



TEXAS LAND & MINERAL OWNERS ASSOCIATION OFFICIAL NEWSLETTER

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1st Quarter 2017

85TH LEGISLATIVE SESSION BEGINS

The Texas Legislature convened its 85th Regular Session on January 10th. After the March 10th filing deadline, more than 5,200 bills and resolutions were filed in the House, and more than 2,700 were filed in the Senate.

TLMA is pleased to report the filing of HB 3198 by Rep. Darby. The bill protects landowners with oil and gas activities on their property from ad valorem tax rollbacks. If a county tax appraisal district removes an open-space land-use exemption, like an agricultural or wildlife exemption, from all or a portion of the property because of oil and gas activities, the bill would prohibit the district from further penalizing the surface owner by collecting the difference in taxes going back five years, plus interest. Sen. Estes filed SB 1514 to also address the potential loss of an open-space exemption. The bill states that beginning oil and gas operations on open-space land does not necessarily end the land's eligibility for an exemption. TLMA thanks Rep. Darby and Sen. Estes for filing our bills to protect surface owners from additional tax burdens, especially for those surface owners who do not own or benefit from the minerals under the land.

TLMA is tracking many bills filed that will impact our members, including SB 1, the state budget bill. On February 9, TLMA Executive Director Laura Buchanan testified before the Senate Finance Committee on the Railroad Commission ("RRC") budget appropriations, asking that the legislature not cut any RRC funding that would impact the agency's ability to enforce its rules and regulations or protect land owners in Texas.

TLMA is monitoring numerous other bills that would

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COURT RULES AGAINST LANDOWNERS IN EMINENT DOMAIN CASE



In January, the Texas Supreme Court issued its decision in the second appearance of a case involving a dispute between Texas Rice Land Partners, LLC and Denbury Green Pipeline-Texas, LLC. The Court found in favor of Denbury, holding that the pipeline would serve a "public use."

Texas Rice Land Partners claimed Denbury lacked eminent-domain authority back in 2007 when it initially sought access to their property to build its pipeline. The lower courts denied Texas Rice Land Partner's effort to stop the condemnation of their land. However, in what was hailed a victory for landowners in Texas, the Texas Supreme Court reversed those decisions in 2012.

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1005 Congress Ave., Suite 360

Austin, Texas 78701

(512) 479-5000

info@tlma.org

www.tlma.org

TLMA NAMES FIRST SLATE OF HONORARY AND ADVISORY DIRECTORS

At the TLMA Statewide Members Meeting in October 2016, TLMA members vote to revise the Association's bylaws. The approved revisions include bylaws sections that allow the TLMA Board of Directors to name Honorary Directors and Advisory Directors.

The TLMA Board of Directors voted to name as Honorary Directors the founding board members of TLMA and former board members who were a part of TLMA in some capacity since its formation in 1999. The new Honorary Directors include the original, founding directors the Honorable Dolph Briscoe, Jack Hunt, Roger Welder, and J.A. Whittenburg, III, as well as the Honorable Cullen Looney, who joined the board in 2001, Doug Beveridge who served as a founding officer of the association and then joined as a director in 2002, Chaunce Thompson, Jr., who served as a director from 2004 to 2011, and Morgan Dunn O'Connor, a founding member and Vice President of TLMA who then served as Vice Chairman of the Board from 2010 until 2016.

In recognition of their efforts and advocacy on behalf of TLMA and its members, the Board of Directors voted to name the following Advisory Directors—Joseph B.C. Fitzsimons, John B. McFarland, Howard P. Newton, George J. Person, and Dr. Kitty-Sue Quinn. TLMA thanks these individuals for their invaluable contributions to the Association over the years and in the future.

As set out in the revised TLMA bylaws, the Board of Directors may name as Honorary Director a former director who has provided exemplary service to the Association. Given the valuable time and resources contributed by each of the newly-named Honorary Directors, the Board felt these individuals exemplified qualification.

