



Texas Land & Mineral Owners Association

Official Newsletter

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TLMA MEMBER DAVID PORTER DEFEATS CARRILLO IN PRIMARY FOR RAILROAD COMMISSIONER

On March 2, David Porter, a TLMA member from Giddings, defeated Victor Carrillo in the Republican primary for Railroad Commissioner with 61% of the vote.

"I have a professional as well as a personal interest in the oil and gas industry. I am always looking for ways to increase my knowledge and skills in managing my own property and assisting clients in keeping up with their interest. So I was glad to join TLMA a few years ago when I learned about the organization. I have learned much since becoming a member," says Porter.

"My election would bring a much needed viewpoint to the commission; the viewpoint of the ordinary citizen and voter," says Porter on his website.

"I have a strong personal interest in vigorous safety regulations that protect the public living near pipeline and oil well production and drilling activities as well as those working on them," continues Porter. "We live on a rural property between Giddings and Dime Box in the heart of the Austin Chalk oil field. There is a pipeline that runs through our property. There are two producing oil wells on the property in which we have no interest. Our water for the house, garden and cattle comes from a well on the property."

David Porter built a CPA practice in Midland focused on providing accounting and tax services to oil and gas producers, royalty owners, oil field service companies and other small businesses and individuals. In 1985, Mr. Porter left the CPA firm in which he was a partner and started his own firm, David J. Porter PC, which he still operates today. He and his wife, Cheryl, reside in rural Lee County between Giddings and Dime Box on land they purchased in 2004.

His current memberships include Texas Land & Mineral Owners Association, life member NRA, Farm and Ranch Freedom Alliance, Texas Society of CPA's, American Institute of CPA's, American Livestock Breeds Conservancy and Giddings Church of Christ.



David Porter

ROGER WELDER AWARDED 2009 TLMA OUTSTANDING SERVICE AWARD

Roger F. Welder was named 2009 TLMA Outstanding Service Award winner. Roger attended one of the very first organizational meetings for TLMA in the fall of 1999, and he joined the organization as soon as it was created in 2000. He has served with passion, intelligence, and distinction since that time.

Roger has been on the Board of Directors of TLMA since its inception and served as Chair of the board for the last four years. "Roger has worked tirelessly and effectively for the organization in all areas; legislative, organizational, membership recruitment, and public outreach," recognized Morgan O'Connor, a TLMA Board Member.

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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.

1005 Congress Ave., Suite 360
Austin, Texas 78701
(512) 479-5000 (phone)
(512) 479-5066 (fax)
info@tlma.org (email)
www.tlma.org

ROGER WELDER AWARDED 2009 TLMA OUTSTANDING SERVICE AWARD

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"Mr. Welder's specific expertise in oil and gas law, and real world experience in drilling wells, and developing oil and gas fields made him uniquely qualified to shepherd TLMA during its formative years. His inclusive leadership style and engaging personality benefited TLMA both in the boardroom and in the Texas legislature" concluded O'Connor.

"Mr. Welder has been a mentor and a friend and I cannot thank him enough for his kindness and commitment to TLMA and its issues," said Kitty-Sue Quinn, Ph.D., executive director of TLMA.



Roger Welder

SCOTT NEW TLMA VP FOR REGION 1

Trey Scott was nominated and elected TLMA Vice President for Region 1 centered around San Antonio at the January 2010 TLMA Board Meeting. Mr. Scott replaces Morgan O'Connor who was recently elected to the TLMA Board of Directors. In 1981, Mr. Scott opened his office as an independent landman, overseeing several lease brokers, successfully acquiring hundreds of oil and gas leases and related duties. Mr. Scott's experience in the oil and gas industry continued to expand to include an in-house position with Sutton Producing Corporation where his duties included many aspects of oil and gas exploration and development.

After his time on the industry side of oil and gas, Mr. Scott began an association with BHCH Mineral Limited where he successfully acquired mineral and royalty interest in several hundred producing oil and gas wells across the United States. Mr. Scott was involved in all aspects of managing that oil and gas portfolio, including the development of databases and software.

