Royalty] Interests, and I am authorized by Lucky Oil Company to make this verification. All of the statements contained therein are within my personal knowledge and are true and correct."

EXECUTED this the ____ day of _____, 2011..

HERMAN PACE

SWORN TO AND SUBSCRIBED BEFORE ME by the said HERMAN PACE on this the ____ day of _____, 2011, to certify which witness my hand and seal of office.

NOTARY PUBLIC, STATE OF TEXAS
My commission expires: _____

APPENDIX 2

[CAPTION]

AFFIDAVIT FOR CITATION BY PUBLICATION

THE STATE OF TEXAS)
COUNTY OF NOLAN)

BEFORE ME, the undersigned authority, on this day personally appeared SAMUEL SLEUTH, known to me to be a credible person, who after being by me duly sworn, on oath deposed and said:

"My name is SAMUEL SLEUTH. My address is 123 Alamo Avenue, Sweetwater, Texas 79556. I am over the age of eighteen years, have never been convicted of a felony, and I am competent in all respects to make this affidavit.

"I am an Independent Petroleum Landman in Sweetwater, Nolan County, Texas. I have been employed by Lucky Oil Company concerning the subject matter of the above law-suit, and in such regard, I am the duly authorized agent of Lucky Oil Company in this proceeding and have authority to make this Affidavit.

"Over a period of _____ [months] [weeks], I have made the following diligent efforts to locate each of the Defendants in the above styled and numbered cause, or their heirs, but all such efforts have been unsuccessful. [Specify efforts undertaken, e.g.:

“(1) checked all records in the offices of the County and District Clerks in Nolan County, Texas;

“(2) checked the tax rolls in the office of the Central Appraisal District of Nolan County, Texas;

“(3) checked the city directory for Sweetwater, Roscoe, Blackwell, Maryneal and Nolan, and instituted a nationwide search of telephone records on the internet; and

“(4) conducted a nationwide search for missing persons through websites on the internet; ETC.]

“Despite all of my efforts, the whereabouts of each of the Defendants in this case, some of whom are non-residences of this state, are and remain unknown.”

EXECUTED this the _____ day of _____, 2011.

SAMUEL SLEUTH

SWORN TO AND SUBSCRIBED BEFORE ME by the said SAMUEL SLEUTH, on this the _____ day of _____, 2011, to certify which witness my hand and seal of office.

NOTARY PUBLIC, STATE OF TEXAS
My commission expires: _____

APPENDIX 3

CITATION BY PUBLICATION

CLERK OF THE COURT:
[NAME AND ADDRESS]

PLAINTIFF'S ATTORNEY:
[NAME AND ADDRESS]

THE STATE OF TEXAS

NOTICE TO DEFENDANTS: "You have been sued. You may employ an attorney. If you or your attorney do not file a written answer with the clerk who issued this citation by 10:00 a.m. on the Monday next following the expiration of forty-two (42) days after the date of issuance of this citation and petition, a default judgment may be taken against you."

TO: JOSEPH R. DOAKES, WILLIAM A. (BILL) BECK, FORREST GUMP and WILLIAM BONNEY, and THEIR HEIRS, KNOWN OR UNKONW, IF ANY OF SAID PERSONS ARE DECEASED, Defendants in the cause herein described.

You and each of you are hereby commanded to appear and answer before the 32nd Judicial District Court in the Nolan County Courthouse in Sweetwater, Nolan County, Texas, at or before 10:00 a.m. on the first Monday after the expiration of forty-two (42) days from the date of issuance hereof, being at or before 10:00 a.m. on Monday, the ____ day of _____, 2011, then and there to answer the petition of LUCKY OIL COMPANY, in Cause No. _____, styled "LUCKY OIL COMPANY vs. JOSEPH R. DOAKES, ET AL.," wherein the said LUCKY OIL COMPANY is Plaintiff, and the said JOSEPH R. DOAKES, WILLIAM A. (BILL) BECK, FORREST GUMP and WILLIAM BONNEY, and THEIR HEIRS, KNOWN OR UNKNOWN, IF ANY OF SAID PERSONS BE DECEASED, as Defendants. The said petition, filed on the ____ day of _____, 2011, discloses that the nature of said suit is as follows:

This suit is brought to have a receiver appointed under the provisions of Section [64.091] [64.093] of the Texas Civil Practice and Remedies Code for undivided [mineral] [royalty] interests owned by the Defendants in the following described lands in Nolan County, Texas, to-wit:

A tract of 160 acres of land, more or less, being the Southeast Quarter (SE/4) of Section ABC, Block XYZ, T&P Ry. Co. Surveys, Nolan County, Texas;

And to execute [Oil, Gas and Mineral Leases] [ratifications of oil, gas and mineral leases] thereof to the Plaintiff [OR ratifications of a pooling agreement covering said land], and take such other action deemed necessary under the provisions of said statute.

If this citation is not served within ninety (90) days after the date of its issuance, it shall be returned unserved.

ISSUED AND GIVEN UNDER MY HAND AND THE SEAL OF SAID COURT on this the ____ day of _____, 2011, at Sweetwater, Nolan County, Texas.

PATTI NEILL,
Clerk of the District Court of Nolan County, Texas

By: _____ Deputy

OFFICER'S RETURN

Received this Citation on the ____ day of _____, 2011, at ____ o'clock __.m. Executed by publishing the same in the "Sweetwater Reporter," a duly qualified newspaper for legal publications, published in Nolan County, Texas, the county in which suit is pending and the county in which the property the subject of such suit is situated.

