



2017 Case Law Update

Benjamin B. Holliday

NHAPL 2018 Half-Day Seminar

Holliday Energy Law Group PC

Holliday Energy Law Group PC is an energy law firm focused on advising exploration and production companies in their operations across the United States. We actively engage with our clients throughout all stages of a drilling program, from acquisition through drilling, and eventually to divestiture.

2017 Case Law Update – Focus on Three Cases

- **Davis v. Mueller** – Texas Supreme Court case holding that general granting clause following a vague tract description unambiguously and effectively conveyed all of grantor's interest in the county.
- **Wenske v. Ealy** – Texas Supreme Court deed interpretation case focusing on the primacy of the parties' intent in determining that the parties intended for an outstanding royalty interest to burden the entire mineral estate proportionately.
- **Reed v. Maltzberger/Storey Ranch, LLC** - 4th Court of Appeals (San Antonio) decision – Deed in question conveyed a mineral interest and not a royalty interest. Petition to the Supreme Court was denied.

Davis v. Mueller, 528 SW3d 97 (2017)

Summary: A general grant (a/k/a global conveyance) was found to be valid and unambiguous despite the fact that it followed numerous legally insufficient tract descriptions.

Key Concepts

1. Statute of Frauds
2. General Grant, a/k/a Global Conveyances
3. Mother Hubbard Clause

Key Takeaways

1. General grant is a valid property description in Texas and will satisfy Statute of Frauds. No limit to the size of interest it can cover.
2. Mother Hubbard Clause is intended only to cover small strips/vacancies clearly intended to be conveyed, but left out by errant property descriptions. Will not cover significant property interest not adequately described.



Davis v. Mueller - Facts

ISSUE: Whether a general grant following insufficient specific property description is sufficient to pass title.

HOLDING: General grant following insufficient specific description of lands the grantor owns is unambiguous and can pass title.

FACTS

- 1991 Deed - Cope conveys to Davis (i.e. Boss Hog), general small town bad guy, all of her mineral interests in 10 vaguely described tracts in Harrison County. The 10 specific tract descriptions do not pass Statute of Frauds.
- Key 1991 Deed Language: Following these 10 bad descriptions were 3 critical sentences contained in the same paragraph:
 1. Sentences 1 & 2: Standard Mother Hubbard Clause
 2. Sentence 3: “Grantor hereby conveys to Grantee all of the mineral, royalty, and overriding royalty interest owned by Grantor in Harrison County, whether or not the same is herein above correctly described.”



Davis v. Mueller - Facts

FACTS cont'd

- 2011 Deed – Cope conveys to Mueller (i.e. Bo & Luke), “a landman who had contacted them,” the same interests conveyed to Davis in 1991. Mueller thinks that he is on to something...



Davis v. Mueller - Facts

FACTS cont'd

- Litigation Ensues: Quiet Title Suit
 - Mueller sues Davis to quiet title to the minerals, asserting that the 1991 Deed property descriptions were insufficient to pass title under Statute of Frauds.
 - Davis does not contest that tract descriptions are insufficient to pass title under SoF, but claims that the general granting clause was sufficient to pass all of Cope's mineral interest in Harrison County.
- **Trial Court** rules for Davis on summary judgment.
- **Appellate Court** rules for Mueller. Finds general granting clause ambiguous because purports to convey all grantor's interest in the county – a large amount of property – although it is located in the same paragraph as as the Mother Hubbard Clause – a catchall for small, overlooked interests. Holds that the parties intent is a fact issue for the jury.
 - Note that they are not saying Mueller is right, they are saying it's ambiguous and a jury should decide.

Davis v. Mueller – Statute of Frauds

Ambiguity and Deed Interpretation

- Courts will construe an un-ambiguous deed ‘as a matter of law,’ seeking to find the parties’ intent from the four corners of the document.
- Ambiguity means that a deed is subject to more than 1 reasonable interpretation.
- Ambiguous = Jury, finder of fact
- Unambiguous = Court decides as a matter of law
- In *Davis*, appellate court is not saying Mueller wins, they are saying that a jury should decide.

