

By: Hegar

S.C.R. No. 47

1 CONCURRENT RESOLUTION

2 WHEREAS, Grandfather's Blind, Ltd., and Donner Properties
3 allege that:

4 (1) Grandfather's Blind, Ltd., owns the surface of a
5 body of land in Refugio County, Texas, that is estimated to contain
6 approximately 3,800 acres and that is commonly known as "Negley
7 Ranch," "Swan Lake Ranch," "Duncan Point," and other names;

8 (2) all the surface of this property was patented by
9 the State of Texas into private ownership through 13 patents or
10 awards, dating from 1861 through 1956, that together state a
11 collective patented area in Refugio County of 3,827.37 acres and
12 included inland lake waters;

13 (3) in five of these patents, dated 1946 or 1952, the
14 state reserved as a free royalty a one-sixteenth royalty on all oil
15 and gas production and a one-eighth royalty on sulphur and other
16 minerals, and in three of these patents, dated 1956, the state
17 reserved as a free royalty one-eighth of all oil, gas, sulphur, and
18 other minerals;

19 (4) since the issuance of the patents, various
20 landowners, mineral owners, and others have relied in good faith on
21 these patents, including the free royalty mineral reservations
22 stated therein, and with the exception of those free royalty
23 mineral reservations, all the minerals within the boundaries
24 described by each of the 13 patents are today owned by Donner

1 Properties, except for a portion owned by ConocoPhillips;

2 (5) the potential value of the property for future
3 mineral development is currently believed to be minimal;

4 (6) the property, which is mostly undeveloped, offers
5 a wildlife habitat having importance publicly recognized by the
6 U.S. Fish and Wildlife Service of the Department of the Interior,
7 and the principal use of the property is recreation and enjoyment of
8 its natural beauty;

9 (7) of the property conveyed by the 13 patents,
10 approximately 70 percent was conveyed by means of, and is owned
11 under, patents whose boundaries are defined entirely or almost
12 entirely by metes and bounds calls of course and distance and not by
13 calls to any shore or waters or other natural monument;

14 (8) of the property conveyed by the 13 patents,
15 approximately 30 percent was conveyed by means of, and is owned
16 under, patents that have at least one boundary defined by a call to
17 the shore of Hynes Bay, San Antonio Bay, or Guadalupe Bayou;

18 (9) under timeless rules of coastal geography law, the
19 shores of Hynes Bay, San Antonio Bay, and Guadalupe Bayou are
20 continuous, can be easily located and surveyed, and for survey and
21 boundary purposes exist today in substantially the same locations,
22 without gaps, as their locations reflected by the maps, surveys,
23 and property descriptions filed in the General Land Office in
24 connection with the patents;

25 (10) under Section 18.033, Civil Practice and Remedies
26 Code, the maps, surveys, and property descriptions filed in the
27 General Land Office in connection with each of the 13 patents are

1 presumed to accurately depict the boundaries between the patents
2 and the adjacent state-owned lands submerged beneath Hynes Bay, San
3 Antonio Bay, and Guadalupe Bayou;

4 (11) all waters situated within the footprint of the
5 13 patents, being neither navigable in fact nor navigable in law,
6 are not in any part public water but are private water in which the
7 public has no right to boat or fish, and the right of the owners to
8 exclude the public from those waters is not subject to any public
9 easement or piscatory rights but is absolute and unqualified;

10 (12) for decades, private owners have paid property
11 taxes on all of the property conveyed by the 13 patents, including
12 the land covered by water;

13 (13) the General Land Office has never assigned state
14 lease tract numbers to any property located within the recorded
15 boundaries of any of the 13 patents but has created state lease
16 tracts adjacent to the property whose boundaries follow, adjoin,
17 respect, and agree with the private boundaries as shown on the maps,
18 surveys, and property descriptions filed in the General Land Office
19 in connection with the 13 patents, and the electronic "Interactive
20 Land/Lease Mapping System" published and maintained on the Internet
21 by the General Land Office also shows boundaries that agree with the
22 boundaries established by the patents;

23 (14) over time, land within the 13 patents has eroded
24 or accreted in various places, and as a result, some private waters
25 over the thirteen patents are not physically separated by land from
26 public waters of adjacent bays;

27 (15) members of the public, especially during hunting

1 season, have invaded and disturbed the owners' peaceful enjoyment
2 of their property, creating an unreasonable risk of breaches of the
3 peace, potential premises liability issues, and other problems
4 inconsistent with this state's system of property rights;

5 (16) the public confusion and resulting risk of injury
6 and harm can be dispelled, and the peace restored, only by a court
7 decree fixing and determining with certainty the location of the
8 boundary that separates the land and private water owned by the
9 owners under the 13 patents from the state-owned submerged land and
10 public water of Hynes Bay, San Antonio Bay, and Guadalupe Bayou that
11 surround the property on three sides, and also determining the
12 rights of the owners to exclude the public from the land and the
13 water within the bounds of the 13 patents;

14 (17) Grandfather's Blind, Ltd., has attempted to
15 affirm the boundaries originally established by the 13 patents
16 issued by the General Land Office and has been told by the General
17 Land Office that it no longer owns the land covered by water;

18 (18) the owners do not seek recovery of monetary
19 damages from the state, but seek only to obtain the determination of
20 their boundary and determination of their rights through a court
21 order that:

22 (A) fixes and determines the boundary that
23 separates the land privately owned by the owners under the 13
24 patents from the adjacent land owned by the state;

25 (B) decrees that the owners have the absolute and
26 exclusive right to use and enjoy all of the land within the outer
27 perimeter of the 13 patents and to exclude the public therefrom,

1 including land that is covered by water;

2 (C) decrees that with the exception of those
3 certain mineral interests reserved to the state as a free royalty
4 under the express terms of some of the patents, all of the minerals
5 within the outer perimeter of the boundary established by those
6 patents, including minerals lying under lands covered by water, are
7 owned according to the terms of the conveyances made under the
8 patents; and

9 (D) decrees that the owners have the absolute and
10 exclusive right to use and enjoy all of the water within the outer
11 perimeter of the 13 patents, which is private water that is not
12 navigable and to exclude the public from boating on, fishing in, or
13 otherwise using that water; now, therefore, be it

14 RESOLVED by the Legislature of the State of Texas, That
15 Grandfather's Blind, Ltd., and Donner Properties are granted
16 permission to sue the State of Texas, the General Land Office, and
17 the School Land Board subject to Chapter 107, Civil Practice and
18 Remedies Code; and, be it further

19 RESOLVED, That the suit authorized by this resolution may be
20 brought in Refugio or Travis County; and, be it further

21 RESOLVED, That the relief awarded in the suit authorized by
22 this resolution is limited to the relief authorized under Chapter
23 37, Civil Practice and Remedies Code, or Chapter 22, Property Code,
24 or both; and, be it further

25 RESOLVED, That the commissioner of the General Land Office,
26 and the chairman of the School Land Board, both offices currently
27 being held by the same person, be served process as provided by

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1 Section 107.002(a)(3), Civil Practice and Remedies Code.