The bylaws provide that the Board of Directors may appoint as Advisory Director a member of the association who provides specific expertise of great value to the association.

Advisory and Honorary Directors are appointed for a term of two years, not subject to term limits.

VISIT THE TLMA WEBSITE TODAY

TLMA wants to hear from you! We have set up a survey on our website to gather your feedback and opinions on how TLMA can best serve our membership and the State of Texas. When you have a free moment, please visit the website and tell us your thoughts about TLMA and our current and future activities.

Every survey response will help TLMA improve and evolve as the changing landscape of Texas evolves. Let us know how we are doing and what we can do better. Thank you!

Don't forget, you can sign in and take advantage of features for TLMA members' only on the website, such as the Discussion Forum.

TWO TEXAS SUPREME COURT CASES TO WATCH

Forest Oil v. El Rucio Land and Cattle Co, et al

TLMA recently filed an amicus curiae brief in this Texas Supreme Court case. The long-running case is important for TLMA members because an unfavorable decision by the Court could strip rights and remedies from landowners faced with contamination by oil and gas companies.

In 2004, James McAllen filed a lawsuit against Forest Oil for burying mercury-contaminated iron sponge wood chips on the McAllen Ranch and for providing Mr. McAllen fence-building pipe that contained radioactive material, causing his cancer. Forest argued that the lawsuit was improper because Mr. McAllen was bound by an arbitration agreement in their lease. In 2008, the Texas Supreme Court found in Forest's favor that Mr. McAllen's claims must go to arbitration. Mr. McAllen won in arbitration and was awarded money damages, which the trial court confirmed. Forest appealed, and in February, the Texas Supreme Court heard oral arguments on Forest's appeal.

After it spent four years fighting to force arbitration, the company now argues that the arbitration should be thrown out because private arbitration subverts the Railroad Commission's ("RRC's") jurisdiction. It claims the legislature gave the RRC exclusive jurisdiction over wastes associated with oil-and-gas operations, and that the claims for monetary damages for the contamination are actually public health and safety issues that must go through the RRC.

The Court also heard Forest's claim that one of the arbitrators was biased. The Court did not give any indication as to which of Forest's claims caught the Court's attention to hear the appeal. A court decision finding the RRC has exclusive jurisdiction over contamination claims would nullify carefully-negotiated surface-agreement contract terms for clean-up and remediation, forcing claims through the RRC process and subject to RRC standards for remediation with no option for necessary monetary damages.

TLMA joined South Texans' Property Rights Association, Texas and Southwestern Cattle Raisers Association, Texas Farm Bureau, Texas Wildlife Association, Texas Cattle Feeders Association, Landowner Coalition of Texas, and Texas Forestry Association in filing an amicus curiae brief to support landowners' rights and remedies and preserve your freedom of contract.

Murphy Exploration v. Adams, et al (Herbst)

TLMA is also filing an amicus brief in a dispute over what qualifies as an offset well. In this case, a producer on an adjacent tract drilled a well near enough to the Herbst's lease line to trigger the offset clause in their lease. Murphy Exploration was required to drill an offset well, pay royalties, or release acreage under the lease. Murphy drilled a well on the opposite side of the Herbst's tract, almost as far from the adjacent well as it could be and still be located on the Herbst's lease, and called it an offset well.

At issue in this appeal to the Texas Supreme Court is whether Murphy had to prove that the offset well actually is protecting the Herbst's lease from drainage, or if, because the lease did not specifically define offset well or set distance requirements, Murphy could drill a well anywhere it wanted on the lease and say it satisfied its offset obligation. The 4th Court of Appeals held that, despite there being no definition in the lease, there is a commonly-understood meaning of the term offset well—a well to protect a leasehold against drainage to an adjacent tract. It found that Murphy needed to and failed to provide specific evidence to the trial court that proved the well it drilled was protecting the lease against drainage.

