

JURY QUESTIONS

Now bearing in mind the foregoing instructions, please answer the following questions:

Question No. 1

Do you find, from a preponderance of the evidence, that the property in issue cannot be partitioned in-kind into four (4) tracts?

In answering the foregoing question you will be guided by the following definitions and instructions:

1 The “property in issue” (“property”) is that certain tract of 609.151 acres, more or less, owned by the parties.

2 Unless established by a preponderance of the evidence that the property in issue is not susceptible to a fair and equitable partition in-kind, it is presumed that the property in issue can be partitioned in-kind. If you do not find by a preponderance of the evidence that the property cannot be partitioned in-kind then you shall find that the property can be so partitioned.

3 For the purposes of this question, “partitioned in-kind” means that the property may be fairly and equitably divided into four (4) tracts. You do not need to attempt to agree upon any particular division to find that the property can be “partitioned in-kind.”

4 You are instructed that if a partition in-kind would result in the sum of the fair market value of the individual tracts being materially less than the fair market value of the entire property then such division would not be fair and equitable.

5 You are further instructed that you may consider the costs associated with dividing the property into four (4) tracts in arriving at your answer.

6 The court, if necessary, may divide the property into shares of unequal value and adjust the difference by requiring any party receiving a more valuable share to pay cash to a party receiving less valuable property in order to equalize the division. The payment to be made would be secured by a lien on the more valuable property.

7 The law provides that upon partitioning there will be established a nonexclusive access easement over and across a tract of partitioned property for the purpose of providing reasonable ingress to and egress from an adjoining partitioned tract that does not have a means of access through a public road. The adjoining tract owner who is granted an access easement shall maintain the easement and keep the easement open for public use.

Now then, keeping in mind the foregoing instructions, answer the question as stated above.

Place a **U** mark next to your answer:

“The property cannot be partitioned in-kind”

or

“The property can be partitioned in-kind”.