Subsequently, Mr. Scott started adding to his client list large South Texas ranches, where his responsibilities include overseeing and managing all aspects of mineral and royalty ownership including lease compliance and royalty audits in addition to surface operations from drilling locations, pipelines, surface facilities, remediation and environmental issues. In September of 2005, at the request of some key clients, Mr. Scott expanded his services by founding Trinity Mineral Management, LTD., where Mr. Scott is currently the Managing Partner.

Mr. Scott is a member of the Texas Land and Mineral Owner Association, the American Association of Professional Landmen and San Antonio Association of Professional Landmen where he served as President and currently serves as Education Chairman.

LANDOWNER'S BILL OF RIGHTS POSTED FOR COMMENTS

The 2007 Landowner's Bill of Rights Act required governmental and private entities with eminent domain authority to provide landowners a written statement of their rights and options under Texas law before their property is condemned. The Office of the Attorney General is responsible for drafting and publishing the Landowner's Bill of Rights.

The Legislature recently passed House Bill 2685, which required the Office of the Attorney General to update the Landowner's Bill of Rights so that it reflects legislative and constitutional changes during the 81st Legislative Session. The text of the proposed updated Landowner's Bill of Rights was posted in the Texas Register on Dec. 25, 2009 and is accessible at the following link: <http://www.sos.state.tx.us/texreg/>. The following is TLMA's response to a request by the Office of the Attorney General for TLMA to provide comments to the proposed Landowner's Bill of Rights.

February 5, 2010

Intergovernmental Relations Division,
Office of the Attorney General
P.O. Box 12548
Austin, Texas 78711-2548

Thank you for allowing the Texas Land and Mineral Owners Association the opportunity to provide written comments on recent revisions to the Texas Landowner's Bill of Rights. As an association comprised of members who often deal with condemnation issues, we are pleased to be afforded the opportunity.

Generally speaking, TLMA believes the document is helpful; both in the old format and with the new text reflecting changes made last legislative session. We believe the document could be improved by addressing the following concerns:

1. **Remedy:** The document does not provide adequate guidance to a landowner on what remedy is available if the Bill of Rights is not produced at the proper time. We recognize the law is silent on the matter, but what option does this leave a landowner?
2. **How the Taking Process Begins:** The two different provisions regarding when the Bill of Rights must be sent to the landowner is confusing. It looks like it should be sent twice – once at initial contact and then again in the mail at least 7 days prior to the final offer. Is this correct? What are the policy reasons behind this and should they be explained in the document?

Other issues: There are other issues involved in the condemnation process that TLMA takes issue with. We recognize however that those issues must be addressed by the Texas Legislature and not by the Office of Attorney General in compiling the Landowner Bill of Rights as statutorily directed.

In conclusion we would like to again thank you for including TLMA in the stake holder process. We look forward to seeing your finished product.

Sincerely,

Kitty-Sue Quinn, Ph.D.
Executive Director
Texas Land and Mineral Owners Association

MARK YOUR CALENDAR

March 19-21, 2010 – Texas and Southwestern Cattle Raisers Association Annual Convention, Ft. Worth Convention Center. For more information call 800-242-7820 or www.tscra.org/convention.

March 25, 2010 – TLMA Educational Town Hall Meeting, Garden City, Texas. 6:30 pm, Garden City Community Center, 117 S. Myrl, For directions call 432-354-2381. For more information call the TLMA office at 512-479-5000.

April 8-9, 2010 – 36th Annual Ernest E. Smith Oil, Gas & Mineral Law Institute, Hyatt Regency, Houston, Texas. For more information contact The University of Texas School of Law at 512-475-6700 or www.utcle.org.

October 2010 – Texas Land and Mineral Owners Association Bi-Annual Meeting, San Antonio - date and specific location to be announced.

WHO OWNS THE WATER BENEATH YOUR PROPERTY?

By Cynthia Cox Payne, Esq., Taken by permission from the February 25, 2010 issue of the Bandera County Courier.

A case with far-reaching implications was argued last week before the Texas Supreme Court (TSC), *Edwards Aquifer Authority and State of Texas v. Burrell Day and Joel McDaniel* (EAA v. Day).

