



TEXAS LAND & MINERAL OWNERS ASSOCIATION

OFFICIAL NEWSLETTER

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CONOCOPHILLIPS V. KOOPMANN: DOES A RESERVED TERM ROYALTY INTEREST VIOLATE THE RULE AGAINST PERPETUITIES?

By John McFarland

Last week the Texas Supreme Court issued its opinion in *ConocoPhillips Co. v. Koopmann*, No. 16-0662. Its opinion rejected Burlington's argument based on the Rule Against Perpetuities.

Strieber sold 120 acres in Dewitt County to Koopmann, reserving one-half of the royalty for a term of 15 years and as long thereafter as there is production in paying quantities. The 15-year term ended on December 27, 2011. At that time the 120 acres was under lease to Burlington. Burlington included the 120 acres in a pooled unit and drilled a well in 2011, but the well was not producing on December 27. Prior to that time, Strieber conveyed to Burlington 60% of her reserved term royalty, "presumably as an incentive to motivate Burlington to begin drilling." The parties – Koopmann on one side, contending the term royalty had expired, and Strieber and Burlington, on the other, contending it had not — then joined suit.

Burlington and Strieber contended that the interest the Koopmanns claimed – the one-half-of-the-royalty that would be owned by her on expiration of the 15-year term – was void because it violates the Rule Against Perpetuities. In effect, they argued that the royalty reserved by Strieber should remain in effect indefinitely because of the Rule. The court disagreed, holding that the future interest conveyed to Koopmann was "vested" and therefore did not violate the Rule. After a detailed discussion of the Rule and its application, the court followed more modern scholarship that construes the Rule based on its purpose and intent rather than by archaic application of terms and concluded that application of the Rule in this instance would not serve the Rule's purposes.

Oil and gas attorneys will be greatly relieved at this result, since it is and for many years has been common for grantors to reserve term royalties in conveyances of their land. The rule advocated by Burlington would have made all such royalty reservations perpetual.

The court also rejected another creative Burlington argument. The Koopmanns' claims included a breach of contract claim against Burlington for failure to pay the royalties due under their oil and gas lease. Burlington argued that this claim was barred because their exclusive (*continued on page 2*)

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THE IMPORTANCE OF THE NEXT GENERATION JOINING TLMA

By Lauren Looney Runnels

TLMA has identified the need to increase the TLMA Membership with younger generation. As a new member, Jennifer Bremer contacted me in hopes of assisting her to encourage a new active membership with some of the younger generation. Clearly, if you are an active member you don't need to be educated on the importance and the value the TLMA offers land and mineral owners in Texas. I would like to appeal to you to encourage the next generation, within your family tree, or with those you know, to become involved in the TLMA organization, or simply become a member. The sign of a good mature organization is one where the experienced and established leadership identifies, grooms and incorporates the next generation in their efforts. The TLMA is a strong, reputable organization because of the strength, work and influence of the founding members. In order to maintain the influence and cohesiveness of this well laid foundation of like minded individuals who work together to protect land and mineral ownership, we need to make an effort to expand membership to the next generation. The senior leadership of the land and mineral owner community should take the step to encourage and invite these new members to become involved and provide the guidance to successfully achieve the needs of all mineral owners. As we all know, the needs and goals are constantly changing in a state as vibrant and productive as Texas. We all benefit from a healthy and active TLMA, which provides concentrated efforts, resources and information to us all. As frequently seen in policymaking and the judicial and regulatory systems, history repeats itself. Now is the time for the younger generation to get involved and learn about these issues that remain the same, yet evolve over time.

The biennial meeting will be held in San Antonio on October 11, 2018. At that meeting, Jennifer Bremer hopes to have a group of at least 20 younger potential or new members in attendance. Please contact her with any recommendations on specific people to engage and encourage attending. In addition, please forward any ideas you may have to Jennifer on how to facilitate involvement in bridging the gap, educating and grooming new and younger members.

CONOCOPHILLIPS V. KOOPMANN: DOES A RESERVED TERM ROYALTY INTEREST VIOLATE THE RULE AGAINST PERPETUITIES?

remedy was under Chapter 91 of the Natural Resources Code. Burlington cited section 91.402 which provides that payments of royalty must be made within 120 days after the end of the month of first sale of production but allows a company to withhold royalty payments without interest when there is "a dispute concerning title that would affect distribution of payments;" and section 9.404(c), which gives a royalty owner a cause of action for nonpayment of royalties and interest as required in section 91.402. Burlington argued that the legislature, by adopting this statute, intended that royalty owners' only cause of action for failure to pay royalties was under section 91.404(c). Again, the court disagreed. It held that the statute did not clearly indicate legislative intent to abrogate a common-law cause of action, and the Koopmanns could therefore sue for breach of contract.

