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## Oil and Gas Title Examination - A Review of the Materials and Records that Must be Examined in Order to Render Oil and Gas Lease Title Opinions

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## OIL AND GAS TITLE EXAMINATIONS

*A Review of the Materials and Records that Must be Examined In Order to Render Oil and Gas Lease Title Opinions\**

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Examination of titles to lands that are or may become valuable for oil and gas is very different from an examination of ordinary real estate titles. Since a large discovery can momentarily skyrocket the value of a tract of oil property from a few thousand dollars to many millions of dollars, the title examiner must always assume that millions of dollars are already at stake. Therefore, the customary "title standards" are virtually useless and every possible flaw must be meticulously described. Furthermore, the entire concept of an oil and gas lease is completely different from the customary landlord-tenant relationship and if Indian or federal lands are involved a host of intricate problems involving federal regulations and decisions of the Department of the Interior are bound to arise.<sup>1</sup>

Fundamental to any title examination is a review of public and private records. The purposes of this article are to provide the reader with a very elementary and basic review of (1) the records which must be examined in oil and gas title work as to the types of land most frequently encountered, (2) the precise nature of these records, and (3) the nature and limitations of abstracts and other summaries upon which attorneys generally rely.

It should be noted that the records and title materials referred to in this article are those that an attorney must insist upon reviewing before giving an opinion that title is acceptable for drilling. For other purposes, such as purchasing a nonproducing lease, paying rentals, and general curative work, the particular problem at hand may not justify as detailed an examination as must be made before commencement of actual drilling operations.

### THE RECORDS WHICH MUST BE EXAMINED

*Private Files.* The private files which an attorney must examine are those belonging to his client and any other files which the client may have examined and of which the client has knowledge. The attorney must insist on examining any and all rental receipts or

\* A book devoted to land and legal problems in oil and gas leasing by the Denver staff of the Continental Oil Company Legal Department will be published this fall by F. H. Gower, Denver, Colorado. This article is adapted from a chapter in that book.

<sup>1</sup> For a comprehensive treatise as to Indian lands, see McLane, *Oil and Gas Leasing on Indian Lands* (1955); and for similarly excellent treatises on Federal lands, see Hoffman, *Oil and Gas Leasing on the Public Domain* (1951), and Hoffman, *Oil and Gas Leasing on Federal Lands* (1957). These books are invaluable aids when examining titles to Indian or federal leases.

other evidence as to how lease rentals have been paid. He must examine the original lease and all amendments, ratifications, and also any and all assignments, options, overriding royalty agreements, operating agreements and other instruments to which his client is a party. He must review any mineral deeds which have been submitted to his client by any successor in interest of the original lessor. If the client has acquired the lease by assignment rather than as the original lessee, he should be requested to obtain all of these materials that his predecessor may have in his files. If the lands are patented the attorney should insist on a copy of the patent certified to by the Bureau of Land Management in Washington and should not rely on any copy obtained from an abstractor.<sup>2</sup> Finally, the attorney should insist on evidence as to the state of the surface of the lands. Such evidence should consist of both an affidavit setting forth the party or parties in possession and a report describing all significant features of the surface, *e.g.*, buildings, mines, wells and houses.

#### *Public Records Which Must be Reviewed as to Fee Lands*

Every state has a statute which provides for the maintenance of a system of public records where instruments affecting real property may be recorded. These public records exist to preserve evidence of deeds and other instruments in order that they may be used as proof of matters which they contain and to charge any interested person with "record" or "constructive" notice equivalent to actual notice. The records are kept in the county seat of each county and the person in charge of the records is the county clerk and recorder.

The Colorado statute provides that no instrument conveying, encumbering or affecting the title to real property "shall be valid as against any class of persons with any kind of rights, except between the parties thereto, and such as have notice thereof, until the same shall be deposited with the recorder."<sup>3</sup> Therefore, with respect to fee lands, the only public files which need be examined are those of the office of the county clerk and recorder.

#### *Public Records Which Must be Reviewed as to Federal Lands*

The federal records which must be reviewed consist of at least (1) the Bureau of Land Management records in Washington and (2) the records in the District Office of the Bureau of Land Manage-

<sup>2</sup> The patents which appear in county records are generally based on unofficial copies which sometimes contain inaccuracies, particularly as to whether or not minerals have been reserved.

<sup>3</sup> Colo. Rev. Stat. Ann. § 118-6-9 (1953).