As summarized by the TSC staff attorney, the issues include “(1) whether landowners within the Edwards Aquifer boundaries own the groundwater under their property, and (2) whether water from an artesian well that flowed into a reservoir constituted water controlled by state regulations or by the Edwards Aquifer Authority.”

Technically, Day sought a permit from EAA for 700 acre-feet of water from the Edwards Aquifer to irrigate crops. However, the well on Day’s property had inadequate operating information during the historic period (June 1, 1972 to May 31, 1993), which was required by the Edwards Aquifer Authority Act to support the permit request.

After a contested hearing, Day was given a permit to pump 14 acre-feet of water per year – considerably less than the 700 acre-feet sought. Day alleged this confiscation of water rights, without due process and just compensation, was a “taking,” which violated the Texas Constitution, Article I, §17. Day appealed this decision to the district court and that decision was appealed by both parties to the 4th Court of Appeals.

The 4th Court of Appeals held: (1) property owners have a vested right in the groundwater under their land and, hence, are entitled to constitutional protection, and (2) water pumped from a well which entered a lake becomes state water inasmuch as the lake is a watercourse.

A suggestion of how the TSC would view the issue of who owns the groundwater was, perhaps, seen by their handling of *City of Del Rio v. Clayton Sam Colt Hamilton*. This is a case on which the 4th Court of Appeals ruled in 2008 holding that a landowner does own the water under his land and that ownership is a vested right.

When a petition of review was filed on *City of Del Rio* with the TSC, the TSC declined to hear it. Review was denied on Sep 23, 2009 and rehearing of petition for review was again denied on Dec 11, 2009, a little over two (2) months ago.

While the notation, “review denied” does not mean that the TSC believes the judgment of the 4th Court of Appeals is correct and all legal principles announced in the opinion are likewise correct, it does mean that the decision presents no error that requires reversal or that is of such importance to the jurisprudence of the state as to require correction.

On this significant issue of whether property owners have a vested interest in the groundwater beneath the land they own, in addition to EAA and Day and the State of Texas – which was added as a defendant by EAA – 15 different organizations weighed in on this issue in the form of amicus briefs.

Some of the amicus briefs were filed by the Texas and Southwestern Cattle Raisers Association, the Texas Farm Bureau, the Texas Comptroller of Public Accounts, the Texas Wildlife Association, the Harris-Galveston Subsidence District and Canadian River Municipal Water Authority, to name a few.

However, TSC decisions do not turn on which organizations line up on a particular side. Some questions and comments posed by the justices during oral arguments included:

- “A landowner has some rights (to groundwater), what are they?”
- “Why should we treat water differently than oil and gas?”
- “Texas Water Code §36.002 states: ‘The ownership and rights of the owners of the land and their lessees and assigns in groundwater are hereby recognized ...’ So, what ownership is the statute addressing?”
- “Why distinguish groundwater in place from zoning?”
- “If regulation of groundwater is okay, then, what formula should the state use (to set limits)?”
- “If the case went back down, what would the takings claim look like?”
- “If you (litigant Day) prevail, does that open the floodgate to litigation?”
- “One side says there is no vested right (of landowner) in groundwater. The other side says there is a vested right but it is subject to regulations. Which is more reasonable?”
- “I have a problem with the all or nothing approach in the briefs.”

Some decisions take a year before they are announced by the TSC. In the interim, speculation and uncertainty will abound.

TINY TOWN OF DISH STIRS UP HORNET'S NEST OVER AIR POLLUTION IN BARNETT SHALE

Dish is a town of about 200 residents north of Fort Worth, Texas. The mayor and town council have recently become concerned about emissions from gas compressors and wells in and around the town, from the Barnett Shale gas development. Large compressor stations are located near Dish; these stations have big internal combustion engines that compress gas to move it through gas transmission lines in the area. The town hired an environmental firm, Wolf Eagle Environmental, to conduct air quality tests and has complained to the Texas Commission on Environmental Quality about air emissions. The small community has now become the focus of the larger debate over the impact of Barnett Shale wells on air quality in the Dallas-Fort Worth area and the impact of oil and gas drilling and production activity on the environment generally.

