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## A Model Form Title Opinion: Time for a Revisit?

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## A MODEL FORM TITLE OPINION: TIME FOR A REVISIT?

PAUL YALE\*

### *I. Introduction: Order and Disorder in Title Examination*

An orderly mind, it has been said, “is reflected by an orderly body; and an orderly body is reflected by orderly dress.<sup>1</sup>” An orderly title examiner’s mind, by analogy, should be reflected by an orderly title examination; and an orderly title examination should be reflected by an orderly title opinion.

Few if any title examiners would take exception to the notion that an orderly, well-organized title opinion is more apt to serve the needs of the client than one that is not. But title examiners and other industry professionals disagree over how to best organize a title opinion.

There are many reasons for the widespread differences in title opinion forms used in the oil and gas industry today. Regional differences and the size and complexity of the area being examined account for some dissimilarity. Lawyers have widely conflicting views on the subject and can be close-minded about changing whatever form it is they are accustomed to using. Competition between law firms, conflicts of interests, and confidentiality concerns may chill exchanges of title opinion forms or otherwise dampen collaborative efforts to develop a more uniform approach.

No wonder, then, that the oil and gas industry has failed to develop a model form title opinion template. Disorder, not order, reigns. But there have been candles in the darkness. Over fifteen years ago an article was written by George Snell for the State Bar of Texas Oil & Gas Section

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1. Dr. Harold Weatherby, Vanderbilt University, Freshman English, Fall 1970.

Report entitled “A Model Form Title Opinion Format—Is it Possible? Is it Practical?”<sup>2</sup> After pointing out the trend towards standardized forms in the real estate industry, Snell attached a proposed uniform title opinion template to his article and issued a bell call for Texas oil and gas lawyers to collaborate with him in developing a more uniform approach. That bell call, however, appears to have fallen on deaf ears.

Or if ears were not deaf, perhaps they were indifferent? Many lawyers as well as landmen, division order analysts and others might question whether developing an industry wide model form is either necessary or worth the trouble. The oil industry in the United States has survived so far without one. What has changed?

One obvious change from the past is the sheer volume and geographic diversity of oil and gas title examinations in the United States over the past decade. Advances in horizontal drilling and hydraulic fracturing and the opening of shale plays in basins throughout the United States have likely created the largest demand for oil and gas title opinions in the industry’s history.

With the increased number of title opinions has come increased pressure within oil companies to make their internal processes dealing with title opinions more efficient. It is easier and quicker to act on information when a reader is reviewing a title opinion in a form that the reader is accustomed to. This is especially true when a reader must review a large number of title opinions, or when multiple readers within the same company are looking at the same title opinion forms.

Technological advances also factor in. The author is aware of at least one company who has attempted to put a system in place to link title opinions to its royalty check disbursements database. The theoretical efficiencies and cost savings of such systems seem obvious.

For all these reasons, more and more companies are requiring law firms to use a standard form title opinion template. But efforts to standardize title opinion forms by companies tend to be ad hoc and inconsistent. Lawyers, being anxious to please, often accept whatever form the client wants without further discussion. Rigorous analysis can be preempted by expediency. Best practices can be overlooked.

Therefore, the questions raised by George Snell fifteen years ago (“A Model Form Title Opinion Format—Is it Possible? Is it Practical?”) seem worth revisiting. Has the time come for an industry wide standard oil and gas title opinion format? The oil and gas industry has adapted model form

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2. George Snell, *A Model Form Title Opinion Format - Is it Possible? Is it Practical?* 25 STATE BAR OF TEX. OIL, GAS & MINERAL LAW SEC. REPORT 2 (Dec. 2000).

leases, operating agreements, gas purchase contracts, and drilling contracts. Why would a model form title opinion not be attainable?

Irrespective of the answer to that question this paper presumes that the oil and gas bar as well as landmen, division order analysts, and other industry professionals can benefit from an exchange of ideas and best practices with regard to title opinion structure and format. Accordingly, following this Introduction, Part II of this paper lists twenty of the most common elements of oil and gas title opinion formats found in Texas and elsewhere; Part III lists and discusses twenty common differences. Part IV discusses oil and gas title opinion comments and requirements and makes suggestions for organizing. Part V discusses a “Form Opinion” (Appendix B).

Part VI addresses title opinion writing style. It is difficult if not impossible to divorce a discussion about title opinion structure and format from a discussion of writing style. Rules and best practices in legal writing are not suspended when it comes to writing title opinions.

It is also difficult to divorce a discussion of title opinion format, structure and style from a broader discussion of title examination in general. One of the best treatments of title examination best practices I have run across is George Morgenthaler’s *Oil and Gas Title Examination* (Mockingbird Press (2012), which is a republication of his original 1982 book by the same name, but with some minor revisions.<sup>3</sup>

Morgenthaler’s 6th chapter entitled “Attitudes and Techniques” is particularly insightful. It summarizes what I call Morgenthaler’s “Thirteen Rules.” I will be referring to the “Thirteen Rules” throughout this paper—a list is included in Part VI.

I wish to emphasize that many experienced oil and gas lawyers, landmen and division order analysts may disagree with views expressed in this paper. In that regard, I have intentionally avoided the use of the word “model” when talking about the “Form Opinion” discussed in Part V. I am not that ambitious. If this paper is successful in provoking oil and gas lawyers, landmen, division order analysts and others to think more about oil and gas title opinion structure, format and style, then its purpose will have been achieved.

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3. GEORGE J. MORGENTHALER, *OIL AND GAS TITLE EXAMINATION*, (Mockingbird Press 2012) (1982).

## II. Commonality in Title Opinion Structure and Format

An Oklahoma or a Colorado oil and gas lawyer may take a certain satisfaction in reminding a Texas oil and gas lawyer that “Texas law stops at the Red River.” Louisiana and Pennsylvania oil and gas lawyers can and do make the same point with reference to the Sabine.<sup>4</sup> The underlying point is well taken. Ignoring differences in local laws and practices by a lawyer when examining oil and gas titles can be a prescription for legal malpractice.

Nevertheless, much of what is found in oil and gas title opinions is common from basin to basin as well as from state to state. This can be illustrated by the following list of features found in practically any oil and gas drilling title opinion:

1. Statement of certification period
2. Description of lands
3. Materials examined
4. Surface ownership
5. Mineral ownership
6. Leasehold ownership
7. Royalty ownership
8. Working interest owners
9. Division of Interest (or net revenue)<sup>5</sup>
10. Identification and summary of leases
11. Assignment listing
12. Encumbrances listing
13. Tax statement
14. Comments and Requirements
15. Supplemental exhibits

Division order title opinions might add the following:

16. Legal description of unit and unit tracts
17. Mineral, leasehold and royalty ownership by tract

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4. This has been communicated to me on more than one occasion, and is sometimes put more crudely.

5. A “Division of Interest” table will disclose the net revenue interests of the parties for purposes of disbursing revenues. The term “division of interest” may or may not be used and a Division of Interest table is commonly omitted in drilling title opinions. However, practically every title opinion will disclose what the net revenue interests of the working interest owners are. This is because most clients want to have an idea of what their net revenue interest will be for purposes of running pre-drill economics on a location.

18. Division of production by tract
19. Other information by tract
20. Drilling opinion curative analysis

Having reviewed title opinions from many different parts of the United States over the course of many years I observe that the biggest differences in title opinion structure and format are not due to omissions of one or more of these features but rather how they are sequenced and how much detail is included. Often these differences can be explained by the purpose of the opinion. An opinion issued solely for drilling purposes would of necessity be structured differently than a division order title opinion. But most of the differences in title opinion structure and format, in general, are attributable to the subjective preferences of examiners or their clients.

### *III. Differences in Title Opinion Structure and Format*

So what are some of the most common differences in title opinion structure and format? I have identified twenty. There are undoubtedly others, but the following would top my list:

#### *1. Surface Ownership*

Almost all title opinions start with something like this: “Based solely upon our examination of the instruments listed above (hereinafter collectively referred to as “Materials Examined”), and subject to the comments, requirements and limitations hereinafter set forth, we find title to the Subject Lands to be vested as of June 26, 2014, at 7:00 AM, CST, as follows....”

But what is meant by “title”? Fee title to real property can include surface interests, mineral interests, water rights, and so on. Is an oil and gas title examiner intending to render an opinion on riparian water rights? Generally not, and typically a statement limiting the scope of the opinion to oil, gas and associated hydrocarbons is found somewhere in the opinion.

Nevertheless many title examiners will render an opinion on the surface estate as part of an oil and gas title opinion. Others will not, or at least will include a disclaimer. The “Scope of Opinion” section in the Form Opinion (Appendix B), for example, includes the following disclaimer: “This Opinion expressly excludes from coverage the ownership of the surface estate in the Subject Lands. Surface information may be included in this Opinion for convenience purposes, only. If a definitive Opinion on the Surface is needed, contact the Examiner for a supplement to this Opinion.”

Such a disclaimer is inserted for good reason. Rendering a definitive opinion on the surface in effect makes a lawyer or his or her malpractice

carrier title insurers as to the surface. An oil and gas lawyer might expect to be sued for rendering an erroneous opinion on the oil and gas estate. But do oil and gas lawyers and their malpractice carriers contemplate being sued if a surface related real estate transaction were to be upended due to an error in an oil and gas title opinion?

At minimum, if a definitive opinion on the surface is needed, a frank discussion should occur about the cost of the opinion. If an opinion on the surface is being sought for dual oil and gas and real estate purposes and to avoid having to pay a title insurance premium perhaps the oil and gas title examiner should be charging more for the opinion?

Why does surface ownership need to be included as part of an oil and gas title opinion at all? Particularly if the minerals had previously been severed from the surface, surface ownership, as a practical matter, can be almost irrelevant to oil and gas operations except to the extent that the accommodation doctrine may come into play.<sup>6</sup>

Nevertheless, the client may want to know who the surface owner is for purposes of paying surface damages. Some might say that if this is the case, why not simply rely on property tax assessment rolls? As a practical matter this is often done. But property tax assessment roles can contain ownership errors and in any event the tax assessing authority is not warranting title.

So a client may want surface information included in the opinion for a number of reasons. This is an issue that should be discussed with the client up front. A definitive opinion on the surface would normally require the title examiner to expend additional time and effort worrying about surface related mortgages, tax assessments, deed restrictions and a multitude of other issues. Having said that, to not include surface information may annoy a client so it is best to raise the matter for discussion early in the process.

## *2. Use of the Word “Minerals”; Scope of the Opinion*

Back to what is meant by “title”? Is an opinion being rendered on the mineral estate or only the oil and gas estate? The term “Minerals” can

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6. A discussion of the “Accommodation Doctrine” as articulated by the Texas Supreme Court in *Getty Oil. v. Jones*, 470 S.W.2d 618, 622-623 (Tex. 1971) and subsequent cases is beyond the scope of this paper. Likewise, a discussion of the issue of pore space ownership that has arisen in a number of US jurisdictions is beyond the scope of this paper. See Gray, Trae (2015), “A 2015 Analysis and Update on U.S. Pore Space Law —The Necessity of Proceeding Cautiously With Respect to the “Stick” Known as Pore Space, OIL AND GAS, NATURAL RESOURCES, AND ENERGY JOURNAL: Vol. 1: Iss. 3, Article 3, available at <http://digitalcommons.law.ou.edu/onej/vol1/iss3/3>.

include coal, uranium, gold and so forth. Most oil and gas lawyers intend to only cover oil and gas, not minerals. But the use of the word “Minerals” in the ownership section of oil and gas title opinions is very common. Sometimes a specific comment limiting the opinion to oil and gas can be found in the opinion. In other cases the lawyer simply assumes the client knows what is intended.

The old adage about assumptions will not be repeated. Many lawyers address the issue by using the words “Executive (Leasing) Right, Bonus and Delay Rental” or perhaps “Leasing Privilege, Bonus and Delay Rental” either in place of or in tandem with the word “Minerals.”

These are good semantic choices because they remind that executive rights can be severed from a royalty interest. Another alternative is to avoid the use of the word “Minerals” altogether and say “Oil and Gas” as is done in the Form Opinion (Appendix B). That will work nine times out of ten. In the exceptional case where the executive rights have been severed, address it by a footnote to a comment and requirement or by a modification to the ownership table. By simply saying “Oil and Gas” any question as to whether or not coal, uranium and so forth is included is avoided. Likewise, three words (“Oil and Gas”) can be used in place of six (“Leasing Privilege, Bonus and Delay Rental”) in tables that often have to be repeated throughout the opinion. There will be more said on saving words in Part VI when writing style is addressed.

By now it is obvious that numerous issues arise in oil and gas title opinions relating to scope. Does the opinion cover the surface? Is it restricted to the oil and gas estate? Is it depth limited? Does it include before and after penalties or payout calculations if there is a forced pooling order or a farmout agreement involved? These are all fundamental questions that impact the structure and format of the opinion. For this reason, the inclusion of a “Scope of Opinion” section should be considered as has been done in the Form Opinion (Appendix B). Some lawyers might say that a Scope of Opinion section is too “inside baseball” to be included so early in the opinion and should be deferred either to comments and requirements or to the limitations section at the end of the opinion. Clients get annoyed with their lawyers for putting in too many qualifiers and limitations in opinions, so why add a specific section that would pour even more fuel on that fire? That is undoubtedly a fair criticism. In rebuttal I would say that misunderstandings with clients should be avoided. If putting a statement of scope early in the opinion can contribute to transparency and minimize miscommunications with a client it seems worth risking minor vexation.



Another good use of a Scope of Opinion section in those cases where an opinion is being rendered on more than one depth is to tie the depths to specific wells and stratigraphic equivalents and to mention the assignment which defined or created the depth reference by volume and page. This could be done by footnote or within the body of the Scope of Opinion section.

### 3. *How Much Detail?*

Keep it simple; keep it short; “omit needless words.”<sup>7</sup> How often are we admonished of the importance of brevity in legal writing and in communication in general?

I have seen some very brief title opinions. I have seen some lawyers say little more than owner “x” owns the land and that it is subject to oil and gas lease “y.” Ownership may be set forth in the form of a fraction, such as “1/4,” or in a formula, such as “1/4 – (1/16) x 3/8,” but then the examiner stops. There are no decimals. There are no net revenue interests. If leased there may be a reference to the lease royalty. There are usually at least a couple of comments and requirements—but not much else.

That type of title opinion has a lot of appeal to many lawyers and some clients. It is short, it is to the point, and it does not take as much time to prepare as a more comprehensive opinion.

Unfortunately, the world of oil and gas titles today does not often lend itself to such brevity and simplicity. The facts are too complicated. But some lawyers are inclined to be more concise than others. An example of what I call a “Short Form” ownership table is included in Appendix A as Example 1.

This is a very good ownership table format. It is short; it is precise; it is easy to follow. It might even be called elegant. Through most of my career this format met the needs of most clients perfectly. During most of my career, the overwhelming majority of wells drilled were vertical and were drilled either on a single tract or in relatively small units.

Times, however, have changed. Single tract, vertical well title opinions are now the exception. Most new wells drilled now are horizontal, and it is not uncommon in at least some areas of the country for units to encompass multiple sections with dozens of tracts and hundreds of owners.

This is not to say that examiners have never had to deal with large units with multiple tracts and owners before. Natural gas wells have always

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7. “Omit needless words” is from the famous quote from WILLIAM STRUNK, JR. AND E.B. WHITE, *THE ELEMENTS OF STYLE* 23 (4th ed. 1999) (1935). See *infra* note 45 for the full text.

tended to be more complex from a pooling standpoint than oil wells and more often involve large units with multiple tracts. This is particularly true in states like Oklahoma which have an aggressive forced pooling regime. Federal units in the Rockies, or large secondary recovery units anywhere, invariably include multiple tracts.

Today, however, more frequently than ever before, both oil and natural gas wells are being completed in units with multiple tracts in the primary recovery phase. By statute in practically all states, revenues must be disbursed to owners within so many days of production. At the same time, oil and gas companies in their zeal to control costs are relentlessly automating systems and getting by with fewer and fewer lease administration, division order and accounting personnel per well completion than perhaps seen since the early days of the oil industry. What does this mean for the title examiner?

It has been said that the number one rule in all writing, legal or otherwise, is to know your audience.<sup>8</sup> The “audience” for most title examiners is made up of landmen and division order analysts. My experience has been that rather than pressing examiners to be more concise in their title opinions, landmen and division order analysts are asking for more and more detail, at least in ownership tables. Why is this? Among other reasons royalty owners and their attorneys are getting increasingly demanding. They want to know exactly how that eight decimal ownership interest was derived. Telling them to get their own title opinion can be met with adverse reaction (mildly put).

Furthermore, landmen and division order analysts are asking for more user-friendly title opinions. There is an analogy to the court system. It is no secret that the judiciary and their staffs by and large are overworked. That is why tables of contents and summaries are now required by most court rules for appellate briefs. Judges want lawyers to make their job easier.

So what is meant by the term “user friendly” title opinion? In essence a “user friendly” title opinion makes data easy to find. This suggests: 1) adding a Table of Contents (more on that subject later); 2) replicating some data in more than one place; 3) providing tract data, even in a unit opinion (more on that subject later); and 4) helping to more easily link owners to specific comments and requirements and not presuming that a landman or division order analyst is going to hang on every word of an examiner’s too often voluminous comments and requirements section.

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8. Allyson Ho, *Shorter is Better: Introductions, Summaries of Arguments, and Preliminary Statements*, Legal Writing to Win, Texas Bar CLE, (Jan. 2015).

Essentially, anything that can be done, within reason, to make the job of a landman or a division order analyst easier, should be considered. After all, who is seeing to it that the lawyer's bill is paid?

Some examiners may consider replication of data in more than one place redundant and inefficient. They prefer to keep things as short and simple as possible. They have a point. But increasingly the need for conciseness and brevity is trumped by a greater need for transparency and full disclosure.

There are parallels to the world of public accounting. Ownership tables in title opinions can be likened to putting together an accounting ledger.<sup>9</sup> Conciseness and brevity are of secondary importance to accountants. What is of primary importance to accountants when writing a financial statement is or should be full transparency and disclosure. Otherwise they could find themselves sharing a jail cell with former Enron executives.

