



***COOL, CLEAR
WATER***

Who Sang Dat Song?



Welcome

I am a...

TX AGGIE

Roads Scholar

You can go to Mecca
w/o leaving Texas?



Mecca

Attending “Early Church”

- How can you sleep late, yet attend “Early Church”?



Early

CITY LIMIT

POP. 2762



THE REAL ESTATE CENTER

AT TEXAS A&M UNIVERSITY



Judon

Fambrough

Attorney at Law

G.I. ATTORNEY!

Which way do I turn?



PUBLICATIONS OF INTEREST FROM THE REAL ESTATE CENTER

- Secrets for Negotiating a Groundwater Leases (#1593)
- Whose Water Is It Anyway? (#2069)
- Hints on Negotiating an O & G Lease (#229)
- Understanding the Condemnation Process in Texas with emphasis on pipelines (Updated for 9/1/11 changes.) #394
- Texas Easements (#422)
- The Texas Deer Lease (#570)
- End-of-Life Documents (#2044)

Documents Covered

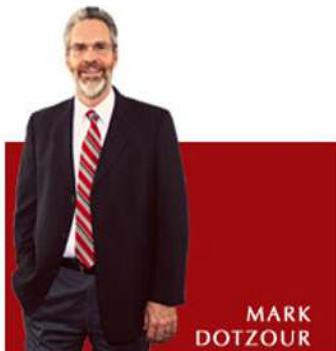
- Powers of Attorney, especially “Durable” Powers of Attorney.
- Directive to Physician to Withhold Life Supports (Living Wills).
- Medical Powers of Attorney.
- Out-of-Hospital DNR Orders (Do Not Resuscitate). Bracelets and Necklaces.
- Anatomical Gifts.



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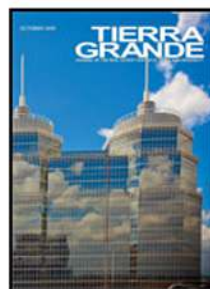
1 food plant

illo

2

at Fort Bliss

cility to Kilgore



TIERRA GRANDE

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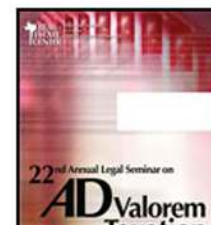
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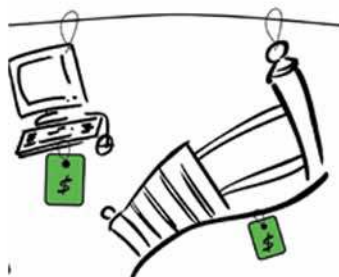
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Monthly Review of the Texas Economy

[Dotzour](#) & [Anari](#) No. 1862, Technical report, 15pp (10/25/2010)

How does the Texas economy compare with the national one? This report looks at all the angles with a particular focus on employment and unemployment. It includes rankings of various industries by employment.



"Cost Segregation Yields Cash Flow"

[Stern](#) No. 1953, *Tierra Grande* reprint, 3pp (10/18/2010)

Times are tough and lending is tight. Fortunately, businesses can pocket a little extra cash by taking some depreciation deductions early.



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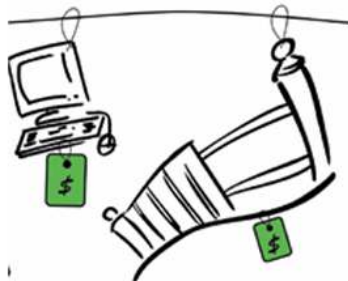
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SI GN OF THE TIMES



FUTURE SIGN



**NO WATER
TO DRINK**

1st Question

- If the surface and minerals have been severed, which party owns the groundwater?
- Answer: Unless the groundwater is mentioned in the reservation, the groundwater belongs to the surface owner.
- Observations: If the surface and minerals are split, then the surface owner will negotiate the groundwater lease, not the mineral owner.

2nd Question

- 2) Does the Mineral Lessee have the automatic right to use the groundwater, **free of charge and without surface owner's consent**, in association with oil and gas drilling and production?
- 2) **Yes.** The mineral owner (or mineral lessee) has the implied right to use as much of the **surface and surface substances** as reasonably needed to explore and produce the minerals without permission or having to pay for it.

What **TEN SUBSTANCES** ARE EXCLUDED FROM THE
TERM “OIL, GAS AND OTHER MINERALS?”
(“The Surface Substances”)

SAND

LIMESTONE

GRAVEL

* COAL

Wind?