Davis v. Mueller – Statute of Frauds

Key Principle No.1: Statute of Frauds

- All real property conveyances for more than a year must:
 1. Be in writing
 2. Be signed by the party charged
 3. Contain a valid property description – either in the instrument or by reference to another existing writing – providing the means by which the property can be located with reasonable certainty
- **Reasonable Certainty to Whom?** In Texas, a legal description is sufficient when it contains facts that identify the property with reasonable certainty *to a party familiar with the locality*.
- **Reference to Another Existing Writing?** This means that the conveying instrument does not have to contain a full description of the property if it references another recorded instrument that contains a complete description.

Davis v. Mueller – General Granting Clause

Key Principle No.2: General Granting Clauses (a/k/a Global Property Description)

- Descriptions of all the grantor's real property wherever located in a specific city, county, or state
- E.g. "All my interest in Johnson County."
- Valid in Texas.
- Sufficient to satisfy Statute of Frauds, even if other tracts are specifically described.

Davis v. Mueller – Mother Hubbard Clause

Key Principle No.3: Mother Hubbard Clauses

- General catch-all provision in the property description designed to ensure that the grant includes small strips, etc. that are adjacent to or in same survey as the land conveyed, but that may not be properly described because of incorrect surveying, fence locations, or other small description mistakes.
- 'including all lands adjacent or contiguous' or even 'located in the same survey'
- These sound scary, but as we will see, they are not

Davis v. Mueller – Mother Hubbard Clause

- **General Granting Clause vs. Mother Hubbard Clause: Key Distinction is Size of Interest Covered**
 - **Mother Hubbard Clause** = Small strips/vacancies only, which are typically not included b/c of unknown description mistake. No large interests.
 - Texas public policy discourages separate ownership of narrow strips of land.
 - Mother Hubbard effects this intent and applies only to small strips and vacancies unintentionally left out of a specific description.
 - **General Granting Clause** = No size limit. All interest in a specific geographic location.
- **GENERAL RULE:** In Texas, a Mother Hubbard Clause is not effective to convey a significant property interest not adequately described in the deed.
 - Will only operate to convey small interests that were clearly contemplated within the specific conveyance.
 - Will not convey large property interests not adequately described or clearly contemplated.

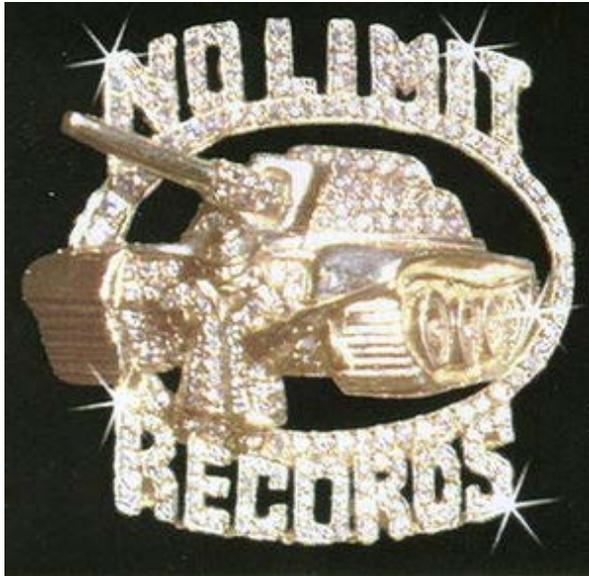
Davis v. Mueller - Decision

Texas Supreme Court: Davis and the 1991 Deed Wins. General Granting Clause is valid; Davis has superior title.

- General grants in the 1991 deeds are valid and unambiguous, and convey all Cope's mineral interests in Harrison County.
- GRANT SATISFIES STATUTE OF FRAUDS
 - Mueller is correct that the specific property descriptions in 1991 Deed did not satisfy the Statute of Frauds. However, the general granting clause resolves this ambiguity by making it clear that all interest in the county is conveyed.
 - Distinguishes this case from 2005 Texas Supreme Court decision in *J. Hiram Moore v. Greer*.
- GLOBAL CONVEYANCE ALONG WITH A MOTHER-HUBBARD CLAUSE DOES NOT CREATE AMBIGUITY
 - To hold that the general grant applies only to the small strips and vacancies covered by the Mother Hubbard Clause would be to give no effect to the general grant. Mother Hubbard Clause already covers these; there would be no need for general grant. It would be redundant.

