

BILL ANALYSIS

Senate Research Center

S.C.R. 47
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Jurisprudence
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AUTHOR'S / SPONSOR'S STATEMENT OF INTENT

Grandfather's Blind, Ltd., owns the surface of a body of land in Refugio County, Texas that is estimated to contain approximately 3,800 acres and that is commonly known as "Negley Ranch," "Swan Lake Ranch," "Duncan Point," and other names. All the surface of this property was patented by the State of Texas into private ownership through 13 percent or awards, dating from 1861 through 1956, that together state a collective patented area in Refugio County of 3,827.37 acres and included inland lake waters. In five of these patents, dated 1946 or 1952, the state reserved as a free royalty a one-sixteenth royalty on all oil and gas production and a one-eighth royalty on sulphur and other minerals, and in three of these patents, dated 1956, the state reserved as a free royalty one-eighth of all oil, gas, sulphur, and other minerals.

Since the issuance of permits, various landowners, mineral owners, and others have relied in good faith on these patents, including the free royalty mineral reservations stated therein, and with the exception of those free royalty mineral reservations, all the minerals within the boundaries described by each of the 13 patents are today owned by Donner Properties, except for a portion owned by Conoco Phillips. The potential value of the property for future mineral development is currently believed to be minimal.

The property, which is mostly undeveloped, offers a wildlife habitat having importance publicly recognized by the U.S. Fish and Wildlife Service of the Department of the Interior, and the principal use of the property is recreation and enjoyment of its natural beauty. Of the property conveyed by the 13 patents, approximately 70 percent was conveyed by means of, and is owned under, patents whose boundaries are defined entirely or almost entirely by metes and bounds calls of course and distance and not by calls to any shore or waters or other natural monument. Of the property conveyed by the 13 patents, approximately 30 percent was conveyed by means of, and is owned under, patents that have at least one boundary defined by a call to the shore of Hynes Bay, San Antonio Bay, or Guadalupe Bayou. Under timeless rules of coastal geography law, the shores of Hynes Bay, San Antonio Bay, and Guadalupe Bayou are continuous, can be easily located and surveyed, and for survey and boundary purposes exist today in substantially the same locations, without gaps, as their locations reflected in the General Land Office (GLO) in connection with the patents.

Under Section 18.033 (State Land Records), Civil Practice and Remedies Code, the maps, surveys, and property descriptions filed in the GLO in connection with each of the 13 patents are presumed to accurately depict the boundaries between the patents and the adjacent state-owned lands submerged beneath Hynes Bay, San Antonio Bay, and Guadalupe Bayou. All waters situated within the footprint of the 13 patents, being neither navigable in fact nor navigable in law, are not in any part public water but are private water in which the public has no right to boat or fish, and the right of the owners exclude the public from those waters is not subject to any public easement or piscatory rights but is absolute and unqualified. For decades, private owners have paid property taxes on all of the property conveyed by the 13 patents, including the land covered by water.

GLO has never assigned state lease tract numbers to any property located within the recorded boundaries of any of the 13 patents but has created state lease tracts adjacent to the property whose boundaries follow, adjoin, respect, and agree with the private boundaries as shown on the maps, surveys, and property descriptions filed in the GLO in connection with the 13 patents, and the electronic "Interactive Land/Lease Mapping System" published and maintained on the Internet by GLO also shows boundaries that agree with the boundaries established by the patents.

Over time, land within the 13 patents has eroded or accreted in various places, and as a result, some private waters over the 13 patents are not physically separated by land from public waters of adjacent bays. Members of the public, especially during hunting season, have invaded and disturbed the owners' peaceful enjoyment of their property, creating an unreasonable risk of breaches of the peace, potential premises liability issues, and other problems inconsistent with this state's system of property rights. The public confusion and resulting risk of injury and harm can be dispelled, and the peace restored, only by a court decree fixing and determining with certainty the location of the boundary that separates the land and private water owned by the owners under the 13 patents from the state-owned submerged land and public water of Hynes Bay, San Antonio Bay, and Guadalupe Bayou that surround the property on three sides, and also determining the rights of the owners to exclude the public from the land and the water within the bounds of the 13 patents.

Grandfather's Blind, Ltd., has attempted to affirm the boundaries originally established by the 13 patents issued by GLO and has been told by GLO that it no longer owns the land covered by water. The owners do not seek recovery of monetary damages from the state, but seek only to obtain the determination of their boundary and determination of their rights through a court order that fixes and determines the boundary that separates the land privately owned by the owners under the 13 patents from the adjacent land owned by the state; decrees that the owners have the absolute and exclusive right to use and enjoy all of the land within the outer perimeter of the 13 patents and to exclude the public therefrom, including land that is covered by water; decrees that with the exception of those certain mineral interests reserved to the state as a free royalty under the express terms of some of the patents, all of the minerals within the outer perimeter of the boundary established by those patents, including minerals lying under lands covered by water, are owned according to the terms of the conveyances made under the patents; and decrees that the owners have the absolute and exclusive right to use and enjoy all of the water within the outer perimeter of the 13 patents, which is private water that is not navigable and to exclude the public from boating on, fishing in, or otherwise using that water.

RESOLVED

That Grandfather's Blind, Ltd., and Donner Properties are granted permission to sue the state of Texas, the General Land Office (GLO), and the School Land Board subject to Chapter 107 (Permission to Sue the State), Civil Practice and Remedies Code.

That the suit authorized by this resolution may be brought in Refugio or Travis County.

That the relief awarded in the suit authorized by this resolution is limited to the relief authorized under Chapter 37 (Declaratory Judgments), Civil Practice and Remedies Code, or Chapter 22 (Trespass to Try Title), Property Code, or both.

That the commissioner of GLO and the chairman of the School Land Board, both offices currently being held by the same person, be served process as provided by Section 107.002(a)(3) (relating to service of citation requirements), Civil Practice and Remedies Code.