

HEIRS

HEIRS ENFORCING INHERITANCE RIGHTS

THANK YOU FOR YOUR SUPPORT!

HEIRS is an educational, research, and support, work committee of descendants of Spanish and Mexican land grantees in South Texas assisting in the passage of enabling legislation that will authorize the Texas State Comptroller to pay claims arising from legal rights to royalties from unclaimed mineral estates with an agreed-upon formula for payments.

While the movement to establish this historic and long-denied compensatory system in Texas was initiated on behalf of legally declared heirs of Spanish and Mexican land grantees, proposed amendments to the state property code will benefit all persons who determine that they can file a claim on unknown mineral estates in Texas.

The passage of this legislation will not require the expenditure of any state tax revenues. Claims and any related administrative costs will be paid from unclaimed mineral proceeds deposited with the Comptroller of Public Accounts by oil and gas companies. Neither will the honorable discharge of this public duty deprive present land and mineral title holders of their rightful claims.

Annual Fees are **\$ 50.00** by Cashier's Check
or Money Order payable to:

HEIRS

P.O. Box 490
La Porte, Texas 77572

Reference your Payment
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WE BELIEVE

THE TIME IS RIGHT FOR JUSTICE TO BE DONE

HISTORY OF SPANISH AND MEXICAN LAND GRANTS

Land Grants under Spanish rule were conveyed roughly between 1750 and 1810. Grants under Mexican rule were bestowed between 1810 and 1836, but Mexico continued to grant these property privileges in South Texas even after the Republic of Texas came into being.

Spanish land grants began as a result of a visit by a royal commission in 1767. The grants were termed *porciones* and land was divided based on merit and seniority. The grants were long, thin strips of rectangular land, each with narrow frontage on the Rio Grande and were assigned a number. Other grants north of the *porciones* and along the Gulf of Mexico acquired names usually derived from saints names or from physical or natural characteristics of the region. These later grants were intended for grazing and went to influential citizens of the towns of Camargo and Reynosa on the border. The largest of these was the 600,000 acre *Agostadero de San Juan de Carricitos* grant to José Narciso Cabazos.

The Treaty of Guadalupe Hidalgo, ending the boundary dispute with Mexico and the state of Texas, officially recognized the land grants under Spanish and Mexican rule as valid. In 1848 Governor Peter H. Bell called on the legislature to conduct an investigation of claims. A commission was appointed headed by William H. Bourland and James B. Miller as commissioners. In 1860 the legislature gave the responsibility of confirming Spanish and Mexican titles to the district courts. The Bourland Miller Commission recommendations and report are in the Texas General Land Office.

Sources: (1) Greaser, Galen. *New Guide to Spanish and Mexican land Grants in South Texas*. Austin: General Land Office, Jerry Patterson, Commissioner, 2009. (2) Fowler, Eileen McKenzie, J.D. "Did you Know?" <http://www.Spanishlandgrants.com>, accessed August, 9, 2012. (3) Aldon S. Lang and Christopher Long, "LAND GRANTS," *Handbook of Texas Online*, (<http://www.tshaonline.org/handbook/online/articles/mpj01>), accessed August 10, 2012. Published by the Texas State Historical Association.

MINERAL RIGHTS IN TEXAS

Grants of land to early South Texas settlers from Spain or Mexico generally did not convey the minerals with the land, but exceptions could be made. Mineral ownership was reserved for the Spanish crown and Mexican nation. The Republic of Texas and the State of Texas continued this rule. On January 20, 1840, Texas adopted the English common law, but stated that the law would not apply to minerals, among other things.

A dispute over ownership of the famous South Texas salt lake, "El Sal del Rey" on the San Salvador de Tule grant, a tract granted to Juan José Ballí in 1798 by Spain, changed the law. Lawsuits resulted in a subsequent proposal to amend the Texas constitution of 1866 restoring mineral interests to existing owners, and the effect was retrospective. The 1866 provision carried over to the constitutions of 1869 and 1876, the present constitution of Texas.

Since the dispute was over salt, and oil and gas were not factors in the decision at the time, the state unwittingly gave away the rights in oil, gas, sulphur, and other minerals to landowners. Afterwards, owners could sell the land and minerals, sell the land and retain mineral interests, or vice-versa. The courts eventually held that oil and gas could be defined as minerals.