CALICHE

* LIGNITE

SURFACE SHALE

* IRON ORE

BUILDING STONE

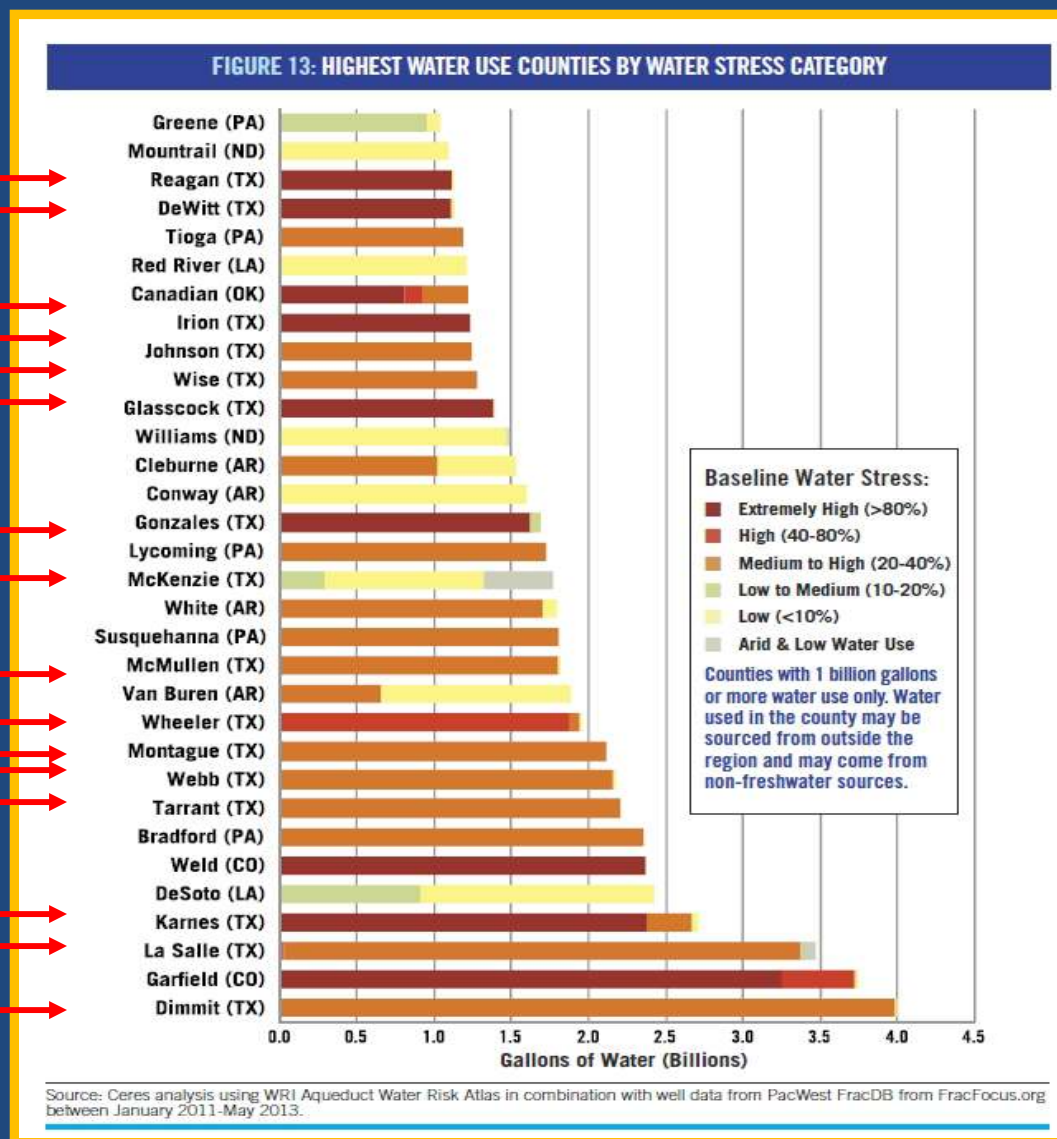
GROUNDWATER !

These may be used free of charge to aid in the exploration and
production of the minerals without asking permission or
paying for them. Free Frac Water!!!

Of the Top 32, Texas has 16. (Two of the top Three)

Texas had 16
of top 32
U.S. counties
from Jan.
2011 to May
2013

But, recycling
and reuse as
well as
brackish water
are beginning.



Source: www.ceres.org

3rd Question

- If there is a scarcity of groundwater or a drill site, which has priority... (1) The Oil Co. (Lessee) or (2) the Water Co. (or surface owner if there is no groundwater lease)
- Answer: Regardless of which lease came first, the Oil Co. has priority because the surface estate is subordinate to the mineral estate.

4th Question

- Is the Groundwater Lease (Lessee) subject to the Rules and Regulations of the local GWD?
- Answer: Yes.
- Is an Oil Co. (Lessee) subject to the Rules and Regulations of the GWD?
- Answer: Sorta. No permit required from GWD. No reporting req. No spacing req. But, the amt. of water used to frac (for Production) *may* fall w/i jurisdiction of GWD.