Speaking of accountants, particularly since the advent of the Sarbanes-Oxley Act,<sup>10</sup> title information must be made readily accessible by oil and gas producers in order to back up net revenue assumptions for reserves reporting. Oil and gas companies may be subject to audits by outside auditors unfamiliar with oil and gas title opinions. Making the data in the ownership tables easier to follow, even if this involves replication, will serve an oil company better in an audit than otherwise. This is a relatively recent development that many oil and gas title attorneys may not be considering in their zeal to keep things short and simple.

Complexity in oil and gas titles is unavoidable. When examiners attempt to avoid complexity by kicking the "complexity can," as it were, down the road, they risk alienating their clients. Clients do not want the "complexity can" either—or at least want the examiner's help in avoiding as many of them as possible.

With that overview, consider the second example, which is what I will call a "Long Form" ownership table. (Appendix A, Example 2). To make things as consistent as possible the same basic information included in the "Short Form" is included in the "Long Form" example, with a few exceptions, which will be pointed out below.

Though the same ownership information is used, notice the very different format of the "Long Form" versus the "Short Form" examples. The Long Form differs from the Short Form, first of all, in its inclusion of three additional columns. These are for: 1) net acres; 2) leases and assignments (separated into two columns instead of a single "source" column); and 3) a

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9. Which is why I prefer the columns in a title opinion to line up, as would be done in an accounting ledger. See discussion in Part VI.

10. Sarbanes-Oxley Act of 2002, Pub. L. No. 107-204, 116 Stat. 745.

column including references to specific requirements (instead of noting in a parenthetical after the owner's name as was done in the Short Form).

The Short Form is also less redundant than the Long Form in several respects. First, it only lists the lease numbers for the mineral owners once. Second, the Short Form does not include royalty information except to the extent the royalty is included in the net revenue interest formula. Instead, it presumably relies on accompanying lease summaries to capture the lease royalty information. Third, the Long Form includes headings under "Unleased Owners," "Nonparticipating Owners," and "Overriding Royalty Owners" but notes that there are none. The Short Form simply ignores these categories.

All of this makes the Long Form version admittedly less manageable and more unwieldy as a document and to some might make it look less elegant in appearance. How can these additional structure and formatting differences be justified?

#### *4. Net Acres*

Turning to the specific differences between the Short Form and Long Form formats, first, the Long Form includes net acres, whereas the Short Form does not. This is one of the biggest differences I see in title opinions issued by different examiners in Texas and elsewhere.

So what is the issue? I have heard more than one attorney say, "My landman doesn't want net acres." Other attorneys will say, "I don't want to represent net acres because a survey has not been furnished and I don't wish to misrepresent the net acres included."

I would observe that if a landman is telling you he or she is disinterested in net acres, chances are it is because he or she has not been around long enough. Net acres drive everything in the land business. First of all, the landman needs to know how many net acres are associated with unleased interests for leasing purposes. Second, even if the interest is leased the landman may need to pay rentals,<sup>11</sup> or shut in royalties, or minimum royalties which under most lease forms are acreage based. Third, if a unit is later formed, net acres are normally needed for each owner for Division of Interest purposes.

In very simple ownership tables, listing net acres may appear to be a waste of time because they can be relatively easily calculated. For example, if the tract has 100 acres, and Party A owns 1/2, it should be obvious that Party A owns 50 acres whether that is specifically stated or

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11. Admittedly the majority of today's lease forms are paid up so paying rentals is no longer the issue it once was.

not. But with multiple owners and complex fractions calculating net acres gets more complicated.

I would further observe that to a certain extent the “net acres” debate is a Texas-centric discussion. Oklahoma title opinions and Rocky Mountain title opinions are much more apt to include net acres. For that matter, and at some risk of criticism from my Texas peers, I would observe that our counterparts in Oklahoma and the Rockies were more easily able to accommodate their existing title opinion formats to the shale revolution because, unlike Texas, they practice in states where the forced pooling regime is better equipped to handle multiple tract development. Furthermore, the Bureau of Land Management normally requires acreage numbers to be disclosed in communization agreements. Having the net acreage figure in a title opinion can make the landman’s task easier when preparing such an agreement. This may not be as important in Texas where federal minerals are rarely encountered but it is a potential factor when rendering title in most of the Rocky Mountain States.

Another reason for including net acres is that oil and gas titles are become increasingly fractionated and complex. Describing an interest as so many net acres over the gross acres in a tract can be a shorthand way of referring to the interest. For example, if a lease covers a  $9/256 + 2.5/640$  interest, or alternatively, 25 net mineral acres out of 640, which is the more convenient way to refer to the interest?<sup>12</sup>

The other reason to include net acreage is that it quickly conveys a sense of proportionately more so than a decimal interest standing alone. If an unleased interest only involves a half an acre out of 640 acre unit, for example, a business plan for dealing with it may be less of a priority than if it involved 320 acres out of 640.

The objection that net acres unsupported by survey are misrepresentative is addressed by considering that surveys themselves are rarely definitive—acreage totals frequently change upon resurvey. In any event ball park acreage estimates are frequently used for purposes of leasing interests and paying bonus. When the definitive survey comes back net acres may change, but so what? The decimal ownership interests themselves will be unaffected because the changes in numerators and denominators will be pro rata across the board.

Use of net acres is also very handy, if not a practical necessity, when dealing with working interests. Most operating agreements for primary recovery use net acres as the basis for determining working interests and will force the landman or whomever is putting the operating agreement

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12. Concept attributable to George Snell, Snell Law Firm, Amarillo, Texas.

together to make assumptions based on acres whether or not a survey has been completed.

In any event multi-tract opinions are becoming more and more the norm, even in Texas. The entire production sharing/allocation well debate in Texas is arguably driven because of weak forced pooling laws. I predict that over time Texas opinions will be looking more and more like Oklahoma and Rocky Mountain opinions as horizontal units get larger and allocation well drilling becomes more common. Coming hand in hand with larger units is the task of having to deal with acreage tract factors which in turn leads to dealing with net acres attributable to individual owners.

Last word on the subject. How do you come up with net acres if the survey is not back? Make a best guess using deed recitals, government land office plats, or by deed plotting the description yourself, preferably using deed plotting software. Then add a comment/requirement to the effect that all net acreage figures are best guesses based on a deed recitals or a deed plot or whatever and that the opinion may have to be revised following an actual survey or receipt of additional information. At least the landman will have a ballpark acreage figure that he or she can work with. And since more and more title examiners are rendering opinions accompanied by Excel spreadsheets, the extra effort involved in transposing net acres to the opinion is relatively minimal.

Speaking of Excel spreadsheets, one more example of a “Short Form” title opinion is found in Appendix A as Example 3. This example, like the first Short Form example, is likewise a very short and elegant ownership table. The facts were changed slightly—it covers more than one tract and includes both an overriding royalty interest and an unleased interest. It has a footnote with the key to abbreviations.

This form is very similar to the one proposed for fee titles by Morgenthaler in his book and is not too dissimilar from a form I have seen frequently used by some Colorado title examiners still today.<sup>13</sup> This format has the advantage of consolidating into one table all of the interests that can be encountered in an oil and gas title—working interest, royalty interest, overriding royalty and so forth.

Conspicuously missing are net acres and fractional interests. Presumably Morgenthaler ignored these because he had an attitude similar to many other examiners who ignore net acres. This attitude would be consistent

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13. MORGENTHALER *supra* note 3, at Appendix A. For an example of a Colorado examiner’s form using an approach similar to Morgenthaler see the attachment to Upsons, Paul, “Title Opinions: Type, Basis, Format, and Intended Audience,” *Nuts and Bolts of Mineral Title Examination*, Paper 5, Pages 5-11 through 5-15 (ROCKY MTN. MIN. L. FDN. 2015).

with Morgenthauer's admonitions in his Rule Nos. 6 and 7 about giving too much information. See discussion in Part VI.

Though Morgenthauer would not have thought about it thirty years ago another explanation for such omission is that this format presupposes something that more and more companies are requiring—an accompanying ownership spreadsheet in an Excel format to be completed by the examiner at the same time as the opinion. Net acres, fractions and other information that might otherwise be found in ownership tables in opinions can be found in the Excel spreadsheet (or workbook).<sup>14</sup>

Such a system can work longer term only if the company utilizing it has internal processes in place guaranteeing that the spreadsheet does not get separated and lost from the title opinion. For this reason this format would be unacceptable to companies who want to have net acres, for example, included in their title opinions without reference to an extraneous spreadsheet. It would also be unacceptable to a company who views the title opinion, not the spreadsheet, as the primary source of title information. At least one company I know of has fully integrated their title opinion process into their Sarbanes-Oxley<sup>15</sup> compliance procedures which gravitates even more to the title opinion being a comprehensive, stand-alone, document.

The assumption that a title opinion is a stand-alone document is the traditional approach in title examination and is the approach taken in the form opinions included in the Appendices. A spreadsheet may accompany, but the title opinion itself normally contains all required information. That, incidentally, should be a question that should be asked of a prospective client at the outset. If the title opinion is not the primary source document, then the second Short Form example (the "Morgenthauer Form") may be a viable and attractive alternate choice.

##### *5. Historical Formulas (aka Fractions )*

The next difference to consider between the Short Form and the Long Form examples is use of historical formulas, which are referred to in the Long Form example as fractions. First, what do I mean by "historical fractions"? Consider the following: Grandpa owns 8/8ths; Grandpa dies leaving two children as his heirs; each child has two children, then dies. So there are four grandkids. Each grandchild has 1/4 and many title examiners would simply state 1/4. Others would state it as " $= (1/2)/2$ " or perhaps " $1/ 2$

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14. This is the attitude of at least one company the Examiner knows of who has used this format in the past. That company required an accompanying, customized spreadsheet in a format which sets forth net acres, historical formulas and much other data separately.

15. See *supra* note 10.

x 1/2” and then put the decimal interest under “interest” as “0.25000000.” Why do this? If simplicity and elegance is important why bother with the longer version of the formula?

Many examiners would not bother. As a case in point the “Morgenthaler Form” has no fraction at all. Other examiners would gross up the historical fraction to a “root” fraction to make them less complicated. This is the approach used by both the first Short and the Long Form examples.

But compare the fractions in the Form Opinion in Appendix B to the fractions in the first Short Form opinion example in Appendix A. Look especially at the Division of Interest exhibit (Exhibit D) to the Form Opinion. Why use such lengthy formulas instead of a simpler fraction? Because many examiners believe that it is useful to “tell a story” as to how title evolved. Each divisor in the formula represents a different transaction or event in the chain of title.

For example, “(((60%/3)/2) + (20%/3)) + (((60%/3)/2) + (20%/3))” could also be represented as “1/3.” But each divisor or multiplier in the chain represents an event that impacted the title. One might have been a deed; another might have been a probate; another might have been a judicial partition in a divorce settlement. Grossing up the formula to 1/3 omits the history.

If the historical fraction is included and if the client wished it could go back to the run sheet and trace the examiner’s steps in coming up with whatever decimal interest is ultimately represented. Similarly, if a title history or a list of instruments in a “chain of title” exhibit or section is provided in the opinion itself, the historical fraction would enable someone reading the opinion to replicate the examiner’s ownership calculations without having to refer to a run sheet or the abstract.

Furthermore, in the first example if grandpa’s prodigal son appears following a probate proceeding triggered by a requirement in the examiner’s original opinion, and the interests must be recalculated, the client could go back to the “root” formula and make the adjustment without having to get a supplemental opinion from the examiner. (Take the original fraction,  $= (1/2)/2$ , and substitute  $= (1/3)/2$  for each grandchild, or 0.166666667 instead of 0.25000000.) This provides greater flexibility for the client in keeping pay decks updated and saves on legal bills. Or, more optimistically for the title examiner, the lawyer can be freed up to be hired for another more pressing task.

Being able to furnish the historical formula (usually put under a column that says “fraction”) also allows greater transparency and potentially improved owner relations. At least one legal writer has surmised that an implied covenant of disclosure may be arising in law for the same reason



that earlier implied covenants, such the duty to further develop, or to prevent drainage, arose to fill in the gaps in lease forms that were often the product of the superior knowledge and bargaining power of the lessee.<sup>16</sup> Oil and gas title opinions are increasingly expensive and it is impractical for most small interest owners to pay for their own opinions. Would it be too far of a stretch of the implied covenant of disclosure to say that an oil or gas producer in possession of a title opinion has a duty to share it with its lessors to the extent required to explain how an owner's decimal interest was derived?

Though to my knowledge case law has not yet gone so far as to require a producer to furnish copies of title opinions to owners in the absence of an express lease or contract provision dealing with the issue, at least one Texas case has dealt with fraudulent concealment of a chain of title by and oil company.<sup>17</sup> In any event the contents of title opinions and their ownership calculations are often subject to litigation. It is commonly thought that title opinions, since they are subject to attorney client privilege, are not discoverable. But the privilege is often waived by the client when it distributes title opinions to third parties as may be required by operating agreements, purchase and sale agreements, or otherwise.

Is the dissemination of title opinions by producers becoming so commonplace that some future court might carve out an exception to the attorney client privilege and require a producer to give a copy to an owner under an implied duty of disclosure? If such required disclosure was to come about, would the producer look less or more like a prudent operator in having relied upon a title opinion with ownership interests supported by a historical fraction? Or is the legal profession held in such high esteem by jurors that a lawyer's word (decimal interest and nothing more) is good enough?

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16. JOHN BURRITT MCARTHUR, OIL AND GAS IMPLIED COVENANTS FOR THE 21ST CENTURY, CH. IX (Juris 2014).

17. *Kerlin v. Saucedo*, 273 S.W.3d 920 (Tex. 2008). In that case the court rejected the fraudulent concealment argument when the lessee allegedly concealed portions of his chain of title. McArthur, *ibid*, is very critical of that case in his book and others like it from the Texas Supreme Court because they presume that royalty owners must undertake continuing scrutiny of lessees to ensure that they are telling the truth and are honestly performing the tasks they were hired to undertake. To McArthur, this lack of protection by the courts of the lessor in such situations runs counter to the history of the development of implied covenants which arose to protect the party with the lesser bargaining power from an exploitative relationship. One of the premises of McArthur's book is that new implied covenants, such as an implied covenant of reasonable disclosure, are overdue from the courts. See MCARTHUR, *supra* note 16, at 346-360.

My own experience in dealing with owners like Aunt Sally whom a client referred to me for explanation of why her decimal interest was 0.00222168 while her Cousin Minnie's was 0.00222189 is that many people are less than confident in lawyers who claim to have such omnipotent command of the facts that their conclusions should be accepted as sacrosanct. On the other hand, if you are able to show the historical fraction and use it to explain that Grandma Blanche must have loved Cousin Minnie's mother more than Aunt Sally's mother because Cousin Minnie's mother received twice as much interest in the 1947 gift deed, Aunt Sally may still be angry but hopefully her anger would then be directed at her late Grandma and not at you.

So in this respect, I am not entirely in agreement with Morgenthaler's Rule No. 6, discussed in Part VI, "Don't Give a History Lesson."<sup>18</sup> In any event, if it is decided that historical fractions are going to be included in a title opinion, then the title opinion format must be designed to accommodate, as is done in the case of the Form Opinion (Appendix B) in its Exhibit "D," Division of Interest. Even the Long Form example set forth above for a single tract has a "Division of Interest" table incorporated which is included to provide more space to showcase historical fractions than the Short Form version to which it compares.

For those familiar with Excel it should be apparent that the formulas in the Form Opinion are copied and pasted from an Excel spreadsheet. Some Examiners would object to that format and would substitute for the Excel formulas a more text based statement of the formula. For example, instead of saying " $= ((25/464)/2) + ((15/464)/2)$ ," the following format might be used: "[ $(25/464) \times 1/2$ ] plus [ $(15/464) \times 1/2$ ]." In both cases the formulas equate to 0.04310345.

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18. Here is Morgenthaler's Rule 6 verbatim: "*Don't Give a History Lesson*. You may rest assured that your client is not interested in a detailed presentation of every assignment in the chain of title to his leasehold interest unless he asks for it. Do not tell your client how he got where he is; chances are, he only wants to know where, not how. Some firms render title opinions that merely tabulate the leases, then tabulate each assignment in the chain of title, and leave it to the client to figure out just who is left owning what. This is totally inadequate. It provides too much information, none of it worthwhile. If you find yourself writing a comment about a fascinating title problem where Tillie Wassel sold the farm to her nephew, Billie Wassel, then bought it back at a tax sale, and had to endure a suit brought by Willie to get the farm back, but the whole thing does not matter because Billie and Tillie both eventually quitclaimed to Uncle Edgar, forget about it. The point of the exercise was to get Billie and Tillie out of the chain of title; having done so, do not drag them back into the opinion. If you have faced a puzzle and solved it through personal brilliance and an incredible knowledge of obscure statutes, be satisfied with your work. Forget the past unless it actively affects the present," see MORGENTHALER *supra* note 3, at 83-84.

An objection that I have to the latter example despite the fact that it is easier on the eyes is that the formula has to be recast rather than simply copied and pasted into an opinion from a spreadsheet. Having to recast the formula involves additional time for the examiner in a business where cost control is always a client concern.

Similarly, if the ownership table in the opinion is either available to the client in a word processing document or is constructed by converting the table from a PDF, the examiner's formula can be copied and pasted by the client into an Excel spreadsheet. This can be useful when demonstrating to an owner how a particular decimal interest was determined.

Clients may object to overuse of parentheses in an Excel formula. This can result from a title examiner chaining title in Excel starting with the patent and continuing on through the last document of record. While this replicates the historical chain the formula can become unwieldy and difficult to understand when viewed on a stand-alone basis.

The solution would appear to be to use as few parentheticals as possible despite the fact that it will lengthen the formula. Another technique used by many examiners is to gross up the fractions to a "root" fraction and show only historical changes since that time. This might work well where a tract of land stayed in the same family over a period of decades or at least long past the statutory period called for under the applicable adverse possession statute.

Time and space prevent further discussion of the "historical fraction" issue and related chaining techniques. As oil and gas titles become more diffuse and complex through time there appears to be a parallel growing distrust by owners that lessees are properly crediting their interests. Suffice to say that if you have not worried about historical fractions in the past, there is no guarantee that you will be able to ignore them in the future, or that old opinions you wrote without them might not return to haunt.

#### *6. Rounding*

Another issue for which there is considerable divergence among examiners is the issue of rounding. In both the Short Form and the Morgenthaler Form examples above there was a rounding up of the interest of "Joe Allen Wilson et ux, Gayla J. Wilson" to .02083334 (or 2.083334% in the Morgenthaler Form). This was not the case in the Long Form which left it at .02083333, as it would be disclosed in Excel.