Mueller v. Davis – Key Takeaways

General Grant – No limit to size



Mother Hubbard Clause – Small in size, only intended to catch small mistakenly left pieces



Distinguishing 2005 Texas Supreme Court Case *J. Hiram Moore*

J. Hiram Moore v. Greer, 172 SW3d 609 (2005)

- Texas Supreme Court finds general granting clause ambiguous and gives it no effect.
- Facts:
 1. Greer owns Surface and Minerals in Tract 1, NPRI in Tracts 2-4. Lands are in Survey A, Wharton County.
 2. Tracts 3 and 4 are pooled with adjacent tracts in the Survey B to form SixS Frels Unit. Greer owns no interest in lands in Survey B.
 3. Deed Contains Specific and General Grants:
 1. Specific Grant - Greer conveys all royalties produced from “all that tract of land out of ... Survey [B] known as the SixS Frels Unit.” Greer owns no royalty interest in any tract in Survey B.
 2. General Grant – “in addition, it is the intent of this instrument to convey ... all of [grantor’s] royalty and overriding royalty interest in [Wharton County].”

Distinguishing 2005 Texas Supreme Court Case *J. Hiram Moore*

- **Holding: General Grant is ambiguous and could not be construed as a matter of law.**
- **What is the distinction?**
 - In *J. Hiram Moore*, the general grant creates an ambiguity.
 - In *Davis* it resolves an ambiguity.
- *J. Hiram Moore*
 - Specific description conveyed nothing b/c grantor owned no interest in the tracts purportedly described.
 - General grant would have been sufficient, by itself, but it follows a grant of nothing.
 - Because deed “states that [grantor] conveys nothing, and that she conveys everything,” the grant is ambiguous and could not be construed as a matter of law.
 - Ambiguity means it’s up to a jury, and that a court can’t determine as a matter of law.
- *Davis*
 - General grant cures a technically deficient property description for a tract in which the grantor owned an interest.
 - “That is precisely the purpose of the general grant when included with specific grants.”

Davis v. Mueller – Reminder About Texas Rules of Evidence

SOMETHING TO CONSIDER

- Mueller also argued that the general grant should not be enforced because Davis was a bad actor who had been sued many times for fraud, including by Texas Attorney General.
 - E.g. He's always ripping people off, so he had to be doing the same thing here.
- **Texas Rule of Evidence 404(a)**: Evidence of a person's character or character trait is not admissible to prove that on a particular occasion the person acted in accordance with the character trait.
- This means that just because you are about to litigate with a 'bad guy that everyone knows is a crook' doesn't mean that this will have any bearing on the case. It almost certainly will not be allowed into evidence; the court and jury will never know about it.



Wenske v. Ealy, 521 SW3d 791 (2017)

Summary: Texas Supreme Court determined that the intent of the parties was that an outstanding NPRI burdened the entire mineral estate, not solely the portion of the minerals later conveyed. Intent of the parties is key; parties are free to split/burden as they see fit.

Key Concepts

1. Deed Construction
2. 'Subject To' Clause of Deed
3. Whether Outstanding Royalty Interests Burden Interests Later Granted and Reserved

Key Takeaways

1. In construing an unambiguous deed, the court will seek the intent of the parties from the four corners of the instrument, and will not adhere to arbitrary mechanical rules of construction that ignore intent. No “magic words.”
2. General rule, which may be altered by the parties to a deed, is that outstanding royalty interests proportionately burden the entire mineral estate.

Wenske v. Ealy, 521 SW3d 791 (2017)

ISSUE: Whether the language of the deed in question passed the entire burden of an outstanding NPRI to grantees or whether the NPRI proportionately burdened the entire mineral estate.