The court held that there were unresolved fact issues as to whether a payment made by Burlington to extend the lease was effective also to extend the term royalty and remanded the case to the trial court.

TEXAS PRIMARIES LEAVE TWO CANDIDATES REMAINING

The Republican Party of Texas and the Democratic Party of Texas held their primary elections at the beginning of March. Current Railroad Commission Chairman Christi Craddick defeated Weston Martinez in the Republican Primary. Chairman Craddick will now face Democrat Roman McAllen, who defeated Chris Spellmon. The general election will be held on Tuesday, November 6, 2018.

Christi Craddick is in the forefront of the newest wave of pragmatic conservatives in leadership roles across Texas. Raised in a strong conservative household, retained as legal counsel by prominent Texas firms, and shaped by more than a decade as a trusted political adviser, Christi has set a clear standard of integrity, self-reliance and innovation in her role as Chairman at the Railroad Commission of Texas.



Since her tenure on the Commission began in November 2012, Craddick has pushed to maximize the effectiveness and efficiency of an energy industry that is driving the state's unparalleled economic success. In the process, she has repeatedly proven that sensible regulations, careful listening and plain talk can foster innovation that has solidified Texas leadership in the energy sector.

Making it a top priority, Christi has worked to educate the public about the oil and gas industry and its impact in Texas. She has fought against Washington's one-size-fits-all environmental policies that would kill jobs and stifle energy production growth. Christi has advocated for recycling in the oilfields, helping to drive the percentage of reclaimed water upwards, an essential achievement in a state enduring a multi-year drought.

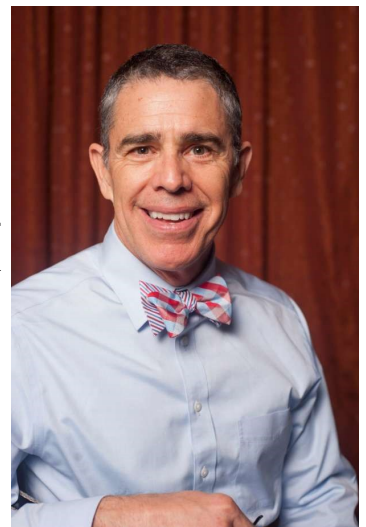
As part of her efforts to modernize the agency, Christi has championed an Information Technology overhaul for the Commission, seeking improvements that would upgrade the Geographic Information System, increase public access to the agency's data, and speed up inspections and permitting times.

A native of Midland, Christi earned both her Bachelor's Degree as a Plan II graduate and her Doctorate of Jurisprudence from The University of Texas at Austin. During her career as an attorney, she specialized in oil and gas, water, tax issues, electric deregulation and environmental policy.

Following the example of her father and mother, Craddick has been drawn to public service and politics. As president of a grassroots advocacy firm, she took the lead on work in coalition building in the public policy arena and development and implementation of issue strategies.

Christi serves her community as an active member of organizations including the State Bar of Texas, University of Texas Liberal Arts Alumni Advisory Council, and Dell Children's Medical Center Foundation. Christi resides in Austin with her daughter, Catherine, and is an active member of St. John Neumann Catholic Church.

Roman McAllen is a native of Houston. He graduated from the University of Houston Downtown with a business degree, attended one year of law school at The University of Houston; he left though he was offered a job with John O'Quinn upon graduation who also offered to pay for him to complete law school. Mr. O'Quinn at the time was one of the highest paid lawyers in the U.S. Afterwards he became an expert automobile insurance adjuster with progressive Insurance. He began a second career after completing a Master of Architecture at The University of Texas Austin in 2011 in Preservation And Urban Planning. He worked in Brownsville, Texas where he also served on the Cameron County Crimestoppers board. Presently he is President-elect of Preservation Texas, which advocates for the Preservation of Texas' historic resources and serves as the Historic Preservation Officer of Denton, TX.



UPDATE FROM THE EXECUTIVE DIRECTOR

TLMA members—

What a first quarter of 2018 it has been!

TLMA Board Chairman, Carolyn Frost Keenan, and I have spent quite a bit of time on the road recruiting new members and meeting with current members to discuss developments on issues TLMA advocates for. I've met a lot of wonderful people and look forward to meeting more! The stops remaining on our tour of Texas are:

April 25—Beaumont and Liberty

May 8—Amarillo and Canadian

For those of you who are wondering, we are working on a stop in West Texas that will conclude our tour. It will likely be the last week in July, so please save the date and watch for more information! If we did not make it to your area this year and you would like to see the presentation, please reach out to me. I am happy to share that with you.