Many examiners and their clients feel strongly that numbers in a title opinion should be susceptible to manual adding of all numbers to "1," and if that is not the case, that the opinion is in error. This can create an issue when converted fractions, like  $1/2 \times 1/4 \times 1/6$  (or 0.02083333) go to

infinity. There are two solutions. The first is to manually round either by eye or by use of the Excel rounding function. The second solution is to insert a comment and requirement addressing the issue, such as Comment/Requirement No. 18 in the Form Opinion.

As the Comment/Requirement points out, in some respects the debate is misplaced. For example, the difference between 0.50000000 and 0.49999999 in a net revenue calculation would be equal to one barrel out of 100 million; similarly, the difference between 0.50000000 and 0.49999999 in a cost calculation would be \$1.00 out of \$100 million. This should cause some wonder about whether this is worth paying an examiner to go through the steps to manually round, particularly in long opinions with hundreds of entries.

The solution would be to pick one or the other approach depending on the number of entries and a judgment call by the examiner on how long it would take to go through the rounding. If the first approach is taken it would be appropriate to note which figures are being rounded as is the case in both the Short Form and the Morgenthaler Opinion examples.

### *7. References to Requirements*

Both the first Short Form and the Long Form examples reference specific requirements in title opinions. This is not universally true of title examiners. Most lawyers would prefer not to reference specific title opinion requirements at all. After all, are not all the lawyer's title requirements worthy of being read? If not, why were they made in the first place?

The truth is that all title opinion requirements are not worthy of being read. A fair number of title requirements are included only for the purpose of covering the lawyer's back. Reference the formal limitations section near the end of the Form Opinion (Appendix B).

If you look at title opinions over the past half century or so (and many lawyers, including myself, get to do this routinely in the process of preparing supplemental opinions), the number of title comments and requirements have increased exponentially. Whether lawyers are smarter (doubtful), or more concerned about being sued for malpractice (more likely), or if the world of oil and gas titles has simply gotten more complicated (indisputable), comments and requirements in title opinions just seem to keep getting more and more numerous.

The chickens have come home to roost. Many clients are insisting that lawyers tell them which title requirements are tied to which owners in ownership tables. This can be done in a variety of ways. The first Short Form example in Appendix A handles by notation following the owner's name. The Long Form example in Appendix A has a separate column in the

Division of Interest table. Footnotes or asterisks are used by other lawyers. Irrespective, not referencing requirements in title opinion ownership tables is among the greatest pet peeves of division order analysts and is an issue that lawyers ignore at their peril. There will be more said on this subject in Part IV, below (“Organizing Comments and Requirements”).

#### *8. Distinguishing Leasehold Information from Working Interest Information*

Working interest is the operating interest under an oil and gas lease.<sup>19</sup> A leasehold interest, in contrast, is the oil and gas leaseholder’s possessory estate in land,<sup>20</sup> and may be either operating or non-operating. Leasehold interests may ripen, therefore, into working interests but they do not necessarily start out that way.

Why would leasehold information be of interest to a client since costs and revenues are allocated on a working interest, and not a lease basis? The reason is that unit boundaries change all the time. Having leasehold as well as working interest information allows a client to quickly deal with unit changes and determine who the new working interest owners are. See the Form Opinion (Appendix B) for an example.<sup>21</sup>

#### *9. Short or Long Form? Which is Preferred?*

So which form is to be preferred? At this point my own biases have undoubtedly become evident. But what is the justification, for example, for inserting a heading such as “UNLEASED OWNERS (“UNL”)” and then putting the word “None”? Why replicate lease numbers in both the owners section and the division of interest table? Whatever happened to the adage, “omit needless words”?<sup>22</sup>

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19. 8 PATRICK H. MARTIN & BRUCE M. KRAMER, WILLIAMS & MEYERS, OIL AND GAS LAW 1155 (LexisNexis 2014).

20. BLACK’S LAW DICTIONARY 416 (3rd pocket ed. 2006).

21. While not directly related to the subject of leasehold interests at least one experienced examiner advises that he routinely includes summaries of relevant title facts from completion reports for all wells drilled in the area being examined. Identifying producing well information can assist a client a client in determining whether or not a particular lease is held by production, or not. This is not a universal practice and should be discussed with the client because it will require review of completion reports and other information not typically included in title abstracts. Another experienced examiner with whom the author discussed the issue expressed the opinion that it should be left to the client and its technical team to determine whether or not a lease is being held by production and that he considers it out of place for an examiner to render an opinion in this regard. As mentioned at the outset, there are considerable differences between title examiners when it comes to title opinion formats.

22. *Infra* note 45.

Professor Strunk, may he rest in peace, was not a landman or a division order analyst. The reason it is useful to put “UNLEASED OWNERS (“UNL”): None,” is that there is probably no single piece of information in a title opinion more important for a landman preparing for a drilling well to know than whether or not there are unleased interests. Why be coy about it? Tell the landman as early in the opinion as possible.

As another example, look at the initial reference to the owners in the first Short Form table. What if there had been a hundred owners listed over the course of ten pages? Is omitting the lease number and the royalty rate applicable to the owner an efficiency—or is it a missed opportunity to take advantage of space that is already on a page and that might make a landman or division order analyst’s job dealing with a long opinion just a bit easier?

This gets back to the “complexity can” discussed earlier. Lawyers undoubtedly can make things easier for themselves by including the least amount of information possible. But does that makes things easier for the client?

Why separate columns for Leases and Assignments instead of the single column, “Source”? In the simple, one tract opinions shown in the Short and Long Form samples found in Appendix A it would not make much difference. But what if there are a dozen or more each of leases and assignments?

Last word on this topic. Leaving out or abbreviating historical fractions, omitting net acres, avoiding references to lease royalties, and combining lease numbers and assignment numbers under a single “Source” column unquestionably leads to simpler and more elegant title opinions ownership tables, and there is much to be said for that from the standpoint of appearance. The Short Form examples found in Appendix A speak for themselves in this regard. These are particularly attractive options when title is very simple.

Oil and gas titles, however, are not always simple. Having the extra columns for a total of six in the Long Form example (versus four in the first Short Form version) with different column widths depending on the section of the Opinion makes the Long Form opinion more difficult to deal with from a formatting standpoint because alignment, margin and spacing issues have to be carefully managed if the format is to still look clean and crisp. But the additional columns also provide those extra touches I have been talking about that can make the ownership tables in an opinion more transparent, more fully disclosing, and more user-friendly to the reader, particularly if the opinion is very lengthy.

A reader of a title opinion should be able to find information as quickly and as easily as possible. Returning to my earlier accounting analogy—is the goal of a financial statement to be brief, or is to provide transparency and full disclosure? Ownership tables in title opinions should be thought of the same way.

Perhaps I have sold you on the Form Opinion format for long title opinions. But why not use something simpler and less complicated for shorter opinions? That is an excellent question. Before answering, however, a discussion needs to be had about law firm branding and overall consistency in title opinions. That discussion is included in Part V below when talking about the Form Opinion.

#### *10. Lease and Assignment Summaries*

Moving on finally, from the ownership tables, look at Exhibit A to the Form Opinion (Appendix B), and its summary of active oil and gas leases. A lease summary of some sort is found in almost any title opinion. It would be a brave (or careless) title examiner who would not bother to tell the client who the lessor and the lessee are under the leases applicable to the lands, what the dates of the leases are, or not disclose the recording information, terms of the leases or what the royalty rates are.

Beyond that, title examiners vary widely in terms of how much information they capture about provisions in the applicable oil and gas leases. Some examiners will come close to copying the entire lease in the title opinion. Other examiners will provide the bare minimum to identify the lease and disclose the royalty rate.

Summarizing the lease can be a dicey thing. What if you leave out a key provision that the client otherwise overlooks, leading to lease forfeiture or a release of critical acreage?

On the other hand, I once had a client tell me, “I don’t need to pay you to tell me what my lease says.” Probably because those words still echo, I lean towards a “less is best” philosophy when it comes to lease summaries. This may sound inconsistent with the lecture I have been giving so far on providing more, not less, information in title opinion ownership tables. But once you start moving away from ownership tables, a different philosophy should kick in. It is not the examiner’s task to summarize every document in a leasehold or mineral chain of title. Doing this can add astronomically to the cost of a title opinion and is not needed. Morgenthaler’s Rule No. 8, “Don’t Prove How Much You Know,”<sup>23</sup> is relevant in this regard. Beyond

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23. *Infra* note 35.

that, clients can and should read their own leases. That is one “complexity can” that is unavoidable.

Include the names of the lessor and lessee, the date of the lease, recording information, lands covered, royalty rate, and whether rentals are paid up, or not. Indicate any features of the lease that might cause premature forfeiture or clauses that will cause acreage to be released. At that point, I generally stop. A standard requirement that I and many other examiners use reminds the client to read the lease(s) and not rely on the summaries. See the example in the Form Opinion (Appendix B) at Comment/Requirement No. 12.

This is an area where I will concede that a uniform approach to title opinion structure and format is seemingly a practical impossibility. The needs and preferences of clients are simply too varied. A large oil company with a large lease administration department which itself summarizes all the company’s oil and gas leases and inputs the data into a computerized lease summary data base may look upon a comprehensive lease summary in a title opinion as redundant and unnecessary. (“I don’t want to pay you to tell me what my lease says.”) A smaller oil company, conversely, may look at title opinions as the primary source documents for both title and lease information and may insist on lease summaries that are as comprehensive and detailed as possible. If the client wants to pay for the additional time it takes to provide comprehensive lease summaries then so be it.

When discussing the issue recently with a division order manager for a well-known oil company, it was suggested that cost netting and whether or not royalties are due on flare gas are two other important provisions that should be referenced in a lease summary. A landman for the same oil company suggested that the maximum number of acres that can be pooled for oil and gas is something else worthy of being noted in a lease summary.

At least one examiner I know believes that detailed summaries of “Pugh” clauses or other such retained acreage clauses should be an absolute requirement in a title opinion. Other examiners will simply note the existence, or not, of such a clause in their lease summaries as was done in the Form Opinion (Appendix B). These are just a few examples of the many and varying preferences that clients and examiners may have with regard to lease summaries.

The same discussion can be had about the level of detail in assignment summaries. Some lawyers will not include assignment summaries. But assignment summaries can be very useful particularly to a division order analyst reviewing an examiner’s calculation of deduction of overriding royalty from net revenue interests. Proportionate reduction clauses and what other agreements the assignment may be subject to are also key issues with



assignments. See the sample assignment summaries in the Form Opinion (Appendix B).

Perhaps the take way is that when it comes to lease and assignment summaries, the needs and preferences of clients vary widely, for a variety of good reasons. The solution is to conduct a dialogue, up front, between the examiner and the client to identify what those unique needs and preferences might be and to incorporate them into the examiner's lease and assignment summary format.

#### *11. Detail in Mortgage, Easements and Other Miscellaneous Summaries*

There is less divergence of opinion on how much information to include in miscellaneous summaries of encumbrances such as mortgages and easements. Again the guiding principle in this regard should be that less is better. Mortgages are time barred in Texas four years after maturity. If the mortgage does not identify the due date of the note, then limitations runs from date of the mortgage. Mortgages can be amended and extended, but in final analysis, all that really needs to be cited are mortgage facts such as due date and present owner.

Similarly, it should not be necessary to tabulate assignments of easements or the mortgages which may encumber them. Who the current owner of an easement is or whether a mortgage encumbers an easement is information that has minimal impact on oil and gas operations. Most examiners would not bother to include such information in their summaries.

Unreleased but presumably expired leases are another subject. Reference Exhibit E to the Form Opinion (Appendix B) and take special note of the four categories of prior unreleased oil and gas leases. These categories are self-explanatory. The most troublesome category is "Category 1" which includes prior unreleased leases without "Pugh" clauses that could be held by production from wells miles away on non-contiguous tracts. Much less troublesome is the last category, "Category 4"—a small lease contained wholly within the drilling unit. Visual inspection of your drill-site may determine if that lease is a problem, or not (assuming the lease was never pooled or unitized).

The detail that is included in the lease summaries for presumably expired leases is normally much less than what is provided for active leases. I generally do not include assignment detail for expired leases unless the client asks for it which presumably would only happen were an investigation to show that a presumably expired lease may be an issue after all. This happens relatively infrequently so the additional time and effort required in summarizing the assignments up front is hard to justify from a cost perspective.

### *12. Use of Exhibits and Tables of Contents*

Another common difference in title opinion formats relates to use of exhibits. Some examiners do not use exhibits at all. Other examiners use exhibits very liberally. See the Form Opinion (Appendix B).

Liberal use of exhibits goes almost hand and hand with incorporating a Table of Contents. Without a Table of Contents the client is more prone to waste time thumbing through the body of the opinion to look for, as examples, lease summaries or a Division of Interest.

Some lawyers I have discussed the issue with object to Tables of Contents as being “overkill” or not worth the trouble, or at least not for very short title opinions. My response is, what about the Federal and Texas Rules of Appellate Procedure (Rules 28 and 38 respectively)? Even a one page appellate brief is required to have a Table of Contents. Why is that? Because appellate judges and their staff are busy people and want to have a ready reference to the brief to quicken their review process. Why would the circumstances of equally busy landman or division order analysts be different when it comes to reading a title opinion? See the Form Opinion (Appendix B) for an example of a Table of Contents.

### *13. Sequence of the Opinion*

An issue closely related to the use of exhibits and a Table of Contents is the general issue of sequencing. This is possibly the biggest issue of all when it comes to differences between title opinion formats. Lawyers and their clients are all over the map when it comes to the sequencing of information included in title opinions.

So how would I handle sequence? Look at the Form Opinion (Appendix B). Following the Working Interest Owners Summary, the opinion first identifies the fee owners in a separate section from the leasehold owners called “Ownership of the Subject Lands.” The fee owners are the owners of the oil and gas rights and are normally the executive owners of the leasing rights. They are, in effect, the participating royalty owners. This is the portion of the ownership tables devoted to the lessors and unleased interests. If there are non-participating royalty (NPRI) owners, they are referenced in proximity to the lessors and unleased interests so that they can be better linked to the lessors and unleased owners who may be subject to their interests. The NPRIs should be connected to the owners by footnote, asterisk or otherwise.

The next section of the opinion is for the leasehold owners (“Leasehold Estate”). This is also where the overriding royalty interest (ORRI) owners are included since they are carved out of the leasehold estate. Once again

the ORRIs should be linked to the leases they burden by footnote, asterisk, or otherwise.

Next in sequence is the Division of Interest table. See the Division of Interest table included in the Long Form example for single tract or even multiple tract opinions. If a unit is involved, use the Division of Interest table included as Exhibit D to the Form Opinion (Appendix B).

Last, if there is a unit, disclose the working interest owners and their respective shares of well costs. For convenience put the unit net revenue interest by the unit working interest. Until recently I had this table in the middle of the opinion because that seemed logically sequential, but clients objected. When you think about it, the first question a landman wants to have answered is “what is my company’s share of costs and revenues?” So rather than burying the working interest table in the middle of the opinion, I now make it the first ownership table at the beginning of the opinion.

In summary, the sequence of the opinion I am suggesting flows as follows: 1) fee ownership; 2) leasehold ownership, and 3) Division of Interest. If there is a unit, put a summary of the working interest owners up front.

Why separate? Why not have all the ownership for a single tract in close proximity? This is the most common objection I get from clients or other attorneys when they first see this format.

The first advantage of the sequence I suggest is that it can shorten the length of title opinions by lessening repetition of redundant information. Generally speaking there is more likely to be commonality between leasehold interests, as a class of ownership, than fee interests. What if the same company has leased all or nearly all of the twenty-three tracts covered by the title opinion? A single or perhaps only a couple of leasehold tables for Tracts 1-23 could be set up irrespective of how diverse the royalty ownership interests are in the fee section of the opinion. See the leasehold summary in the Form Opinion for an example.

Second, what do landmen look for primarily when they are getting a drilling location ready for operations? The first question, usually, is are there any unleased interests? The second question is, who are my partners? The next question might be, what are the net revenue interests in the leases? In the sequence of opinion I suggest all this information is quickly accessible to the landman in the working interest and leasehold summary sections without the landman (or his or her Land Manager or Land Vice President or General Counsel) having to thumb through a long opinion looking for it tract by tract.

Third, unit outlines are often in a state of flux. Having all the leasehold information in one section can facilitate a landman being able to more quickly address fluctuating unit boundaries.

Fourth, what does a division order analyst want to see in a title opinion when a new well comes on stream? Generally, the division order analyst first wants to see the information needed to prepare a division order. That is the primary purpose of a separate Division of Interest table.

I have had many debates over whether or not my concept of separating the three tables is a better solution than handling each tract on a stand-alone basis. Keeping all the information together in a single tract summary is without doubt a simpler solution. But if a Table of Contents is provided, would not the separated information be just as accessible? What about the advantage of having all the leasehold information in one section for pre-drill planning purposes? If a well is not timely drilled because the landman was not able to timely solve complex pre-drill title curative issues, all the other issues can go away. If having all the leasehold information together in one section can hasten the landman's job, then everyone else benefits.

There is, however, a limit. If the number of different groups of common leasehold ownership exceeds two or three, it is better to keep all the information for a particular tract in the same place. More than two or three groupings of leasehold information can cause a separate leasehold section of the opinion to be cumbersome and hard to follow. But that exception to the "rule" should be just that—the exception. Approaching it as the exception ensures that at least some consideration is given to the potential advantages of the alternative approach.

#### *14. Chains of Title (Mineral and Leasehold)*

Many examiners, particularly in Texas opinions, will include a list of the pertinent documents in the mineral chain of title. This is much less common in Oklahoma and the Rocky Mountain States because title opinions so often will include multiple tracts and the sheer number of different instruments can make such lists very lengthy. Some examiners even in Texas will question whether such an inventory is useful given that the client likely possesses the same run sheet as the examiner, which presumably includes all the instruments.

But if the list is short enough the historical information and utility of not having to track down the runsheet at some later time may outweigh the additional cost. My rule of thumb is that if the list is greater than thirty or forty instruments, either discuss the need for the list with the client or omit with the comment that the list can be included in a supplement to the Opinion.

Some lawyers will also include lists of the assignments contained in leasehold chains of title. In most cases this seems redundant since assignment summaries are normally included in the opinion already. In the Long Form and the Form Opinion examples in the Appendices, the assignment summary numbers are tied to owners in the ownership tables.

