



Texas Land & Mineral Owners Association

Official Newsletter

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INTERIM CHARGES ANNOUNCED

The House Natural Resources Committee recently held their first interim hearing in Austin. The committee will host a number of hearings throughout the state over the next 14 months as the Legislature begins to gear up for the 83rd Legislative Session which begins in January, 2013.

State Representative Tracy O. King (D- Batesville) sits as vice-chair of the committee and will be keeping a keen eye on water issues as they affect different regions of South Texas and the Eagle Ford Shale play.

The **House Natural Resources Committees** charges are:

Monitor the ongoing statewide drought and the performance of state, regional, and local entities in addressing it. Examine the impact of the drought on the state water plan, including an evaluation of how well the state's existing water resources can meet demand, the need for additional funding sources to implement the plan, and the effectiveness of current drought planning and drought management policies. Identify short-term and long-term strategies to help the state better cope with drought and assess any obstacles, including state and federal regulations, to implementation of these strategies.

Examine the interplay of water and energy resources and needs in the state. Study the economic, environmental, and social impacts of water use in energy production and exploration, including the impacts of this use on regional and state water planning. Determine the current and likely future water needs of power generation and energy production, and evaluate options to develop new or alternative supplies. Include an evaluation of current issues involving water use for oil and gas production and related water quality issues.

Evaluate the status of desalination projects in Texas. Include an evaluation of the regulation of brackish groundwater and whether opportunities exist to facilitate better utilization of this groundwater to meet future needs.

Study ways to enhance incentives for water conservation in agricultural irrigation.

Monitor the agencies and programs under the committee's jurisdiction and the implementation of relevant legislation passed by the 82nd Legislature.

In addition, the House Energy Resources Committee will also be looking at a number of issues that affect TLMA members.

The **House Committee on Energy Resources** charges are:

Review current state and federal laws and regulations and make recommendations to encourage additional energy production in Texas. Focus on the impact energy production has on our state's economy.



State Representative Tracy O. King (D- Batesville)

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TLMA's mission is to create a business and legal environment that is accommodating to the continued exploration for and production of oil and natural gas by ensuring that the rights of both the mineral and surface owners are protected, reduce litigation and to protect our precious groundwater resources.

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Examine state regulations governing oil and gas well construction and integrity and pipeline safety and construction and determine what changes should be made, if any, to ensure that the regulations are adequate to protect the people of Texas and its natural resources.

Study and make recommendations on the current process for the submission of well logs to the state by oil and gas operators. Specifically, identify changes that could be made in statute or agency administrative rules that would result in increased production through a more efficient system of collecting well logs.

Monitor the agencies and programs under the committee's jurisdiction and the implementation of relevant legislation passed by the 82nd Legislature. Specifically, monitor the Railroad Commission of Texas' implementation of HB 3328 (82R) to ensure that the required rulemaking is completed efficiently and in a timely manner.

We will be actively monitoring and testifying at these committee hearings. In the meantime, committee hearings will be posted on the Legislative website and hearings can also be viewed from the site. <http://www.capitol.state.tx.us>

Happy Holidays!

Share TLMA

**Membership makes a great
Christmas Gift!**

Contact Robbie Querner, TLMA Executive
Assistant, for brochures and information on how
you can help recruit new members to TLMA.

512-479-5000

**You know why TLMA
is so important!**

Help us get the word out!

MINERAL OWNERS LOSE AGAIN IN COURT DUE TO STATUTE OF LIMITATIONS

Mineral owners have lost another substantial verdict against an oil company based on their failure to bring their claim within four years. In *Samson Lone Star v. Hooks*, No. 01-09-00328-CV, the Houston First District Court of Appeals reversed a verdict and judgment against Samson for \$21 million, holding that the claim was barred by the four-year statute of limitations as a matter of law – even though the jury had found that the Hooks should not have discovered Samson's fraudulent conduct until April 2007, less than four years prior to their suit.

The Court relied on the Texas Supreme Court's decision in *BP v. Marshall*, deciding earlier this year which overruled a jury verdict in favor of royalty owners, holding that their claim was barred by limitations as a matter of law.