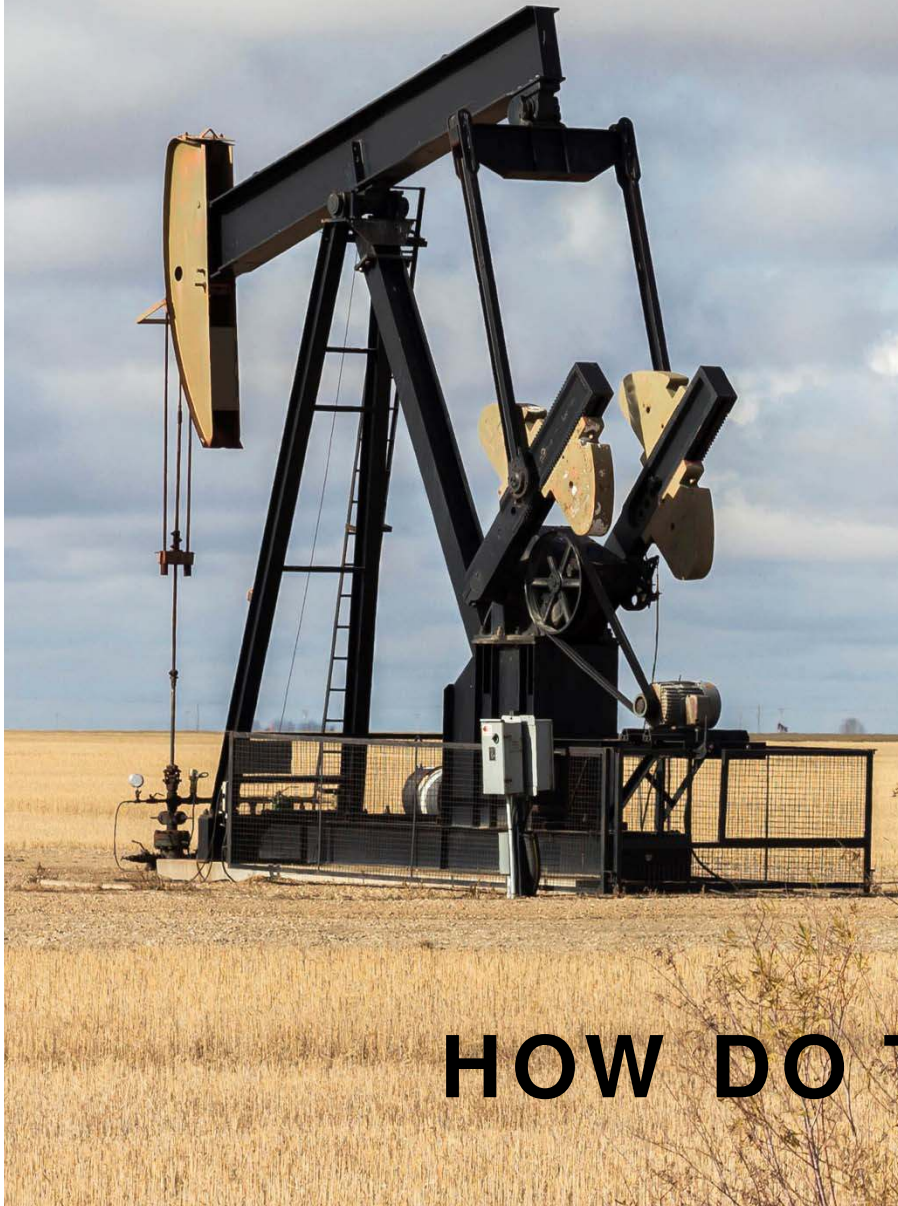
5th Question

- Is there a statutory **sanitary-control easement** imposed around each oil & gas well and each public groundwater well?
- **Answer:** No and Yes. (50' radius) See Handout.
- **But**, there are mandatory restrictions around each public water supply well that can extend 500' from the well and encompass 18 acres.
- **This fact should** impact amt. of surface damages.

Oil and Gas Lease

versus

GROUNDWATER LEASE



HOW DO THEY VARY?

Comparison of Documents

Oil and Gas Lease:

- The “Lease” is a Deed.
- “Time is of the **Essence**” implied.
- Automatic Use of Surface Implied.
- Lasts “for so long as production continues”.
- Producer 88 Lease Forms are somewhat Uniform about 2 pp.
- Statutory timing of royalty payments

Groundwater Lease:

A Lease/Easemen/Deed.

- “Time is of the **Essence**” not implied by Law.
- Automatic Use of Surface not Implied.
- Lasts the length negotiated in the lease.
- No Uniformity among the Lease Forms.
- Control Easement around wells
- No statutory timing of royalty payments

Biblical Advice When Leasing?

James 4:2

“Ye have not because ye ask not.”

So, what should you ask for?

Leasing Strategies

- 1) Limit the lease to 100' above and below the first commercial aquifer below the surface...Carrizo-Wilcox Formation
- 2) Specify how bonus is tendered.
- 3) Limit the number of acres held by one well.
- 4) Specify timing and minimum royalty payments.
- 5) Limit “aggregate” time on shut ins.

Leasing Strategies

- 6) Specify how surface use and surface damages will be addressed. Will the locations for drill sites, roadways and pipelines be mutually agreed upon? How much \$ for each? Make sure damages are prepaid to the extent possible.
- 7) Specify the fate of equipment, pipelines and roadways when lease terminates.
- 8) Give no warranty of title and no return of consideration for any reason incl. royalties.

Leasing Strategies

- 9) Specify “Time is of the essence”.
- 10) Know the difference between a lease covenant and a condition.
- 11) Make sure your royalty is free of both pre-production and post-production costs and expenses.
- 12) Don’t become a referee between the oil co. and the groundwater co.

Unknowns

- Do the same rules that apply to oil-and-gas leasing apply also to groundwater leasing?

The Five Rights, Non-consenting Cotenants

- What about pooling? RRC regulates the size, shape and **contiguous** acreage. No regulations of “water pools” except the Groundwater Lease. One well on one pool could hold Burleson Co.
- No pooling except for well located w/i half mile on contiguous leased acreage.

Three Stage of Leasing

- **First:** Euphoric... I am going to get rich!
- **Second:** Realty... What was I thinking when I signed this Lease?
- **Third:** ... Resignation... I hope my kids (and possibly my grandkids) don't hate me!

**Mine and Barbara
Sue's time has
"Expired"!**



BARBARA SUE MANIRE

APR. 29, 1941

APR. 29, 2005

OUR MOM...

HER HUMOR LIVES ON

**Hope You Aggies Don't Forget
Anything on the way Home.**

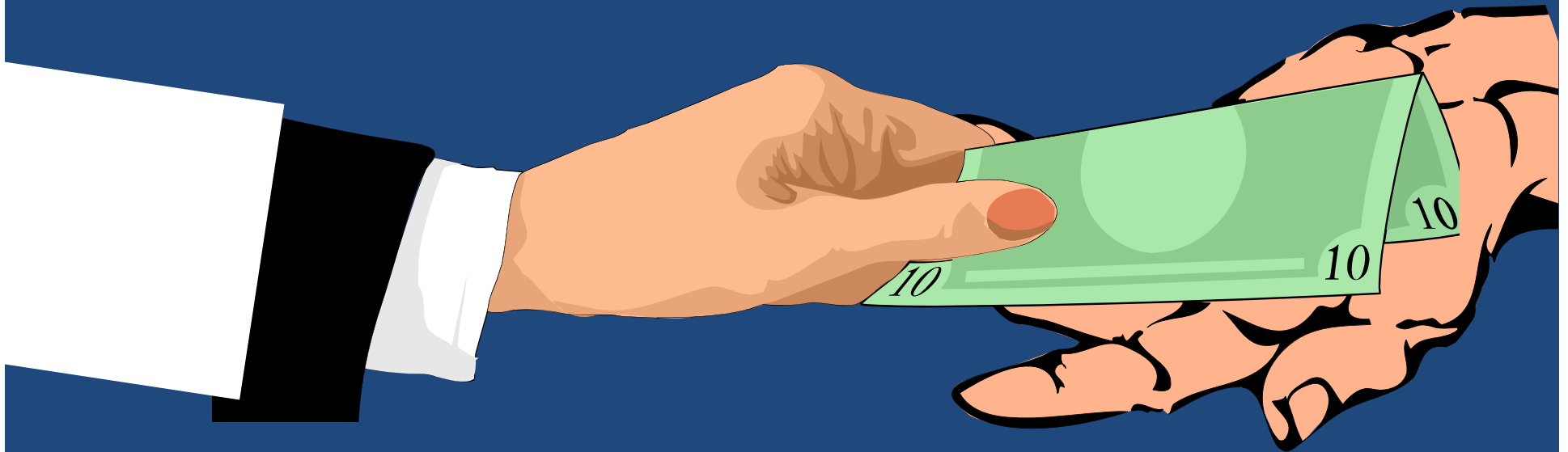


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SURFACE DAMAGE SOLUTION:

Condition the entry to drill on the prepayment of “Liquidated Surface Damages.”