Some Examiners will go much further than simply listing the pertinent documents in a mineral or leasehold chain of title. They will include a narrative history of the chain of title. If such a narrative is short, I would not take exception and upon occasion have included such narratives in my own opinions. But longer narratives run the risk of being convoluted and rambling and some clients will be annoyed (justifiably) in having to read them. This is where I am in agreement with Morgenthaler's Rule No. 6—"Don't Give a History Lesson."<sup>24</sup>

I know of other examiners who will insert their comments and requirements into the mineral chain of title. This has its advantages. It can avoid replication of recording references (with attendant risks of transposition errors) and can better put issues in a historical context. The disadvantage to this approach is lack of prioritization—the most significant requirement in the opinion could be buried at the end. More on this subject in Part IV below.

### 15. *Addresses*

Another issue that examiners will differ with relates to addresses of owners. Some examiners do not include addresses of owners, others do. The argument for not including is that last known addresses of record are frequently not current and the client presumably has some idea of the current the addresses of the owners anyway since the landman is trying to lease or negotiate surface damages. In Oklahoma there is a state wide mineral registry which many landmen rely on anyway—so why pay an examiner to identify last known addresses in the title opinion?<sup>25</sup> LexisNexis® Accurint® and other commercial vendors sell databases that can be used to trace addresses and other missing person information.

Other clients may have limited access to such commercial databases and may deem last known addresses of record very useful. Where do you begin the process of locating the current mineral owners? What if an interest is unleased? Knowing the last known record address of an unleased mineral owner may be the first step in locating him or her. This issue, however,

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24. *See supra* note 18.

25. *See* OKLAHOMA MINERAL OWNER REGISTRY, <http://www.ownerregistry.com> (last visited May 7, 2015).

should be discussed with the client to make sure that efforts are not being replicated with those of the field landmen.

The Form Opinion (Appendix B) incorporates last known addresses in its Exhibit D, the Division of Interest exhibit. That way the address can be found next to the net revenue interest that will be relied upon for payment purposes. In single tract or multiple tract opinions lacking a Division of Interest Exhibit D, the addresses can either be inserted in the Division of Interest table in the body of the opinion or in a separate exhibit. I prefer the separate exhibit because addresses in the Division of Interest table located in the body of the opinion tend to clutter with too much information.

Note the date of the source document following the addresses in Exhibit D to the Form Opinion (Appendix B). This gives the reader a sense of how “stale” the address of record is. If addresses are included, it is important to remind the client that they are last known addresses of record, only, and may not be current. This is done in the Form Opinion in the Limitations Section.

#### *16. Before and After Payout Interests*

Another issue that should be considered is whether the ownership information is to be presented on a before or after penalty or payout basis. In states such as Oklahoma and North Dakota, for example, forced pooled owners can be entitled to statutory or commission mandated royalty prior to recovery of penalty which means that separate sets of before and after penalty working and net revenue interests must be calculated.

This can happen even in Texas with its weaker forced pooling laws if there is a farmout or a common law carried interest. Having to account for before and after payout or penalty interests adds an additional layer of complexity to title opinions. Some clients will handle the calculations themselves and do not want the title opinion to address payout or penalties. Other clients may be short staffed and will want the lawyer to furnish detailed before and after penalty calculations. For those clients who require or desire ownership spreadsheets to accompany title opinions, the pivot table function in Excel can be useful.<sup>26</sup>

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26. “In data processing, a pivot table is a data summarization tool found in data visualization programs such as spreadsheets or business intelligence software. Among other functions, a pivot table can automatically sort, count total or give the average of the data stored in one table or spreadsheet, displaying the results in a second table showing the summarized data. Pivot tables are also useful for quickly creating unweighted cross tabulations. The user sets up and changes the summary’s structure by dragging and dropping fields graphically. This “rotation” or pivoting of the summary table gives the concept its

In any event a discussion should take place with the client early in the process of preparing the title opinion to determine what is going on factually with reference to carried interests, farmout agreements, forced pooling and the like. Depending on the outcome of that discussion it should be stated somewhere in the title opinion that the information is or is not being presented on a before or after payout or penalty basis. If farmouts or forced pooling penalties and so forth are being ignored this would mean that the information in the opinion is being presented on an after payout basis. This statement is found in the Form Opinion (Appendix B) in the Scope of Opinion Section.

### *17. Plats*

It is very common in Texas title opinions for land plats to be attached. This is because Texas legal descriptions are so frequently stated by metes and bounds or are otherwise irregular. Attaching a plat is another one of those “user-friendly” features of a title opinion that helps the landman or division order analyst reading it for the first time to get oriented more quickly.

A pet peeve that has been communicated to me by clients involves plats where the subject acreage was apparently colored in yellow with no further identification. A black and white copying machine, of course, will not pick up color. Better to use a heavy outline or an arrow to indicate the lands being examined in relation to other tracts.

### *18. Record Reference and Other Abbreviations*

Many title opinions will have “Record Reference Abbreviation” sections. These are useful sections that can shorten opinions. For example, in the Form Opinion (Appendix B) instead of stating Volume 246, Page 89 of the Deed Records of such and such a county the explanation in its “Record Reference and Other Abbreviations” section allows “246/89” to be substituted. This section provides other opportunities to economize words or clarify formatting issues, which is why in the Form Opinion (Appendix B) the section is entitled “Record Reference and Other [italics added] Abbreviations.” An abbreviation I find particularly useful is “C/R” in place of “Comment and Requirement.”

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name.” WIKIPEDIA, THE FREE ENCYCLOPEDIA, “PIVOT TABLE,”  
[http://en.wikipedia.org/wiki/Pivot\\_table](http://en.wikipedia.org/wiki/Pivot_table)  
(last visited May 7, 2015).

### *19. Number of Decimal Places*

Working interests are traditionally expressed as percentages, whereas net revenue interests are almost invariably expressed as decimals. It is said that consistency is the hobgoblin of small minds.<sup>27</sup> I would not advise challenging that axiom when it comes to the number of decimal places in net revenue interests. Most of my clients want net revenue interests in eight decimals.

A working interest expressed as a percentage would have an equivalent six decimal places. Some examiners will use decimals, not percentages, when referring to working interests, as is done in the Long Form and the Form Opinion in the Appendices. Using an eight digit decimal instead of a six digit percentage takes less space and is visually more consistent. Whatever the convention is stick with it and do not bob back and forth with shorter or longer numbers of decimal places for either working or net revenue interests.

### *20. Effective Date*

Ideally the effective date of the title opinion should coincide with the date of first sales. This is normally the effective date of the division order. Some examiners consider this sacrosanct and will make a specific comment and requirement that the abstract be supplemented through first sales. Sometimes, however, the client will not want to pay for the additional abstracting cost in bringing title forward to first sales much less pay the lawyer for a supplemental title opinion.

There is found in most oil and gas leases a clause requiring the owner to notify the lessee of changes in ownership.<sup>28</sup> Once the client has a title opinion a baseline is established irrespective of whether or not the effective date of the title opinion is at or before first sales. Regardless of what is decided relative to updating the abstract through first sales it is a good practice to list under the date of the opinion on the first page the date through which the materials are current. See the Form Opinion (Appendix B) for an example.

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27. R. W. EMERSON, *Self-Reliance*, in ESSAYS, FIRST SERIES (1841) (“A foolish consistency is the hobgoblin of little minds, adored by little statesmen and philosophers and divines.”).

28. “...and no such change or division of such ownership shall be binding on a lessee until forty five days after Lessee shall have been furnished at Lessee’s principal place of business with a certified copy of recording instrument or instruments evidencing same.” JOHN S. LOWE ET AL., FORMS MANUAL TO ACCOMPANY CASES AND MATERIALS ON OIL AND GAS LAW 2-6 (Oil and Gas Texas Company Lease Form) (4th ed. 2004).



#### IV. Organizing Comments and Requirements

First, what are “comments” and what are “requirements” in title opinions? Think of a “comment” as the statement of the issue. Think of a “requirement” as a statement of the solution.<sup>29</sup> Most examiners put comments and requirements in a separate section of the opinion.

Comments and requirements serve a dual purpose. The first and primary purpose is to set forth steps necessary to cure the client’s title. The second purpose is to protect the examiner from being sued.

Most landmen and division order analysts are not fond of reading comments and requirements in title opinions. Who can blame them? So they often ask title examiners to prioritize comments and requirements. This is because so many title examiners use a stream of consciousness approach in writing comments and requirements that at best might sequence them in the order that the issues arose in the chain of title. This can frustrate landmen and division order analysts who are often left with too many and too verbose requirements to sort through with too little time (or patience) to review.

But some title examiners object to prioritization of comments and requirements in principle. They will say that all the comments and requirements in their opinions are important; if not, they wouldn’t have been made in the first place. I would not advise relying on that line of argument. Most landmen and division order analysts would scoff at that attitude, and rightly so. Recall the discussion in Part III (7. References to Requirements) about the explosion of comments and requirements in title opinions over the past decade and how clients are demanding more help in dealing with them.

On a more thoughtful level, an examiner might say that prioritization can imply waiver. Waiving comments and requirements in title opinions should be up to the client to decide, not the examiner. In any event, waiving comments and requirements is a subject in itself.<sup>30</sup> Let’s assume

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29. Attributable to Sheryl Howe, in verbal presentation connected with her paper, “Putting the Substance of the Opinion on Paper,” *Nuts and Bolts of Mineral Title Examination*, Paper 10 (ROCKY MTN. MIN. L. FDN. 2012.)

30. Paul G. Yale, *To Waive or Not to Waive: Analyzing Oil and Gas Title Opinion Requirements*, STATE BAR OF TEXAS, 27TH ANN. ADVANCED OIL, GAS AND ENERGY RESOURCES LAW COURSE (Oct. 8-9 2009); *See also*, Terry E. Hogwood & Michael Jones, *The Myth of the Cured Title Opinion: Supplemented by That Title Requirement is Satisfied! Really?* Texas Bar CLE, available at <https://www.texasbarcle.com/materials/Programs/3183/WebCastInfo.htm> (last visited Oct. 19, 2015).

prioritization is possible. How can comments and requirements best be prioritized to make the jobs of landmen and division order analysts easier?

Think of a steam driven train, traveling from El Paso to Fort Worth circa 1900. There would be an engine, followed by a coal car. At the end of the train, a caboose. Between the two there would be passenger cars; first class passengers perhaps in a Pullman; second class passengers in the car following; then the coach car; at the end of the train, before the caboose, the cattle cars.

Using the train as a metaphor, various forms of oil and gas title opinion comments and requirements may be put into perspective. “Formal Requirements” (also known as “Limitations”) can be likened to the caboose. Who cares about the caboose? No one unless the train needs to be stopped. Formal Requirements are usually found at the end of the opinion—look at the example in the Form Opinion (Appendix B). Hardly anyone reads the Formal Requirements—unless there is a title bust and the client wishes to sue the lawyers.

All the other comments and requirements, by definition, would be “Informal Requirements.” The Informal Requirements can be further divided into “General Requirements” and “Special Requirements.” The General Requirements are like cattle cars—passengers tend to ignore them. These are requirements like “Read the lease,” or “Get an affidavit of use and possession,” or “Check the taxes,” or “Secure a division order.” These are borderline Formal Requirements—but they are there to help the clients, not just protect the lawyer.

Next are the “Special Requirements.” Now we are into the passenger cars; now we are getting to the important part of the train. These can likewise be divided into “Advisory” and “Non-Advisory” Comments and Requirements. An “Advisory Comment” by definition cannot have a Requirement—there is nothing to be cured. In any event Advisory Comments are like coach cars; they are important, but not as important as the first and second class passenger cars. Advisory Comments do not require curative action but are useful in that they can provide explanations that can head off questions down the road. They are also frequently used by examiners to insert specific limitations in opinions not otherwise addressed in the formal Limitations section.

The Non-Advisory Requirements are the action requirements. These can be further divided into “Drilling Requirements” and “Production (i.e., Division Order) Requirements.” Drilling Requirements are like the first class cars. They are the most important cars in the train (except for the engine). These are the requirements that the landman wants to get out of the way first so the rig can be moved to location. The Production Requirements

are like the second class cars. They are the second most important cars on the train. Not curing them may not stop the drilling of the well, but it may stop revenue from being paid to owners.

The engine, by the way, is the examiner; the coal car—Starbucks? Enough of the train metaphor—what is the point? The point is that comments and requirements in title opinions, can and should be sequenced as follows: Informal Requirements always trump Formal Requirements; Special Requirements always trump General Requirements; Non-Advisory Requirements always trump Advisory Comments; and Drilling Requirements always trump Division Order Requirements.<sup>31</sup>

In the Form Opinion the comments and requirements have been labeled as Special and General Requirements and are sequenced in the order suggested above, at least in the Special Requirements section.<sup>32</sup> This has the advantage of the client being able to pick up the opinion and have the most important, action oriented requirements leap out at the outset.

It also helps better define what requirements are or are not being referred to as “REQ.” in the references in the Division of Interest table. “REQ.” by definition refers only to Special Requirements which gets around the problem of implicitly scuttling the other comments and requirements in the opinion. This is made clear by the definition in the “Record Reference and Other Abbreviations” section discussed above.

This system is not intended as a substitute for footnoting or otherwise linking comments and requirements to owners. Footnotes should be used when needed in the ownership tables to help clients connect owners to comments and requirements. But too liberal use of footnotes in ownership tables can make things harder to manage. For example, what if you think of a new comment or requirement late in the process of drafting the opinion and insert a new footnote? This can cause all the footnotes referring to other footnote numbers to have to be renumbered, which is both tiresome and aggravating. Inserting requirement references into the Division of Interest table avoids this problem. It can also avoid use of multiple footnotes when the same owner is found in more than one tract.

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31. I would qualify this general rule by saying that more latitude might be taken in the General Requirements Section in placing Advisory Comments ahead of Non-Advisory Requirements. This can make the General Requirements Section flow better and can be more in accordance with traditional sequencing. For example, stating that the opinion is based on the run sheet is a traditional lead off in a General Requirements section but is an Advisory Comment. In any event most clients will only skim the General Requirements and the Formal Requirements sections of Opinions. Where they need help is in dealing with Special Requirements.

32. *Ibid.*

If this suggested system is not to your liking, then invent one of your own. A frequently used and more traditional approach is a section at the end of the opinion categorizing comments and requirements as either Drilling or Production Requirements, Advisory or Non-Advisory.

Sheryl L. Howe in an excellent article and presentation for the Rocky Mountain Mineral Law Foundation likewise on the subject of structuring and formatting oil and gas title opinions (“Putting the Substance of the Opinion on Paper”<sup>33</sup>) relayed the story of a client who wanted the examiner to list comments and requirements in order of dollar importance, based on damages that could be result from failing to cure the title defect. Howe points out that this, as a practical matter, would be nearly impossible for a title examiner to do given the limited technical data typically made available, but it reminds that clients look at title issues from a financial risk perspective.

Advisory Comments should be used sparingly, especially in the Special Requirements section of an opinion. Morgenthaler<sup>34</sup> is particularly critical of the use of Advisory Comments. He addresses them in his Rules No. 7, “Don’t Show How Much You Know,”<sup>35</sup> and No. 9, “Don’t be Chicken.”<sup>36</sup>

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33. Howe, *supra* note 29.

34. *Supra* note 3.

35. “*Don’t prove how much you know.* Many attorneys routinely inform their clients that the patent to the subject lands was issued at a time when the United States [or Texas] did not reserve oil and gas in its conveyances. So what? That bit of information may have helped the attorney conclude that the patentee received full mineral title, but all the client wants to know is who owns the minerals, not a history of public land law. Similarly, some attorneys produce requirements that ramble on about some title problem, then recite a statute that cures the whole difficulty, and for a requirement state: None; advisory only.” Foolishness! If the requirement is advisory, it is either a comment or garbage. Move it to the comments section if it is useful; if only it only shows off how smart you are, junk it.” *Supra* note 3, at 84. For every rule there can be exceptions, however, recall the “first rule in writing” previously referred to—“know your audience.” See Ho, *supra* note 8. Clients from outside of Texas are often unfamiliar with the Texas Relinquishment Act, so giving more background and a little history can be helpful. See the Form Opinion which includes a brief discussion of Mineral Classification in the “Patent, Mineral Classification and Chain of Title” section leading into Comments and Requirements.

36. (excerpt) “*Don’t Be Chicken.* “The signs of title examiner yellow streak usually show up under comments, or as advisory requirements (remember, there is no such thing as an advisory requirement—that critter is a comment). Chicken comments arise when the examiner has made a discretionary call on a title problem and is just a little uncomfortable with the call....The examiner is performing an inadequate service by drawing conclusions that he is not sure are warranted, and then covering himself by reciting his unwarranted conclusions for all to see. He should be opening a couple of law books and settle the issues. If they cannot be adequately settled, they should become the subject of a requirement, not a comment,” *supra* note 3, at 85.

I once had a client issue title opinion preparation guidelines that banned the use of Advisory Comments. That is perhaps a bit extreme but the point is well taken.<sup>37</sup>

Title examiners often err by mixing comments and requirements. They do this most often by making the requirement “as stated above” or “as above” which refers back to the comment. This is not concise because it refers to the entire comment instead of precisely identifying the solution to the problem.<sup>38</sup> But for every rule there are exceptions. I will occasionally use “as above” as a requirement if the accompanying comment is short and direct in order to avoid redundancy. But this can be a bad habit to get into. I would not advise a newer examiner starting out to rely on “as above” as a statement of a requirement.

Each comment in the Opinion should have a heading, preferably less than one line. This allows a reader to more quickly appreciate the purpose and the significance of the comment and accompanying requirement. The heading should normally identify the issue, such as a missing probate, ambiguous deed, and so forth, and should identify the tract and or the lease and the owner affected. Not all title examiners do this—it unquestionably requires extra effort. But there is an analogy to the headings which are required by court rules for appellate briefs. Courts require them because it can make the job of reading the brief easier and go more quickly. The same thing can be said about headings in title opinion comments and requirements—they make the job of the landman and the division order analyst easier.

Last, but very important, comments and requirements for particular tracts should be grouped together. This can enable a landman or division order analyst to more efficiently manage title curative. For example, a well bore tract title requirement would logically be of higher priority than a non-well bore path title requirement. Grouping title comments and requirements by tract better lends itself to such prioritization. This is another reason to use headings in title opinion comments —tract references can be included in the heading which in turn assists in grouping comments by tract.

