WW-870

The attorney general opinion that denies counties a revenue stream that could be used to repair road and bridge damages caused by drilling activity.

1960

In 1960, the County of Kleberg asked Attorney General Will Wilson for an opinion with respect to its right to execute an oil and gas lease of the right of way of a county road within the county.

After recitation of several Supreme Court decisions dating to 1895, indicating that the ownership of fee simple right of way belonged to the State and not to the county [no matter how said right of way was acquired], AG Wilson concluded by saying …

"the county, therefore, has no lawful authority to make a valid oil and gas lease on a county road right of way in the absence of some legislative authority conferring such power."

Summary of Opinion WW-870

"The ownership of public roads is in the State and not the counties within which they are located. Therefore, Kleberg County has no legal authority to execute an oil and gas lease on the county road right of way in question."

Since 1960

Counties with fee-simple ownership of the mineral estate underneath their right of ways have not been able to enjoy a revenue stream of rent and royalty payments that could offset the cost of maintaining the county road system.

Oil companies now go directly to the General Land Office in Austin to negotiate leases under county-owned and maintained roads. The revenue received is deposited into the General Revenue Fund pursuant to Section 51.300 of the Natural Resource Code.

Revenue generated from leases under state highways is deposited into the State Highway Fund.

Natural Resources Code

SUBCHAPTER G. EASEMENTS

Sec. 51.300. DISPOSITION OF INCOME. Income received by the commissioner under this subchapter from public school land shall be credited to the permanent school fund. *Other income received by the commissioner on other land under this subchapter shall be credited to the General Revenue Fund.*

Acts 1977, 65th Leg., p. 2439, ch. 871, art. I, Sec. 1, eff. Sept. 1, 1977. Amended by Acts 2003, 78th Leg., ch. 328, Sec. 5, eff. Jan. 1, 2004.
Amended by:
Acts 2007, 80th Leg., R.S., Ch. 387 (S.B. 654), Sec. 11, eff. June 15, 2007.

Barnett Shale and Haynesville Shale Play Era
9/01/2000 – 12/31/2010

- **<u>State Highway ROW</u>**
- 844 producing leases
- $29,810,279
  - received from lease bonuses, rents, and royalty payments

- **<u>County ROW</u>**
- 440 producing leases
- $14,072,697
  - received from lease bonuses, rents, and royalty payments
- Tarrant County ROW
  - 107 leases
  - $7,095,174.97
  - 50.42 percent of total
  - #1 Tarrant CROW lease = $1,511,809