The said publication was made once each week for four (4) consecutive weeks prior to the return day hereof, to-wit: One _____, _____, _____ and _____, 2011, the first such days being at least 28 days before the return day hereof. Attached hereto is a printed copy of such publication, duly verified by the publisher.

The distance actually traveled by me in serving such process was ____ miles, and my fees are as follows:

For serving Citation	\$ _____
Printer's Fee	\$ _____

Total Fees	\$ _____

To certify which witness my hand this ____ day of _____, 2011.

DAVID WARREN, SHERIFF,
NOLAN COUNTY, TEXAS

By: _____, Deputy

APPENDIX 4

[CAPTION]

PUBLISHER'S AFFIDAVIT

THE STATE OF TEXAS)

COUNTY OF NOLAN)

I solemnly swear that the foregoing Citation by Publication was published in the "Sweetwater Reporter," a newspaper printed in Sweetwater, Nolan County, Texas, and of general circulation in said county, as provided in the Texas Rules of Civil Procedure for the service of citation or notice by publication. Said publication was made once each week for four (4) consecutive weeks prior to the return day thereof, to-wit: On _____, _____, _____ and _____, 2011, the first of such days being at least 28 days before the return day thereof. A copy of such notice as published, which was clipped from the newspaper, is attached hereto.

PUBLISHER
By: _____
(Title)

SWORN TO AND SUBSCRIBED BEFORE ME by _____ on this the _____ day of _____, 2011, to certify which witness my hand and seal of office.

(SEAL) _____
NOTARY PUBLIC, STATE OF TEXAS

THE STATE OF TEXAS)
COUNTY OF NOLAN)

This instrument was acknowledged before me on the _____ day of _____, 2011, by _____ of the "Sweetwater Reporter."

(SEAL) _____
NOTARY PUBLIC, STATE OF TEXAS

APPENDIX 5

SAMPLE LETTER TO EDITOR OF THE NEWSPAPER

[Date]

Mr. Editor
Sweetwater Reporter
P. O. Box 750
Sweetwater, TX 79556

Re: No. 123, Lucky Oil Company vs. Joseph R. Doakes, et al.;
In the 32nd Judicial District Court, Nolan County, Texas

Dear Mr. Editor:

We represent Lucky Oil Company, of Sweetwater, Texas, and have filed on behalf of our client an Application for Appointment of Receiver or [Mineral] [Royalty] Interests, which requests that the defendants named in the suit be cited by publication. In accordance with the requirements of Rule 116 of the Texas Rules of Civil Procedure, pertaining to citation by publication, we are writing this letter to offer guidelines for publishing the Citation by Publication, which will be served upon you by the Nolan County Sheriff's Office.

The statute requires that the citation be published once each week, for four (4) consecutive weeks, the first of said publication dates to be at least twenty-eight (28) days before the return day of the citation (_____, 2011). Therefore, in order to meet your publication deadline, and in order for us to strictly comply with the statute, we hereby request that this citation be published on the following dates:

Wednesday, April 13, 2011
Wednesday, April 20, 2011
Wednesday, April 27, 2011
Wednesday, May 4, 2011

Failure to publish the citation for four consecutive weeks will invalidate the citation and necessitate repetition of the publication.

Immediately following the last publication on **Wednesday, May 4, 2011**, we will appreciate your forwarding to the service officer copies of the tear sheets for each of the four required publications, along with a publisher's affidavit. Please either include with these documents or forward directly to us a statement for your publication charges, and we will see that it is promptly paid.

Should you have any questions concerning this matter, please do not hesitate to contact us. Thank you for your attention to this matter.

Very cordially yours,

WETSEL & CARMICHAEL, L.L.P.
By: Roderick E. Wetsel

REW:ggs

APPENDIX 6

SAMPLE LETTER TO SELECTED RECEIVER

[Date]

The Honorable Tim Fambrough
Nolan County Judge
Nolan County Courthouse
Sweetwater, TX 79556

Re: No. 123, Lucky Oil Company vs. Joseph R. Doakes, et al.;
In the 32nd Judicial District Court, Nolan County, Texas

Dear Judge Fambrough:

In accordance with our discussions concerning the referenced matter, we are enclosing a copy of the Application for Appointment of Receiver for [Mineral][Royalty] Interest, with citation by publication, which has today been issued by the District Clerk.

Please note that the hearing in the District Court will be scheduled on or after the ____ day of _____, 2011, at 10:00 o'clock a.m. [i.e., **the appearance date, which is the first Monday after the expiration of 42 days from the date of issuance of the citation**]. At the hearing, we will ask that you be appointed Receiver for these interests.

As soon as we have a hearing date and time, we will let you know. In the meantime, please review the enclosed pleadings and the accompanying statutes and rules, and call if you have any questions.

We sincerely appreciate your help in this matter. Best personal regards.

Very cordially yours,

WETSEL & CARMICHAEL, L.L.P.
By: Roderick E. Wetsel

REW:ggs

cc: Mr. Herman Pace
Lucky Oil Company
1712 Country Club Drive
Sweetwater, TX 79556

APPENDIX 7

[CAPTION]

APPOINTMENT OF ATTORNEY AD LITEM AFTER PUBLICATION

It has been brought to the Court's attention that JOSEPH R. DOAKES, WILLIAM A. (BILL) BECK, FORREST GUMP and WILLIAM BONNEY, and THEIR HEIRS, KNOWN OR UNKNOWN, IF ANY OF SAID PERSONS BE DECEASED, Defendants herein, have been cited by publication, and that no answer has been filed and no appearance has been entered by any of such parties within the prescribed time.