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37. This is another reason I like to have a General Requirements section. Many Advisory Comments can be included in that section, especially ones that are borderline Formal Requirements. In any event I agree with Morgenthaler in concept—what I call “Special” Advisory Comments should be used as sparingly as possible.

38. Howe, *supra* note 29.

### *V. Form Title Opinion*

The Form Opinion (Appendix B) is designed for use in a unit situation but could be adapted to a multi-tract or single tract situation by omitting the working interest summary at the beginning of the opinion. If the Division of Interest is relatively short, it could be incorporated into the opinion as it is in the Long Form example above rather than being set forth in an exhibit.

Little discussion of the Form Opinion is needed because in a sense this paper so far has been talking about nothing else. It should be no surprise that the “Long Form” ownership table from Appendix A is used. Requirements are organized as described in the preceding section. Lease and assignment summaries are in separate exhibits. There is a Table of Contents near the front of the opinion.

The Form Opinion (Appendix B) is a Drilling and Division Order Opinion. If it was strictly a Drilling Title Opinion, the Division of Interest tables could be omitted.

Incidentally, not all examiners will refer to “Division of Interest.” They may say, “Net Revenue Interests,” or simply “NRI.” A Division of Interest table, after all, is a table of consolidated Net Revenue Interests. I prefer to use the term “Division of Interest.” This may be semantics, but semantics are important to lawyers and often to their clients. Division of Interest connotes Division Order, and the purpose of a Division Order is to divide money. Dividing money is something that clients care about a great deal. Title examiners can show their respect for the importance of this task by labeling the table as the “Division of Interest.” Division order analysts will immediately recognize what is being referred to and generally appreciate (if not insist on) the consolidation of this type data in one place in an opinion.

Now let’s return to the question raised earlier in the “Short Form or Long Form?” section of Part III. When dealing with a simple, basic title what is wrong with one of the simpler title opinion formats such as the either of the “Short Form” opinions in Appendix A? Why is consistency so important?

I believe consistency in title opinion format is important for several reasons. The first reason is law firm branding. If the reader is a lawyer, irrespective of whether the lawyer agrees with the recommendations in this paper, or unless the lawyer is a solo practitioner, the lawyer will always be faced with the issue of consistency between the title opinion format that she or he uses and those used by her or his other colleagues in the same law firm, particularly when a common client is being served. There can be no justification for such differences other than inertia, indifference, and simply not taking the time to reconcile. Clients will notice and will have a less favorable impression of the law firm.

Second, consider the opportunity that having a single, firm-wide consistent title opinion template presents. Most lawyers hate having to bother with things as mundane as formatting and structure of documents. Regardless of what you think a “form” title opinion template should look like, find one and stick with it. Then train your paralegals and assistants to become passionate about form, structure, and above all, consistency. Then you can focus less on format, structure and consistency and more on legal analysis and conclusions, which at the end of the day is what you are being paid for by the client.

The Long Form example may have more detail and be more cumbersome in situations involving a very brief title, but it is nevertheless part of the same wardrobe, so to speak, as the Form Opinion (Appendix B). When all these factors are considered—branding, consistency, and leveraging off paralegals and assistants, the longer length of the Long Form example can be rationalized, even when the underlying title is very simple.

The length and scope of a formal “Limitations” section is another feature of title opinions for which there are considerable differences between examiners. Examiners are sometimes accused of overkill when it comes to Limitations sections in title opinions. Morgenthaler<sup>39</sup> has a rule that addresses this, Rule No. 13, “Don’t Try to Limit Your Liability.”<sup>40</sup> Morgenthaler, however, was talking more about ethical issues that arise when a lawyer seeks to totally evade liability for a title opinion similar to an abstract company. Morgenthaler’s own form opinion examples contain what he calls “Exceptions,” which are the same as Limitations, although admittedly he is more concise than many other examiners might be (including myself) consistent with his overall philosophy.

My own view is that clients rarely read the Limitations section in title opinions, anyway. But if you are going to have a Limitations section, you might as well make it comprehensive. The larger the law firm the more sensitive firm management may be about malpractice exposure when it comes to title opinions. Prudence may suggest use of as expansive a Limitations section as possible consistent with industry practice (but that would be difficult to define given the disparity among examiners). Going too far in a Limitations section can annoy clients. So tailor the Limitations section accordingly, but whatever version you decide upon, use it consistently throughout your firm.

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39. *Supra* note 3.

40. *See* discussion *infra* Part VI, at note 50, including the reference to Rule 1.02 (b) of the Texas Rules of Professional Responsibility.

The Limitations section of the Form Opinion (Appendix B) is set up for Texas but can be customized for other states. Subject to that caveat, and subject to the earlier caveat I made about customizing lease and assignment summaries based upon client preferences, I cannot think of a reason why the Form Opinion could not be adapted for use in any basin or state in the United States.

Last word on formatting and structure in title opinions. Formatting and structure are closely linked with writing style. Sloppy formatting can distract from and obscure legal analysis. Once a format is established, stick with it and avoid carelessness and inconsistencies. A formatting error in a title opinion can be thought of as a rotten apple. Open a barrel and find a rotten apple and what do you think? You think the whole barrel is likely rotten. As much attention needs to be paid to proofing and avoiding formatting errors as any other type error in a title opinion.

## *VI. Title Opinion Writing Style*

### *1. Legal Writing Style in General*

The number one problem clients have with title lawyers is that their opinions are late. I mention that because writing style, as important as it is, too often is thrown out the window in order to “get that opinion out.” That is unfortunate. A lawyer may not have control over how many facts he or she must deal with in a particular title chain. But the lawyer has total control over writing style.

Writing style is important in a title opinion for several reasons. First, writing style is directly linked to depth of analysis and clarity of thought. Simply put, sloppy writing exudes sloppy analysis; clear and succinct writing exudes competent analysis. Clients understandably have more confidence in an examiner if a clear and succinct writing style comes through.

Second, though most lawyers restrict use of their title opinions to their clients, clients often circulate opinions to third parties. Title opinions tend to be referred to for many years, even decades, after they are written. Though it may be an exaggeration to say that oil and gas lawyers are writing for the ages, as in any other legal endeavor, it is important to put one’s best foot forward. A poorly written title opinion, irrespective of accuracy, can do irreparable damage to a lawyer and his or her firm’s reputation.

Legal writing rules and best practices in general should not be abandoned when writing title opinions. As I so often say to colleagues I work with, if we cannot train ourselves to write well written, thoughtful, and concise



comments and requirements in title opinions with minimal proofing and formatting errors, how will we, later in our careers, be able to effectively write multi-billion dollar transactional documents or appellate briefs for argument before the United States Supreme Court?

Matthew Butterick, in his book, *Typography for Lawyers*,<sup>41</sup> makes the point that the legal profession is responsible for the biggest, most important publishing industry in the United States.<sup>42</sup> At the end of the day, what lawyers are selling are words. Oral arguments and courtroom drama are part of the mix, but for most transactional lawyers, including oil and gas title attorneys, written words are our bread and butter. Good writing, says Butterick, is part of good lawyering.<sup>43</sup>

What are the elements of good legal writing? Unlike some of the other topics discussed in this paper, there is relatively broad consensus on what good legal writing is and is not. At the end of this paper there is a bibliography of sources for lawyers which talk about the style and mechanics of good legal writing. The books by Bryan Garner are among my personal favorites.

An experienced practitioner sums up best practices in writing title opinions in three words: “short, readable, and focused.”<sup>44</sup> The old adage, “omit needless words...,”<sup>45</sup> is as true as ever. I have not yet in my career ever had a client tell me, “Gosh, that title opinion you wrote was too short.”

This may sound inconsistent with the earlier part of this paper when I was discussing title opinion ownership tables. I will not rehash but to say that that the task of writing oil and gas title opinion comments and requirements is a fundamentally different exercise than putting together ownership tables. Putting the ownership tables of a title opinion together may be likened to an accounting exercise; brevity and conciseness is less important than transparency and full disclosure.

Writing comments and requirements, on the other hand, is more akin to legal writing in general. This is where all the admonitions about keeping things short, simple and concise are unquestionably applicable. Face it—the

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41. MATTHEW BUTTERICK, *TYPOGRAPHY FOR LAWYERS, ESSENTIAL TOOLS FOR POLISHED AND PROFESSIONAL DOCUMENTS* (Jones McClure Publishing 2013).

42. *Id.* at 13.

43. *Id.* at 14.

44. Attributed to George Snell.

45. WILLIAM STRUNK, JR. AND E.B. WHITE, *THE ELEMENTS OF STYLE* 23 (4th ed. 1999) (1935) (“*Omit needless words.* Vigorous writing is concise. A sentence should contain no unnecessary words, a paragraph no unnecessary sentences, for the same reason that a drawing should have no unnecessary lines and a machine no unnecessary parts. This requires not that the writer make all sentences short, or avoid all detail and treat subjects only in outline, but that every word tell.”)

subject matter of most title opinion comments and requirements is dry, technical, and above all, tedious. So start strong and, if possible, end quick. If the subject matter is too convoluted for quick treatment, then consider breaking it into sub-comment/ requirements, just as you might break an appellate brief down into smaller parts.

On the other hand, clients have little tolerance for overly terse (or condescending) comments and requirements. State all assumptions, and if appropriate, point out the attendant risks in accepting them. If stating all the assumptions causes the comment to be longer than otherwise, so be it. Recall Texas Rule of Professional Conduct 1.03(b): “A lawyer shall explain a matter to the extent reasonably necessary to permit the client to make informed decisions regarding the representation.” This would include stating all assumptions necessary for a client to both understand and make an informed decision as to whether to waive, or not to waive, a title opinion requirement.

Writing title opinion comments and requirements is a challenging and underrated area of law practice and though it has much in common with mainstream legal writing, there are differences. Perhaps the biggest one is that title examiners are saddled with a very narrow margin of error. They must be concise and thorough at the same time.

## *2. Morgenthaler’s Thirteen Rules*<sup>46</sup>

I have been referring to Morgenthaler’s book on oil and gas title examination throughout this paper. His book is actually a slight revision of an earlier version that came out in 1982.<sup>47</sup> Morgenthaler’s book should be a part of every title examiner’s library. My personal favorite chapter and the one most relevant to writing comments and requirements is the sixth chapter, where Morgenthaler sets out and discusses thirteen rules that are as relevant now as ever to title examination techniques in general and more specifically, to writing title opinion comments and requirements.<sup>48</sup>

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46. GEORGE J. MORGENTHALER, OIL AND GAS TITLE EXAMINATION (Mockingbird Press 2012) (1982).

47. *Id.*

48. *Id.* The text accompanying the thirteen rules is omitted for purposes of space but some of the text in a few of the rules is noted earlier in this paper. Buy the book. It is available at [ogtitle.com](http://ogtitle.com). And no, I am not getting a commission on its sale.

## “Attitudes and Techniques

- 1) Take your time....
- 2) Be Picky....
- 3) Be Skeptical....
- 4) Be Thorough....
- 5) Be Precise....
- 6) Don't Give a History Lesson....
- 7) Don't Prove How Much You Know....
- 8) Rely on Previous Title Opinions....
- 9) Don't be Chicken....
- 10) Rely on Curative Statutes....<sup>49</sup>
- 11) Try to Avoid Requirements....
- 12) Give Alternatives....
- 13) Don't Try to Limit Your Liability....<sup>50</sup>

The first five rules pertain to title examination technique. The last eight pertain to writing style. Morgenthaler notes that the mindset needed when examining a title is different from the mindset needed when writing a title opinion. As he puts it, “When you are examining title, be picky; when you are preparing your opinion, try to find a way out.”<sup>51</sup> Finding a way out means being as practical and reasonable as possible.

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49. A good source of reference for this in Texas and for elsewhere is Basye's, *Clearing Land Titles* (Nancy St. Paul, ed., 3d ed. 2014).

50. This should not be taken as a condemnation of the Limitations Section of title opinions. Morgenthaler is speaking about attempts to disclaim liability by the Examiner. Here is what he said: “*Don't Try to Limit Your Liability*. This admonition should be unnecessary since virtually every code of ethics prevents an attorney from attempting to limit his liability, but the fact is that some attorneys are in the habit of stating in title opinions that their liability is limited to the cost of preparation. This is okay for abstractors in some jurisdictions, but not acceptable for attorneys. Get yourself a good malpractice policy and do the best you can.” *Id.* at 87. In Texas the pertinent Rule of Professional Responsibility is Rule 1.02 (b): “A lawyer may limit the scope, objectives and general methods of the representation if the client consents after consultation.” This is another reason why I favor the more exhaustive version of formal limitations as well as the Scope of Opinion section set out in the Form Opinion. Though I am unaware of any disciplinary opinions or even cases involving a violation of TPRC 1.02 (b) in a title opinion context I would rather err on the side of caution in spite of the complaint I have heard from at least one of my clients, which is that “you lawyers include so many limitations in your opinions that we question whether we are really getting anything.”

51. MORGENTHALER at 86.

Or as suggested earlier, be “short, readable and focused.”<sup>52</sup> “None of this is easy to teach. It is not a coincidence that experienced attorneys tend to write fewer and shorter title opinion comments and requirements than attorneys starting out.

This gets back to the first rule of writing—know your audience.<sup>53</sup> Getting to know someone takes time. Over time a lawyer’s interactions with landmen, division order analysts and other oil industry clients will lead the lawyer to a better understanding of their business issues and will cause the lawyer to become more practical and reasonable in her or his comments and requirements. In the interim, find a mentor—or find a place to work where you can benefit from peer review of your comments and requirements. Read Morgenthaler’s book or other similar sources. Attend continuing legal education courses on title examination.

### *3. Other Common Flaws and Some Pet Peeves in Title Opinions*

What are other some other common flaws and pet peeves in title opinions that I see or hear about from clients or otherwise? Here are a few of the most common:

1. *Failure to provide sufficient references to documents.* Do not say “John Doe conveyed Blackacre to Aunt Sally in 1958.” What kind of instrument— General Warranty or Quitclaim? What day in 1958? What is the recording reference (book and page)? Do not orphan an instrument from its date, its recording references or the names of the grantor(s) and grantee(s) or their equivalents. Someone may need to pull the instrument, including yourself, if you have to return the abstract to the client and afterwards someone attacks one of your conclusions.

2. *Failure to bring a problem forward.* Do not talk about an issue from 1948 and make a requirement in connection with it without referencing which current owners will be affected.

3. *Failure to quote ambiguous deed language.* Clients want to see exactly what language you are talking about so they can make their own independent assessments if they are inclined. This is particularly true in connection with NPRI deeds. Quote the specific language creating the NPRI as part of your analysis. This is an exception to the “omit needless words” rule.<sup>54</sup> You may think you are omitting needless words, but the client may not agree.

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52. Attributed to George Snell.

53. *See supra* note 8.

54. *See STRUNK & WHITE supra* note 45.

4. *Failing to Keep Lease and or Family Information Together.* Title typically devolves through families and gets increasingly fragmented. Showing ownership using subtotals for family predecessors makes it easier to identify and manage families as a group, in part since they often lease as a group. If the mineral ownership reflects leases by family group, the NPRI burden, for example, can be shown more clearly.

5. *Not Referencing Title Requirements.* This was mentioned earlier, but is repeated for emphasis because it is among the greatest pet peeves of division order analysts, and is an issue that lawyers ignore at their peril.

6. *Typographical Overkill.* Do not ignore typography. Earlier I mentioned Matthew Butterick's book, *Typography for Lawyers*.<sup>55</sup> Most lawyers do not have a clue what typography is much less how poor typography can distract. For example, Butterick makes the point that underlining is a holdover from the typewriter era. Title lawyers, in particular, tend to overdo underlining. They also tend to overuse the bold case and the use of italics, and they inconsistently use fonts. If you do not have time to read Butterick's book, at least get on his website<sup>56</sup> and consider some of his suggestions.

7. *Failing to Disclose Net Acres on the Cover Page.* Put the total acres in the subject lands being dealt with by the opinion on the first page. Clients get vexed when they must dig through the opinion to find how many acres are covered. If you don't have the survey back, guess and cover yourself with a comment/requirement about it. Also, if a client has a discreet identifying number, an Authority for Expenditure (AFE) number or whatever, be sure to include if you are made aware of it. Even better, inquire if this is something the client wants included.

8. *"Snaky" columns.* What do I mean by "snaky" columns? Those are columns in the ownership tables in title opinions that meander back and forth like a snake wriggling through a garden. The ownership table should look like an accounting ledger, which, in essence, is what it is. Related to "snaky" columns is alignment within columns. Whatever alignment may be picked—far left or far right—is less important than being consistent. This all gets back to Butterick and typography. Paying attention to minor things like this may seem misplaced to some, but it improves the overall

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55. See BUTTERICK *supra* note 41.

56. See TYPOGRAPHY FOR LAWYERS, available at <http://typographyforlawyers.com> (last visited May 7, 2015).

appearance of the document which in turn can increase client confidence in the final work product.<sup>57</sup>

9. *Assumption that Client has a Color Copier.* I am repeating for emphasis another client pet peeve from earlier in the paper, which is the use of plats where the subject acreage was apparently colored in yellow with no further markings. A black and white copying machine, of course, will not pick up color. Better to use a heavy outline or an arrow to indicate the lands being examined in relation to other tracts.

10. *Sloppy citations.* Legal citation rules have been called the “Tyranny of the Inconsequential<sup>58</sup>.” I would not advise making that argument to an appellate judge. We all went to law school and at one point in our careers were exposed to the rules of legal citation. If you need a refresher course, take one. Or refer to any one of several source books/articles on legal citations referred to in the Bibliography at the end of this paper.

References to citations in title opinions should be rare. Recall Morgenthauer’s Rule No. 7—“Don’t Prove How Much You Know.”<sup>59</sup> But if you cite a source, use the proper form. Using proper citations is the mark of a legal professional and shows pride in your work.

### *VII. Conclusion*

*“Chaos is the rule of nature; order is the dream of men.” –Anonymous.*

I started this paper talking about order and disorder and will end on the same subject. Lawyers love to argue, and they will no doubt keep arguing over the perfect title opinion format. Landmen and division order analysts will also continue to debate the subject. In final analysis picking the perfect title opinion format may be likened to a committee picking the perfect necktie. Chaos will likely continue to rule. As said at the outset, if this paper was successful in provoking oil and gas lawyers, landmen and division order analysts to think more about oil and gas title opinion structure, format and style, then its purpose will have been achieved.