One justice wrote a separate opinion in *Samson v. Hooks*, reluctantly concurring with the majority on the limitations issue and agreeing that the court was bound by the Supreme Court precedent in *BP v. Marshall* (TLMA Newsletter, 3rd Quarter 2010, v.10 no.3, p.6), but urging the Supreme Court to revisit its prior rulings. Justice Jim Sharp wrote:

Thus it is clear that Samson, through its representative, took action to cover up its own error by both oral and written misrepresentations to its lessor, born of "assuming" and "hoping." It is further clear that the Hooks, after asking for and receiving verification of Lanoue's oral representation in the form of a plat, believed its lessee's representations and made no attempt to go beyond them to discover the truth or falsity thereof. On these facts, the majority has found that the discovery rule does not apply to the Hooks' fraud, fraudulent inducement, and statutory fraud claims and that they are barred by limitations as a matter of law

I reluctantly concur, based on the Texas Supreme Court's holding in *BP America Production Co. v. Marshall*, 342 S.W.3d 59 (Tex. 2011). In that case, the Texas Supreme Court makes clear that no lies on the part of a lessee, however self-serving and egregious, are sufficient to toll limitations, as long as it is technically possible for the lessor to have discovered the lie by resort to the Railroad Commission records. This burden the Court imposes upon lessors is severe. It is now a lessor's duty to presume that any statement made by its lessee is false and to ransack the esoteric and oft-changing records at the Railroad Commission to discover the truth or falsity of its lessee's statements. If, as is often the case, these records are technical in nature and require expert review to ferret out the truth, it is the lessor's job to hire experts out of its own pocket to perform such a review. If a lessor fails to take these steps, then it will have failed in exercising reasonable diligence to protect its mineral interests and, if the lessee's fraud is successful for longer than the limitations period, the lessor's claims will be barred by limitations

Such is the case here. Had the Hooks presumed that Samson's oral representations, followed by written representations, about the bottom-hole location of the well were false, and had they hired an expert to resort to Railroad Commission records to trace the various filings (some of which were also false), that expert could have hit upon the directional survey and, by virtue of his expertise, interpreted it to prove the falsity of the representations. Instead they merely relied on the oral and written representations of their lessee, without undergoing what doubtless seemed to them the useless expense of hiring an expert to rake through the Railroad Commission records with an eye towards exposing a potential falsehood.

I believe the Texas Supreme Court has placed an unnecessary and very heavy burden on lessors by its ruling in *BP America*, one that will result either in much money being spent unnecessarily on prophylactic forensic review of Railroad Commission records or in many viable claims being lost to limitations. As we are, however, bound to follow the Court's rulings, I reluctantly concur in that part of the opinion that finds the Hooks' fraud, fraudulent inducement, and statutory fraud claims barred by limitations as a matter of law.

The case will surely be appealed, so we shall see if the Supreme Court revisits the issue.

This article was provided in part by John B. McFarland an attorney with Graves, Dougherty Hearon & Moody, P.C. in Austin, TX. It was previously published on his blog www.oilandgaslawyerblog.com on October 25, 2011. It was edited to fit in this space. In the last twenty years, Mr. McFarland has negotiated oil and gas leases and lease options covering more than 235,000 acres of land in Texas. His practice also includes negotiation of seismic survey permits, data use licenses, purchase and sales agreements, pipeline easements, and financing agreements covering leasehold, mineral and royalty interests. He obtained Board Certification as a Specialist in Oil, Gas and Mineral Law in December 1986. Mr. McFarland is the author of the Texas Land & Mineral Owners Association oil and gas lease form.

UPCOMING EVENTS

December 8, Laredo: Winter Oil and Gas Seminar for Landowners, ½ day seminar with lunch. 8:30 am, UT Health Science Center, Multiple speakers including TLMA Executive Director. For more information call Laura 956-727-4441.

March 30-31, 2012, Fort Worth: Texas and Southwestern Cattle Raisers Association Annual Convention. Visit TLMA at their booth. For more information call 817-332-7064.

AS PIPELINES MULTIPLY, MORE EMINENT DOMAIN FIGHTS LIKELY

By Jennifer Hiller, Staff Writer, *Houston Chronicle*, Published November 13, 2011. Reprinted by permission. www.copyright.com

When a pipeline company decided to cross a large South Texas ranch in 2009, the family that has owned the property since the 1940s dug in its heels. The question wasn't whether LaSalle Pipeline, which has the right of eminent domain, could lay a 16-inch, 52-mile pipeline that would cross two tracts of McMullen County land owned by Donnell Lands, a family partnership.

The biggest issue was whether the value of the rest of the ranchland would be devalued by the pipeline's presence. The company said no. But the landowners said yes, and a trial jury agreed with them to the tune of more than \$600,000. That decision has been winding its way through the Texas court system, and along with some legislative changes that went into effect in September, could represent a small step in giving landowners a larger voice in eminent domain battles.

If the Texas Supreme Court upholds the jury award, attorneys say it would reinforce the right of landowners to testify in court about the value of their own property, and could ensure that pipeline companies pay something for the diminished value of the so-called "remainder" property that isn't taken under an easement.