Accordingly, IT IS ORDERED, and the Court hereby appoints BONNIE BARRISTER, Attorney at Law, who is licensed to practice law in this Court and this state, to defend the suit on behalf of said Defendants.

SIGNED and entered this the ____ day of _____, 2011.

GLEN HARRISON,
DISTRICT JUDGE PRESIDING

APPENDIX 8

[CAPTION]

ORDER SETTING HEARING

IT IS ORDERED that the Plaintiff's Application for Appointment of Receiver for Mineral Interests on file herein be, and the same is hereby set for hearing on _____, the ____ day of _____, 2011, at 10:00 o'clock a.m.

ENTERED this ____ day of _____, 2011.

GLEN HARRISON,
DISTRICT JUDGE PRESIDING

APPENDIX 9

[CAPTION]

ORDER APPOINTING RECEIVER FOR [MINERAL] [ROYALTY] INTERESTS

On the ____ day of _____, 2011, came on to be heard the Application for Appointment of Receiver for [Mineral] [Royalty] Interests in the above styled and numbered cause, brought by the Plaintiff, LUCKY OIL COMPANY.

The Plaintiff, LUCKY OIL COMPANY, appeared by and through his attorney of record, ROD E. WETSEL. The Defendants, JOSEPH R. DOAKES, WILLIAM A. (BILL) BECK, FORREST GUMP and WILLIAM BONNEY, although duly cited by publication, as provided by the Texas Rules of Civil Procedure, and as prescribed in Section [64.091] [64.093] of the Texas Civil Practice and Remedies Code, failed to appear and wholly made default. BONNIE BARRISTER, an attorney practicing before this Court, was appointed by the Court as Attorney Ad Litem to represent the interests of the Defendant, his heirs and assigns.

The case was called for trial, and the Plaintiff, by and through his attorney of record, and the Defendants, by and through their Attorney Ad Litem, announced ready for trial. No jury having been demanded, all matters of fact and of law were submitted to the Court. The Court found and does find that it has jurisdiction of the parties hereto and of the subject matter hereof, and after having examined the pleadings, heard the evidence and arguments of counsel, the Court finds further as follows:

I

(A) Plaintiff, LUCKY OIL COMPANY,, is engaged in oil and gas exploration and development in Nolan County, Texas, and is the owner of certain undivided leasehold interests in and under the following described lands in Nolan County, Texas, to-wit:

A tract of 160 acres, more or less, being the Southeast One-fourth (SE/4) of Section ABC, Block XYZ, T&P Ry, Co. Survey, Nolan County, Texas.

(B) Defendants own [undivided interests in the oil, gas and other minerals] [undivided interests in the royalty] [nonparticipating royalty interests] in and under the above described lands, as is more particularly set out in Plaintiff's Application for Appointment of Receiver for [Mineral] [Royalty] Interests filed herein.

(C) The Defendants have been cited by publication in the manner and for the length of time required by the Texas Rules of Civil Procedure, and as prescribed by Section [64.091(d)(2)] [64.093(2)] of the Texas Civil Practice and Remedies Code. The return of citation is on file herein, and is in all things proper and in accordance with the law.

(D) The residences and/or whereabouts of the Defendants, who of whom are non-residents of this State, are unknown. Neither the Defendants nor their heirs have paid taxes on the undivided interest owned by him in the above described lands, nor have they rendered said interests for taxes during the five-year period immediately preceding the filing of this action.

Plaintiff has made diligent efforts to locate each of the above named Defendants or their heirs, all of which efforts have been unsuccessful.

(E) Plaintiff has proved to the satisfaction of the Court that he will suffer substantial damage or injury unless a Receiver is appointed, as requested herein. The Court finds that the allegations of substantial injury and damages that will be suffered by Plaintiff if a Receiver is not appointed are true. The Court further finds that the appointment of a Receiver, as requested herein, for oil, gas and mineral development purposes will inure to the benefit of the Defendants and their heirs, as well. Under the provisions of Section [64.091] [64.093] of the Texas Civil Practice and Remedies Code, it is, therefore, in the best interests of the Plaintiff and the Defendants that the County Judge of Nolan County, Texas, and his successors, be appointed Receiver for the undivided [mineral] [royalty] interests owned herein by the Defendants herein, with the following powers:

(1) To negotiate, execute and deliver to the Plaintiff [oil, gas and mineral leases with pooling and unitization clauses] [ratifications of oil, gas and mineral leases] [ratifications of a pooling agreement] [enter into a unitization agreement authorized by the Railroad Commission of Texas] under such terms and conditions as may be prescribed and approved by this Court (and any renewals or extensions thereof); it being ORDERED that such [leases] [ratifications] [unitization agreements] shall cover the entire undivided [mineral] [royalty] interests owned by the Defendants in the above described lands (or in the County);

(2) To manage the said [mineral] [royalty] interests for the duration of the receivership which, once created, shall continue as long as said Defendants, or their heirs, successors, assigns or personal representatives, fail to appear in this Court in person or by agent or attorney to claim their interests;

(3) [If appropriate:] To enter into a unitization agreement authorized by the Railroad Commission of Texas; and

(4) To render said interests for taxation purposes and to pay the taxes upon the same as they become due.