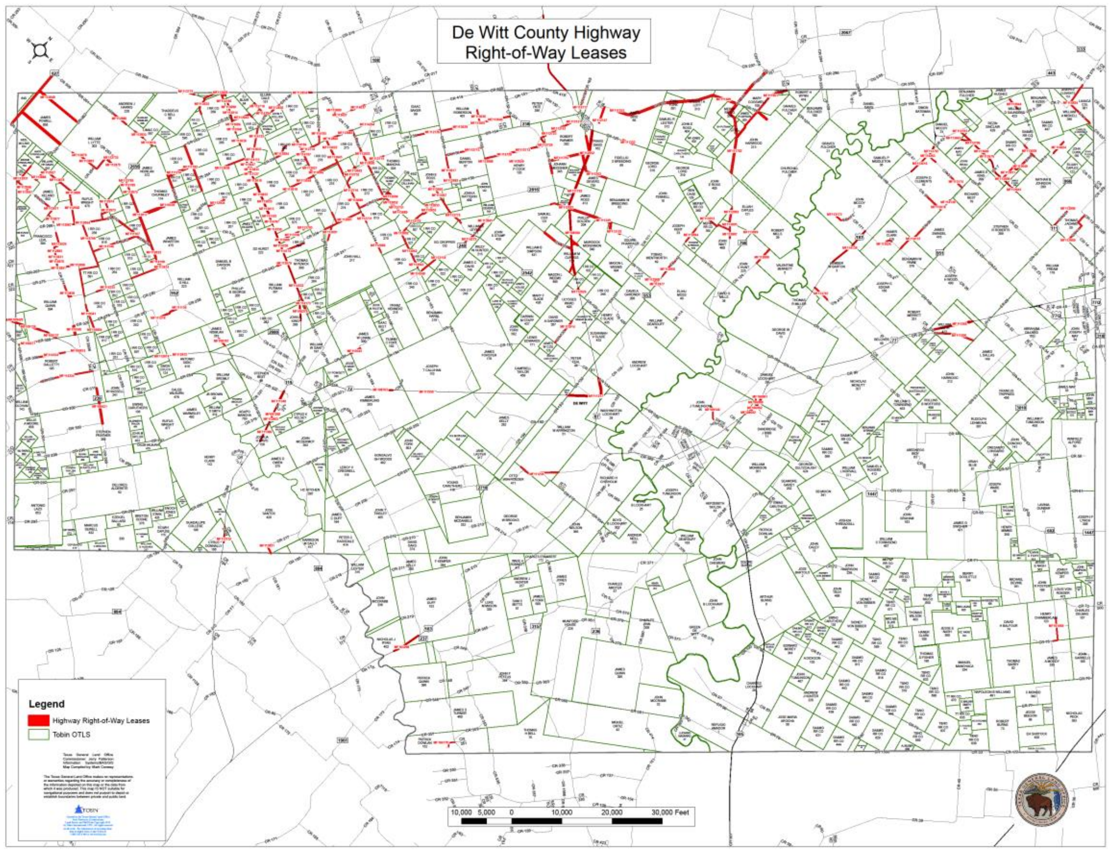
Eagle Ford and Permian Shale Play Era
01/01/2011 – 04/30/2014

- **State Highway ROW**
- 115 counties w/ SHROW leases
- $36,219,566
  - received in lease bonus, rent, and royalty payments

- **County ROW**
- 74 counties w/ CROW leases
- $28,570,573
  - received in lease bonus, rents, and royalty payments
  - $16,606,795 (58 percent) collected from leases in DeWitt, Gonzales, Karnes counties

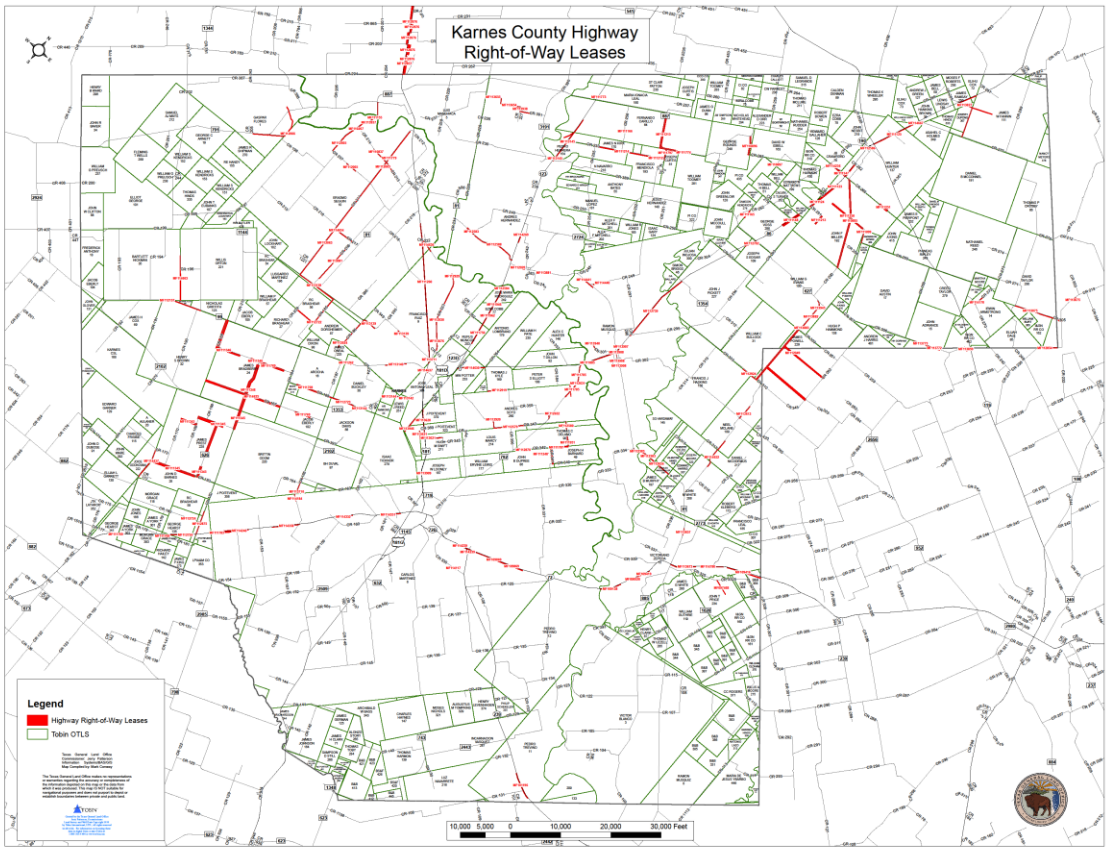
88 producing CROW leases in DeWitt County produced $8,799,596.95 in 40 months