(Maximum recovery is fair market value of surface.)

These Include:

- 1) Right to negotiate and sign the Lease. (The **Executive Rights** or the Leasing Rights)...The one who signs the Lease.
- 2) Right to Explore (Seismic) and Produce...Always given to oil co. in the lease.
- 3) Right to Receive **Delay Rentals (\$)**,
(Negated by “Paid-Up” Leases)
- 4) Right to Receive a **Bonus (\$)** for signing the Lease and
- 5) Right to Receive a Portion of the Production known as a **Royalty (\$)**.

MINERAL LEASING:

Starting with the Basics

(Assume you own 200 acres)

Query: What does the Landman mean when he or she says we are offering “**Three Hundred Dollars** for a 1/5th, 3-year, Paid-up Lease, with a 2-year option to extend?”

What does all this mean?

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Starting with the Basics

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(Would you grant this Option?)

See what the Landman says when you ask for a:

- Vertical Severance Clause,
- Horizontal Severance Clause and
- Cost-Free Royalty?

3rd Question

- If you own the minerals, how deeply does the mineral interest (or mineral estate) extend beneath the surface?
- If they drill one well, how deeply will this well hold your lease if completed at 1,000 feet?

FIRST CRITICAL RULE

Unless you negotiate otherwise, One Well on your land, or on land with which you have been pooled, **holds the entire leased premises to the center of the earth** as long as production or operations continue **at any depth** with no cessation for 90 continuous days.

You Need a Depth Clause or a
“Horizontal Severance Clause” to
alter the Rule.

This clause forces the Water company (Lessee) to
lease each producing formations separately.

This clause can make mineral owners a lot of money
if there is more than one producing formation.

3 Types of Horizontal Severance Clauses:



- Predetermine depths measured by Feet or Formation- to 10,000 feet or to bottom of Eagle Ford Shale .

Producing Formation

100 Ft.

- 100 feet below deepest producing formation at end of primary term **or**
- 100 feet below deepest drilled depth at end of primary term.
- **Variations?**

4th Question

- If you lease the minerals, how many acres will one well hold on your land?
- If you lease a 1,000 acres and you have one producing well on your land or land pooled with your lease, how many acres will the well hold if the production unit contains 80 acres?

SECOND CRITICAL RULE

Unless you negotiate otherwise, One Well on your land, or on land pooled with it, holds the entire leased premises (the acreage described in the legal description) as long as production or operations continue with no cessation for 90 continuous days.

A **VERTICAL SEVERANCE CLAUSE** alters
this Rule.

VSC is based on the creation of a **Production Unit**—i.e., the acreage assigned to the well by the Lessee for drilling permits for gas wells or for allowables for oil production.

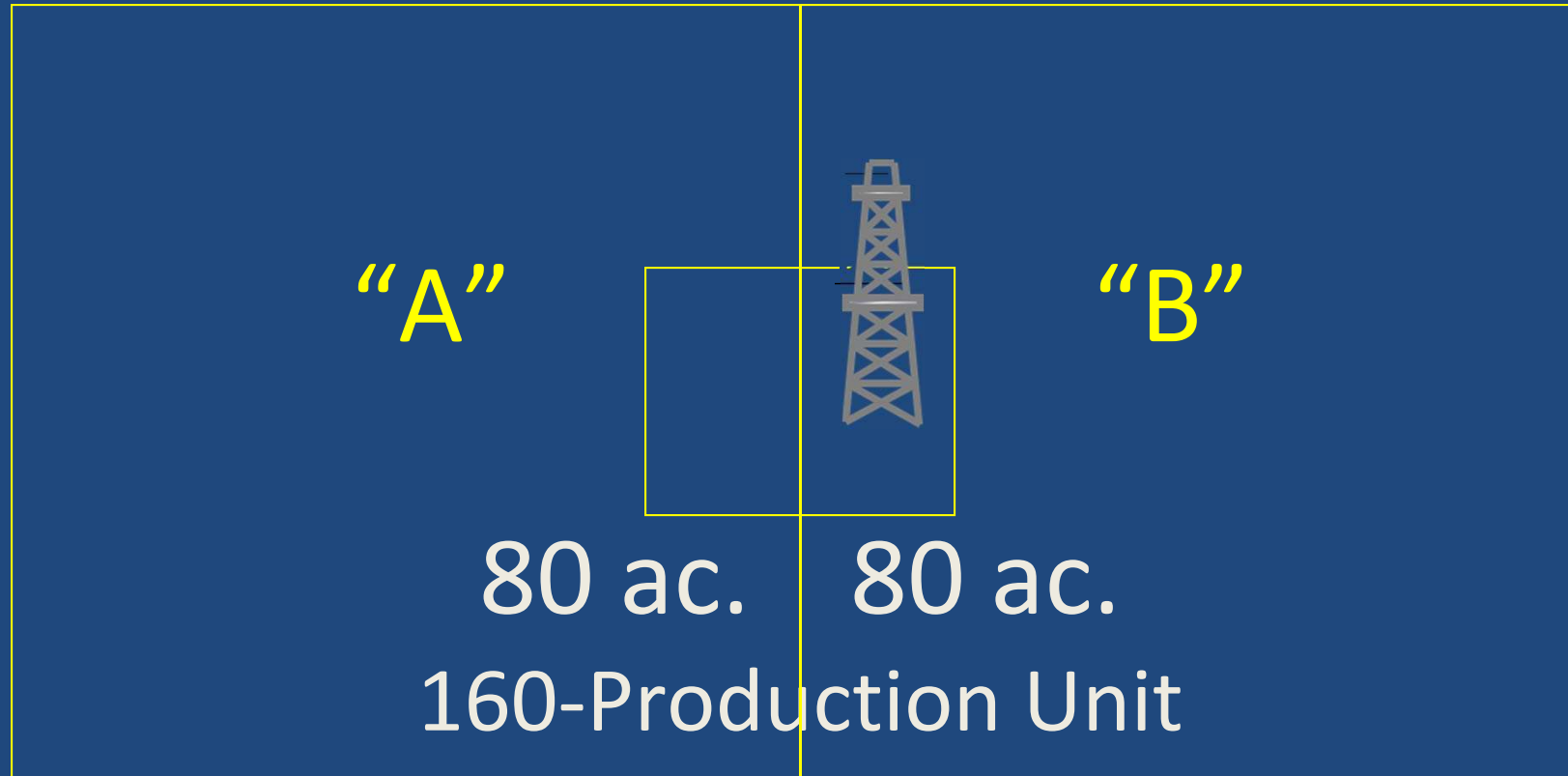
However, you may wish to stipulate the size of the units for purposes of the VSC for horizontal wells.