(F) The Court further finds and is satisfied that the Plaintiff has fully complied with all the terms, conditions and provisions of Section [64.091] [64.093] of the Texas Civil Practice and Remedies Code.

IT IS, THEREFORE, ORDERED, ADJUDGED AND DECREED that TIM FAMBROUGH, the County Judge of Nolan County, Texas, and his successors, be and is hereby appointed Receiver of the [undivided interests of the Defendants in the oil, gas and other minerals] [royalty or nonparticipating royalty interests of the Defendants] in and under and that may be produced from the above described lands, with all of the powers set out above, and acting in such capacity, is AUTHORIZED and DIRECTED to execute and deliver to Plaintiff, [as Lessee, an oil, gas and mineral lease or leases containing pooling and unitization clauses, and other provisions] [ratifications of oil, gas and mineral leases or ratifications of a pooling agreement], as prescribed by this Court and by law, covering all of the lands described in Plaintiff's Application.

IT IS FURTHER ORDERED that upon commencing the duties as Receiver in this cause, the County Judge of Nolan County, Texas shall take the oath required by law, and such appointment shall be effective upon the filing of such Oath in this proceeding.

IT IS FURTHER ORDERED that as provided in Section [64.091(d)(4)] [64.093(d)(4)] of the Texas Civil Practice and Remedies Code, the Receiver is not required to post bond.

IT IS FURTHER ORDERED that the Attorney Ad Litem appointed herein be and is hereby granted an attorney's fee in the amount of _____ AND NO/100 DOLLARS (\$ _____), to be taxed as part of the costs of this proceeding.

IT IS FURTHER ORDERED that all other costs incurred in this proceeding be taxed against and paid out of the money consideration paid for the [execution of the leases of these interests by the Receiver] [money consideration paid for the execution of ratifications by the Receiver, or funds later accruing to these royalty interests], and the balance retained for the use and benefit of the Defendants.

IT IS FURTHER ORDERED that the Receiver shall report the execution of the [leases of the interests of the Defendants [ratifications executed on behalf of the Defendants] to this Court for approval, and that this cause be subject to further orders made by the Court herein.

SIGNED this the ____ day of _____, 2011.

GLEN HARRISON,
DISTRICT JUDGE PRESIDING

APPENDIX 10

[CAPTION]

OATH OF RECEIVER FOR [MINERAL] [ROYALTY] INTERESTS

THE STATE OF TEXAS)

COUNTY OF NOLAN)

I, TIM FAMBROUGH, County Judge of Nolan County, Texas, being the Receiver for [Mineral] [Royalty] Interests appointed in the above styled and numbered cause by the District Court of Nolan County, Texas, do solemnly swear that I will well and truly perform the duties of a Receiver herein, according to law and the Orders of this Court appointing me, and any further Orders of this Court that may be hereafter entered in this cause.

TIM FAMBROUGH

SWORN TO AND SUBSCRIBED before me on this the ____ day of _____, 2011, by TIM FAMBROUGH, to certify which witness my hand and seal of office.

PATTI NEILL, DISTRICT CLERK
Nolan County, Texas

By: _____
Deputy

APPENDIX 11

[CAPTION]

REPORT OF RECEIVER FOR [MINERAL] [ROYALTY] INTERESTS

TO THE HONORABLE JUDGE OF SAID COURT:

Now comes TIM FAMBROUGH, Receiver for Mineral Interests in the above styled and numbered cause, and reports to the Court the following:

On the ___ day of _____, 2011, after money consideration was first paid to the District Clerk of Nolan County, Texas by the Plaintiff, LUCKY OIL COMPANY, as prescribed by Section [64.091(h)] [64.093(h)] of the Texas Civil Practice and Remedies Code, [OR, no initial bonus money having been paid], and pursuant to the authority granted to me as a Receiver in these proceedings, acting as Receiver, I did execute [Oil, Gas and Mineral Leases] [Ratifications of Oil, Gas and Mineral Leases] [Ratifications of a Pooling Agreement], dated _____, 2011, to LUCKY OIL COMPANY, Lessee, covering the following lands in Nolan County, Texas, to-wit:

A tract of 160 acres of land, more or less, being the Southeast Quarter (SE/4) of Section ABC, Block XYZ, T&P Ry. Co. Surveys, Nolan County, Texas;

on behalf of each of the Defendants in this cause: JOSEPH R. DOAKES, WILLIAM A. (BILL) BECK, FORREST GUMP and WILLIAM BONNEY, and their heirs, known or unknown, if any of said persons are deceased.

True and correct copies of the [Oil, Gas and Mineral Leases] [Ratifications] are attached hereto as Exhibit "A," and made a part hereof for all purposes.

WHEREFORE, premises considered, your Receiver prays that this Report and the execution by him of the attached [Oil, Gas and Mineral Leases] [Ratifications], be approved and confirmed; that your Receiver be directed to deliver said [Oil, Gas and Mineral Leases] [Ratifications] to LUCKY OIL COMPANY for recording the same in Nolan County, Texas.

Respectfully submitted,

TIM FAMBROUGH, RECEIVER

SWORN TO AND SUBSCRIBED before me on this the _____ day of _____, 2011, by TIM FAMBROUGH.

PATTI NEILL, DISTRICT CLERK
Nolan County, Texas

By: _____, Deputy

APPENDIX 12

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.