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ment having jurisdiction over the lands under consideration.<sup>4</sup> Review of the records in these two offices is sufficient with respect to leases issued under 43 C.F.R. § 192 (1955, & Supp. 1957), i.e, leases covering ordinary public domain lands. With respect to lease issued under 43 C.F.R. § 200 (1955, & Supp. 1957), i.e., acquired land leases and as to leases issued under other chapters of the regulations, it is necessary to review additional records. When examining the title to acquired lands, it is necessary to consider the records of the particular governmental agency having jurisdiction over the surface of the lands in question, e.g., the Forest Service, the Bureau of Reclamation, the Fish and Wildlife Service, Atomic Energy Commission, the military or some other governmental agency. These other governmental agencies frequently have a central office in Washington and a field office having jurisdiction over the lands under consideration but the field office may or may not be located in the same city as the field office of the Bureau of Land Management.

Even though the federal records are the most important source of information concerning federal lands, the records in the local county clerk and recorder's office cannot be ignored. These must be examined with respect to lands covered by federal leases for the same reason that they must be examined as to fee lands—because any instrument of record is notice to the whole world.

An assignment of a federal lease or an operating agreement may be of record in the county records but not in the federal records. Such an instrument is valid between the parties even though not recognized by the government and it creates a defect in the title of the person who is the apparent owner of the lease according to the federal records.<sup>5</sup> Such occurrences are rare but they are always a possibility.

Mining claims are a type of interest which can cause a complete failure of title under a federal oil and gas lease.<sup>6</sup> County records are normally the only place where notices of mining claims are filed. Claims often are not recorded with respect to the tract affected and it is frequently difficult for anyone to determine pre-

<sup>4</sup> The various District Land Offices and their jurisdictions are as follows:

District Office	Jurisdiction
Phoenix, Arizona .....	Arizona
Los Angeles, California and Sacramento, California .....	California
Denver, Colorado .....	Colorado
Boise, Idaho .....	Idaho
Billings, Montana .....	{ Montana
	{ North Dakota
	{ South Dakota
Reno, Nevada .....	Nevada
Santa Fe, New Mexico .....	{ New Mexico
	{ Oklahoma
	{ Texas
Salt Lake City, Utah .....	Utah
Spokane, Washington .....	Washington
Cheyenne, Wyoming .....	{ Wyoming
	{ Kansas
	{ Nebraska
Washington, D. C. ....	States which have no local office

<sup>5</sup> Recovery Oil Co. v. Van Acker, 79 Cal. App. 2d 639, 180 P.2d 436 (4th Dist. 1947); Aronow v. Bishop, 107 Mont. 317, 86 P.2d 644 (1938); Hockman v. Sunhew Petroleum Corp., 92 Mont. 135, 11 P.2d 778 (1932).

<sup>6</sup> A permit or lease issued under the Mineral Leasing Act of 1920 is invalid insofar as it covers lands previously covered by a valid mining claim located prior to the passage of the Multiple Mineral Development Act effective August 13, 1954. Henry W. Pollock, 48 L.D. 5 (1921); Secy's Op., 50 L.D. 650 (1924). See also Wilbur v. Krushnic, 280 U.S. 306 (1930).

cisely whether a given claim does or does not affect the lands under consideration. Sometimes the most practical method of disposing of the mining claim problem is to have a competent geologist actually examine the lands. If he concludes that there could be no valid discovery on the lands, he should make an affidavit to this effect. Such an affidavit may then be relied upon as disposing of the danger of a title failure from this source. If the facts are otherwise, however, it will be necessary to locate the owners of the mining claims affecting the lands under consideration and neutralize their inchoate rights to oil and gas.

Rights of way are another type of interest which can cause a complete title failure under a federal oil and gas lease.<sup>7</sup> Generally, these interests are shown in federal records. It is conceivable, however, that the county records may contain the only evidence of a right of way and this is another reason why it is not safe to disregard reviewing county records in connection with federal leases.

Nevertheless, as a practical matter, county records are often disregarded. This is especially true in reviewing titles for purposes other than the purpose of actual drilling and particularly if the mining claim and right of way problems have been disposed of by surface examination and if the client is either the original lessee or else is completely confident that the predecessors in the chain of the lease title have not entered into any assignments or operating agreements which do not appear in the federal records.

#### *Public Records Which Must be Reviewed as to Indian Lands.*

A complete title examination of Indian lands includes an examination of the records of the Office of the Commissioner of Indian Affairs in Washington (and sometimes also documents deposited in the National Archives, which is the only place that many original instruments, such as treaties, can be found). Records in Area Offices of the Bureau of Indian Affairs<sup>8</sup> and records of the Superintendent of the Indian Agency having jurisdiction over the lands in question must also be examined.