Two Types of “PRODUCTION UNITS” (or Proration Units)

- 1) If the production unit is taken from more than one lease, it is called a “**POOLED UNIT.**”
- 2) If the production unit is taken from one lease, it is called a “**Lease Well**” or a “**Tract Well.**”

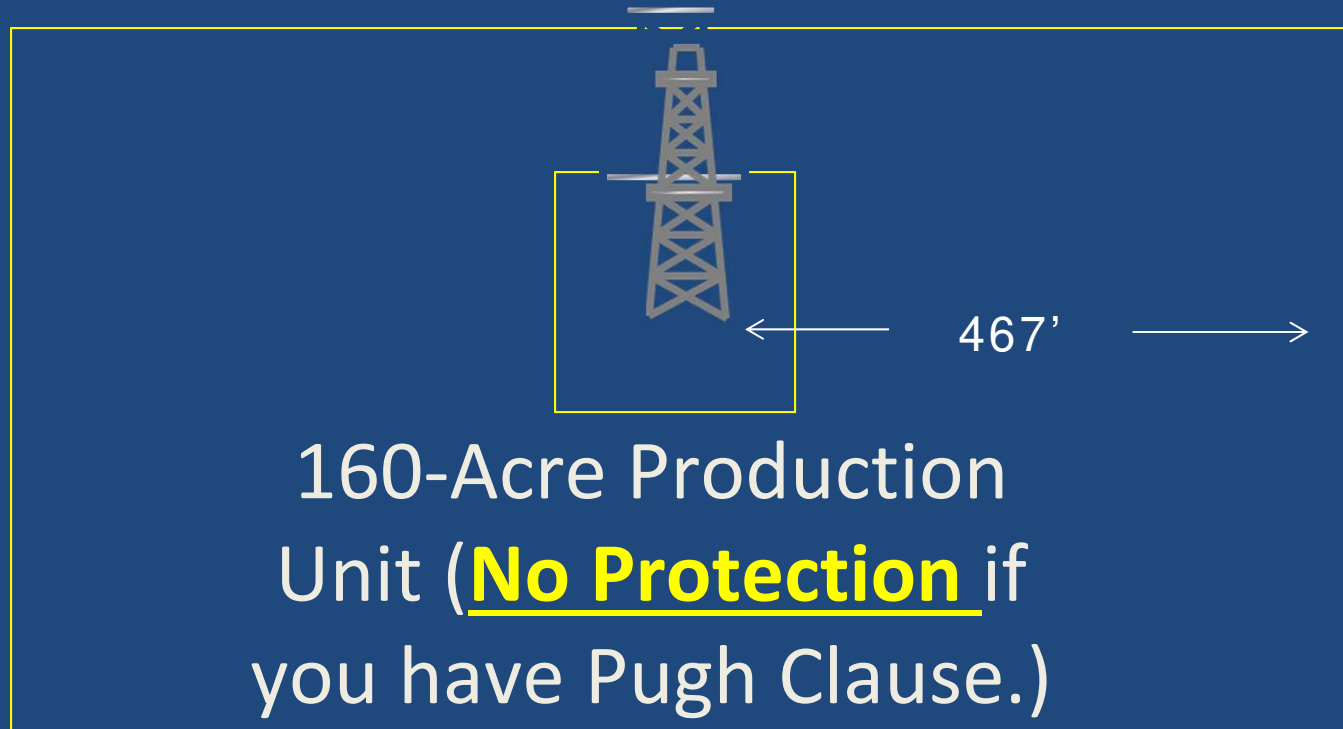
1,000 Acres

1,000 Acres



This is a Pooled Unit.

1,000-Acre Lease



This is a Tract Well or Lease Well.
(No Pool) (No Pooling)

2 VERTICAL SEVERANCE CLAUSES

Two types: (See Handout)

- Pugh Clause** (Freestone Rider) depends solely on the creation of a pooled unit.

- Rubberband Clause** (Modified Pugh) applies whenever a production unit is created, whether pooled or not.

IF POOLING OCCURS...

Royalties apportioned according to respective surface areas. This is why you want as many acres in the pool as possible.

You share your royalty when pooled.

ROYALTY FORMULA FOR POOLED UNITS

Number of acres you have in the pool
(divided by)

Total # of acres in pool
(times)

Mineral Owner's Royalty in Lease

- ❑ $50/160 \times 1/5 = 0.0625000$ (Your Share)
- ❑ $100/160 \times 1/5 = 0.1250000$ (Your Share)
- ❑ $160/160 \times 1/5 = 0.2000000$ (All Yours)

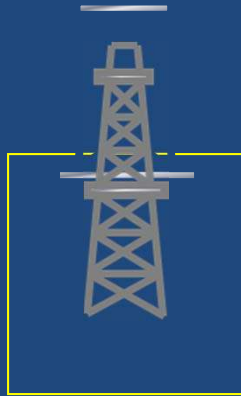
Applying the Vertical Severance Clauses

Let's see how well you can answer the following questions.

Assume you are landowner “A.” You own 100% of the minerals under 1,000 acres.

How many acres will be held by the well in each situation?

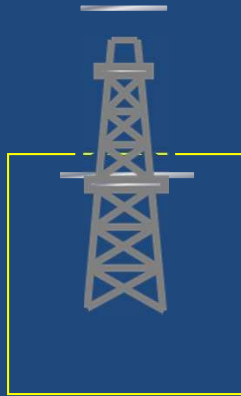
1,000-Acre Lease



160-Acre Tract
Well

IF YOU HAVE A **PUGH CLAUSE**, HOW MANY ACRES DOES THIS WELL HOLD at the end of the primary term?