Producers 88 (7-69)-Paid Up
With 640 Acres Pooling Provision

TEXAS STANDARD FORM

POUND PRINTING & STATIONERY COMPANY
2325 FANNIN, HOUSTON, TEXAS 77002 (713) 659-3159

OIL, GAS AND MINERAL LEASE

THIS AGREEMENT made this _____ day of _____, 2011, between TIM FAMBROUGH, County Judge, Nolan County, Texas, acting in his capacity as Receiver for [Mineral][Royalty] interests under appointment by the 32nd Judicial District Court of Nolan County, Texas, in Cause No. 1234, for JOSEPH R. DOAKES, WILLIAM A. (BILL) BECK, FORREST GUMP and WILLIAM BONNEY, and their heirs, known or unknown, if any of them should be deceased, Lessor (whether one or more), whose address is: c/o Office of the District Clerk of Nolan County, Texas, 100 East Third, Suite 200, Sweetwater, Texas 79556

and LUCKY OIL COMPANY, 1712 Country Club Drive, Sweetwater, Texas 79556, Lessee,

WITNESSETH:

1. Lessor, in consideration of Ten and no/ 100----- Dollars, receipt of which is hereby acknowledged, and of the covenants and agreements of lessee hereinafter contained, does hereby grant, lease and let unto lessee the land covered hereby for the purposes and with the exclusive right of exploring, drilling mining and operating for, producing and owning oil, gas, sulphur and all other minerals (whether or not similar to those mentioned), together with the right to make surveys on said land, lay pipe lines, establish and utilize facilities for surface or subsurface disposal of salt water, construct roads and bridges, dig canals, build tanks, power stations, telephone lines, employee houses and other structures on said land, necessary or useful in lessee's operations in exploring, drilling for, producing, treating, storing and transporting minerals produced from the land covered hereby or any other land adjacent thereto. The land covered hereby, herein called "said land", is located in the County of Nolan, State of Texas, and is described as follows:

A tract of 160 acres of land, more or less, being the Southeast Quarter (SE/4) of Section ABC, Block XYZ, T&P Ry. Co. Surveys, Nolan County, Texas.

For the purpose of determining the amount of any bonus or other payment hereunder, said land shall be deemed to contain 160.00 acres, whether actually containing more or less, and the above recital of acreage in any tract shall be deemed to be the true acreage thereof. Lessor accepts the bonus as lump sum consideration for this lease and all rights and options hereunder.

2. Unless sooner terminated or longer kept in force under other provisions hereof, this lease shall remain in force for a term of Three (3) years from the date of the Notary Acknowledgment of Lessor hereinafter called "primary term", and as long thereafter as operations, as hereinafter defined, are conducted upon said land with no cessation for more than ninety (90) consecutive days.

3. As royalty, lessee covenants and agrees: (a) To deliver to the credit of lessor, in the pipe line to which lessee may connect its wells, the equal ONE-SIXTH (1/6) part of all oil produced and saved by lessee from said land, or from time to time, at the option of lessee, to pay lessor the average posted market price of such ONE-SIXTH (1/6) part of such oil at the wells as of the day it is run to the pipe line or storage tanks, lessor's interest, in either case, to bear ONE-SIXTH (1/6) of the cost of treating oil to render it marketable pipe line oil; (b) To pay lessor on gas and casinghead gas produced from said land (1) when sold by lessee, ONE-SIXTH (1/6) of the amount realized by lessee, computed at the mouth of the well, or (2) when used by lessee off said land or in the manufacture of gasoline or other products, the market value, at the mouth of the well, of ONE-SIXTH (1/6) of such gas and casinghead gas; c) To pay lessor on all other minerals mined and marketed or utilized by lessee from said land, one-tenth either in kind or value at the well or mine at lessee's election. except that on sulphur mined and marketed the royalty shall be one dollar (\$1.00) per long ton. If, at the expiration of the primary term or at any time or times thereafter, there is any well on said land or on lands with which said land or any portion thereof has been pooled, capable of producing oil or gas, and all such wells are shut-in, this lease shall, nevertheless, continue in force as though operations were being conducted on said land for so long as said wells are shut-ins, and thereafter this lease may be continued in force as if no shut-in had occurred. Lessee covenants and agrees to use reasonable diligence to produce, utilize, or market the minerals capable of being produced from said wells, but in the exercise of such diligence, lessee shall not be obligated to install or furnish facilities other than well facilities and ordinary lease facilities of flow lines, separator, and lease tank, and shall not be required to settle labor trouble or to market gas upon terms unacceptable to lessee. If, at any time or times after the expiration of the primary term, all such wells are shut-in for a period of ninety consecutive days, and during such time there are no operations, on said land, then at or before the expiration of said

ninety day period, lessee shall pay or tender, by check or draft of lessee, as royalty, a sum equal to one dollar (\$1.00) for each acre of land then covered hereby. Lessee shall make like payments or tenders at or before the end of each anniversary of the expiration of said ninety day period if upon such anniversary this lease is being continued in force solely by reason of the provisions of this paragraph. Each such payment or tender shall be made to the parties who at the time of payment would be entitled to receive the royalties which would be paid under this lease if the wells were producing, and may be deposited in the

N/A - Pay directly to Lessor at the addresses above stated. Bank

at or its successors, which shall continue as the depositories, regardless of changes in the ownership of shut-in royalty. If at any time that lessee pays or tenders shut-in royalty, two or more parties are, or claim to be, entitled to receive same, lessee may, in lieu of any other method of payment herein provided, pay or tender such shut-in royalty, in the manner above specified, either jointly to such parties or separately to each in accordance with their respective ownerships thereof, as lessee may elect. Any payment hereunder may be made by check or draft of lessee deposited in the mail or delivered to the party entitled to receive payment or to a depository bank provided for above on or before the last date for payment. Nothing herein shall impair lessee's right to release as provided in paragraph 5 hereof. In the event of assignment of this lease in whole or in part, liability for payment hereunder shall rest exclusively on the then owner or owners of this lease, severally as to acreage owned by each.