A final observation for beginning title examiners: do not hold your breath waiting for accolades in this business. Earlier I said I never had a client tell me that one of my title opinions was too short. I have also never

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57. In full disclosure, this is a personal pet peeve. The other nine, however, were either specifically relayed to me by clients when soliciting feedback for this paper or as in the cases of nos. 6 and 10, are commonly cited by legal writers.

58. Dylan O. Drummond, *Texas Citation Writ Large(r): Consequential Necessity or “Tyranny of the Inconsequential”?* 26 APP. ADVOC. 1, 25 (Fall 2013) (quoting Professor Wayne Schiess, Legible, <http://j.mp/10KEhgh> (Aug. 9, 2012)).

59. *Supra* note 35.

had a client tell me that I did not charge enough for an opinion, or that my opinion was a joy to read.

Title examination is something of a thankless task. It is not the only area of legal practice that can suffer from lack of respect or gratitude. The late Harvard Law School Professor W. Barton Leach once described the task of lawyers who made their livelihoods drafting wills as follows:

*The competent drafting of wills is a difficult business which offers only austere rewards. The monetary compensation in this type practice is usually not adequate to the training and effort required. Often enough the virtues or vices of a will do not appear until the draftsman has long been under the sod. No beneficiary of a well-drawn will is likely to strew orchids upon his grave, whereas defeated claimants under ill-drawn wills are sure to heap imprecations upon his memory. But the counselor who leaves behind him a will book which succeeds in placing property where his clients wished it without those uncertainties as to validity and ambiguities as to meaning which breed litigation, can sleep the eternal sleep in the comforting knowledge that he has upheld the finest traditions of his craft.<sup>60</sup>*

In addition to being a masterly example of good legal writing (refer to Part VI), take out the word “will” from the above and put “title opinions” in its place and what is left is an almost perfect description of the job of an oil and gas title examiner. Perhaps the main difference is that title examiners usually do not have to wait until they are under the sod before irate clients and landowners are heaping imprecations upon them.

Paying more attention to title opinion structure and format can help an oil and gas title examiner avoid those heaping imprecations. Format and structure can too often be distractions from the real task of oil and gas title examination, which in essence is synthesizing and sorting large amounts of data into a well-organized, accurate, and timely delivered title opinion document. Making formatting and structure decisions early on leads to greater focus on accuracy, depth of analysis, and speed.

So whether you or a new or a seasoned oil and gas title examiner, strive for thoughtful and consistent format and structure in your opinions, whatever that may look like. Put your best foot forward when it comes to writing style. Approach each comment and requirement in your opinion as if a million dollars or more may be riding on it. It may very well be.

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60. W. Barton Leach, *Perpetuities in a Nutshell*, 51 HARV. L. REV. 4, 671 (1938).

Then someday, irrespective of accolades from clients or worldly reward, perhaps you also will “sleep the eternal sleep in the comforting knowledge that [you have] upheld the finest traditions of [your] craft.”<sup>61</sup> May that someday be a long time coming.<sup>62</sup>

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61. *Ibid.*

62. The author wishes to express appreciation to the following contributors to this paper for their excellent suggestions, wise counsel, and generous assistance: Katie English, Brooke Sizer and Dominic Salinas, Associates, Jonathan Worthington, Member, and James Ormiston, Shareholder, all at the law firm of Gray Reed & McGraw, PC, Houston, Texas; Betsy Rumely, Attorney at Law, Denver, Colorado; George Snell, Attorney at Law, Amarillo Texas; Terry Cross, law firm of McClure & Cross LLP, Dallas, Texas; Joe Judd, Vice President of Land at PetroMax Operating Inc., Garland, Texas; Michelle Phillips, Land Advisor, Christine Herron./CDOA, Division Order Analyst, and Bethany Payne, Division Order Analyst, all at Hess Corporation, Houston, Texas; Lauren Bernard, Division Order Supervisor/PPU and Ryan Culberson, Land Supervisor, both at BHP Billiton, Houston, Texas; Kacie Beavers, Associate, law firm of Steptoe & Johnson, The Woodlands, Texas; John Bode, Partner, Bode & Werner, Houston, Texas; and especially to my assistant, Sherry Colburn, at the law firm of Gray Reed & McGraw, PC, Houston, Texas.



## APPENDIX A—"SHORT" AND "LONG" FORM TITLE OPINION EXAMPLES

### EXAMPLE 1—"SHORT FORM" OWNERSHIP TABLE

#### OWNERSHIP

Our examination of the aforesaid records and documents of title reflect that, as of \_\_\_\_\_, \_\_\_\_\_, at 8:00 a.m. CST, record title to the captioned land was vested as follows, subject to the Comments and Requirements hereinafter set forth:

#### SURFACE ESTATE:

Joe Allen Mixon et ux, Gayla J. Mixon (ALL)	1.00000000
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#### MINERAL ESTATE:

Geneva Ashby Smith (Requirement No. 3) (1/2 x 3/4)	.37500000
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Robert H. Ashby (Requirement No. 3) (1/2 x 3/4)	.37500000
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Sherry G. Lundberg (Requirement No. 3) (1/2 x 1/4)	.12500000
---	-----------

Joe Allen Wilson et ux, Gayla J. Wilson (1/2 x 1/4)	.12500000
--	-----------

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1.00000000

#### LEASEHOLD ROYALTY ESTATE:

#### Source

Geneva Ashby Smith (Requirement No. 3) (1/2 x 3/4 x 1/6)	.06250000	L1
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Robert H. Ashby (Requirement No. 3) (1/2 x 3/4 x 1/6)	.06250000	L2
--	-----------	----

Sherry G. Lundberg (Requirement No. 3) (1/2 x 1/4 x 1/6)	.02083333	L3
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Joe Allen Wilson et ux, Gayla J. Wilson (1/2 x 1/4 x 1/6)	.02083334	L4
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Total RI:	.16666667
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OIL, GAS AND MINERAL LEASEHOLD ESTATE:

	<u>Working Interest</u>	<u>Net Revenue Interest</u>	<u>Source</u>
Double XX Oil Inc. (100% x 5/6)	100.000000%	.83333333	L1-4
		<hr/>	
Total RI + NRI:		1.00000000	

**EXAMPLE 2—"LONG FORM" OWNERSHIP TABLE**

**OWNERSHIP**

Our examination of the aforesaid records and documents of title reflect that, as of \_\_\_\_\_, \_\_\_\_\_, at 8:00 a.m. CST, record title to the captioned land, consisting of **640.00 acres**, more or less, was vested as follows, subject to the Comments and Requirements hereinafter set forth:

<u>SURFACE</u>	<u>FRACTION</u>	<u>INTEREST</u>
Joe Allen Mixon et ux, Gayla J. Mixon	8/8	1.00000000

**OIL AND GAS: LEASED**

<u>OWNER / FRACTION</u>	<u>INTEREST</u>	<u>NET ACRES</u>	<u>LEASE ROYALTY</u>	<u>LEASE</u>
Geneva Ashby Smith (1/2 x 3/4)	.37500000	240.0000	1/6	L1
Robert H. Ashby (1/2 x 3/4)	.37500000	240.0000	1/6	L2
Sherry G. Lundberg (1/2 x 1/4)	.12500000	80.0000	1/6	L3
Joe Allen Wilson et ux, Gayla J. Wilson (1/2 x 1/4)	<u>.12500000</u>	<u>80.0000</u>	1/6	L4
	1.00000000	640.0000		

**OIL AND GAS: UNLEASED**

None.

**NONPARTICIPATING ROYALTY**

None.

**LEASEHOLD ESTATE**

<u>OWNER</u>	<u>WORKING INTEREST</u>	<u>NET REVENUE</u>	<u>NET ACRES</u>	<u>LEASE</u>	<u>ASSIGN.</u>
Double XX Oil Inc.	1.00000000	.83333333	640.0000	L1-4	NA

**OVERRIDING ROYALTY**

None.

**DIVISION OF INTEREST**

**LANDOWNER'S ROYALTY ("LOR")**

<u>OWNER</u>	<u>FRACTION</u>	<u>INTEREST</u>	<u>LEASE</u>	<u>REQ.</u>
Geneva Ashby Smith	(1/2 x 3/4 x 1/6)	.06250000	L1	3
Robert H. Ashby	(1/2 x 3/4 x 1/6)	.06250000	L2	3
Sherry G. Lundberg	(1/2 x 1/4 x 1/6)	.02083333	L3	3
Joe Allen Wilson et ux, Gayla J. Wilson	(1/2 x 1/4 x 1/6)	<u>.02083333</u>	L4	NA
	TOTAL	.16666667		

**UNLEASED OWNERS ("UNL")**

None.

**NONPARTICIPATING ROYALTY ("NPRI")**

None.

**OVERRIDING ROYALTY INTERESTS ("ORRI")**

None.

**NET REVENUE INTERESTS ("NRI")**

<u>OWNER</u>	<u>FRACTION</u>	<u>INTEREST</u>	<u>LEASE</u>	<u>REQ.</u>
Double XX Oil Inc.	(100% x 5/6)	.83333333	L1-4	NA

**LOR+UNL+NPRI+ORRI+NRI= 1.00000000**

### EXAMPLE 3—SHORT FORM” OWNERSHIP TABLE (ALTERNATE)

#### OWNERSHIP<sup>1</sup>

Our examination of the aforesaid records and documents of title reflect that, as of November 5, 2004, at 8:00 a.m. CST, record title to the captioned land was vested as follows, subject to the Comments and Requirements hereinafter set forth:

<u>OWNER</u>	<u>WI</u>	<u>NRI</u>	<u>LEASE</u>	<u>TRACT</u>	
Double XX Oil Inc.	97.916666%	82.333333%	WI	1-4	1-2
Geneva Ashby Smith	--	6.250000%	LOR	L1	1-2
Robert H. Ashby	--	6.250000%	LOR	L2	1-2
Sherry G. Lundberg	--	2.083333%	LOR	L3	1-2
George Snell	--	1.000000%	ORRI	L1-3	1-2
Joe Allen Wilson et ux, Gayla J. Wilson	2.083334%*	2.083334%*	UNL	NA	1-2
<b>TOTAL</b>	<b>100.000000%</b>	<b>100.000000%</b>			

(\*Rounded up)

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<sup>1</sup> A standard footnote that I have added when using this format in the past included a key to abbreviations. Not every reader would know that “NRI” means net revenue interest, or that “UL” means unleased, for example. The footnote might say the following: Abbreviations used in this Opinion include Working Interest = WI; Unleased = UL; Lease Royalty (a/k/a Landowner’s Royalty) = LOR; Overriding Royalty Interest = ORRI; Net Revenue Interest = NRI (NRI = Mineral Interest less Burdens x Working Interest for WI Owners/Mineral Interest for Unleased Owners/Mineral Interest x Lease Royalty for RI Owners/Mineral Interest x Overriding Royalty Interest for ORRI Owners). More on abbreviations later in this Part III, Number 18, Record Reference and Other Abbreviations.

**APPENDIX B**  
**Form Title Opinion**

Month, day, year  
(Materials Examined through Month, day, year through \_\_\_PM, CST)

**DRILLING AND DIVISION ORDER TITLE OPINION**

Client  
Address  
City, State, ZIP

Attention: \_\_\_\_\_

Re: XXXX Unit, Tracts 1-23, A.-\_\_, PSL Survey  
\_\_\_\_\_ County, Texas  
**500.00** acres, m/l

*Delivered via e-mail*<sup>2</sup>

**DEPTH LIMITED TO SAN ANDRES FORMATION**<sup>3</sup>

Ladies and Gentlemen:

Pursuant to your request, title has been examined as to the following described lands, comprising the XXXX Unit, which encompasses **500.000 acres of land**, more or less, in \_\_\_\_\_ **County, Texas**, described as follows: Section XX, W/2, W/2E/2, NE/4NE/4, Block A-XX, Abstract XXX, PSL Survey. The XXXX Unit is comprised of 23 separate Tracts, each being individually described below, and all of which together are referred to herein as the "Subject Lands."

**SUBJECT LANDS**

**TRACT 1:** Being \_\_.\_\_\_\_ **acres of land**, more or less, located in the \_\_\_\_\_ Survey, A-\_\_\_\_, \_\_\_\_\_ County, Texas, and being more particularly described in that certain Deed of Gift, dated December 22, 1982, from \_\_\_\_\_ as Grantor, to \_\_\_\_\_, as Grantee, and recorded in Volume \_\_, Page \_\_ of the Deed Records of \_\_\_\_\_ County, Texas.

*[Tract descriptions 2-23 omitted for purposes of this sample opinion]*

*See Exhibit "F" for a plat depicting the Subject Lands included within the \_\_\_\_\_ Unit.*

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<sup>2</sup> Most clients no longer want paper copies of opinions.

<sup>3</sup> See C/R No. 3.

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## MATERIALS EXAMINED

Our examination was limited to the following:

### ABSTRACTS, et al:

1. Assignment of Oil, Gas and Mineral Leases dated June \_\_\_\_, 20\_\_ (\_\_/\_\_), \_\_\_\_\_, as Assignor, and \_\_\_\_\_, as Assignee;
2. Quitclaim Deed dated \_\_\_\_ \_\_, 20\_\_ (\_\_/\_\_), from \_\_\_\_\_ aka \_\_\_\_\_ and \_\_\_\_\_, as Grantors, to \_\_\_\_\_, as Grantee, quitclaiming her interest in Tract \_\_.

*[Remaining Materials Examined omitted for sample opinion purposes]*

## SCOPE OF OPINION

This Drilling and Division Order Title Opinion (the "Opinion") has been prepared based upon the Materials Examined as identified above, and further, has been limited to an examination of the oil and gas estate. **This Opinion is depth limited to the San Andres Formation.** Furthermore, no opinion is expressed on the ownership of existing oil and or gas wellbores that may be located within the lands covered by this Opinion. No opinion is expressed on the ownership of coal, lignite, or any other minerals other than oil and gas. The use of the term "Minerals" in this Opinion shall be understood to refer only to the oil and gas estate.

This Opinion expressly excludes from coverage the ownership of the surface estate in the Subject Lands. Surface information may be included in this Opinion for convenience purposes, only. If a definitive Opinion on the Surface is needed, contact the Examiner for a supplement to this Opinion.

All ownership interests in this Opinion are calculated on an after payout basis. The Examiner has not taken into account who will, or will not, participate in any wells drilled on the Subject Lands and/or the impact of any farmout agreements or forced pooling penalties. If an opinion is needed on a before and after payout basis, contact the Examiner for a supplement to this Opinion.

Based solely upon our examination of the instruments listed above (hereinafter collectively referred to as "Materials Examined"), and subject to the comments, requirements, and limitations hereinafter set forth, we find title to the Subject Lands, as of \_\_\_\_\_, \_\_\_\_, at \_\_\_\_ AM/PM, \_\_\_\_ as follows:

### WORKING INTEREST OWNERS SUMMARY

#### TRACTS 1-23 CONSOLIDATED

<u>OWNER</u>	<u>WORKING INTEREST</u>	<u>NET REVENUE</u>	<u>NET ACRES</u>	<u>LEASE</u>	<u>ASSIGN</u>	<u>TRACT</u>
Cold Play Oil , Inc.	0.95000000	0.72900000	475.0000	L1-31, 33	A1	T 1-4, 6-21, 23
Aerosmith Oil, Inc.	0.03600000	0.02880000	18.0000	L32	A2	T22
Avett Brothers Oil and Gas, LLC.	0.00200000	0.00160000	1.0000	L32	A2	T22
Radio Head Oil, Inc.	0.00200000	0.00160000	1.0000	L32	A2	T22
<i>Unleased</i> Bruno Mars	<u>0.01000000</u>	<u>0.01000000</u>	<u>5.0000</u>	UNL	N/A	T5
TOTAL	1.00000000	0.77100000	500.0000			

**OWNERSHIP OF THE SUBJECT LANDS**

**TRACT 1:**

**SURFACE**

<u>OWNER</u>	<u>FRACTION</u>	<u>INTEREST</u>
Jay Z and Beyoncé, Joint Tenants	=(8/8)	1.00000000

**OIL AND GAS: LEASED**

<u>OWNER/FRACTION</u>	<u>INTEREST</u>	<u>NET ACRES</u>	<u>LEASE ROYALTY</u>	<u>LEASE</u>
Pit Bull =((8/8)/3) x 2-(1/3)	0.33333333	8.3333	25%	L1
Taylor Swift =((8/8)/3) x 2-(1/3)	0.33333333	8.3333	25%	L2
Katy Perry =((8/8)/3) x 2-(1/3)	<u>0.33333333</u>	<u>8.3333</u>	25%	L3
TOTAL	1.00000000	25.0000		

**OIL AND GAS: UNLEASED**

None

**NONPARTICIPATING ROYALTY**

None

*[Tracts 2-22 omitted in Sample Opinion]*

**TRACT 23:**

**SURFACE**

<u>OWNER</u>	<u>FRACTION</u>	<u>INTEREST</u>
Adam Levine	= (8/8)	1.00000000



**OIL AND GAS: LEASED**

<u>OWNER/FRACTION</u>	<u>INTEREST</u>	<u>NET ACRES</u>	<u>LEASE ROYALTY</u>	<u>LEASE</u>
Blake Shelton =(8/8)	1.00000000	35.000	25%	L21

**OIL AND GAS: UNLEASED**

None

**NONPARTICIPATING ROYALTY**

<u>OWNER/FRACTION</u>	<u>INTEREST</u>	<u>LEASE</u>
Justin Timberlake =1/4 (of production)	0.25000000	L21

**LEASEHOLD ESTATE**

**TRACTS 1-4, 6-21, 23**

<u>OWNER</u>	<u>WORKING INTEREST</u>	<u>NET REVENUE</u>	<u>NET ACRES</u>	<u>LEASE</u>	<u>ASSIGN.</u>	
Cold Play Oil , Inc.			25.0000 (T1)	L1-3		
			50.0000 (T2)	L4-6		
			100.0000 (T3)	L7-10		
			5.0000 (T4)	L11-15		
			10.0000 (T6)	L16		
			10.0000 (T7)	L17		
			30.0000 (T8)	L18		
			20.0000 (T9)	L19		
			20.0000(T10)	L20		
			10.0000(T11)	L21		
			20.0000(T12)	L22		
			20.0000(T13)	L23		
			10.0000(T14)	L24		
			20.0000(T15)	L25		
			30.0000(T16)	L26		
			20.0000(T17)	L27		
			5.0000(T18)	L28		
			10.0000(T19)	L29		
			5.0000(T20)	L30		
			20.0000(T21)	L31		
		1.00000000	0.75000000	<u>35.0000(T23)</u>	L33	A1
			TOTAL	475.0000		