1,000-Acre Lease

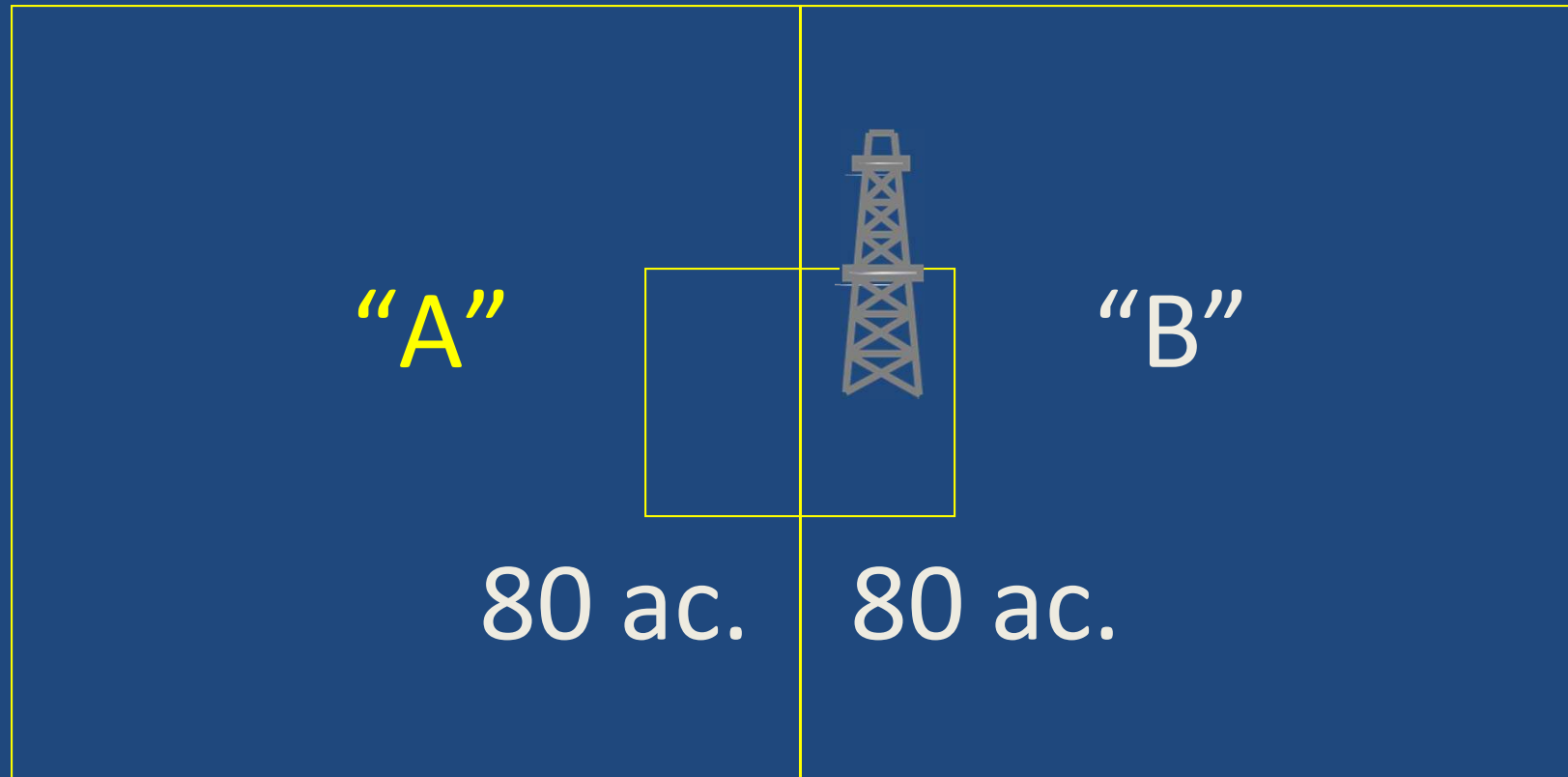


160-Acre Tract
Well

IF YOU HAVE A **RUBBERBAND CLAUSE**, HOW MANY ACRES DOES THIS WELL HOLD at the end of the primary term?