4. Lessee is hereby granted the right, at its option, to pool or unitize any land covered by this lease with any other land covered by this lease, and/or with any other land, lease, or leases, as to any or all minerals or horizons, so as to establish units containing not more than 80 surface acres, plus 10% acreage tolerance; provided, however, units may be established as to any one or more horizons, or existing units may be enlarged as to any one or more horizons, so as to contain not more than

640 surface acres plus 10% acreage tolerance, if limited to one or more of the following: (1) gas, other than casinghead gas, (2) liquid hydrocarbons (condensate) which are not liquids in the subsurface reservoir, (3) minerals produced from wells classified as gas wells by the conservation agency having jurisdiction. If larger units than any of those herein permitted, either at the time established, or after enlargement, are required under any governmental rule or order, for the drilling or operation of a well at a regular location, or for obtaining maximum allowable from any well to be drilled, drilling, or already drilled, any such unit may be established or enlarged to conform to the size required by such governmental order or rule. Lessee shall exercise said option as to each desired unit by executing an instrument identifying such unit and filing it for record in the public office in which this lease is recorded. Each of said options may be exercised by lessee at any time and from time to time while this lease is in force, and whether before or after production has been established either on said land, or on the portion of said land included in the unit, or on other land unitized therewith. A unit established hereunder shall be valid and effective for all purposes of this lease even though there may be mineral, royalty, or leasehold interests in lands within the unit which are not effectively pooled or unitized. Any operations conducted on any part of such unitized land shall be considered, for all purposes, except the payment of royalty, operations conducted upon said land under this lease. There shall be allocated to the land covered by this lease within each such unit (or to each separate tract within the unit if this lease covers separate tracts within the unit) that proportion of the total production of unitized minerals from the unit, after deducting any used in lease or unit operations, which the number of surface acres in such land (or in each such separate tract) covered by this lease within the unit bears to the total number of surface acres in the unit, and the production so allocated shall be considered for all purposes, including payment or delivery of royalty, overriding royalty and any other payments out of production, to be the entire production of unitized minerals from the land to which allocated in the same manner as though produced therefrom under the terms of this lease. The owner of the reversionary estate of any term royalty or mineral estate agrees that the accrual of royalties pursuant to this paragraph or of shut-in royalties from a well on the unit shall satisfy any limitation of term requiring production of oil or gas. The formation of any unit hereunder which includes land not covered by this lease shall not have the effect of exchanging or transferring any interest under this lease (including, without limitation, any shut-in royalty which may become payable under this lease) between parties owning interest in land covered by this lease and parties owning interests in land not covered by this lease. Neither shall it impair the right of lessee to release as provided in paragraph 5 hereof, except that lessee may not so release as to lands within a unit while there are operations thereon for unitized minerals unless all pooled leases are released as to lands within the unit. At any time while this lease is in force lessee may dissolve any unit established hereunder by filing the record in the public office where this lease is recorded a declaration to that effect, if at that time no operations are being conducted thereon for unitized minerals. Subject to the provisions of this paragraph 4, a unit once established hereunder, shall remain in force so long as any lease subject thereto shall remain in force. If this lease now or hereafter covers separate tracts, no pooling or unitization of royalty interests as between any such separate tracts is intended or shall be implied or result merely from the inclusion of such separate tracts within this lease, but lessee shall nevertheless have the right to pool or unitize as provided in this paragraph 4 with consequent allocation of production as herein provided. As used in this paragraph 4, the words "separate tract" mean any tract with royalty ownership differing, now or hereafter, either as to parties or amounts, from that as to any other part of the leased premises.

5. Lessee may at any time and from time to time execute and deliver to lessor or file for record a release or releases of this lease as to any part or all of said land or of any mineral or horizon thereunder, and thereby be relieved of all obligations, as to the released acreage or interest.

6. Whenever used in this lease the word "operations" shall mean operations for and any of the following: drilling, testing, completing, reworking, recompleting, deepening, plugging back or repairing of a well in search for or in an endeavor to obtain production of oil, gas, sulphur or other minerals, excavating a mine, production of oil, gas, sulphur or other mineral, whether or not in paying quantities.

7. Lessee shall have the use, free from royalty, of water, other than from lessor's water wells, and of oil and gas produced from said land in all operations hereunder. Lessee shall have the right at any time to remove all machinery and fixtures placed on said land, including the right to draw and remove casing. No well shall be drilled nearer than 200 feet to the house or barn now on said land without the consent of the lessor. Lessee shall pay for damages caused by its operations to growing crops and timber on said land.