Texas laws governing surface rights are complex and different provisions address the ownership of land. Sometimes land could be acquired under less than straightforward circumstances and these cases are generally governed by sections of the law related to what is termed "adverse possession." Different statutes of limitation govern the right to full possession of land and therefore the laws relating to land rights and mineral rights are different. Once ownership of land is legally established, regardless of how it was obtained, the surface rights are lost forever. Not so with minerals.

Sources: (1) Greaser, Galen. *New Guide to Spanish and Mexican Land Grants in South Texas*, Austin: Texas General Land Office, Jerry Patterson, Commissioner, 2009. (2) Willis, J.D. LL.M., David J. "Adverse Possession in Texas,"

<http://www.lonestarlandlaw.com>, accessed August 12, 2012.

UNCLAIMED SURFACE AND MINERAL ESTATES

Normally under Texas property law when a person sells a piece of land and no mention is made of the minerals contained, the rights pass on to the purchaser. In the case of land grants, if no mention is made of the transference of minerals by sale or conveyance of the land, the minerals are retained by the seller and pass on to his or her heirs.

As has been heretofore noted, the rightful owner of land in Texas must claim title within a certain period of time or possession vests in the current claimant. Not so with minerals in what is termed "Unclaimed Mineral Estates." The "known" mineral estate is that portion of a tract of land for which there is a recorded title. Unclaimed mineral estate is that portion of a tract of land for which ownership of the minerals is "unknown."

The amendment included in the 1866 Constitution stated, "That the State of Texas hereby releases to the owners of the soil all mines and mineral substances, that may be on the same, subject to such uniform rate of taxation as the Legislature may impose." Most of the property owners in South Texas as of that ruling were the descendants of the original Spanish and Mexican land grantees, and the unclaimed mineral estates belong to them according to the laws of descent and distribution. These laws of distribution and descent defer to a valid will but, in the absence of such, various statutes define how property is to be distributed.

It might be noted that an unclaimed mineral estate may exist for owners in Texas other than the descendants of Spanish and Mexican land grants provided that in a sale of surface rights mineral rights were retained and became an unclaimed mineral estate.

Sources: (1) Cisneros, Al. "History, <http://www.landgrantjustice.org>, The Land Grant Justice Association, Inc., accessed August 9, 2012.
(2) Greaser, Galen. *New Guide to Spanish and Mexican Land Grants in South Texas*. Austin: Texas General Land Office, Jerry Patterson, Commissioner, 2009.

SPANISHLANDGRANTS.COM

A program to assist descendants of Spanish and Mexican Land grantees to recover royalties due them from unclaimed mineral estates was initiated several years ago by Attorney Eileen McKenzie Fowler, licensed in Texas, whose principal offices are located in La Porte, Harris County, Texas. This project was initiated by her in conjunction with her then law partner, the late retired Judge Felix Salazar. In consultation with other area attorneys a system was developed to assist claimants in a practical and economic fashion.

The first step in the process is for the descendant to be able to prove with valid documentary evidence his or her ancestry to the land grantee. Descendants are advised to gather a group of 100 descendants of each land grant to equally apply and share the cost of the program. Mrs. Fowler has a computer program designed to verify ancestry and provide evidential material.

The next step is to file for what is called a Declaratory Judgment in state court that legally establishes, by court action and the judge's signature, that the descendants are valid and "known" heirs of the land grantee. The term "heir" is both a genealogical and legal term. This action does not by and of itself validate a legal claim by the descendant, but paves the way for ultimate justice.

The third step is to determine what Mrs. Fowler terms the "net mineral estate." Normally this is performed by a title search of county records by certified professionals that calculates what percent of a land grant contains an "unknown" mineral interest. By a mathematical formula based on the number of oldest living descendants, termed "primaries," their share of the mineral estate can be calculated.

Mrs. Fowler currently represents over 11,000 adjudicated heirs eligible for first claims. As recipients of their estates, their children and grandchildren are secondary and tertiary claimants.

Visit her website for more details of her quest to bring justice long-denied to South Texas families.