With thousands of new wells being drilled across the Eagle Ford shale, new pipelines will need to crisscross the state to get newly drilled oil and gas to refineries and markets, increasing the likelihood of more owner-condemner clashes.

There are also business implications. Although easement costs vary by county, with rural areas being less expensive per mile than urban areas, attorneys say a San Antonio appellate court decision in favor of the Donnells immediately increased the amount that pipeline companies are paying for easements. Attorneys for LaSalle have called the jury award a windfall. If the decision stands, it would "eviscerate the ability of entities with the power of eminent domain to undertake public projects with any certainty to the costs involved," they said in a recent court brief.

Other attorneys say the case isn't quite so far-reaching, but more a rare example of landowners with the means and tenacity to duke it out with an energy company.

"It just happens that the Donnells had enough money to fight it," said [Judon Fambrough](#), an attorney and senior lecturer at the [Real Estate Center](#) at Texas A&M University. "The time and money is just beyond most people. It wears on you to go through this. They just wanted to fight it, and they could fight it."

Longtime presence

The Donnells have lived in McMullen County, about 80 miles southwest of San Antonio, since the 1870s, and [James Donnell Jr.](#) runs the family's ranching business. He declined to comment on the case but during the trial said the fact that the pipeline cut through the middle of the property and that the pipeline company could do what it wanted with the easement would be a factor in any future sale.

"It's a black mark on my deed," Donnell said in court. "It's there for eternity from now on."

Prior to the trial, a special commission had assessed \$226,055 in damages against LaSalle for the easement. An appraiser hired by Donnell Lands and Donnell testified that the property value loss, including about 4.4 miles of permanent easement and the remainder damages, was about \$900,000. But the appraiser for LaSalle said there was no objective, comparable sales data in the county to show that pipelines hurt sales prices, and that there was no damage to the remainder.

A McMullen County jury found LaSalle liable for about \$19,000 in workspace easements, \$34,500 for the permanent easements and about \$605,000 for the loss in value of the remainder tracts. LaSalle appealed, a San Antonio appellate court knocked down the award by \$12,000, and LaSalle appealed again, saying the award was based on "speculative mathematical gymnastics" and that some of the jurors were biased in favor of the Donnells.

"The significance of the case, and why it's being appealed, is that it's set a precedent that allows speculation and supposition, and large awards to be based on that," LaSalle's Houston-based attorney, [Tom Zabel](#), said. "You have a sixth- or seventh-generation family in a county of 600 to 700 residents. He's probably the largest landowner in the county. I like the family. I can see why people like them in the county. That's a hard thing to confront."

More cooperation seen

Fambrough said the case could make pipeline companies more sensitive to remainder damages. "The Donnells got what they deserved in that case," he said. "I think it will make pipelines and condemners more cooperative. Here they should have paid more to start off with."

Senate Bill 18 went into effect in September and requires condemners to make good faith offers, provide landowners with an appraisal and compensate for loss of access to the remaining property.

Other changes include giving landowners the right to build roads over pipeline easements, forbidding confidentiality provisions and letting landowners repurchase the easement if it's not used for public purposes in a certain period. Companies or governments that don't follow the proper process could be at risk for paying the other side's attorney's fees and expenses.

"The playing field has changed a little bit," Fambrough said.

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Ezra Johnson, an attorney with San Antonio's Cox Smith, said the laws still favor the condemner over the landowner. But in the wake of the uproar over the Kelo v. the City of New London case in Connecticut, in which a homeowner's property was taken under the guise of economic development (and ultimately turned into a dump), the Legislature has taken some steps to give landowners more of a voice. "I think there will continue to be a push and pull between pipeline companies and utilities and landowners," Johnson said. "It's something of a tug of war between these groups."

'It's a volume issue'

The rule of thumb is that 95 percent of pipeline cases are negotiated and that 5 percent end up in a dispute. But Zabel said that in a period of exceptional need for new pipelines, there's an increased chance that pipeline companies and landowners will be fighting.

"It's a volume issue. If you have 16 pipelines versus one, there's a 16-fold increase chance for disputes," Zabel said. "It's an unprecedented period of pipeline construction. It's not a small uptick." And Johnson said the Eagle Ford shale play has been so active that more pipelines are needed than was thought. Between September 2010 and October 2011, pipeline companies applied for permits to lay more than 1,300 miles of new pipeline in the Eagle Ford shale play, according to Texas Railroad Commission permits.

"One of the things in favor of the Eagle Ford in the beginning was that it was relatively close to infrastructure like pipelines and refineries," Johnson said. "As more wells have come online, it's abundantly clear that there's not enough infrastructure. Companies are compelled to get these lines in as fast as possible."