8. The rights and estate of any party hereto may be assigned from time to time in whole or in part and as to any mineral or horizon. All of the covenants, obligations, and considerations of this lease shall extend to and be binding upon the parties hereto, their heirs, successors, assigns, and successive assigns. No change or division in the ownership of said land, royalties, or other moneys, or any part thereof, howsoever effected, shall increase the obligations or diminish the rights of lessee, including, but not limited to, the location and drilling of wells and the measurement of production. Notwithstanding any other actual or constructive knowledge or notice thereof of or to lessee, its successors or assigns, no change or division in the ownership of said land or of the royalties, or other moneys, or the right to receive the same, howsoever effected, shall be binding upon the then record owner of this lease until thirty (30) days after there has been furnished to such record owner at his or its principal place of business by lessor or lessor's heirs, successors, or assigns, notice of such change or division, supported by either originals or duly certified copies of the instruments which have been properly filed for record and which evidence such change or division, and of such court records and proceedings, transcripts, or other documents as shall be necessary in the opinion of such record owner to establish the validity of such change or division. If any such change in ownership occurs by reason of the death of the owner, lessee may, nevertheless pay or tender such royalties, or other moneys, or part thereof, to the credit of the decedent in a depository bank provided for above.

9. In the event lessor considers that lessee has not complied with all its obligations hereunder, both express and implied, lessor shall notify lessee in writing, setting out specifically in what respects lessee has breached this contract. Lessee shall then have sixty (60) days after receipt of said notice within which to meet or commence to meet all or any part of the breaches alleged by lessor. The service of said notice shall be precedent to the bringing of any action by lessor on said lease

for any cause, and no such action shall be brought until the lapse of sixty (60) days after service of such notice on lessee. Neither the service of said notice nor the doing of any acts by lessee aimed to meet all or any of the alleged breaches shall be deemed an admission or presumption that lessee has failed to perform all its obligations hereunder. If this lease is canceled for any cause, it shall nevertheless remain in force and effect as to (1) sufficient acreage around each well as to which there are operations to constitute a drilling or maximum allowable unit under applicable governmental regulations, (but in no event less than forty acres), such acreage to be designated by lessee as nearly as practicable in the form of a square centered at the well, or in such shape as then existing spacing rules require; and (2) any part of said land included in a pooled unit on which there are operations. Lessee shall also have such easements on said land as are necessary to operations on the acreage so retained.

10. Lessor hereby warrants and agrees to defend title to said land against the claims of all persons whomsoever. Lessor's rights and interests hereunder shall be charged primarily with any mortgages, taxes or other liens, or interest and other charges on said land, but lessor agrees that lessee shall have the right at any time to pay or reduce same for lessor, either before or after maturity, and be subrogated to the rights of the holder thereof and to deduct amounts so paid from royalties or other payments payable or which may become payable to lessor and/or assigns under this lease. If this lease covers a less interest in the oil, gas, sulphur, or other minerals in all or any part of said land than the entire and undivided fee simple estate (whether lessor's interest is herein specified or not), or no interest therein, then the royalties and other moneys accruing from any part as to which this lease covers less than such full interest, shall be paid only in the proportion which the interest therein. If any, covered by this lease, bears to the whole and undivided fee simple estate therein. All royalty interest covered by this lease (whether or not owned by lessor) shall be paid out of the royalty herein provided. This lease shall be binding upon each party who executes it without regard to whether it is executed by all those named herein as lessor.

11. if, while this lease is in force, at, or after the expiration of the primary term hereof, it is not being continued in force by reason of the shut-in well provisions of paragraph 3 hereof, and lessee is not conducting operations on said land by reason of (1) any law, order, rule or regulation, (whether or not subsequently determined to be invalid) or (2) any other cause, whether similar or dissimilar, (except financial) beyond the reasonable control of lessee, the primary term hereof shall be extended until the first anniversary date hereof occurring ninety (90) or more days following the removal of such delaying cause, and this lease may be extended thereafter by operations as if such delay had not occurred.

IN WITNESS WHEREOF, this instrument is executed on the date first above written.

TIM FAMBROUGH, County Judge, Nolan County, Texas, acting in his capacity as Receiver for Mineral interests under appointment by the 32nd Judicial District Court of Nolan County, Texas, in Cause No. 1234, for JOSEPH R. DOAKES, WILLIAM A. (BILL) BECK, FORREST GUMP, WILLIAM BONNEY, and their heirs, known or unknown, if any of them should be deceased

STATE OF TEXAS '
COUNTY OF NOLAN '

This instrument was acknowledged before me on the ____ day of _____, 2011, by TIM FAMBROUGH, County Judge, Nolan County, Texas, acting in his capacity as Receiver for Mineral interests under appointment by the 32nd Judicial District Court of Nolan County, Texas, in Cause No. 1234, for JOSEPH R. DOAKES, WILLIAM A. (BILL) BECK, FORREST GUMP and WILLIAM BONNEY, and their heirs, known or unknown, if any of them should be deceased.

Notary Public, State of Texas

APPENDIX 13

RATIFICATION OF OIL, GAS AND MINERAL LEASE

STATE: Texas

COUNTY: Nolan

ROYALTY OWNER: TIM FAMBROUGH, County Judge of Nolan County, Texas, acting in his capacity as Receiver for Royalty Interests under appointment by the 32nd Judicial District Court of Nolan County, Texas, in Cause No. 1234 for Joseph R. Doakes, William A. (Bill) Beck, Forrest Gump, and William Bonney, and their heirs, known or unknown, if any of said persons are deceased (whose address is c/o Office of the District Clerk of Nolan County, Texas, P. O. Box 1236, Sweetwater, Texas 79556).

LESSEE: LUCKY OIL COMPANY, a Texas corporation, with offices at 1712 Country Club Drive, Sweetwater, Texas 79556.