HOLDING: NPRI proportionately burdens the entire mineral estate based on the intent of the parties.

FACTS

- 1988 – Wenske buys Blackacre from V & N, who each reserve an undivided 1/8 NPRI for 25 years. Total royalty burden is 1/4.
- 2003 – Wenske sells Blackacre to Ealy by WD. The deed...
 - Conveys 8/8 Surface
 - Reserved 3/8 of the Mineral Estate
 - Conveys 5/8 of the Mineral Estate

Wenske v. Ealy, 521 SW3d 791 (2017)

FACTS

- 2003 Conveyance was “Subject To” the following:
 - Reservation Clause: “For Grantor and Grantor's heirs, successors, and assigns forever, a reservation of an undivided 3/8ths of all oil, gas, and other minerals in and under and that may be produced from the Property...”
 - Exceptions to Conveyance & Warranty: “Undivided one-fourth (1/4) interest in all of the oil, gas and other minerals in and under the herein described property, reserved by Marian Vyvjala, et al. for a term of twenty-five (25) years in instrument recorded in Volume 400, Page 590 of the Deed Records of Lavaca County...”
- 2011 – Wenske’s and Ealy’s enter into OGLs.
- 2013 – Dispute arises about whose interest should be burdened by the outstanding 1/4 NPRI

Wenske v. Ealy, 521 SW3d 791 (2017)

FACTS

- Wenske Argument
 - Conveyed SUBJECT TO the Reservations and Exceptions Clauses
 - Subject to a reservation of 3/8, leaving 5/8 available
 - 5/8 minerals thus conveyed were subject to the outstanding 1/4 NPRI clearly identified and excepted from the warranty and grant.
 - Effect of the conveyance is 8/8 LESS 3/8 minerals reserved LESS 2/8 NPRI = 3/8 Royalty
 - Arguing that the intent was convey 5/8 of the minerals, but make this 'subject to' the entire outstanding 2/8 NPRI, which would 100% burden the Ealy interest.
 - Intent was to have an equal 3/8 royalty share with Ealy

Wenske v. Ealy, 521 SW3d 791 (2017)

Key Principal No.1: Canons of Deed Interpretation

- Foremost seeking to find the intent of the parties from the Four Corners
- Courts will seek to harmonize all parts of the deed, and presume all parts were intended.
- Courts will reject application of mechanical rules of construction.
- No “Magic Words.”



Wenske v. Ealy, 521 SW3d 791 (2017)

Key Principal No.1: Canons of Deed Interpretation

Texas Supreme Court determines that the appellate court got the right answer for the wrong reasons.

Appellate Decision: Because the deed provided no guidance, followed the default rule of *Pich v. Lankford* that ordinarily a royalty interest would be carved proportionately from the entire mineral estate.

Texas Supreme Court: Parties' intent governs over arbitrary rules. Here, deed is unambiguous, so we follow the intent and not arbitrary rules.

Wenske v. Ealy, 521 SW3d 791 (2017)

Key Principal No.2: Subject to Clause

- Principal function of 'subject to clause' is to protect a grantor against breach of warranty claim where mineral interests are outstanding – i.e. the grant is 'subject to' the referenced reservations, and excepts them from the warranty.
- Can limit the estate granted.
- Makes clear that a grant is subject to existing burdens, such as an OGL.

Texas Supreme Court: Grant to Ealys was limited by and subservient to the outstanding NPRI. However, reading plain language and harmonizing all parts of the deed, cannot construe the deed such that the parties intended the Ealys to bear 100% of the outstanding burden.

Declines to read intent into the document based on arbitrary or mechanical rules.

Wenske v. Ealy, 521 SW3d 791 (2017)

Key Principal No.3: Whether Outstanding Royalty Interests Burden Interests Later Granted and Reserved

HOWEVER – Court notes that “principles of oil and gas law inform” their interpretation.

General Rules:

1. Conveyance of minerals, including undivided interests, carries with it the corresponding/proportional right to royalty.
2. A severed fractional royalty interest (fixed or floating) generally burdens the entire mineral estate because it limits the royalty attached to that mineral estate.