214 more leases are currently non-producing



88 producing CROW Leases in Karnes County produced $7,500,990.80 in 40 months

211 more leases are currently non-producing



Top 10 producing CROW leases in the 40 month period ending 4/30/2014

Rank	County	$ Amount paid to Texas GF
1	Karnes	2,645,455
2	DeWitt	1,289,832
3	Karnes	1,275,143
4	DeWitt	511,180
5	Karnes	422,505
6	Karnes	421,892
7	LaSalle	329,499
8	Tarrant	305,251
9	DeWitt	300,823
10	McMullen	251,603

In the 40 months ending 4/30/2014:

Tarrant County ROW has produced $6,219,566 for the General Fund of Texas.

DeWitt, Gonzales and Karnes counties ROW combined has produced $16,606,795 and ROW from 70 other counties has produced $5,744,212.

Historically, county ROW is maintained through local property tax levy regardless of ownership or surface easement.

Counties have leased ROW in the past

Lease Name	Lessor	Operator	Property Type	Interest Type	DOI
W Buesing, et al	DeWitt	Eland Energy	ROW	RI	.001286
F L Altman	DeWitt	Eland Energy	ROW	RI	.000885
Schlosser Unit	DeWitt	Eland Energy	ROW	RI	.0000654
M Dueser Unit	DeWitt		ROW	RI	.000390
Henry Belitz	DeWitt	Bettis, Boyle & Stovall	ROW	RI	.005358
Burns G U 1 W#1	DeWitt	Pioneer	ROW	RI	.001030
Burns G U 1 W#2	DeWitt	Pioneer	ROW	RI	.001030
Burns G U 1 W#3	DeWitt	Pioneer	ROW	RI	.001030

Property Taxes are levied on these interests

Additional contracts with O&G

Pipeline ROW Easements

- Consideration is paid to county when county owns the ROW in fee

Sub-Surface Easements

- Consideration is paid to county when county owns the ROW in fee, but leased by State of Texas for O&G exploration

A moral question

Should local taxpayers bear the financial burden of repairing this road when the State of Texas enjoys the revenue?

It is time for a new State policy

Is the State of Texas willing to maintain the county roads that generate royalty income?

Summary

- Local property taxpayers built the roads and have paid to maintain them for the last 80 to 100 years.
- Counties are in great need of revenue to make the repairs to the roads damaged by drilling activity.
- Costs range from $350,000 to $500,000 per mile.
- The State of Texas does not pay for damages.
- The GLO leases the roads and the income goes to General Revenue Fund (001) according to Government Code, Section 404.094(b).
- Therefore, the State of Texas is unfairly benefiting from the revenue.
- Legislation allowing a county to lease its own roads and use the income is vital for the economic well-being of the county.