As in the case of federal lands it is not safe to disregard the county records. There is no reason to believe that an assignment of an Indian lease appearing only in county records would not be a defect in the title of someone else purporting to hold the same lease by virtue of a subsequent assignment properly filed with the appropriate Indian office. Some lands have only recently been made parts of Indian reservations and, as to these lands, previously created rights of way or previously located mining claims remain as much a problem as ever. Federal records must also be reviewed to ascertain that no rights remain in the United States.

<sup>7</sup> The only authorization given for the issuance of an oil and gas lease covering a right of way acquired under any law of the United States is to be found in the Right of Way Leasing Act of 1930, 46 Stat. 374, 30 U.S.C. 306 (1952).

<sup>8</sup> The Area Offices having jurisdiction over the Rocky Mountain Region are:

<i>Office Jurisdiction</i>	
Aberdeen, S. Dak.	Nebraska, South Dakota, and North Dakota.
Albuquerque, N. Mex.	Colorado and New Mexico, exclusive of the New Mexico portion of the Navajo Reservation which is under the jurisdiction of the Window Rock Area Office.
Billings, Montana	Montana and Wyoming.
Phoenix, Arizona	State of Nevada, the portion of the Western Shoshone Agency lying in Idaho, States of Arizona and Utah, exclusive of the Navajo and Hopi Reservations and the Intermountain Indian School, Brigham, Utah, which are under the jurisdiction of the Window Rock Area Office.
Window Rock, Arizona	Navajo and Hopi Reservations lying in the States of Arizona, New Mexico, and Utah plus Intermountain Indian School at Brigham City, Utah.

*Public Records Which Must be Reviewed as to State Lands.*

In considering titles to state lands the most important records to be reviewed are those in the state land office or other body having jurisdiction over the lands in question. In Colorado the State Land Office is composed of a Mineral Section and a State Land Board Section and the records in each of these offices should be examined. For the same reasons as have been set forth with regard to federal lands and Indian lands the county and federal records may not be disregarded when reviewing titles to state leases.

## DESCRIPTION OF THE ACTUAL RECORDS

*County Records.* Every instrument which is accepted by the clerk and recorder for recordation is photostated, microfilmed or otherwise reproduced and the copy is placed in an appropriate volume and given a book and page and document number. These volumes of instruments are indexed either by tract or by grantors and grantees. When reviewing records in those counties using only the grantor-grantee type of index, it is often advantageous to obtain the permission of the local abstractor to use his private tract index since tract indices are much easier to use. Tract indices merely list the type of each instrument affecting the tract in question and the date and recording data as to each such instrument. After this information is obtained it is necessary to go to the large volumes in the county clerk and recorder's office where the copies of the instruments themselves are kept. It should be borne in mind that certain types of instruments may be kept in separate volumes, e.g., oil and gas leases, mining claims and liens.

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The most important matters for which records must be examined are:

- (1) Conveyances and reservations affecting minerals in the tract in question.
- (2) Leases, assignments, operating agreements, etc.
- (3) Liens of all sorts, mortgages, notices of lis pendens.
- (4) Collateral proceedings, such as quiet title actions, probate proceedings, foreclosure proceedings, tax sales and attachments.

As to collateral proceedings usually only the final judgment or decree is placed of record. (In some cases the final action in a collateral proceeding does not appear in the county records even though it properly should have been placed there. If such proceedings are suspected to have been held they should be disregarded only after very careful consideration.) Where a final decree or other final action does appear of record, there remains a question as to the regularity of the proceeding leading up to the recorded instrument. In such cases it may become necessary to obtain and examine the complete file of such collateral proceeding in order to determine whether or not the recorded instrument actually has the legal effect which it appears to have on its face. This kind of material may in some cases be found in courts of the same county where the lands lie, but in other instances the cases may have been heard in courts in other parts of the same state or even in other states altogether. The examiner must require title to be perfected of record in the county where the lands are located.

*Bureau of Land Management Records.* No attempt will be made in this article to describe the records of the Bureau of Land Management which are maintained in Washington, D.C. It is customary to obtain a "status report" as to such records from any one of several attorneys located in Washington who are experienced in the law relating to federal oil and gas leases. A substantial portion of the practice of some of these attorneys consists of obtaining Washington status reports for parties who find it inconvenient to go to Washington to personally examine the records.