BUT – These rules do not compel the outcome. Court determines that parties intended the royalty to burden the mineral estate equally. The parties can effect any intent they want.

Wenske v. Ealy, 521 SW3d 791 (2017)



Wenske v. Ealy, 521 SW3d 791 (2017)

“To be clear, we do not hold that all conveyances of a fractional mineral interest subject to an outstanding NPRI will, by default, result in the various fractional-interest owners being proportionately responsible for satisfying the NPRI. Analytically, our holding is just the opposite. In construing an unambiguous deed, the parties' intent—determined by a careful and detailed examination of the document in its entirety—is paramount. Rigid, mechanical, arbitrary, and arcane rules, which at one time offered certainty at the expense of effectuating intent, are relics of a bygone era. We disfavor their use.”

Wenske v. Ealy, 521 SW3d 791

- **Key Takeaway** = We have general rules which provide a good guide, but ultimately the courts will look to the intent of the parties when construing a deed. No “Magic Words,” and courts will not follow mechanical rules of deed construction.
- If you want an outcome that is outside the general principles of oil and gas law, be clear in your drafting.



Maltsberger Ranch

George Washington Maltsberger

- Civil War Veteran
- Pioneer
- Indian Fighter
- Founded Maltsberger Ranch



Reed v. Maltzberger/Storey Ranch, LLC, 543 SW3d 51

Summary: Disputed 1942 Deed conveyed a 1/4 mineral interest and not a fixed royalty interest

Key Concepts

1. Canons of Deed Construction
2. Mineral v. Royalty Interests
3. Title of Instrument Is Not Dispositive (e.g. Road Deed, Royalty Deed)

Key Takeaways

1. Courts will look to the 4 Corners to determine intent of the parties; they will not follow bright line rules, but instead will look to the context and language used, seeking to harmonize all portions of a deed.
2. While there are traditional hallmarks of mineral v. royalty interest, there are no 'magic phrases' that convey mineral or royalty. Court will seek intent of the parties from the 4 Corners.

Note that petition was denied on this case, meaning it is as good as law can get without being Texas Supreme Court law.

Reed v. Maltzberger/Storey Ranch, LLC, 543 SW3d 51

Key Takeaways

1. If you are in a similar situation in South Texas before the 4th Court of Appeals, and the deed starts out describing minerals, then strips the interest down to royalty and even calls it a royalty, it's likely still a mineral interest.
2. This is b/c the court will likely presume that the parties intended all phrases used to have meaning, that use of the phrase "royalty" and then stripping incidents that don't belong to royalty would be redundant. Thus minerals were intended.

Reed v. Maltzberger/Storey Ranch, LLC - Facts

FACTS

- 1942 Deed – Via instrument titled “Royalty Deed,” Grantor conveyed to Grantee “an undivided one-fourth (1/4) interest in and to all of the oil, gas and other minerals in and under and that may be produced from” described lands in La Salle County, Texas.
 - Acknowledges:
 - Lands are under lease
 - Sale is made subject to the existing lease
 - Sale “covers and includes one-fourth (1/4) of all the oil ... and gas ... royalty due and to be paid under the terms of said lease and an equivalent royalty interest under any future mineral leases thereon”
 - Specifically strips Grantee of
 - Executive Rights
 - Bonus Rights
 - Delay Rentals

Reed v. Maltzberger/Storey Ranch, LLC - Facts

FACTS

- 1942 Deed Cont'd – “It being the purpose and intent hereof to grant ... an undivided ... (1/4) of the ... (1/8) royalty under said existing lease and an equivalent royalty interest under any future mineral leases ... by [grantor] ... or assigns.”
- Who are the parties?
 - Reed = Successor to 1942 Deed Grantee
 - Hanks = Successor to 1942 Deed Grantor and current lessor.
 - Rosetta = Current Lessee distributing royalty payments.
- At time of 1942 Deed, lands were leased at 1/8. Rosetta Resources Operating LP is current lessee under OGL with 22.5% Participating Royalty.
- Rosetta has been paying Reed a fixed 1/32 Royalty; balance to Hanks as mineral owner.
- Reed sues Hanks and Rosetta, claiming they owned a 1/4 Mineral Interest, and thus are owed 1/4 of 22.5%, as opposed to 1/32 (or 1/4 of 1/8).
- Hanks counterclaims that 1942 was correctly construed and conveyed a fixed 1/32 NPRI.