Recently an environmental group, Earthworks, conducted an unscientific survey of residents in the area of Dish. According to Earthworks, 19% of those surveyed considered themselves to be sick, and reported "odor events." According to Earthworks, "61% of the health impacts reported by participants are known health effects of chemicals detected in the air by Wolfe Eagle Environmental in August 2009."

The town of Dish was recently featured in a national news feature by John Burnett broadcast on National Public Radio. Burnett reported that a local pediatric nurse and her two children, who live downwind from the compressors, started having headaches, dizziness, blackouts, muscle contractions, and other health symptoms, and she's convinced that the compressors are the source of the problem.

The work of Wolf Eagle Environmental and the Earthworks survey have been criticized as unreliable. Gene Powell, Jr., publisher and editor of Powell Barnett Shale Newsletter, says that the Earthworks survey included 31 individuals between the ages of 4 and 69, many of whom could have been from the same families -- 15% of a population of 200. Powell also says that Wolf Eagle Environmental is a sole proprietorship owned by Alisa Rich, who is not a registered engineer but has a Masters Degree in Public Health and was a teaching Lab Tech at Collins County Community College. The City of Fort Worth hired another environmental firm to evaluate the Wolf Eagle report. Industrial Hygiene and Safety Technologies, Inc. opined that Wolf Eagle's report ignored other possible sources for air contamination, did not sample for compounds associated with gas well operations, had "generally exaggerated and speculative" discussions of chemical hazards, and "does not ... provide sufficient evidence to demonstrate adverse impact from gas well exploration and operations...."

In response to Dish's complaints and other complaints about air quality in the DFW area, the TCEQ has gone into action. It has conducted an air sample monitoring program in the area. It has set up a website explaining its actions. And it has issued a memorandum to all regional directors directing that "all complaints received regarding oil and gas activities in the Barnett Shale will be given an 'Immediate Response' priority. An on-site investigation will be conducted by the Dallas/Fort Worth Region staff within 12 hours of receipt of the complaint by the regional office." The TCEQ will conduct an investigation at the site complained of using a GasFind IR (infrared) Camera and will take air samples when warranted. TCEQ's initial air sampling in Dish led it to conclude that "the monitored concentrations of benzene at several of the sampling locations could pose a long-term health risk to residents in the area if the concentrations are representative of normal and prolonged ambient conditions." TCEQ will conduct additional sampling in the area.

Personnel from TCEQ attending a Dish town council meeting said that the agency is making air quality in Dish a top priority. "We hear you," said Susana Hildbrand, the TCEQ air quality division chief engineer. "You're our top priority now." Not satisfied, Dish town commissioner William Sciscoe called for a Congressional investigation into how TCEQ and the Texas Railroad Commission have handled complaints about air quality in the Barnett Shale. Dish Mayor Calvin Tillman is rumored to be considering a run for a seat on the Railroad Commission.

The Texas Department of Health Services also said it will collect blood and urine samples from about 50 Dish residents this year, which will be analyzed by the federal Centers for Disease Control and Prevention for the presence of volatile organic compounds and toxins such as benzene and zylene.

The town of Flower Mound, also near Fort Worth and in the Barnett Shale play, recently considered but rejected a staff proposal to impose a moratorium on new gas drilling permits in the town limits until concerns about possible toxic airborne emissions from gas drilling and production activities are addressed.

Gene Powell of Barnett Shale Newsletter calls these developments a "benzene scare" in North Texas, based on "incomplete test results from only a few locations and private studies for which serious credibility questions have been raised."

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In response to the concerns raised by Dish, State Representative Lon Burnam, Dem. Fort Worth, asked nine questions of the Texas Commission on Environmental Quality concerning its investigations of emissions of methane and volatile organic compounds from oil and gas operations in the Barnett Shale area and in Texas in general. Rep. Burnam also called for the City of Fort Worth and the Texas Railroad Commission to place a moratorium on issuing permits for drilling until additional testing has been done. A group of concerned citizens has formed the North Central Texas Communities Alliance, to press for a moratorium in the DFW area until environmental and other concerns are addressed.