TLMA, in filing a brief in this case, is asking the Texas Supreme Court to uphold the Court of Appeals' correct decision. A holding to the contrary would essentially render meaningless the term "offset" in lease offset provisions. It would ignore the well-established understanding in the industry and in Texas law that an offset well has a specific purpose, and it could allow operators to contend that any well drilled, regardless of its location on the lease, would meet its offset requirements even while letting the leasehold be drained to the adjacent tract.

MEMBERSHIP RECRUITMENT AWARD RECIPIENT LICA PINKSTON

The Texas Land & Mineral Owners Association is pleased to present the 2016 Membership Recruitment Award to Lica Pinkston of Alice, TX. Lica has been a TLMA member from the beginning of the Association, and she has served on the TLMA Board of Directors since 2010.

The Membership Recruitment Award was created to honor a TLMA member who has taken an active role in introducing other land and mineral owners to TLMA and helping to bring new members to the association.

Lica made great contributions to the growth of TLMA in 2016, working to inform others in her region about the Association and encouraging them to join. Throughout her membership in the Association, Lica has been an active supporter of TLMA's efforts, and encourages members to participate.

"TLMA is a means whereby we as mineral, royalty, and land owners can contribute to the success of the organization by showing legislators that we care what happens to our environment and we expect the oil companies to comply with the rules and regulations that have been laid out for them," said Lica.



OUTSTANDING SERVICE AWARD RECIPIENT TREY SCOTT



TLMA's 2016 Outstanding Service Award goes to Trey Scott. Trey has been a member of TLMA for almost 15 years, and he has served as a TLMA District Representative, the position formerly titled Vice President, since 2010.

The Outstanding Service award honors a TLMA member who is dedicated to reinstating a sense of fairness in the relationship between those that use the land and those who live on it, and who has made an outstanding contribution toward that end.

Trey has generously contributed his time, service, and expertise toward TLMA's goal of protecting and enhancing private property rights for Texans. In 2016, Trey provided invaluable information and insight to assist TLMA in preparing testimony and devising the best response to legislative concerns, particularly in the area of Railroad Commission enforcement and its flaws.

In addition to assisting TLMA in legislative interim hearings, Trey shared his insight into the Railroad Commission and the problem with inactive wells in an outstanding article that appeared in the December 2016 TLMA newsletter.

THE 85TH LEGISLATIVE SESSION BEGINS—CONTINUED FROM PAGE 1

have a positive impact on our members. For example, Rep. Craddick filed HB 129 to require information be printed on your royalty check stub unless you opt-in, rather than current practice of having to opt-out, to receive the information online. HB 247 by Rep. Anchia and its companion SB 568 by Sen. Rodriguez will require the RRC to allow public access to enforcement information through its website. HB 2715 by Rep. Darby requires specific penalties and fees that are collected by the RRC be deposited into the Oil & Gas Cleanup fund.

TLMA's participation in the Texans for Property Rights coalition will push for reform to the eminent domain laws in Texas (see page 6 of this newsletter). The coalition strives for a more balanced system that is fair and respectful of landowners' private property rights when they are forced to sell.

A sunset bill to continue the RRC has been filed as HB 1818 in the House and SB 300 in the Senate. While TLMA is disappointed that some of the positive recommendation of the Sunset Commission staff were not adopted and included in the bill, the TLMA supports the continuation of the Railroad Commission.

This legislative session again brings two forced unitization bills—SB 177 by Sen. Van Taylor and HB 1597 by Rep. Cecil Bell. The bills would force unwilling mineral owners into large tertiary-recovery units at unfavorable terms, a direct hit to Texas's longstanding respect for private property rights and freedom of contract. TLMA opposes these bills and any similar legislation that further erodes mineral owners' interests.

There are numerous other industry-sponsored bills that TLMA will monitor to ensure they do not negatively affect land and mineral owners' rights. TLMA puts constant effort into ensuring progress we have made toward leveling the playing field for our members do not get unraveled.

TLMA will track all bills that impact the interests of our membership and take action to protect and enhance your private property rights. You can find a list of bills TLMA is tracking on its website at tlma.org. Check the 2017 Legislative Session page under the News & Resources tab.