Reed v. Maltzberger/Storey Ranch, LLC – Key Principles

ISSUE: Whether 1942 Deed conveyed a mineral or royalty interest.

HOLDING: Parties intended the interest to be a mineral interest.

Key Principle No.1: Deed Construction

- No. 1 priority is to determine the intent of the parties.
- Four Corners Rule = Ascertain intent of the parties from the four corners of the instrument
 - Based on the words USED, not the subjective intent of the parties
 - i.e. What they did, not what they might have done
- Intent is determined by harmonizing the instrument as a whole, particularly where there are conflicts/inconsistencies in the language used
- Texas Supreme Court has rejected mechanical, bright-line rules of interpretation that are contrary to an intent-based inquiry; no “no magic-words”



Reed v. Maltzberger/Storey Ranch, LLC – Key Principles

Key Principle No.2: Mineral v. Royalty

- A Review of Basic Mineral Principles - Start w/Big Picture & Narrow Down
- Fee simple grant conveys all rights unless a contrary intent is expressed
 - Most commonly a Reservation from or Exception to the grant
 - Applies to a mineral conveyance, including undivided interests
- Mineral Estate Consists of the 5 Essential Elements (The Bundle of Sticks)
 1. Development Right
 2. Executive Right
 3. Right to Bonus
 4. Right to Delay Rentals
 5. Right to Royalty
- Mineral conveyance may cover less than all interests; i.e. grantor may grant or reserve some or all of the rights incident to the mineral estate

Reed v. Maltzberger/Storey Ranch, LLC – Key Principles

Key Principle No.2: Mineral v. Royalty

- **Royalty Interest** – A in-corporeal interest in real property. Right to a proceeds from the sale of a thing; not a right to a thing.
 - A stick in the bundle that may be carved out
 - Right to get paid a fraction of production if and when production is established, free of expenses
 - Two Distinguishing Characteristics
 1. Non-possessory – no right to explore, drill, produce
 2. Non-cost bearing – not burdened by the costs of extraction
 - A/k/a Non-Participating Royalty Interest
- Hybrid Interests ARE POSSIBLE
 - Separation of all possessory rights WILL NOT convert a mineral into a royalty interest
 - Possible to have a non-executive mineral interest stripped of all rights other than royalty
 - Possessory rights may be conveyed alongside a royalty interest

Reed v. Maltzberger/Storey Ranch, LLC – Key Principles

Key Principle No.2: Mineral v. Royalty

- Traditional Language Used to Create
 1. **Royalty Interest** = Words that contemplate the grant of payment of a fraction of the oil and gas when produced; i.e. when severed from the ground
 1. Typically created by using the word “Royalty,” as in 1/16th Royalty.
 2. “Saved and Produced”
 2. **Mineral Interest** = Words that contemplate a grant of the minerals in place
 1. “In and under and that may be produced”

Reed v. Maltzberger/Storey Ranch, LLC – Key Principles

Key Principle No.2: Mineral v. Royalty

- There is NO BRIGHT LINE RULE from Texas Supreme Court. These cases start with broad mineral grants that progressively carve away rights associated with the mineral estate. Intent is key.

Watkins v. Slaughter - Reservation created a royalty interest, where grant was of 15/16 ‘in and to all OGM in and under and that may be produced,’ and grantor retained title to ‘1/16 interest in and to all of the OGM in and under and that may be produced...’

1. Reservation specifically excluded executive, bonus, delay rentals, and parties stated that grantor should receive royalty *only from actual production*.
2. Court harmonized language and placed great emphasis on parties’ designation of interest as royalty.

