



Texas Land & Mineral Owners Association

Official Newsletter

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WATER: TWO TEXAS SUPREME COURT CASES BUBBLING UP!

The Texas Supreme Court will decide soon whether to hear two different cases that could have major implications for landowners and the water beneath their ground. This could be the biggest development in groundwater case law since the *Sipriano* decision from 1999.

The first case is *City of Del Rio v. Clayton Sam Colt Hamilton Trust*. In a nutshell, the Clayton Sam Colt Hamilton Trust (Trust) sold fifteen acres of its 3,200 acre-tract to the City of Del Rio in 1997. The fifteen acres border a state highway. In the warranty deed the Seller retained all of the oil, gas, and other mineral rights using language commonly drafted for such a document. But the trust also had language inserted that states: "Grantor Reserves unto Grantor, its successors, heirs and assigns forever all water rights associated with said tract, however, Grantor may not use any portion of the surface of said tract for exploring, drilling or producing any such water."

Three years after the City purchased the tract, it felt the need to augment municipal drinking water supplies and drilled a water well on the fifteen acre-tract. The Trust then issued a cease and desist letter and immediately drilled some water wells of its own in the nearby vicinity of the fifteen acre-tract. The City rejected the Trust's claim and the Trust filed suit. The trial court and appellate court both ruled in favor of the Trust; the appellate court holding that 1) landowner was entitled to sever groundwater from surface estate by reservation when it conveyed surface estate to city; 2) city was not permitted to drill and pump groundwater from beneath tract under rule of capture; and 3) landowner's reservation of all water rights did not violate State Constitution's prohibition against perpetuities. The City of Del Rio has now petitioned the Supreme Court to hear the case.

The second case, entitled *Edwards Aquifer Authority v. State of Texas v. Burrell Day and Joel McDaniel*, could impact groundwater conservation efforts by Texas landowners and clarify the authority of the 91 conservation districts regulating groundwater use across the state. At issue is the claim by landowners that EAA's permitting decisions resulted in a taking. The EAA claims, on the other hand, that the Supreme Court's *Barshop* decision from 1996 means landowners do not have a constitutionally protected right in groundwater.

We will know soon whether the Supreme Court decides to hear either one of these cases.

INSIDE THIS ISSUE

- Water & the Texas Supreme Court
- 81st Legislative Session Re-Cap
- TLMA Now Accepts Credit Cards
- TLMA Newsletter Available Via E-mail
- O'Connor Case Raising Publicity
- Recruit New Members
- Upcoming Events

Got Internet? Be sure to check out our web site at: www.tlma.org

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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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**81ST LEGISLATIVE SESSION – 2009
RECAP**

BILLS PASSED

- **HB 2259** – Financial Security for Oil and Gas Operators. Increased bonding requirements and clean up responsibilities for operators. This is small improvement in current law. TLMA sought even tougher standards but the legislature sided with industry. – **Signed by the Governor.**
- **HB 2685** – Landowner Bill of Rights. Requires an entity with eminent domain authority to provide landowners with a copy of the Landowner's Bill of Rights before beginning condemnation proceedings. **Signed by the Governor.**
- **HJR 14** – Creates a constitutional amendment to limit eminent domain powers for economic development. **Election to be held November 3, 2009.**

BILLS DEFENDED

- **HB 834** – Severance of Mineral Interests. Would have created a structure where mineral interests can be severed from the land for non-use. **Failed to Pass.**
- Successfully ensured that efforts to require forced pooling did not get filed. *(no bill number)*

NEGOTIATED/OPINION SOUGHT/TESTIMONY GIVEN

- **HB 4246** – Lost and Unaccounted for Gas. –Would have set limits on how much line loss a pipeline can claim. **Failed to pass.**

BILLS OF INTEREST

- **HB 1231/HJR 62** – Would have reduced number of Railroad Commissioners from three to one. **Failed to Pass.**
- **HB 1405** – Would have required licensure and regulation of Texas Landmen. **Failed to Pass.**
- **SB 341/HB 499** – Would have changed name of Railroad Commission to Texas Energy Commission. **Failed to Pass.**

TLMA ALERTS GO OUT VIA E-MAIL AND FAX.

Due to the rising cost of printing, ALERTS are only sent to those membership without e-mail and fax addresses when it is urgent.

If you have not provided us with a correct e-mail or fax number you may be missing out on educational opportunities, legislative updates, and other information.

SEND US YOUR E-MAIL ADDRESS OR FAX NUMBER TODAY!

Also note, if you have spam filters be sure to add @tlma.org to your safe list.

TLMA NOW ACCEPTS CREDIT CARDS

Call the TLMA office or go on-line at www.tlma.org/join.

If you choose to pay on-line, you will be asked to click on a button that will redirect you to the PayPal website and given payment instructions from there. You will not need to join PayPal.

We hope this will aide in membership recruitment of younger possibly more internet savvy members and provide an extra maybe more convenient option for existing members to renew.



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.

O'CONNOR CASE RAISING PUBLICITY

As reported in previous TLMA newsletters, the Texas Supreme Court recently overturned decisions by the appellate court and trial court granting damages to the O'Connor family for wells that were plugged in a manner that prevented re-entry in fields in Refugio County. A petition for re-hearing has been requested but has not been ruled upon yet.

It is somewhat rare for a rehearing to be granted, however, it is interesting to note that a few of Texas' Statewide officials have gotten involved.

According to the Texas Weekly Newsletter, "Comptroller Susan Combs sent a letter to the court saying the ruling "could reduce the flow of the state's revenues" and writes that the impact on the so-called Rainy Day Fund – filled with oil and gas production taxes – could be an even bigger fiscal threat. And because that's used to shore up the state in tough times, she argues, any damage to the Rainy Day Fund could then prompt bond-rating agencies to lower their expectations for Texas bonds, raising the state's borrowing costs."



Likewise, Land Commissioner Jerry Patterson has also issued a press release lambasting the court's decision and has petitioned the Railroad Commission to hold a show-cause hearing and issue a penalty against the company.

No word yet on how any of this will turn out... stay tuned.

**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



Upcoming Events

- Sept. 24, 6:30 pm, Presentation by TLMA Executive Director, Dr. Kitty-Sue Quinn at a neighborhood meeting in Weatherford, Adell Community Fellowship Church, 101 Adell Rd, Weatherford, TX - (940) 682-4224 for directions
- Nov. 2, Presentation by TLMA Executive Director, Dr. Quinn at Rural Chief Appraisers Meeting, Austin



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