Do not forget to be on the look-out for email ALERTS from TLMA during the legislative session. ALERTS will explain a bill, how it affects you, and tell you how to contact and educate your legislators.

COURT RULES AGAINST LANDOWNERS—CONTINUED FROM PAGE 1

The Court in 2012 held that merely checking the "common carrier" box on a Railroad Commission ("RRC") permit application does not grant a pipeline eminent-domain authority. The pipeline must show that "a reasonable probability must exist, at or before the time common-carrier status is challenged, that the pipeline will serve the public by transporting gas for customers who will either retain ownership of their gas or sell it to parties other than the carrier." The evidence presented showed that only Denbury or Denbury affiliates owned the CO2 production, the pipeline, and a majority interest in the unit where the CO2 was to be used for tertiary oil recovery. The Texas Supreme Court sent the case back to the trial court to determine whether Denbury's pipeline was actually for public use as a common carrier.

In 2014, the trial judge decided as a matter of law that Denbury was a common carrier after Denbury presented new contracts to transport CO2 to show public use. This ruling came despite the fact that the only independent contract Denbury showed evidence of was inked six years after Texas Rice Land Partners first questioned Denbury's eminent-domain authority. The Beaumont Court of Appeals reversed the trial court's summary judgment decision, finding that "reasonable minds could differ regarding whether, at the time Denbury intended to build the Green Line, a reasonable probability existed that the Green Line would serve the public." The evidence presented was not sufficient to pass the test the Supreme Court set out in 2012.

Denbury appealed the decision to the Supreme Court in 2015. TLMA filed an amicus brief asking the Court to deny Denbury's petition. After the Court agreed to hear the appeal, TLMA filed another brief in support of the landowners and the protection of private property rights.

Justice Green wrote the opinion in January that reversed the appellate court. The justices agreed with the trial judge that Denbury's evidence showed it was a common-carrier as a matter of law. With its decision, the Supreme Court denied the landowners a jury trial. The decision is widely seen as an erosion of the protections landowners hoped to see from the first Supreme Court decision in this dispute.

PROPERTY RIGHTS COALITION SEES FILING OF BENEFICIAL LEGISLATION

The Texans for Property Rights Coalition applauds the filing of bills in both the Texas House and Senate to work toward meaningful eminent-domain reform during the 2017 legislative session. The bills will serve to augment improvements made in the past years to Texas's eminent-domain laws and help level the playing field for property owners who confront corporations and government entities with deep pockets and experienced legal teams.

When it organized, the Texans for Property Rights identified the following particular areas of current eminent-domain law the legislature should improve to strike a better balance for landowners in a state where 95 percent of the land is privately owned.

- Reimburse landowners the costs and fees incurred in eminent-domain proceedings if the final damages awarded are greater than 125 percent of the condemning entity's offer.
- Require as part of a true bona fide offer that a condemning entity disclose information about the project and provide a minimum amount of property-rights protections in order to be allowed to condemn.
- Allow the admission of evidence on the price paid for pipeline or powerline rights-of-way in privately-negotiated transactions made in the absence of condemnation authority in court proceedings for the valuation of an easement.
- Require a surety bond from condemning entities.
- Make appraisals or opinions of property value and damages caused by the condemnation available to the landowner at the time of the initial and final offers.
- Make enforceable possession-and-use agreements between the condemning authority and the property owner made during a condemnation.
- Royalty payments, an option in negotiating payment of which many landowners are not aware, should be stated in statute as a permissible option noticeably available to landowners.
- Relieve landowners of tax obligations on property once exclusive possession of the property is granted to a condemning entity.