James Mann, an Austin-based partner with Duggins Wren Mann & Romero who has represented pipeline companies for 30 years, said South Texas needs billions of dollars in new pipeline. "We are going to be seeing - at least in the short run - oil and gas production coming on line as fast or faster than pipelines can be built to accommodate it," Mann said. "South Texas is going to end up with more infrastructure than anybody would have thought possible a few years ago."

North-south difference

In general, gas and oil pipelines will need to head east out of South Texas to reach refineries and industrial users along the Gulf Coast.

But Mann thinks the pipeline disputes will likely be less contentious in South Texas than they have been in the Barnett Shale play in North Texas. He said he has one client putting a pipeline through three South Texas counties, for instance, and there are only three landowners in the path. "I would think generally the amount of cases that end up in condemnation would be smaller in South Texas than has been true in Fort Worth," Mann said. "There's going to be a big difference in how people feel about a pipeline going through the back pasture than through the backyard."

PRELIMINARY STUDY WAYS MINIMAL IMPACT FROM FRACKING

Reprinted from the Austin American-Statesman on-line (www.statesman.com) written by Farzad Mashhood, Published: Wednesday, Nov. 9, 2011. This article is presented to TLMA members for information only.

As shale gas harvesting has increased in recent years, so have the questions about the process's environmental effects. As a result, the techniques of the extraction and its possible effects on groundwater are facing closer scrutiny, and both the Environmental Protection Agency and the University of Texas's Energy Institute are currently conducting long-term studies of the process.

Preliminary findings from the Energy Institute's study released Wednesday suggest there is no link between the extraction operations and groundwater contamination, said the study's leader, Charles "Chip" Groat, a UT geology professor. He noted that the dangers associated with shale gas drilling — which is accomplished by hydraulic fracturing, a process commonly known as fracking — are largely the same as other oil-drilling operations.

"Hydraulic fracturing doesn't seem to be of concern to groundwater," Groat said. "If there has been water contaminated related to shale gas development let's not look at fracturing, let's look at surface processes."

As in other types of drilling operations, poor casing or shoddy cement jobs have often been to blame for regulatory violations or contamination in shale gas drilling, Groat said. Fracking is a process in which a combination of millions of gallons of water, mixed with sand and chemicals, is injected into rock thousands of feet underground to extract natural gas. The relatively new process of horizontal drilling has allowed for the extraction of natural gas that is otherwise inaccessible if using conventional drilling techniques.

Surface spills of the hazardous chemicals across the country have killed livestock and contaminated waterways, the Houston Chronicle has reported. Texas is home to one of the nation's largest shale gas deposits, the Barnett Shale. The Fort Worth area is a hotbed for fracking that shale, and there have been many questions surrounding the process.

Democratic state Rep. Lon Burnam of Fort Worth told The Associated Press in September that in the past five years, air pollution in North Texas has steadily increased, which he said is related to the drilling in the Barnett Shale.

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Groat downplayed the problems associated with fracking. "The violations that we've seen are of no, minor or small impact," Groat said. "The impact on groundwater, the impact on the surface is not of anything substantial, certainly not compared to coal mines or metal mines."

However, spills have come under closer scrutiny as shale gas drilling occurs in urban and suburban areas, Groat said. "Fort Worth is the poster child for this," Groat said. "They are drilling under subdivisions, and those people are asking questions." Shale deposits are spread out over broad areas, and drilling operations could easily move out of densely populated areas and stay in the fracking game, Groat said. Groat briefed government officials, regulators, energy company executives, community group representatives and reporters in Fort Worth about the Energy Institute's preliminary findings.

Researchers expect to present their final report early next year, looking not only at the environmental effects of fracking but also at policy and regulatory issues as well as media coverage of the controversial technique of capturing natural gas. The yearlong \$330,000 study was paid for entirely by the University of Texas, Groat said. The study's early stages have looked at regulatory violations and frameworks in states with major shale drilling operations, including Texas, Louisiana, New York and Pennsylvania, Groat said.

The EPA has said it expects to release preliminary findings by the end of 2012 and a final report in 2014.

TLMA QUESTIONS RRC ON ENFORCEMENT

The following letter was mailed to the Executive Director of the Railroad Commission of Texas in order to try to stimulate the discussion on the success and failures with regard to the enforcement of HB2259.

November 21, 2011

Mr. John Tinterra
Executive Director
Texas Railroad Commission
1701 N. Congress Avenue
P.O. Box 12967
Austin, TX 78711-2967

Dear Mr. Tinterra:

As you are well aware, the Texas Land and Mineral Owners Association (TLMA) is an association of over 1,000 landowners and mineral interest owners across the state.