Altman v. Blake – Grant creates a mineral interest where deed grants 1/16 in and to all OGM in and under and that may be produced, along with right of ingress/egress, but reservation of all executive and delay rental rights. Creates a non-exec mineral interest stripped of right to rentals.

Reed v. Maltzberger/Storey Ranch, LLC – Key Principles

Key Principle No.2: Mineral v. Royalty

French v. Chevron USA – Deed conveyed a mineral interest, where conveyed 1/656.17 interest ‘in and to all of the OGM, in, under and that may be produced from’ the lands described, before stripping out all incidents of the mineral estate other than royalty.

1. “It is understood and agreed that this conveyance is a royalty interest only, and that” 4 of the 5 Sticks are reserved.
 1. Bonus
 2. Delay Rentals
 3. Executive Rights
 4. Development

Reed v. Maltzberger/Storey Ranch, LLC – Key Principles

Key Principle No.2: Mineral v. Royalty

French v. Chevron USA

Court read instrument as a whole

1. In and Under Language
 2. Description of interest as royalty, BUT
 3. Then defined the various sticks to be reserved, which would be redundant unless a mineral interest was conveyed.
1. Deed created a mineral interest stripped of all rights other than right to royalty.

Reed v. Maltzberger/Storey Ranch, LLC – Key Principles

Key Principle No.2: Mineral v. Royalty

Temple Inland Forest Products Corp. v. Henderson Family Partnership – Deed reserved a fixed **royalty interest**, where deed granted “an undivided ... 15/16ths interest in and to all of the oil, gas and other minerals ... that may be produced from the described land...”

1. “... it is understood and agreed that said ... 1/16 interest is and shall always be a royalty interest, and not be charged with any of the costs ... [of exploring and developing] ... Grantor’s ... 1/16 shall be delivered free of cost to Grantor...”
2. Reservation excluded:
 1. Executive Rights
 2. Bonus
 3. Delay Rentals
3. Court adheres to *Watkins* and declares reservation a fixed 1/16 royalty.
4. What is the distinction from *French* and *Watkins*?
 1. Specific language was highlighted in French deed
 2. *Temple Inland* deeds leave no room for doubt, words royalty used 6 times and stating that it is cost-free
 3. Court states that all intent is garnered from all provisions of the instrument

Reed v. Maltzberger/Storey Ranch, LLC – Key Principles

Key Principle No.2: Mineral v. Royalty

THESE FOUR CASES MEAN BE CAREFUL – WHEN THEY SAY NO BRIGHT-LINE RULE IN DETERMINE MINERAL OR ROYALTY, THEY MEAN IT.

4TH Court looked at other 4th Court appellate cases – *Garza v. Prolithic Energy Co.*, *Hamilton v. Morris Resources, Ltd.*, *Coates Energy Trust v. Frost Nat'l Bank* – which followed *Altman* and which held that an interest termed royalty in a grant or reservation, and which is specifically stripped of additional elements of the mineral estate is a non-executive mineral interest stripped of those certain incidents and not a royalty. Stripping of these rights would be redundant if royalty were intended, b/c royalty does not include them.

Key Principle No.3: Title of an Instrument Is Not Dispositive

Reed v. Maltzberger/Storey Ranch, LLC - Facts

HOLDING: When harmonizing the deed provisions, language creates a mineral interest.

- Court follows *Altman, Garza, Hamilton, Coates*.
- Granting clause contains traditional hallmarks of mineral interests – “in and to all [OGM] in and under and that may be produced from” the lands
- While acknowledging that the lands were under lease, the deed prospectively stripped away certain incidents of the mineral estate for all future leases
 - Executive Rights
 - Delay Rentals
 - Bonus
- If grantor had intended a royalty interest only, stripping these rights would be redundant because a royalty interest doesn’t include them. Language is only meaningful if grantor intended to convey a mineral interest and then intended to strip certain rights out of it.
- Language “and an equivalent royalty interest under any future mineral leases thereon...” makes clear that the future interest is 1/4 of any future royalty negotiated, and thus minerals.

QUESTIONS?

