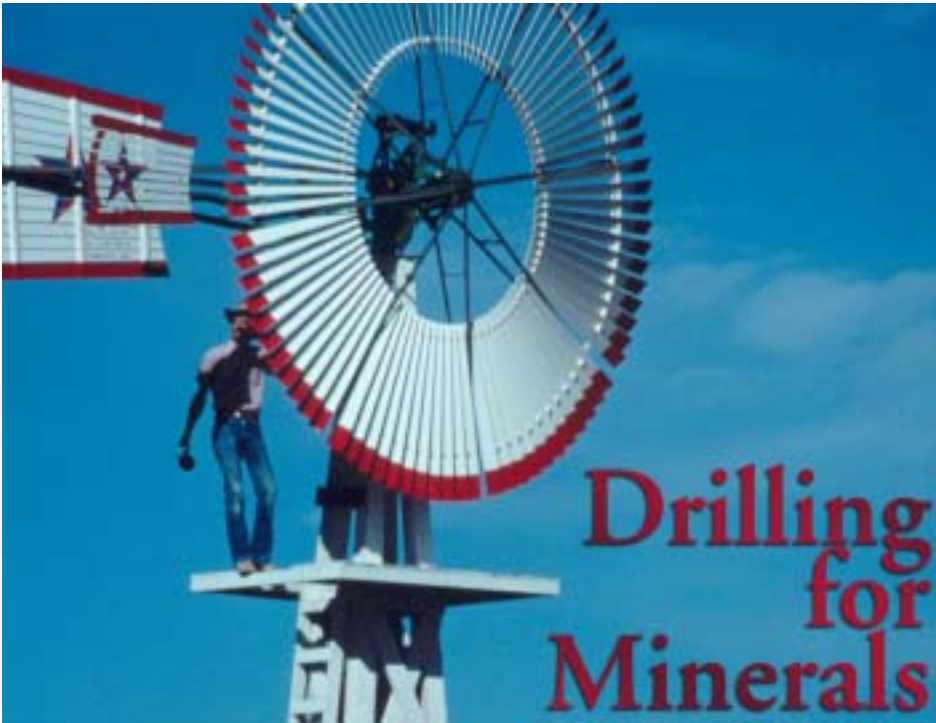


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By Judon Fambrough

**T**exas' legal interpretation of the term *minerals* is noteworthy. A Fort Worth developer, Dyegard Land Partnership, prohibited "drilling for minerals of any kind" in the subdivision's deed restrictions. The land-owners in the subdivision wanted to drill

water wells on their lots. Dyegard claimed the wells violated the deed restrictions.

Eventually, the controversy reached the U.S. Court of Appeals in Fort Worth (*Dyegard Land Partnership v. Hooper*, No. 02-99-361-CV, 1/11/2001).

The appellate court upheld the summary judgment granted the lot owners by the trial court, citing *Fleming Foun-*

*dation v. Texas Inc.*, 337 S.W.2d 846, in which the appellate court in Amarillo held that the term *minerals* does not include water.

The Texas Supreme Court in *Moser v. U.S. Steel Corp.*, 676 S.W.2d 99 (1984) also cited *Fleming* when it decided what substances are and are not considered minerals. According to the court, oil, gas and uranium are minerals. But limestone, sand, surface shale, caliche, building stone, gravel and water are not. Likewise, coal, lignite and iron ore are not considered minerals if they lie on or within 200 feet of the surface and production of the substance will destroy or deplete the surface. ♣

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