Source: Fowler, Eileen McKenzie, J.D.,
<http://www.spanishlandgrants.com> , accessed
August 9, 2012.

THE CLAIMS PROCESS AND CURRENT BARRIERS

After completing various grant packages with declaratory judgments and net mineral estate determinations, Mrs. Fowler contacted the comptroller prior to filing claims and was informed that no claims had ever been honored against the unclaimed mineral proceeds of original land grants in Texas, and that there was no current process and legal basis on which to pay valid claims.

Information gathered indicated that the first Unclaimed Property Act was passed in 1961. The comptroller did not receive any type of unclaimed property prior to that date. Pursuant to a legal case brought by the Getty Oil Company and concluded in 1986, all liabilities of the oil and gas companies for unclaimed mineral deposits were forgiven in the past. In turn the oil and gas companies contributed to a new fund and were required to make deposits every three years for unclaimed mineral proceeds and these funds were to remain in a special unclaimed property fund in perpetuity until claimants come forth.

Obviously, Mrs. Fowler's program brought about a new phenomenon, a significant amount of claimants as "known heirs" coming forward for whom Texas was unprepared to respond. Funds deposited in escrow for net mineral estates are available from 1985 and into the future. Unfortunately, as a result of the Getty settlement, claims for funds generated since the inception of oil and gas explorations over a hundred years ago were forgiven and eliminated. Nonetheless, fund deposits dating from 1985 to the present can be legally claimed for declared heirs and for future royalties.

A word of caution is in order. There are grants that have little or no production and it is not economically feasible to pursue any claims in these instances, keeping in mind that future discoveries of minerals in those properties may make later claims possible.

Sources: (1) Eileen McKenzie Fowler. J.D., (2) Getty Oil Company, et al. v. Ann Richards and Jim Mattox, Case # 85-335 Federal District Court, Corpus Christi, Texas, 1986.

THE UNCLAIMED MINERAL PROCEEDS ACT

With limited time to prepare for the 2011 82nd Legislative session, a non-profit organization, The Land Grant Justice Association, Inc., (TLGJA) was formed by Mr. Al Cisneros to support Mrs. Fowler's program and prepare a legislative bill to carry it through the complex proceedings in Austin. It was formed under section 501 (c) (4) of IRS rules. The bill, termed the "Unclaimed Mineral Proceeds Act," numbered HB2611, missed the vote deadline.

In the summer of 2012, a majority of TLGJA board members voted to suspend operations for the 2013 legislature, preferring to wait for the 2015 legislative session to resume the struggle for rights.

At a meeting in San Antonio, Texas on August 8, 2012, a minority of board members, including Mrs. Fowler, voted to continue work with the 83rd Legislature in 2013 in a program directed personally by her, with the aid of an advisory and support working committee, **(HEIRS)**. In spite of setbacks Mrs. Fowler historically has found a way around barriers to continue to represent the interests of her clients to the best of her ability.

The Act put forth by **HEIRS** in 2013 did not find a sponsor. However, State Representative Ryan Guillen, District 31, introduced HB724 relating to the creation of a 17-member commission to study land grant unclaimed mineral proceeds. The bill calls for the commission to present a report by January 1, 2015 to the governor, lieutenant governor, and speaker of the house of representatives determining the amounts of unclaimed minerals and owners, with notification and distribution of proceeds to the owners.

The bill, strongly supported by Mrs. Fowler's clients, passed the house with one nay vote. Sponsored by Senator Judith Zaffirini 21st District, the senate passed it with three nay votes. Governor Rick Perry signed the bill into law on June 14, 2013.

Sources: (1) Cisneros, Al. "News," August 2, 2012, <http://www.landgrantjustice.org>

The Land Grant Justice Association, Inc.

(2) Minutes of meeting. San Antonio, Texas. August 8, 2012, initiating HEIRS for 2013 legislative efforts.

(3) HB724.

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P.O. Box 490

La Porte, TX 77572



HB724 Co-Sponsors: House; Abel Herrero District 34, J.M. Lozano District 43, Roberto R. Alonzo District 104, Philip Cortez District 117. Senate; Juan “Chuy” Hinojosa, 20th District.