The TCEQ's response to Rep. Burnam's questions provides some interesting data:

The TCEQ has used infrared imaging cameras (IR cameras) to identify sources of emissions of methane and volatile organic compounds (VOC's) from industry sites in Texas. The IR cameras do not measure the quantity of the emissions, but identify potential problem sites. TCEQ issues permits allowing emissions of regulated contaminants, including methane and VOC's, and part of its job is to assure that industrial sites have proper permits and that their emissions comply with those permits. The TCEQ says, that, since 2005, it has conducted IR camera surveys of more than 1,000 sites at oil and natural gas sources in 58 Texas counties, mostly around individual tanks or tank batteries and compressor stations.

A survey of the Gulf Coast and North/Central Texas areas in 2007 using IR cameras showed 64 sites in the Gulf Coast area and 93 sites in the North/Central area with visible emissions. The agency selected 10 sites in the North/Central area and 10 sites in the Gulf Coast area to investigate further. Nine companies own or operate the 20 sites. TCEQ asked the site operators to conduct tests of its emissions. Six sites did not submit data. Data from 14 sites showed emissions in excess of permitted limits. The TCEQ estimated that the 20 sites emitted 2,297 tons of VOC's in 2005. After TCEQ worked with the operators to reduce their emissions, the TCEQ estimated that VOC emissions from those sites in 2007 was reduced to 90 tons. TCEQ said that most reductions in emissions were achieved by decreased production.

As a result of the 2005 IR camera survey, the TCEQ developed a project to test emissions from storage tanks used in the upstream oil and gas industry. Based on this project, the TCEQ increased its estimate of emissions from storage tanks in Texas by a factor of 3 to 11, a total increase in estimated annual emissions of 620,000 tons. TCEQ estimates that 2008 emissions of VOCs from upstream storage tanks in Texas were 1,128,766 tons, equivalent to 8,639,647 barrels of oil.

The "best available technology" for reducing emissions from storage tanks is a vapor recovery unit. Such a unit captures the VOCs that evaporate in tanks and allows them to be sold as part of the production stream. Rep. Burnam asked TCEQ how long it would take a producer to recover the cost of installing a vapor recovery unit for a typical well in Texas. TCEQ referred Burnam to a study conducted by the EPA showing that the cost of a vapor recovery unit could typically be recovered between 3 and 19 months, depending on the price of natural gas. "The Environmental Technology Verification Program at EPA evaluated the Eductor Vapor Recovery Unit (EVRU) from COMM Engineering. The \$108,000 EVRU recovered 175 Mscf/day. Assuming a prices value of \$5.46 per Mscf, the total value of recovered gas was estimated at \$650,000 per year for an approximate two month payback." The EPA has developed a tool to estimate costs and assumptions and calculate a payback for installation of vapor recovery systems, available online.

The mayor of Dish, Calvin Tilman, appeared at the RRC's January 12 open hearing. The mayor's appearance was prompted by an item placed on the agenda by Commissioner Michael Williams, which in turn had been prompted by a letter sent to the Commissioners by State Rep. Ron Burnam. Rep. Burnam's letter asked the RRC to place a moratorium on permits for wells in the Barnett Shale around Fort Worth until the Texas Commission on Environmental Quality (TCEQ) has finished its investigation of air quality in the area. In response, Commissioner Williams proposed that the Commissioners write a letter to the Texas Attorney General asking for a formal opinion whether the RRC has authority to issue such a moratorium.

Mayor Tilman read a prepared statement to the Commissioners and then answered questions. He said that Dish has 180 citizens and a budget of \$70,000. The town marks the intersection of eleven gas transmission lines and eleven compressor stations serving the Barnett Shale. When citizens complained of noise and odors, the Mayor began complaining to State regulators, including the RRC and the TCEQ. Dish commissioned an air quality study which found elevated levels of benzene in the air. Mayor Tilman encouraged further air quality studies but said that, until recently, he had received no

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responses to his complaints. He alleged that there is "no safe level of benzene," and that reduction in emissions will not take place until mandated by regulation. He said that failure to act will cause leukemia and birth defects. Mr. Tilman said that existing emissions control technologies can reduce emissions by 90%, that such technologies are being used in other states, and that the technologies are part of the EPA's natural gas "Star" program for reducing emissions.