EFFECTIVE DATE: (Date of the Oil and Gas Lease being ratified)

On the ____ day of _____, 2011, _____, as Lessor, executed and delivered to the Lessee, named above, an Oil, Gas and Mineral Lease (the "Lease"), recorded in Volume ____, Page ____, Official Public Records, Nolan County, Texas, covering the following described lands (the "Lands"):

[Description of Lands included in the lease]

The royalty owner(s) named above own(s) a nonparticipating royalty interest(s) in and under the Lands.

For adequate consideration, TIM FAMBROUGH, County Judge of Nolan County, Texas, acting in his capacity as Receiver for royalty interests, as described above, for Joseph R. Doakes, William A. (Bill) Beck, Forrest Gump and William Bonney, and their heirs, known or unknown, if any of said persons be deceased, RATIFIES, CONFIRMS and ADOPTS the terms of the lease and acknowledges and agrees that the interests of the above described nonparticipating royalty owners in the Lands may be pooled and unitized, under the terms of the Lease, on the same basis as all other mineral and royalty interests in the Lands.

EXECUTED this the ____ day of _____, 2011.

TIM FAMBROUGH, County Judge, Nolan County,
Texas, Receiver for JOSEPH R. DOAKES,
WILLIAM A. (BILL) BECK, FORREST GUMP,
and WILLIAM BONNEY, AND THEIR HEIRS,
KNOWN OR UNKNOWN, IF ANY OF SAID
PERSONS ARE DECEASED

[Acknowledgment]

APPENDIX 14

RATIFICATION OF POOLING AGREEMENT

STATE: Texas

COUNTY: Nolan

ROYALTY OWNER: TIM FAMBROUGH, County Judge of Nolan County, Texas, acting in his capacity as Receiver for Royalty Interests under appointment by the 32nd Judicial District Court of Nolan County, Texas, in Cause No. 1234 for Joseph R. Doakes, William A. (Bill) Beck, Forrest Gump, and William Bonney, and their heirs, known or unknown, if any of said persons are deceased (whose address is c/o Office of the District Clerk of Nolan County, Texas, P. O. Box 1236, Sweetwater, Texas 79556).

LESSEE: LUCKY OIL COMPANY, a Texas corporation, with offices at 1712 Country Club Drive, Sweetwater, Texas 79556.

EFFECTIVE DATE: (Date of the Pooling Agreement being ratified)

On the ____ day of _____, 2011, _____ and _____ entered into a Pooling Agreement (the "Agreement"), recorded in Volume ____, Page ____, Official Public Records, Nolan County, Texas, concerning the creation of a pooled unit for the production of oil and/or gas covering the following described lands (the "Lands"):

[Description of Lands included in the lease]

The royalty owner(s) named above own(s) a nonparticipating royalty interest(s) in and under the Lands.

For adequate consideration, TIM FAMBROUGH, County Judge of Nolan County, Texas, acting in his capacity as Receiver for royalty interests, as described above, for Joseph R. Doakes, William A. (Bill) Beck, Forrest Gump and William Bonney, and their heirs, known or unknown, if any of said persons be deceased, RATIFIES, CONFIRMS and ADOPTS the terms of the above described Pooling Agreement and acknowledges and agrees that the interests of the above described nonparticipating royalty owners in the Lands may be pooled and unitized, under the terms of said Pooling Agreement, the same as if said Owners had executed, acknowledged and delivered the original or a counterpart of the Pooling Agreement.

EXECUTED this the ____ day of _____, 2011.

TIM FAMBROUGH, County Judge, Nolan County,
Texas, Receiver for JOSEPH R. DOAKES,
WILLIAM A. (BILL) BECK, FORREST GUMP,
and WILLIAM BONNEY, AND THEIR HEIRS,
KNOWN OR UNKNOWN, IF ANY OF SAID
PERSONS ARE DECEASED

[Acknowledgment]

APPENDIX 15

[CAPTION]

ORDER APPROVING RECEIVER'S REPORT

On this the ____ day of _____, 2011, came on to be heard the Report of Receiver for [Mineral] [Royalty] Interests, filed in this proceeding on this date, and the Court having examined the Report and the evidence submitted in connection therewith, is of the opinion and finds that the facts stated therein are true; that each of the [Oil, Gas and Mineral Leases executed by the Receiver to LUCKY OIL COMPANY, as Lessee] [Ratifications executed by the Receiver] covering the lands made the subject of this proceeding and on behalf of the Defendants in this proceeding and their known or unknown heirs, are in proper form; that the terms and provisions thereof are fair and reasonable; and that said [leases] [ratifications] have been executed pursuant to the Orders of this Court. The Court further finds that said Report should be in all things approved and confirmed, and that the Receiver, therefore, should be directed to deliver said [Oil, Gas and Mineral Leases] [Ratifications] to LUCKY OIL COMPANY, as Lessee, for filing the same of record in Nolan County, Texas.

IT IS, THEREFORE, ORDERED, ADJUDGED AND DECREED that the Report of Receiver for Mineral Interests on file herein be, and the same is in all things APPROVED and CONFIRMED, and that TIM FAMBROUGH, as the appointed Receiver herein, be and is hereby directed to deliver to LUCKY OIL COMPANY the [Oil, Gas and Mineral Leases covering the lands made the subject of this action and covering all of the interests owned by the Defendants and their heirs, known or unknown, in said lands] [Ratifications of Oil, Gas and Mineral Leases or Ratifications of a Pooling Agreement] covering the nonparticipating royalty interests owned by the Defendants and their heirs, known or unknown, in said lands].

SIGNED this the ____ day of _____, 2011.

GLEN HARRISON,
DISTRICT JUDGE PRESIDING