Our association was very active in the passage in of H.B. 2259 during the 81st Legislative Session and also submitted written comments to your agency as you drafted the corresponding rules. At this date, two years after enactment of the legislation, we would like to give our members an update on the number of operators who have not been in compliance with the statute and have therefore had their P-5 operating permit denied. We would also like to know the number of those operators who are in compliance with the statute and have therefore had their P-5 permits extended.

We are having trouble locating this information on your website or within the agency. Can you please direct us where to look so we can find out how this law is helping keep wells from becoming orphaned and how junk equipment is being cleaned off the land.

Thank you for your time and consideration.

Sincerely,

Kitty-Sue Quinn, Ph.D.
Executive Director

Cc: Commissioner Barry Smitherman
Commissioner David Porter
Commissioner Elizabeth Ames Jones

TLMA ANNUAL AWARDS

In 2004, the **TLMA Outstanding Service Award** was established to promote and underscore the Association's continuing dedication to oilfield cleanup, protection of surface and groundwater, accurate royalty payments and to encourage new drilling of the state's oil and gas resources. The Board of Directors will award the TLMA Outstanding Service Award to one member who provides outstanding service to TLMA.

The ideal candidate for the 2011 TLMA Outstanding Service Award would:

- 1) Be a member of the Texas Land and Mineral Owners Association
- 2) Have made an outstanding contribution to TLMA through active service in the areas of leadership, recruitment, and legislative activities
- 3) Be dedicated to reinstating a sense of fairness in the relationship between those that use the land and those who live on it

To nominate a TLMA member for this award, please complete the nomination form below and submit it to the membership coordinator on or before January 15, 2012.

To honor those who have exemplified excellence in the areas of recruitment and production, TLMA will award the **TLMA Outstanding Membership Recruitment Award** and the **TLMA Outstanding Operator Award**.

The ideal candidate for the membership recruitment award would be any TLMA member who has taken an active role in recruiting new members to the Association.

The ideal candidate for the TLMA Outstanding Operator Award would be an environmental steward who works closely with royalty and land owners and is open to dialogue. Operator nominees can be small or large organizations.

To make a nomination for any of these awards, please complete the nomination form below and submit it to the membership coordinator on or before January 15, 2012.

Previous award winners are:

Outstanding Service Award

2004 Doug Beveridge, Houston
2005 J. Evetts Haley, Midland
2006 George E. Tanner, Corpus Christi
2007 Renato Ramirez, Zapata
2008 Carolyn Frost Keenan, Houston
2009 Roger Welder, Victoria
2010 Mike Gillean, El Campo

Membership Recruitment Award

2005 Rod Litke, Granbury
2006 Dr. John S. Baen, Denton & Morgan Dunn O'Connor, Victoria
2007 Carolyn Frost Keenan, Houston
2008 Billy K. Lemons, Nacogdoches
2009 Carol Holmes, Adell
2010 Rick Walker, Aguilares



TLMA Awards Nomination Form

2011 TLMA Outstanding Service Award Nominee(s): _____
(Please provide full name and city where landowner/royalty owner resides.)

2011 TLMA Outstanding Member in Membership Recruitment Award Nominee(s): _____
(Please provide full name and city where landowner/royalty owner resides.)

2011 TLMA Outstanding Operator Award Nominee(s): _____
(Please provide contact name, organization name and city where operator resides.)

Please attach a separate sheet of paper for each nominee explaining why the individual(s) or entity is being nominated.
Fax completed forms to (512) 479-5066 or mail to TLMA, Membership Coordinator, 1005 Congress Ave., Suite 360, Austin, TX 78701 by January 15, 2012.

Nomination submitted by (please print): _____

Signature: _____

Email address/ phone#: _____



Texas Land & Mineral Owners Association
 1005 Congress Ave., Suite 360
 Austin, TX 78701



**Increased membership is very important to the mission of TLMA
 Please help us recruit new members!**

TLMA Membership Request Form

I would like to join TLMA, please
 send me membership information

I'm a member, please update
 my contact information

Name _____

Organization/Ranch Name _____

Address _____

City _____ State _____ Zip _____

Telephone Number _____ Fax Number _____

Email Address _____

Have you moved recently?

If so, be sure to update your contact information with TLMA. Otherwise you may experience delays in receiving your newsletters, renewal notices, and other membership correspondence.

To change your address, contact Robbie Querner at (512) 479-5000, mail the attached form, or send an email to

membership@tlma.org.

Please return to: TLMA, 1005 Congress Ave., Suite 360, Austin, TX 78701