As was previously noted, District Offices of the Bureau of Land Management are located at various key cities throughout the country. Each of these offices maintains records known as plat books,

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tract books, serial registers and case files. These records are described as follows:

(1) *Plat Book* — A plat book contains plats arranged according to township and range numbers. Generally, an examination of the particular plat or plats pertaining to the lands involved in the title search is the first step in checking a district land office record. These plats show whether any part or all such lands have been patented whether there are outstanding oil and gas leases, withdrawals, classification of lands and other matters. This information is usually shown by means of notations on the plat itself, but sometimes these notations are so numerous that a separate page containing notations is inserted in the book next to the plat or affixed to the plat page. Sometimes when part of the lands shown on a plat have been designated as within a known geologic structure of a producing oil or gas field an additional plat showing such area is inserted. Also, in areas where there has been considerable oil and gas activity, there will be found inserted along with the plat for that area a plat showing the leases that have been issued including both leases that have been cancelled and also those still outstanding, with appropriate indications as to the status of each lease and the lands covered thereby.

(2) *Tract Book* — A tract book is a large bound volume in which are listed all entries affecting each specific tract of land. If an entry affects only part of the lands described at the top of the page then the entry will include a description of the portion of such lands affected. Typical entries shown on a tract book are homestead entries, applications for patent, offers for oil and gas leases, and applications for rights of way.

(3) *Serial Register* — A serial number is assigned to every filing of any sort that is made with respect to federal lands. The "serial register" is a brief chronological listing of the important actions taken with respect to any given filing. For example, the serial register relative to an oil and gas lease includes such information as the date of issuance of the lease, assignments, applications for extension, and sometimes additional information such as rental payments or creation of overriding royalties.

(4) *Case Files* — A case file is a file containing all of the original correspondence and instruments which have been filed relating to any particular serial number. A person desiring to examine a case file cannot go directly to the file as he can to the serial register, tract book or plat book. He must furnish the attendants in the land office with the serial number of the case file he wishes to examine and then the file is made available to him provided that he can show a satisfactory reason for being interested in the contents in the file, such as that he represents a party interested in acquiring an interest in the lease involved.

*Indian Land Records.* As in the case of Federal lands it is customary to have a competent Washington attorney examine all records in Washington pertaining to Indian lands under consideration. Therefore, the Washington records will not be described in this article.



The most readily available source of information concerning Indian lands is usually the Office of the Superintendent for the agency having jurisdiction of the lands under consideration. The Superintendent maintains complete files relating to the lands under his jurisdiction, including maps, tract books and usually separate lease files. However, the Area Director maintains complete records concerning oil and gas leases covering Indian lands in his area and these records must also be examined.

*State Land Records.* As previously noted, the State Land Office in Colorado has a Mineral Section and a State Land Board Section and records in each of these sections should be examined. In the Mineral Section of the Colorado State Land Office the following records should be examined:

(1) *Plat Book* — The plat book is a large bound volume containing "plat" pages and "tract" pages arranged according to township and range numbers. The plat pages show if the State of Colorado has patented any of its lands and whether the minerals were reserved to the state or passed to the patentee of the state patent. The corresponding "tract" page contains more detailed information relating to the state lands shown on the plat page. Of primary importance, the tract page will show whether any uranium or oil and gas leases have been issued by the state on its lands.

(2) *Cardex File* — If the plat book discloses that a uranium or oil and gas lease has been issued by the state on any of the lands under search, the cardex file should next be examined. This is a file consisting of a number of trays which contain cards on which appear data relating to specific uranium or oil and gas leases. The card relating to the lease in question will show the name of the lessee, the date of the lease, the description of the lands covered thereby, and assignments of such leases, if any.

(3) *Lease Files* — In order to examine the lease itself and any assignments thereof and other information relating thereto, it is necessary to obtain the lease file containing such lease from the office clerk.

(4) *Reception Register* — Under the regulations promulgated by the State Board of Land Commissioners in 1955 ("Regulations Governing the Issuance of Colorado Oil and Gas Leases"), state lands are offered for oil and gas leasing to "the highest responsible bidder." Generally, only those lands upon which applications have been received will be offered for lease bids, although the Board of Land Commissioners reserves the right to include in any list any tract on its own motion. The applications for leases are entered in the Reception Register. The Reception Register, a bound volume, should be examined to determine if the State Land Board has received an application for lease on any of the lands under search. If such an application has been made, this register will show the name of the person or company making such request.

In the State Land Board Section of the State Land Office the following records should be examined:

(1) *Clear Lists* — If all or part of the lands under search are "in lieu" lands, then it will be necessary to obtain a certified

copy or copies of the clear list or lists relating to such "in lieu" lands. A clear list will show that the "in lieu" selection made by the state was properly authorized and that the title to such lands has been vested in the state. If title has been vested in the state, the lands are said to have been "clear listed."