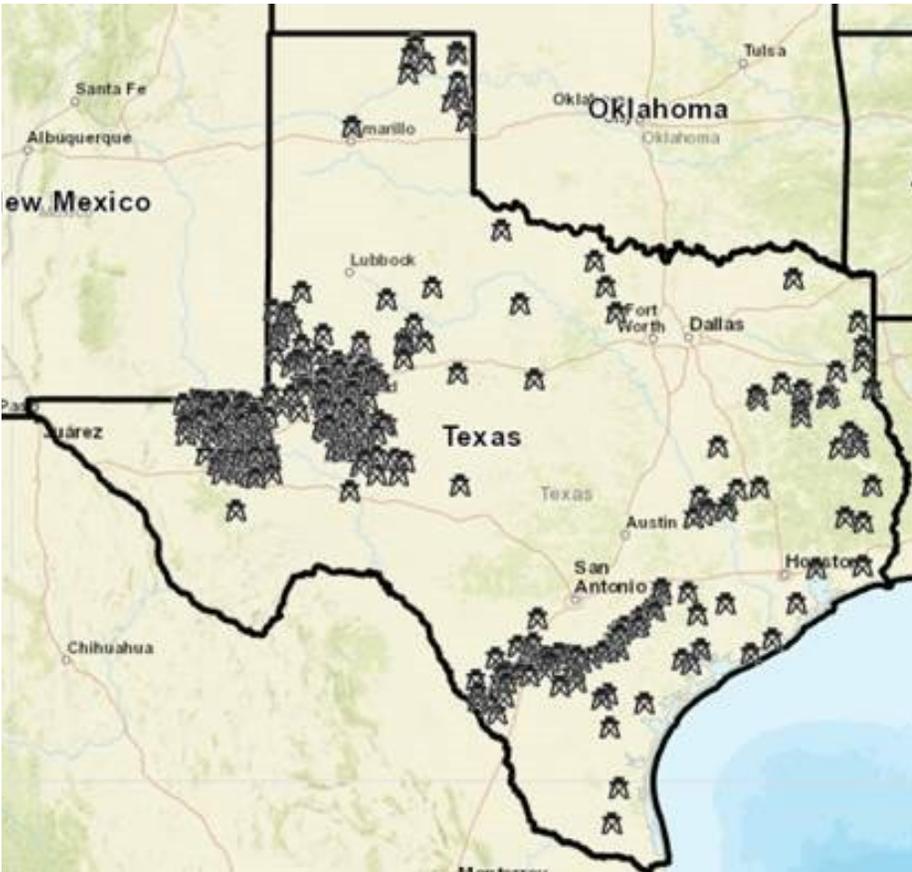
Five bills were filed in the Legislature in direct response to the coalition's efforts. HB 2684 by Rep. Burns is the most comprehensive bill to level the playing field for landowners. It addresses seven major areas of reform—equal disclosure of appraisals, property-rights protections in bona fide offers, the admission of evidence in the valuation of easements, reimbursement of property-owner expenses when sued on a low-ball offer, bond requirements for condemners, waiver of sovereign immunity by government entities in condemnation agreements, and relieving landowners of property taxes on condemned land. Also on the House side, HB 2694 by Rep. Kacal is a stand-alone bill that addresses property-rights protections in a bona fide offer.

In the Texas Senate, Sen. Kolkhorst filed three bills for eminent-domain reform. SB 740 takes up five important issues—equal disclosure of appraisals, property-rights protections in bona fide offers, reimbursement of property-owner expenses when sued on a low-ball offer, bond requirements, and property taxes on condemned land. SB 741 includes provisions that address royalty payments and the valuation of easements. SB 742 is a companion bill to HB 2694. It addresses the property-rights protection in bona fide offers and includes more requirements than the similar section in SB 740.

For more information on the Texans for Property Rights Coalition and its legislative efforts this session, visit the group's website at texansforpropertyrights.com. Sign up to receive emails from the coalition, read recent news on eminent-domain reform, hear other landowners' stories, and share your own experiences with condemnation proceedings in Texas.