**OVERRIDING ROYALTY**

<u>OWNER</u>	<u>BURDEN</u>	<u>INTEREST</u>	<u>TRACT</u>	<u>LEASE</u>	<u>ASSIGN.</u>
Nashville Skyline, LP	½ of 1% of 8/8ths	0.00500000	3	L7-10	Aori1
White Album, LP	¼ of 1% of 8/8ths	0.00250000	3	L7-10	Aori1
Endless Summer, LP	¼ of 1% of 8/8ths	0.00250000	3	L7-10	Aori1

**TRACT 5**

<u>OWNER</u>	<u>WORKING INTEREST</u>	<u>NET REVENUE</u>	<u>NET ACRES</u>	<u>LEASE</u>	<u>ASSIGN.</u>
<i>Unleased</i> Bruno Mars	1.00000000	1.00000000	5.0000	NA	NA

**TRACT 22**

<u>OWNER</u>	<u>WORKING INTEREST</u>	<u>NET REVENUE</u>	<u>NET ACRES</u>	<u>LEASE</u>	<u>ASSIGN.</u>
Aerosmith Oil, Inc.	.90000000	.72000000	18.0000	L32	A2
Avett Brothers, LLC.	.05000000	.04000000	1.0000	L32	A2
Radio Head Oil, Inc.	.05000000	.04000000	1.0000	L32	A2
TOTAL	1.00000000	.80000000	20.0000		

**OVERRIDING ROYALTY**

None

\*\*\*\*\*

**PATENT, MINERAL CLASSIFICATION, AND CHAIN OF TITLE**

The Subject Lands are included in Patent ( / ) dated \_\_\_\_\_, 1845, from the Republic of Texas to \_\_\_\_\_, for what is now the \_\_\_\_\_ Survey, A-\_\_\_\_, \_\_\_\_\_ County, Texas. Under the Relinquishment Act of 1919 and the Sales Act of 1931, lands granted or patented from the State of Texas from 1895 forward may be subject to “mineral classification.” The Relinquishment Act applies to lands granted or patented from September 1, 1895, to May 29, 1931. The Sales Act applies to lands granted or patented from May 29, 1931, forward. Since the grant of the Subject Lands falls outside the applicable dates, the Subject Lands are not under mineral classification and, therefore, the sovereign retained no mineral interest in the Subject Lands. Note, however, the limitations in this Opinion relative to state ownership of navigable watercourses as set forth in the Limitations section of this Opinion. Please see Exhibit “G” for the Mineral Chain of Title relating to the Subject Lands.

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## COMMENTS AND REQUIREMENTS

### *A. Special Comments and Requirements*

1. **Unleased Interest (Tract 5).** The interest of Bruno Mars in Tract 5 is unleased. Oil and Gas Lease No. 8 taken by J.R. Ewing IV from Digger Barnes IV which purports to cover this interest was taken from the wrong owner. Digger Barnes IV is a stranger to title as to Tract 5.

REQUIREMENT: You should obtain a lease or otherwise address the unleased interest of Bruno Mars in Tract 5 through farmin, a joint operating proposal, or otherwise. You should also secure a release from J.R. Ewing IV of Lease No. 8 to remove the cloud on title. *This requirement should be addressed prior to drilling.*

2. **Current Status of Estate of Alton B. Rich (Tract 14).** The Materials Examined show that Alton B. Rich, the owner of a 1/3 interest in Tract 14, died testate on April 1, 2013, and an Independent Administration of his estate proceedings has been opened for him in \_\_\_\_\_ County, Texas, Cause No. \_\_\_\_\_. The Will was not included in the Materials Examined. We have scheduled the mineral interest owned by him in the "Estate of Alton B. Rich." Note that Alton B. Rich entered into Lease No. 1 prior to his death, so his Estate would be bound by its terms.

REQUIREMENT: In the event of production, the above referenced estate proceedings should be reviewed following their conclusion to determine the devisees of Alton B. Rich. The Examiner should be furnished with a copy of the Will so that the ownership schedules in this Opinion may be updated accordingly. The Will should be obtained and recorded in \_\_\_\_\_ County, Texas. A certified copy of the letters testamentary appointing the Independent Executor of the Estate should also be recorded in \_\_\_\_\_ County, Texas. *This requirement should be addressed prior to division orders.*

3. **Depth Limitation – Unleased Mineral Interest.** Subject Lease Nos. 1-3 each contain the following provision labeled "Retained Depths": "Lessor reserves and excepts from this lease all depths from the surface down to the top of the \_\_\_\_\_ formation." Accordingly, the mineral interest from the surface to the top of the \_\_\_\_\_ Formation remains unleased.

REQUIREMENT: Advisory as to the lease status of the minerals from the surface to the top of the \_\_\_\_\_ Formation. If you wish to lease all minerals underlying the Subject Lands, obtain Oil and Gas Leases covering the State's interest from the surface to the top of the \_\_\_\_\_ formation, executed by the State's agents, currently, \_\_\_\_\_, \_\_\_\_\_ and \_\_\_\_\_, Jr. Record the leases in \_\_\_\_\_ County and provide the Examiner with copies for review.

*[Remaining Special Comments and Requirements omitted]*

### *B. General Comments and Requirements*

6. **Reliance on Runsheets.** In preparation of this Opinion, we have not conducted an actual examination of the records of \_\_\_\_\_ County, Texas. Our examination of title and this Opinion is based upon the Runsheets and additional materials furnished to us as indicated in the Materials Examined section of this Opinion. We accept no liability for the accurateness or completeness of the Materials Examined.

REQUIREMENT: Advisory.

7. **Use and Possession of Subject Lands.** We have not been furnished any information regarding the past or current use and possession of the Subject Lands, and ownership as credited herein is subject to the rights of parties actually in possession thereof. The Materials Examined reveal certain gaps and early defects in title to the Subject Lands which would be difficult, if not impossible, to cure at the present time.

You will have to rely upon the Statute of Limitations and possession to cure the early defects. Section 16.030 of the Texas Civil Practice and Remedies Code provides that when a limitation title by a person having peaceful and adverse

possession is perfected, the claimant has the full or fee title precluding all claims, the same as if such title had been conveyed by deed in writing by the record owner or acquired by Patent. Therefore, we have made no requirements to cure all of the early defects other than the hereinafter possession requirement.

**REQUIREMENT (A):** You should secure Affidavits of Possession from two or more persons personally familiar with the Subject Lands setting forth the nature of possession of Subject Lands for the past 25 years. In this connection, determine the location of all fences and improvements located on the Subject Lands, if any, and in what manner the Subject Lands have been used, such as for farming, grazing of cattle, timber operations, or commercial development. The Affidavits should give the names and addresses of such persons and recite the manner in which they are acquainted with the facts surrounding the property insofar as they relate to possession, use, and occupancy. Such affidavit should also include the results of your investigation relevant to the existence or non-existence of any highway or railroad right-of-way, schools, churches, cemeteries, placer, and lode mining locations, if any, located at any time on the Subject Lands. The Affidavits should be submitted to this office for review.

**REQUIREMENT (B):** If the investigation of use and occupancy of the Subject Lands reveals that the lands are occupied by any person other than the current owner, determine by what rights such person is in possession. We recommend that you attempt to secure a Tenant's Consent Agreement from any such person, particularly if their use and occupancy of the land began before the date of your oil and gas lease. Contact this office for advice should this situation arise.

8. **Liens and Other Encumbrances.** We have assumed for purposes of this Opinion that any unreleased liens or similar encumbrances affecting the Subject Lands which were due and payable more than 40 years ago have been paid in full or are barred by the statute of limitations, and that said liens and encumbrances no longer burden the Subject Lands. With this assumption in mind, our review of the Materials Examined revealed no unreleased liens, deed of trusts, or similar interests that may be acting to encumber the interests of the surface, mineral/royalty, or leasehold interest owners as listed in the Ownership section of this Opinion.

**REQUIREMENT:** Advisory.

9. **Easements and Rights of Way.** The Materials Examined included one easement or right of way affecting the Subject Lands, as summarized in Exhibit "C." You should respect the use and enjoyment of same in connection with your operations on the Subject Lands.

**REQUIREMENT:** Advisory.

10. **On the Ground Examination.** Prior to your operations on the Subject Lands, you should conduct an on the ground examination to determine any operating burdens revealed by visual inspection. Your operations on the Subject Lands must be conducted with due regard for any prior rights or conflicting uses including any easements and rights of ways which are senior to your oil and gas leases.

**REQUIREMENT:** Advisory.

11. **Unreleased Oil and Gas Leases.** The Materials Examined reveal the existence of prior, unreleased oil and gas leases as noted in Exhibit "D" of this Opinion. The Examiner observes that these prior, unreleased oil and gas leases cover lands in addition to the Subject Lands and most do not contain Pugh Clauses. Additionally, the Materials Examined included Affidavits of Non-Production stating that there has been no production of oil or gas on the E/2 of the Subject Lands, *see* Affidavits dated \_\_\_\_\_, \_\_\_ from \_\_\_\_\_ ( / ) and \_\_\_\_\_ ( / ).

**REQUIREMENT:** You should fully satisfy yourself that all prior unreleased oil and gas leases covering the Subject Lands have expired by their own terms, or in lieu thereof, you should secure releases of same and file such releases in the county records. Alternatively, you should obtain and furnish for examination Affidavits of Non-Production substantiating that the leases have expired, or otherwise assure yourself to the extent that you deem advisable that each of such Leases have terminated and are no longer in force and effect.

12. **Read the Leases and Assignments.** The Examiner has provided brief summaries of the Subject Leases and Assignments thereof in Exhibits “A” and “B,” respectively. You are advised that these summaries are not exhaustive and should not be relied upon in substitution of your actual review of the terms of the leases and assignments themselves.

REQUIREMENT: Advisory.

13. **Taxes.** Under § 32.01 of the Texas Tax Code, all property subject to property taxes is subject to a lien in favor of the taxing authority as of January 1st of each year. The Materials Examined included Tax Receipts (Certificate Nos. XXXXXX) for the year XXXX covering the Subject Lands. The Tax Receipts reflect that there are no outstanding balances due.

REQUIREMENT: Satisfy yourselves to the extent that you deem advisable that there are no delinquent ad valorem taxes affecting any portion of the oil and gas mineral estate.

14. **Closing Date of the Runsheet.** The closing date of the Runsheet is \_\_\_\_\_, \_\_\_\_\_. The Examiner advises you to check the records of the County and District Clerk’s office of \_\_\_\_\_ County, Texas, to ensure that nothing has been placed of record since the date of this examination which could adversely affect your interest in the Subject Lands or that could impact the division of interest set forth in this Opinion prior to any payment of royalties. In the event any such instruments have been filed of record, you should submit these instruments for our examination so that additional comments and requirements, if appropriate, may be made.

REQUIREMENT: Advisory.

15. **Survey.** We have not been provided a copy of a survey relating to the Subject Lands. We recommend that you obtain and provide a survey of the Subject Lands for our examination.

REQUIREMENT: Advisory.

16. **Division Orders.** You should obtain signed division orders from each of the owners listed in the ownership tables of this Opinion. The form of the division order should comply substantially with Texas Natural Resources Code § 91.402.

REQUIREMENT: Advisory.

17. **Texas Estates Code § 203.001.** The Texas Estates Code, Section 203.001 provides that subject to rebuttal, a statement of facts concerning family history shall be received as prima facie evidence in any proceeding to declare heirship or a suit involving title if contained in a document legally executed and acknowledged or sworn to, if the same has been filed of record for five (5) years in the county where the land is located. Unless otherwise noted, we assume the information contained in any Affidavits included in the Runsheet are correct and rely on the same in preparing this Opinion, regardless of the length of the time the same have been filed of record.

REQUIREMENT: Advisory.

18. **Use of Excel.** Please note the following with regard to the subtotals and totals shown in the various ownership schedules which are part of this opinion. All of these schedules have been prepared using the Microsoft Excel® spreadsheet program. When Excel calculates values, it does so using 15 significant digits of precision. What is displayed, however, is based on the formatting selected for the individual cells. This results, in some cases, in subtotals or totals that are not exactly equal to the number which would be obtained if the component figures were manually calculated.

This effect can be illustrated by the following example. When the fraction  $1/3$  is entered, calculations in Excel are based on 0.3333333333333333. What is displayed, however, is based on the formatting selected for each individual cell. Thus, if a cell is set to display three decimal places, a cell in which  $1/3$  was entered as the value would be displayed as 0.333. When Excel adds three such cells, however, the result is displayed as 1.000, even though manually adding what is displayed would yield 0.999.

The only way these discrepancies can be eliminated is to set each cell to “round” to a certain number of decimal places and then manually change this rounding if necessary to arrive at the proper total. If a spreadsheet/schedule contains a significant number of values, this process is time consuming. In addition, this manual rounding process must be repeated each time an entry is changed. If, for example, a new lease is acquired from a previously unleased interest or the working interest ownership should change for other reasons, then the rounding must be manually updated. We also note that these discrepancies would occur only in the last decimal place displayed and that the differences in the “real world” at this level are negligible. For example, the schedules in this opinion show revenue and working interest calculations to eight decimal places. The difference between 0.50000000 and 0.49999999 in a net revenue calculation would be equal to one barrel out of 100 million, and, similarly, the difference between 0.50000000 and 0.49999999 in a cost calculation would be \$1.00 out of \$100 million. Net acres are shown to only four decimal places because the original GLO surveys expressed acreage amounts to only two decimal places, so expressed precision beyond that level would not be consistent with the underlying data. Where net acres are based on fractional divisions, however, the underlying fraction—rather than the acreage amount—is retained and used for additional calculations.

Given all of the above, we have chosen to include the data in the various schedules as displayed and calculated by Excel, and we have not manually rounded the numbers displayed by Excel, so as to ensure that the subtotals and totals are exactly equal to the sum of their component figures. Upon request, however, we will revise the schedules using the manual rounding methods which are necessary to achieve such results.

REQUIREMENT: Advisory.

### **RECORD REFERENCE AND OTHER ABBREVIATIONS**

References in this Opinion to Volume/Page (V/P) numbers (sometimes represented just as number/number) are to the records of \_\_\_\_\_ County, Texas, and may include references to Deed Records, Official Records, Real Property Records, Deed of Trust Records, Mechanic’s Lien Records or Mechanic & Material Lien Records, Probate Records, or other records as the context may indicate. In addition, the following abbreviations may be used in this Opinion: “LOR” for Landowner’s Royalty; “NRI” for Net Revenue Interest; “NPRI” for nonparticipating royalty interest; “ORRI” for overriding royalty interest; “C/R” for Comments and Requirements; and “ASSIGN.” for Assignment(s). The heading “REQ.” in the Division of Interest table is used to call attention to “Special” Comments and Requirements that directly affect that individual and/or entity. This does not mean that there are no other requirements that may affect that individual and/or entity.

### **LIMITATIONS**

This Opinion does not cover (i) ownership of minerals other than oil, gas, and associated hydrocarbons; (ii) the location of the Subject Lands on the ground, questions of boundary, conflicts with adjacent surveys, or matters of area such as are determinable only by an actual ground survey, which we assume you will undertake prior to commencement of oil and gas operations; (iii) the genuineness, authenticity, or enforceability of any instruments relied upon; (iv) matters not discoverable with ordinary professional care including fraud, forgery, duress, undue influence, capacity/competency of parties, wrongfully indexed instruments, delivery and alteration after delivery, bankruptcy, homestead rights, unrecorded instruments, and inchoate liens; (v) technical defects of title that may not reasonably be expected to materially affect the value or use of the Subject Lands for oil and gas development purposes in accordance with the “Texas Title Examination Standards” found in Title II of the Texas Property Code; and (vi) any other matter not strictly pertaining to title and ownership such as environmental matters or compliance with governmental laws, rules, ordinances, or regulations.

The United States Army Corps of Engineers has designated lands in various counties in Texas to be “wetlands” and has promulgated strict regulations regarding their development for oil and gas purposes. Though we have not examined any materials indicating that all, or part, of the Subject Lands are classified as wetlands, you should be aware that there is a possibility that all, or part, of the Subject Lands could be considered “wetlands” subject to the jurisdiction of

various state and federal authorities for the purposes of protecting the environment and controlling and regulating the drilling of such lands.

Be aware that if there are any watercourses traversing the Subject Lands, the mineral ownership under same could be vested in the State of Texas. Streams which average at least 30 feet in width measured from the mouth are navigable as a matter of law. The State of Texas owns the beds and bottoms, now or formerly, of all navigable waterways within the state, including the minerals. TEX. NAT. RES. CODE ANN. §§ 21.001 (3), 21.012 and 21.013 (Vernon 1978); *State v. Bradford*, 121 Tex. 515, 50 S.W.2d 1065 (1932); *Mott v. Boyd*, 116 Tex. 82, 286 S.W. 458 (1926). Though we have not examined any materials which would lead us to conclude that the State of Texas owns any watercourses traversing the Subject Lands, this Opinion expressly excludes from coverage any possible claims to State ownership of the beds and bottoms of any such watercourses.

The Materials Examined do not indicate whether the Subject Lands are located within the city limits or extraterritorial jurisdiction of an incorporated town or municipality. If the Subject Lands are located within such a city limit or extraterritorial jurisdiction, you should be aware that your oil and gas drilling and producing operations may be subject to municipal or other governmental permitting requirements.

This Opinion has been rendered in accordance with the law as it existed at the time of the preparation of the opinion. In the event of a change in the applicable laws, we are not responsible for informing any party relying on this Opinion of the change in law or its impact upon record title.

All addresses listed in Exhibit "D" (*this might be a different Exhibit letter if there is no Division of Interest Exhibit*) of this Opinion are last known addresses of record only and may or may not be current. The addresses are furnished for your convenience and for starting point purposes. You should independently determine the current addresses for owners and should not rely on last known addresses of record until they have been proven to be current.

Attached to this Opinion as Exhibit "F" is a plat showing the approximate location of the Subject Lands. We make no representation regarding its accuracy, but include it only to assist you in identifying the Subject Lands.