1,000 Acres

1,000 Acres

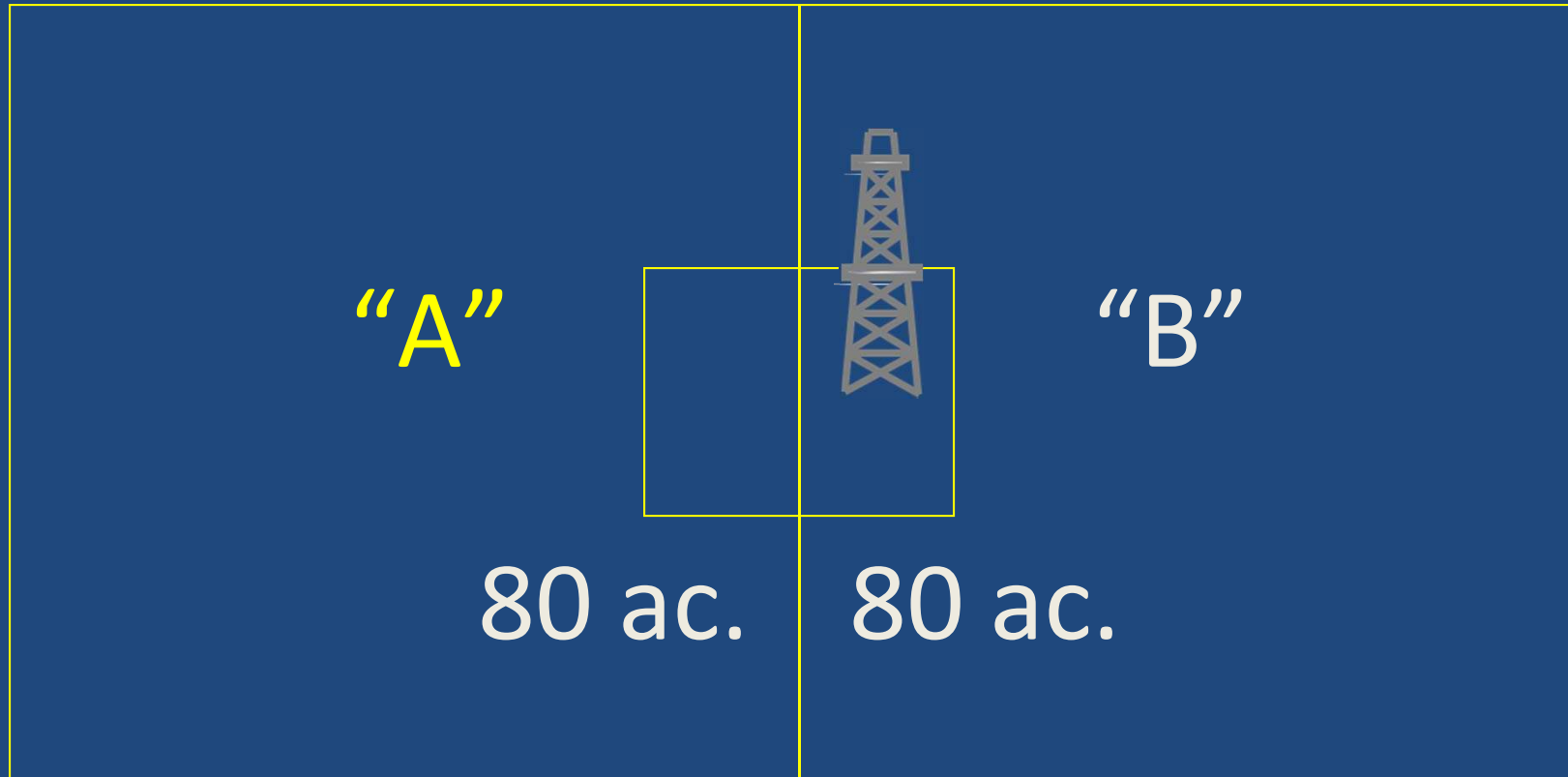


IF "A" HAS **PUGH CLAUSE**, HOW MANY ACRES ARE HELD ON "A" BY THIS WELL at the end of the primary term?

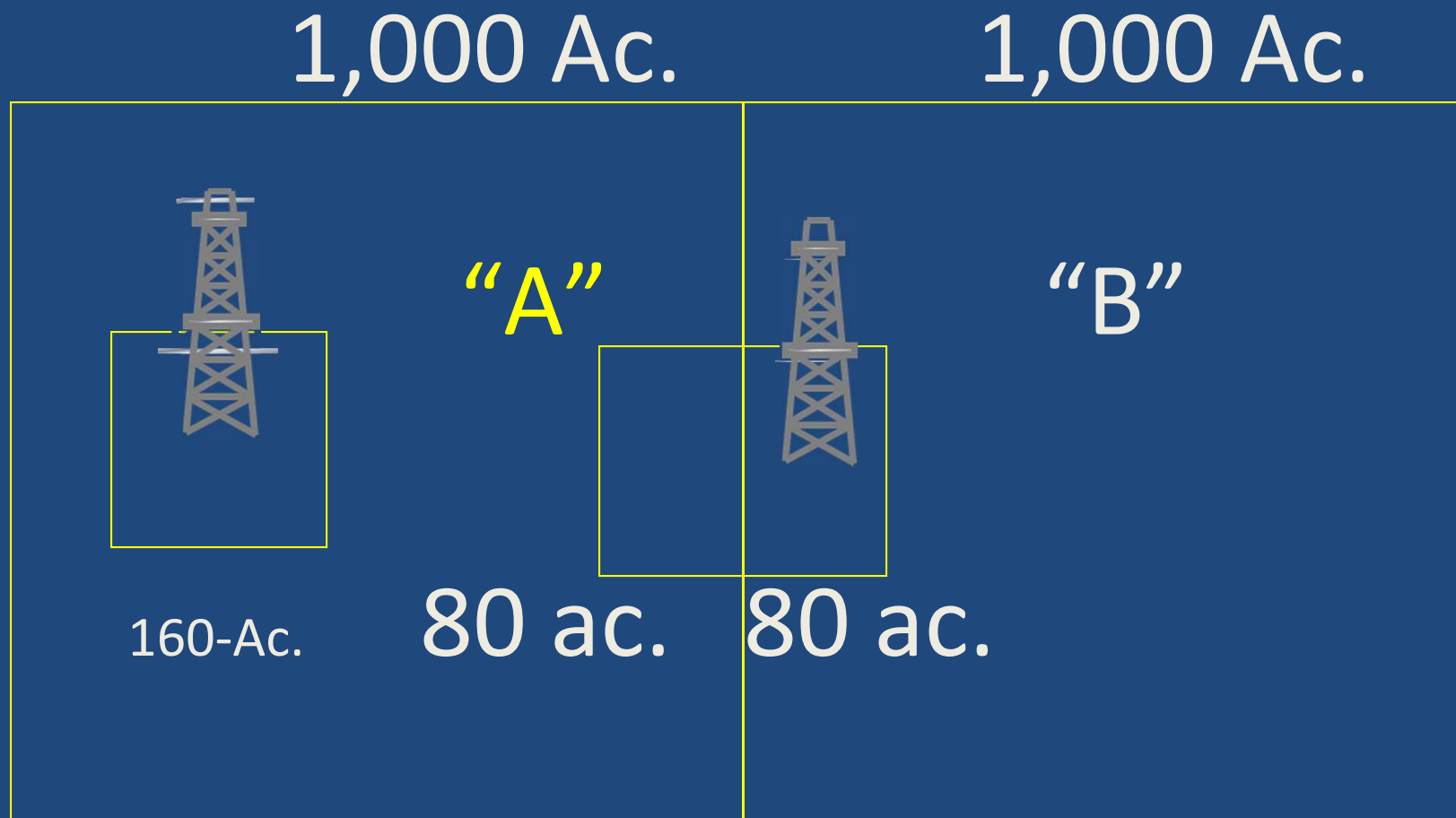
If "B" has no protection (no VSC), how many acres will the well hold on "B"?