MAPS OF CURRENT OIL & GAS ACTIVITY IN TEXAS

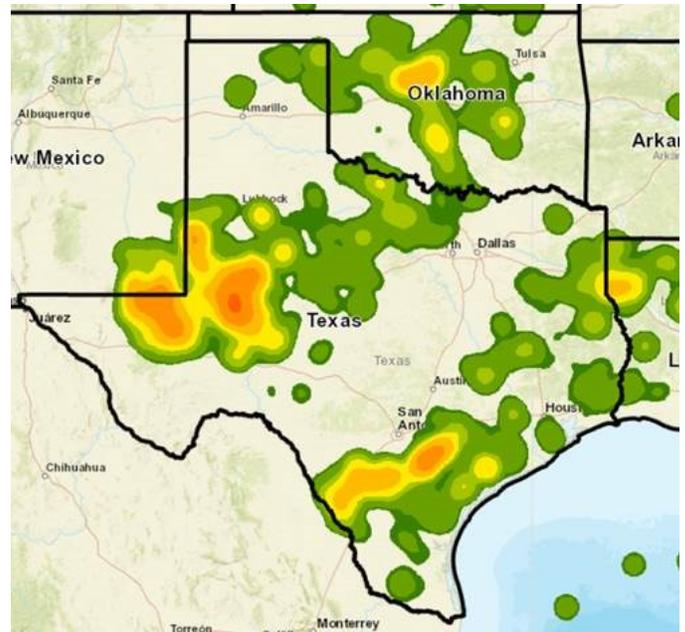
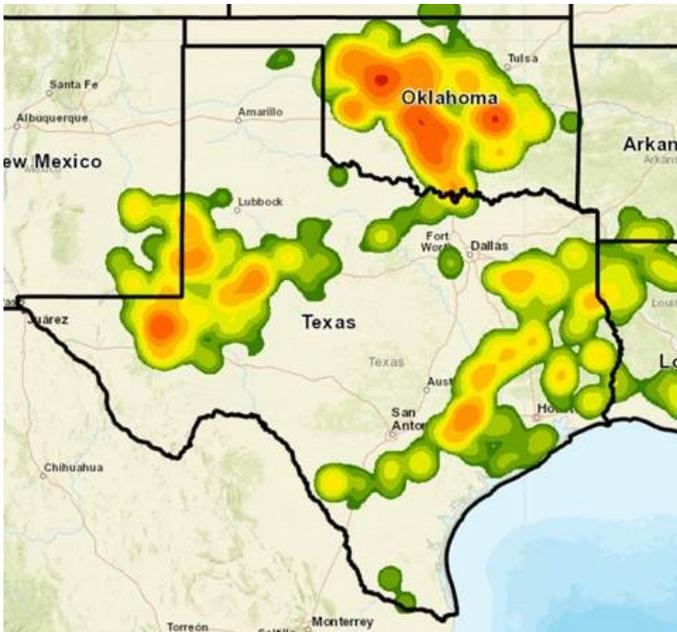
Texas Active Rig Count
411 rigs total



Top Counties	# of active rigs
Reeves	53
Midland	45
Loving	28
Karnes	18
Martin	17
Upton	16
Howard	15
Glasscock	12
Culberson	11
Andrews	10
Reagan	10
Winkler	9
Dimmit	8
Gaines	8
San Augustine	7
Frio	6
La Salle	6
McMullen	6
Pecos	6
Ward	6
Webb	6

Heat Map of Recent Lease Activity
(last 180 days)

Heat Map of Recent Permit Activity
(last 180 days)



Maps provided courtesy of Trinity Mineral Management, San Antonio, Texas utilizing data from DrillingInfo.com.



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

TLMA Membership Information Form

I would like to join TLMA I am a member, please update my contact info

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

Name _____

Organization/Ranch Name _____

Address _____

City _____ State _____ Zip _____

Telephone Number _____

Email Address _____

Referred by _____

Don't forget!

If there is a change in your contact information, update TLMA and avoid delays in receiving your newsletter, renewal, and other correspondence.

To update your member information, call Robbie at (512) 479-5000, mail in this form, or log in to your member account online at www.tlma.org.

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