Mr. Tilman then responded to questions from the Commissioners. The Commissioners were obviously prepared for the opportunity. They questioned the veracity of Dish's air quality study and suggested that air contamination could be coming from sources other than oil and gas facilities. They questioned a health assessment questionnaire used in Dish. The Commissioners also made clear that air quality was not within the RRC's jurisdiction. All three Commissioners announced that they gravely doubted that the RRC had authority to impose a drilling moratorium and in any event would not be in favor of one. They assured Mr. Tilman that they would work with the TCEQ to investigate complaints made by citizens.

Mr. Tilman has subjected himself to severe criticism by the oil and gas industry. In his answers to questions, he said he believes that the source of the contamination is emissions from the gas compressors. He previously complained about noise made by the compressors and has convinced some companies to install noise abatement equipment. There is no question that the gas compressors emit contaminants, including some volatile organic compounds, including benzene.

Mayor Tilman has since made a trip to Pennsylvania, which is experiencing its own gas drilling boom in the Marcellus Shale play, to talk to citizens concerned about the impact of gas drilling in their state.

On the same day as the RRC hearing, the TCEQ issued a report of three days of air sampling done in the Fort Worth area, and made a presentation to the Fort Worth City Council of its findings. The Fort Worth City Council is considering conducting its own independent air quality tests.

VOCs are greenhouse gases. With expected increases in regulation of greenhouse gases and increased drilling activities in urban areas, particularly those like the DFW area which are "non-attainment" areas for air quality, it can be expected that the petroleum industry will face increasing pressure to use best available technologies, including vapor recovery systems, to reduce emissions of VOCs from petroleum storage tanks and compressor stations.

This article was provided by John B. McFarland an attorney with Graves, Dougherty Hearon & Moody, P.C. in Austin, TX. 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.

HOLMES AWARDED TLMA 2009 MEMBERSHIP RECRUITMENT AWARD

"I'm passionate about helping people like ourselves but have come to realize that, as time goes by and more and more neighbors' land is used without fair and proper negotiations, it is about hopeless to change the direction of oil and gas drilling without the support of committed organizations and legislators," said Carol Holmes. "Right now, all I can do is be a focal point for my neighbors, writing letters and making calls to whomever may be able to help... I have also met with our nemesis after legal action has failed to try and move things in a more positive, amicable direction. I don't know where that is going but I'm not giving up. Something has got to give!" continued Holmes.

"In my off time, I am a Xerox agent with access to a lot of people in my community! I've been with the same company for 17 years and enjoy being outdoors, reading, gardening and traveling. My husband is retired from his steel fabricating business and we enjoy our horses, dogs and cattle on our small ranch that shares four wells 500 feet from my kitchen door," shares Holmes.

Carol and her husband, Trellis, reside in Adell, TX.



Carol Holmes

"Carol sponsored a TLMA educational event in her community and has been available to answer any questions regarding marketing TLMA membership in her neighborhood," said Kitty-Sue Quinn, Ph.D., executive director of TLMA. "She seems very committed to positive change between the landowner and the oil and gas industry. I sincerely congratulate her for her hard work."

**TLMA NEWSLETTER AVAILABLE
VIA E-MAIL**

In an effort to save resources and money, the TLMA newsletter is now available via e-mail. Instead of receiving the Quarterly TLMA Newsletter in the mail, you can opt to receive a link to the web site when the newsletter is available. The most recent TLMA Newsletter as well as those dating back about one year are always available on the TLMA website at: www.tlma.org/news but now you can have the option of receiving notice when the most recent version has just been posted.

If you would like to receive the TLMA Newsletter via a link on an e-mail rather than receiving the print copy please e-mail the TLMA office at info@tlma.org.

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