(2) *Miscellaneous Files* — The clerk should be requested to furnish the landman with all files relating to the surface usage of the lands under search. There may be grazing leases, agricultural leases, rights of way and other matters which may affect the leasehold interest.

#### ABSTRACTS, CERTIFICATES OF TITLE AND STATUS REPORTS

*Abstracts.* Attorneys writing title opinions seldom see the public records referred to in the preceding sections of this article. Instead, they rely on abstracts, certificates of title and status reports. The following points should be borne in mind as to abstracts:

(1) *Abbreviated Abstracts* — Although an abstract may identify and briefly describe all instruments appearing of record affecting the lands in question, this generally is insufficient in oil and gas work where the exact language used in conveyances and reservations is of utmost importance in determining mineral ownerships. Therefore, when the instruments in an abstract appear in an abbreviated form, the examining attorney often should require that photostatic copies of many of the instruments be obtained in order that the complete wording may be examined. Some attorneys insist on verbatim abstracts.

(2) *Certification of Abstracts* — An abstract will contain at least one "certificate" whereby the abstracter certifies as to its accuracy and describes the records upon which it has been based. An abstract may contain several certificates, each of which covers a different period of time and sometimes different tracts of land. It is therefore important that every abstract reviewed be examined to definitely ascertain that all the lands purportedly covered by the abstract are in fact continuously covered for all periods of time without any omissions.

(3) *Abstracts are Valuable Personal Property* — The cost of an abstract may run into many hundreds of dollars and often only the one original copy may exist. Consequently, abstracts should be treated with proper care, and it is always advisable to obtain a receipt when an abstract is loaned to some other party.

(4) *Limitations on Abstracter's Liability* — An abstracter is under liability for error only to the person in whose favor the abstract was certified or the party who originally ordered the abstract, and no one else using an abstract can obtain damages from the abstracter for any errors that may exist. Therefore, a party using a borrowed abstract may desire to have it recertified in his favor. Actually, an abstracter's liability for error should never be relied on in any way by anyone interested in oil and gas rights since the value of oil and gas rights generally will be greatly in excess of the abstracter's liability.

(5) *Exceptions in Certificates* — The abstractor's certificate always contains certain exceptions to which the abstractor will not certify. These exceptions may include: (a) right of way and easement not conveyed by deed, (b) All instruments not of record, (c) Unpatented mining claims or mining claims not accurately tied to governmental survey or other ascertainable point, (d) Rights of persons in possession, (e) Matters involving area or boundaries, and (f) Matters which an accurate survey of the property would disclose.

*Certificates of Title.* A certificate of title (sometimes called report of title or memorandum of title) is a very abbreviated type of abstract in which the abstractor expresses his opinion as to the present ownership of the lands and indicates any unreleased oil and gas leases, conveyances of minerals, and outstanding encumbrances and liens of record. The certificate of title is much less reliable than a complete abstract and should not be used as the basis for a title opinion. A certificate of title is often helpful, however, in determining the owner of lands and for the purpose of acquiring a lease or for revealing any major defects in the title. They may be helpful in rendering delay rental opinions. Normally, the liability of the abstractor in preparing the certificate of title is limited to the amount paid to such abstractor for its preparation.

*Status Reports.* The term "status report" is loosely used to describe a summary of federal, state or Indian office records. Some status reports are virtually worthless due to a failure to show all entries affecting the lands under consideration and showing the source of the entries. In preparing a useable status report as to a federal lease, the lands under consideration must be broken down into sections, half-sections, quarter-sections—just as far as is necessary to provide any reader with the same knowledge he would have received from an actual examination of the records. All entries affecting such tract should be shown as to each such specific tract and the source of each entry should be identified as being the plat book, tract book, or other source, as the case may be. This may involve a considerable amount of repetition but it is extremely important as to federal lands, particularly as to entries in Bureau of Land Management tract books, since the validity of federal leases occasionally depends on precisely where notations have or have not been made.<sup>9</sup> A copy of the serial register from the district land office should be included. It is not necessary to examine and summarize the contents of each and every case file applicable to the lands in question. However, case files for any entry not fully disposed of according to both the plat and tract books should be examined and the present status indicated. As to any particular lease under consideration, each item in the case file should be summarized.

<sup>9</sup> 43 C.F.R. 192.43 (Supp. 1957); B. E. Van Arsdale, 62 I.D. 473 (1955).