1,000 Acres

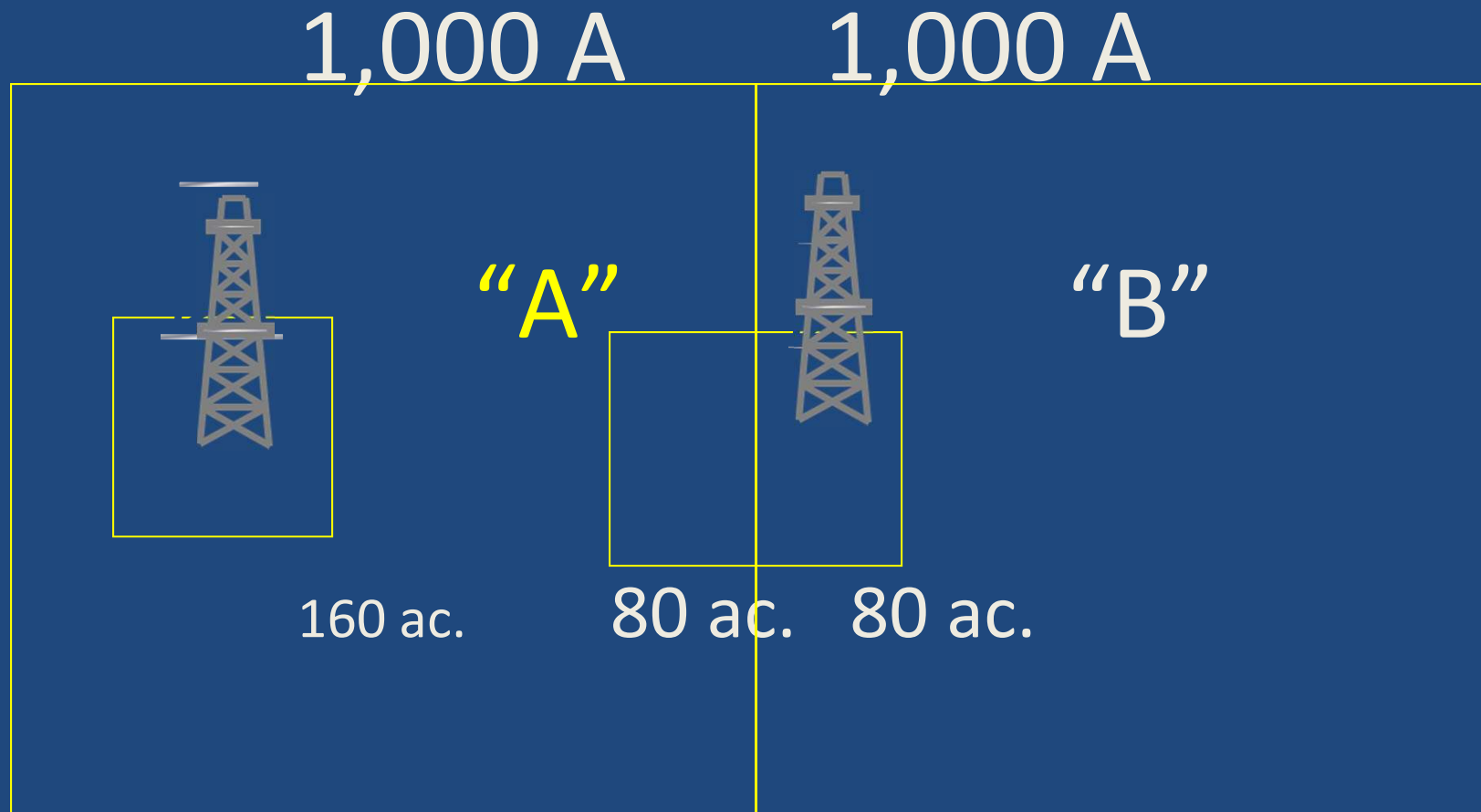
1,000 Acres



IF “A” HAS RUBBERBAND CLAUSE, HOW MANY ACRES ARE
HELD ON “A” BY WELL at the end of the primary
term?



If "A" HAS A PUGH CLAUSE, HOW MANY ACRES WILL THE TWO WELLS HOLD ON "A" at the end of the primary term?



IF "A" HAS A **RUBBERBAND CLAUSE**, HOW MANY ACRES WILL THE TWO WELLS HOLD ON "A" at the end of the primary term?

Suggestion

- On smaller tracts, an “all-or-nothing” provision works in lieu of a VSC. If you place any of my land in a pooled unit, then you must place all of it in the unit.
- Alternatively, you may state that if you place any part of my land in a pooled unit, then at least half of the leased premises must be included.

Visual Illustration

Horizontal and Vertical Severance Clauses are like placing a empty glass in a sink full of water.

ROYALTY PAYMENTS

(They are covenants.)

What costs (expenses) may be deducted from your royalty? Or, is the royalty free of all costs...no deductions from it?

DEDUCTIONS FROM ROYALTIES:

WELL COSTS ARE DIVIDED INTO TWO CATEGORIES:

1. **Production Costs:** required to withdraw the product from the ground.
2. **Post-Production Costs:** needed to treat the product and move it to market.

Royalties are free of the first but share in the second according to the size of the royalty **unless negotiated properly. (Heritage Case.)**

Heritage Lanugage

- “The Lessor’s royalty shall be free of all post-production costs including, but not limited to,....”
- Texas Supreme Court held that this was unenforceable, “*surplusage*” language.

My Suggested Wording

“The Lessor’s royalty shall be free of all post-production costs including, but not limited to,.... The Lessee agrees that this language shall be strictly enforceable and not viewed as “surplusage.” **Lessee waives all rights to assert this provision as unenforceable in a court of law no matter where the Lessee is the plaintiff or defendant.**”

It saves **(or add 2%)** to your existing royalty percentage if you have a 1/5th royalty!

OTHER ROYALTY RECOMMENDATION

Limit oil company's right to recoup for overpayments. What is the Statutes of Limitations for recovering a royalty payment?

Make sure there is no personal liability for overpayments.