This Opinion is rendered solely for the benefit of the addressee and may not be relied on by any other person or entity for any purpose.

Respectfully submitted,  
LAW FIRM

By: \_\_\_\_\_  
Attorney

**EXHIBIT A**

**OIL AND GAS LEASES**

**1. Instrument: Memorandum of Oil and Gas Lease**  
Lease Date: May 15, 2015  
Memo Recorded: May 17, 2015 (Volume \_\_\_, Page \_\_\_)  
Lessor: Pit Bull, dealing in his sole and separate property  
Lessee: Big Oil, LLC  
Lands covered: Tract 1  
Interest covered: Oil & Gas  
Primary term: Three (3) years  
Royalty: 25%  
Delay rentals: None, this is a paid-up lease  
Pooling: Yes  
Pugh Clause: Yes

**2. Instrument: Memorandum of Oil and Gas Lease**  
Lease Date: May 15, 2015  
Memo Recorded: May 17, 2015 (Volume \_\_\_, Page \_\_\_)  
Lessor: Taylor Swift, an unmarried woman  
Lessee: Big Oil, LLC  
Lands covered: Tract 2  
Interest covered: Oil & Gas  
Primary term: Three (3) years  
Royalty: 25%  
Delay rentals: None, this is a paid-up lease  
Pooling: Yes  
Pugh Clause: Yes

*[Remaining leases omitted]*



## EXHIBIT B

### ASSIGNMENTS OF OIL AND GAS LEASES

#### **A. Leasehold**

- 1. Instrument:** Assignment of Oil and Gas Leases
- Dated : June 19, 2015
- Effective: June 19, 2015
- Recorded: June 30, 2015 (Volume \_\_\_\_, Page \_\_\_\_)
- Assignor: Big Oil, LLC
- Assignee: Cold Play Oil, Inc.
- Interest Assigned: All of Assignor's right, title. and interest in Subject Leases 1-31 and 33
- Reservations: None, but subject to Aori 1-3
- Warranty: Yes
- Proportionate reduction: None

*[Remaining Assignments of Leasehold omitted]*

#### **B. Overriding Royalty**

- 1. Instrument:** Assignment of Overriding Royalty Interest
- Dated : June 1, 2015
- Effective: June 1, 2015
- Recorded: June 3, 2015 (Volume \_\_\_\_, Page \_\_\_\_)
- Assignor: Big Oil, LLC
- Assignee: Nashville Skyline, LP
- Interest Assigned: ½ of 1% of 8/8ths overriding royalty interest in Subject Leases 7-10, Tract 3
- Warranty: Yes
- Proportionate reduction: None

*[Remaining Assignments of Overriding Royalty omitted]*

**EXHIBIT C**  
**ENCUMBRANCES**

**A. Declarations of Units/Pooling Declarations**

None examined, *see* C/R \_\_\_\_.

**B. Deeds of Trust**

- 1. Instrument:**                   **Deed of Trust, Line of Credit Deed of Trust, Fixture Filing, Assignment of As-Extracted Collateral, Security Agreement, and Financing Statement**
- Grantor:                           Cold Play Oil, Inc.
- Trustee:                           Stewart Title Company, Inc.
- Beneficiary:                     Bank of America, NA
- Date:                               June 23, 2015
- Recorded:                        June 30, 2015 (\_\_\_\_/\_\_\_\_)
- Description:                    Secured in part by Subject Leases 1-31 and 33, among other leases
- Amount:                         \$ 10,000,000.00
- Maturity:                        As stated in the Loan Agreement

**C. Judgments and Liens**

None examined.

**D. Taxes**

No current information on taxes furnished. *See* C/R \_\_\_\_.

**E. Easements**

None examined.

**F. Affidavits of Production/Development**

None examined.

**G. Affidavits of Non-Production/Non-Development**

None examined.

**EXHIBIT D**

**UNIT-WIDE DIVISION OF INTEREST**

**Unit Description:**

Section XX, W/2, W/2E/2, Block A-XX, XXXX Abstracts XXX and XXX, PSL Survey  
XXXX County, Texas,  
**500.0000 acres**, more or less

**Tract Factors**

**Unit Tract 1:** 25.0000 acres/500.0000 acres  
**Unit Tracts 2-22:** *[Tracts descriptions/net acres omitted]*/500.0000 acres  
**Unit Tract 23:** 35.0000 acres/500.0000 acres

**Contents and Calculations for Unit-Wide Division of Interest**

<b>Landowner's Royalty ("LOR")</b> = (mineral interest) X (lease royalty) X (tract factor)	XX
<b>Unleased Interests ("UL")</b> = (mineral interest) X (tract factor)	XX
<b>Nonparticipating Royalty Interests ("NPRI")</b> = (mineral interest) X (NPRI) X (tract factor)	XX
<b>Overriding Royalty Interests ("ORRI")</b> = (mineral interest) X (ORRI) X (tract factor) (results summed for all leases)	XX
<b>Net Revenue Interests For Working Interest Owners ("NRI")</b> = (1 - lease royalty (including the NPRI)) less (ORRI if any) X (working interest X mineral interest) X (tract factor) (results summed for all leases)	XX

**LANDOWNER'S ROYALTY****Pit Bull**

1819 Smith Street  
 Harlingen, Texas 78550  
 [2012]

$$= ((8/8)/3) \times 2 - (1/3) \times (25\%) \times (8.33/500.00)$$

TRACT	LOR BY TRACT	UNIT LOR	LEASE	REQ.
1	<u>0.00416667</u>		L1	2
	<b>Total LOR =</b>	<b>0.00416667</b>		

**Taylor Swift**

1702 Wayland Avenue  
 Fort Worth, Texas 77345  
 [2010]

$$= ((8/8)/3) \times 2 - (1/3) \times (25\%) \times (8.33/500.00)$$

TRACT	LOR BY TRACT	UNIT LOR	LEASE	REQ.
1	<u>0.00416667</u>		L2	N/A
	<b>Total LOR =</b>	<b>0.00416667</b>		

**Katy Perry**

100 Summer Place  
 Andrews, Texas 77386  
 [2014]

$$= ((8/8)/3) \times 2 - (1/3) \times (25\%) \times (8.33/500.00)$$

TRACT	LOR BY TRACT	UNIT LOR	LEASE	REQ.
1	<u>0.00416667</u>		L3	N/A
	<b>Total LOR =</b>	<b>0.00416667</b>		

**Blake Shelton**

171 Timber Lane  
 Andrews, Texas 77386  
 [2014]

$$= (8/8) \times (25\%) \times (35.00/500.00)$$

TRACT	LOR BY TRACT	UNIT LOR	LEASE	REQ.
23	<u>0.01750000</u>		L21	N/A
	<b>Total LOR =</b>	<b>0.01750000</b>		

*[Other entries omitted]*

**TOTAL UNIT LOR (all tracts, all owners)= 0.20950000**

**UNLEASED INTERESTS****Bruno Mars**

4187 Caravan Way

Tyler, Texas 75701

[2013]

= (8/8) x (5.00/500.00)

**TRACT**

5

**UL BY TRACT**0.01000000**UNIT UL****Total UL =****0.01000000****REQ.**

1

**TOTAL UNIT UL (all tracts, all owners)= 0.01000000****NONPARTICIPATING ROYALTY INTERESTS****Justin Timberlake**

4237 Washington Avenue

Tyler, Texas 75701

[2013]

= (25%) x (35.00/500.00)

**TRACT**

23

**NPRI BY****TRACT**0.01750000**UNIT NPRI****Total NPRI =****0.01750000****LEASE**

L21

**REQ.**

N/A

**TOTAL UNIT NPRI (all tracts, all owners)= 0.01750000**

**OVERRIDING ROYALTY INTERESTS****Nashville Skyline, LP**2100 Orchard Street  
Houston, Texas 77001

[2013]

= (1/2) x (1%) x (8/8) x (100.00/500.00)

<b>TRACT</b>	<b>ORRI BY TRACT</b>	<b>UNIT ORRI</b>	<b>LEASE</b>	<b>REQ.</b>
3	<u>0.00100000</u>		L7-10	2
<b>Total ORRI =</b>		<b>0.00100000</b>		

**White Album, LP**P.O. Box 7000  
Tyler, Texas 75711

[2013]

= (1/4) x (1%) x (8/8) x (100.00/500.00)

<b>TRACT</b>	<b>ORRI BY TRACT</b>	<b>UNIT ORRI</b>	<b>LEASE</b>	<b>REQ.</b>
3	<u>0.00050000</u>		L7-10	N/A
<b>Total ORRI =</b>		<b>0.00050000</b>		

**Endless Summer, LP**P.O. Box 8000  
Bastrop, Texas 78602

[2013]

= (1/4) x (1%) x (8/8) x (100.00/500.00)

<b>TRACT</b>	<b>ORRI BY TRACT</b>	<b>UNIT ORRI</b>	<b>LEASE</b>	<b>REQ.</b>
3	<u>0.00050000</u>		L7-10	N/A
<b>Total ORRI =</b>		<b>0.00050000</b>		

**TOTAL UNIT ORRI (all tracts, all owners)= 0.00200000**

**NET REVENUE INTERESTS FOR WORKING INTEREST OWNERS**

**Cold Play Oil, Inc.**

Jones Tower  
 1000 Main Street  
 Houston, Texas 77056

[2015]

	<b>TRACT</b>	<b>NRI BY TRACT</b>	<b>UNIT NRI</b>	<b>LEASE</b>	<b>REQ.</b>
= (8/8) x (1 - 25%) x (25.00/500.00)	1	0.03750000		L1-3	N/A
= (8/8) x (1 - 25%) x (50.00/500.00)	2	0.07500000		L4-6	N/A
= ((8/8) x (1 - 20%) x (100.00/500.00)) - ((0.5%) + (0.25%) + (0.25%) x (100.00/500.00))	3	0.15800000		L7-10	N/A
= (8/8) x (1 - 25%) x (5.00/500.00)	4	0.00750000		L11-15	N/A
= (8/8) x (1 - 20%) x (10.00/500.00)	6	0.01600000		L16	N/A
= (8/8) x (1 - 10%) x (10.00/500.00)	7	0.01800000		L17	N/A
= (8/8) x (1 - 25%) x (30.00/500.00)	8	0.04500000		L18	N/A
= (8/8) x (1 - 20%) x (20.00/500.00)	9	0.03200000		L19	N/A
= (8/8) x (1 - 20%) x (20.00/500.00)	10	0.03200000		L20	N/A
= (8/8) x (1 - 10%) x (10.00/500.00)	11	0.01800000		L21	N/A
= (8/8) x (1 - 20%) x (20.00/500.00)	12	0.03200000		L22	N/A
= (8/8) x (1 - 20%) x (20.00/500.00)	13	0.03200000		L23	N/A
= (8/8) x (1 - 20%) x (10.00/500.00)	14	0.01600000		L24	N/A
= (8/8) x (1 - 20%) x (20.00/500.00)	15	0.03200000		L25	N/A
= (8/8) x (1 - 20%) x (30.00/500.00)	16	0.04800000		L26	N/A
= (8/8) x (1 - 25%) x (20.00/500.00)	17	0.03000000		L27	N/A
= (8/8) x (1 - 20%) x (5.00/500.00)	18	0.00800000		L28	N/A
= (8/8) x (1 - 20%) x (10.00/500.00)	19	0.01600000		L29	N/A
= (8/8) x (1 - 10%) x (5.00/500.00)	20	0.00900000		L30	N/A
= (8/8) x (1 - 20%) x (20.00/500.00)	21	0.03200000		L31	N/A
= ((8/8) x (1 - 25%) x (35.00/500.00)) - ((25%) x (35.00/500.00))	23	<u>0.03500000</u>		L33	N/A
		<b>Total NRI =</b>	<b>0.72900000</b>		

**Aerosmith Oil, Inc.**2325 Allen Street  
Dallas, Texas 77342

[2015]

= (90%) x (1 - 20%) x (20.00/500.00)

TRACT	NRI BY TRACT	UNIT NRI	LEASE	REQ.
22	<u>0.02880000</u>		L32	N/A
	<b>Total NRI =</b>	<b>0.02880000</b>		

**Avett Brothers, LLC.**2100 Cowboy Way  
Dallas, Texas 77342

[2015]

= (5%) x (1 - 20%) x (20.00/500.00)

TRACT	NRI BY TRACT	UNIT NRI	LEASE	REQ.
22	<u>0.00160000</u>		L32	N/A
	<b>Total NRI =</b>	<b>0.00160000</b>		

**Radio Head Oil, Inc.**3200 Mustang Road  
Dallas, Texas 77342

[2015]

= (5%) x (1 - 20%) x (20.00/500.00)

TRACT	NRI BY TRACT	UNIT NRI	LEASE	REQ.
22	<u>0.00160000</u>		L32	N/A
	<b>Total NRI =</b>	<b>0.00160000</b>		

**TOTAL UNIT NRI (all tracts, all owners)= 0.76100000****TOTAL UNIT INTERESTS (LOR + UL + NPRI + ORRI + NRI)= 1.00000000**

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**EXHIBIT E: PRIOR UNRELEASED OIL AND GAS LEASES**

Section \_\_\_\_, Block \_\_\_\_, \_\_\_\_ acres, more or less  
\_\_\_\_ Survey, A-\_\_\_\_, \_\_\_\_\_ County, Texas

The Examiner has assumed that the following oil and gas leases are expired though they are not released of record or are questionably released. You need to satisfy yourself that these leases are in fact expired and when possible, obtain and record releases. To facilitate your review, the Examiner has sorted the leases in the categories below. The categories are ranked from highest risk (Category 1) to lowest risk (Category 4). Where a lease qualifies for more than one category, the Examiner has included the lease in the lower risk category.

**CATEGORY 1:** Prior unreleased oil and gas leases that encompass lands outside your unit but have no Pugh Clauses. This is what the Examiner considers to be your highest risk—a prior lease in your unit HBP by a well that could be miles away.

**CATEGORY 2:** Prior unreleased oil and gas leases that encompass lands outside your unit but with Pugh Clauses. This is what the Examiner considers to be your second highest risk—a prior lease in your unit held by ongoing operations such that the Pugh Clause has not been triggered.

**CATEGORY 3:** Released oil and gas leases but not all lessees or assignees of the lease have signed the release. The Examiner considers this to be a lower risk category. If any of the lessees signed a release, chances are that the lease is no longer held. Proceeding further without releases signed by all the other lessees or assignees of the lessees could be an acceptable business risk.

**CATEGORY 4:** Prior unreleased oil and gas leases that encompass lands wholly within your unit. This is what the Examiner considers to be the lowest risk category—provided you can get an affidavit of nonproduction or otherwise satisfy yourself relatively quickly that there is or is not prior production in your unit.

**CATEGORY 1:**

<b>1.1 Instrument</b>	<b>Oil, Gas and Mineral Lease</b>
Lessor:	_____
Lessee:	_____
Dated:	_____, _____
Recorded:	_____, _____ (Volume ____, _____)
Lands covered:	Subject Lands, among other lands
Primary term:	Twenty (20) years
Pugh clause:	No

**CATEGORIES 2, 3 and 4:** None examined.

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*[EXHIBITS F (PLAT) and G (MINERAL CHAIN OF TITLE) omitted]*

## BIBLIOGRAPHY AND SUGGESTED FURTHER READING

Douglas E. Abrams, *George Orwell's Classic Essay on Writing: The Best Style 'Handbook' for Lawyers and Judges*, 86 OKLA. B. J. 5 (Feb. 2015).

Chad Baruch, Course Director, *Legal Writing to Win 2015*, Texas Bar CLE (2015).

PAUL E. BASYE, *CLEARING LAND TITLES*, (Nancy St. Paul, ed., 3d ed. 2014).

MATTHEW BUTTERICK, *TYPOGRAPHY FOR LAWYERS, ESSENTIAL TOOLS FOR POLISHED AND PROFESSIONAL DOCUMENTS* (2013).

BRYAN A. GARNER, *GARNER'S DICTIONARY OF LEGAL USAGE* (3d ed. 2011).

BRYAN A. GARNER, *THE ELEMENTS OF LEGAL STYLE* (2d ed. 2002).

BRYAN A. GARNER, *GARNER'S MODERN AMERICAN USAGE* (3d ed. 2009).

BRYAN A. GARNER, *THE REDBOOK: A MANUAL ON LEGAL STYLE* (3d ed. 2013).

Terry E. Hogwood & Michael Jones, *The Myth of the Cured Title Opinion: Supplemented by That Title Requirement is Satisfied! Really?* Texas Bar CLE, available at <https://www.texasbarcle.com/materials/Programs/3183/WebCastInfo.htm> (last visited Oct. 19, 2015).

Sheryl L. Howe, "Putting the Substance of the Opinion on Paper," *Nuts and Bolts of Mineral Title Examination*, Paper 6 (ROCKY MTN. MIN. L. FDN. 2015, No. 2).

GEORGE J. MORGENTHALER, *OIL AND GAS TITLE EXAMINATION*, (Mockingbird Press 2012) (1982).

GEORGE ORWELL, *POLITICS AND THE ENGLISH LANGUAGE* (PENGUIN BOOKS 2013) (1945).

Russell L. Schetroma, *The Oil and Gas Title Opinion: A Lawyer's Perspective* § 6C, E. MIN. L. FOUND., SPECIAL INST. "COPING IN THE 90'S," (Oct. 1989).

George Snell, *Title Opinions: A Suggested Model Format*, presented at the Nat'l Ass'n of Lease and Title Analysts, Ann. Conf., Austin, Texas (Sept. 2004).

WILLIAM STRUNK, JR. AND E.B. WHITE, *THE ELEMENTS OF STYLE* 23 (4th ed. 1999) (1935).

Paul Upsons, "Title Opinions: Type, Basis, Format, and Intended Audience," *Nuts and Bolts of Mineral Title Examination*, Paper 5 (ROCKY MTN. MIN. L. FDN. 2015).

RICHARD C. WYDICK, *PLAIN ENGLISH FOR LAWYERS* (4th ed. 1998).

*THE MANUAL ON USAGE & STYLE* (Texas Law Review Ass'n ed., 11th ed. 2008).

*TEXAS RULES OF FORM* (Texas Law Review Ass'n ed., 11th ed. 2005).

*THE BLUEBOOK: A UNIFORM SYSTEM OF CITATION* (Columbia Law Review Ass'n et al. eds., 18th ed. 2005).