In between planning all of the membership events and day-to-day tasks, I'm feverishly planning the statewide members meeting. I am working to secure a very exciting keynote speaker that I believe everyone will enjoy. We are lining out the remaining speakers to make sure that we include topics of importance to our members. If you haven't already registered, please do so! We can have up to 400 members and I hope that we will get very close to selling it out. For more information on the details of the statewide members meeting, please see page 6 of this newsletter. I hope that you will take advantage of all of the new things we are doing. As I previously mentioned, we are hoping to make this an annual event, but cannot do so without your support and attendance!

It seems that each legislative session comes a little quicker than the previous session did. While we're only officially in session for 5 months, it seems like the 19 months between go by faster than those 5 months. We are starting to identify issues that we will seek legislative changes on, as well as issues that we will need to defend. Interim hearings are beginning to be held. TLMA will provide testimony at some of these hearings. All information about the hearings, including date, time, location, and topics covered, is available on the House and Senate websites. I will also try to post on the TLMA website.

As always, please do not hesitate to reach out to me if you there is something that I can help you with, something you think I should be aware of, or if you're in Austin and would like to stop by and meet me!



A handwritten signature in black ink that reads "Jennifer".

UPCOMING DATES OF INTEREST

April 17—House of Representatives Transportation & Energy Resources Committee Hearing—Austin

April 18—House of Representatives Energy Resources Committee Hearing—Austin

April 25—Membership Drive and Educational Events in Beaumont and Liberty

May 8—Membership Drive and Educational Events in Amarillo and Canadian

May 22—RRC Hearing—Austin

June 5—RRC Hearing—Austin

June 19—RRC Hearing—Austin

June 20-22 Independent Cattlemen's Association of Texas 44th Annual Convention & Trade Show, College Station

October 11, 2018—TLMA Statewide Member's Meeting

**All House of Representatives, Senate and RRC meetings can be viewed online. Email info@tlma.org for more information.

NEW LEASE FORM AVAILABLE TO TLMA MEMBERS

One of the membership benefits available to members at the \$250 level and above members or at least two years of membership is an oil and gas paid-up lease form. The form has recently been updated. If you qualify to receive this lease and would like a copy, please call the TLMA office or email

NEW CALL BEFORE YOU DIG REQUIREMENTS EFFECTIVE

By the Railroad Commission of Texas

AUSTIN – Effective Monday, Feb. 12, Railroad Commission pipeline damage prevention rules require excavators who strike a pipeline while digging to notify the pipeline operator by calling the 811- notification center as soon as possible, but no later than one hour after an incident. Excavators must also call 911 if any natural gas or other product is released when an underground pipeline is struck. These rule updates extend the deadline for pipeline operators and excavators to file a damage report with the Railroad Commission from the current 10 days to 30 days.

More information on these new rule requirements can be found under "Chapter 18. Underground Pipeline Damage Prevention." at the RRC website:

<http://www.rrc.texas.gov/general-counsel/rules/proposed-rules/>

RRC rules already require anyone planning to dig deeper than 16 inches to call 811 before they dig to prevent damage to underground pipelines. The required 811 call prompts pipeline operators to mark their underground natural gas or hazardous liquid pipelines to avoid being struck during the digging process. Failure to obey the "Call Before You Dig" rules can result in penalties and fines.



**Know what's below.
Call before you dig.**

2018 STATEWIDE MEMBERS MEETING UPDATE

The countdown is on! The TLMA Statewide Members Meeting is 6 months away! I am so excited to bring you all a very educational day and have our members in one place.

Registration is **NOW OPEN**. You can register on the TLMA website or you can fill out the enclosed registration form and mail to the TLMA office: 1005 Congress Ave., Ste. 360, Austin, TX 78701. We invite you to bring guests! If they would like to register online, but are not currently members, they will have to join TLMA first. If they mail in the application, please make sure they mail in the correct amount.

We are still seeking sponsors! All sponsors will receive complimentary registrations, recognition in printed materials, verbal recognition the day of the event, and recognition on the TLMA website. If you or someone you know is interested in sponsoring the event, please email info@tlma.org for a sponsorship form.

———— TLMA Statewide Member's Meeting ————

SAVE THE DATE

— October 11, 2018 Pearl Stable, San Antonio —

more details to follow

For those of you who may not have joined us in previous years because of the distance from home, we are excited to tell you all that we have a block of rooms reserved at the Wyndham Garden River Walk—Museum Reach. We have rooms reserved for Wednesday, October 10 and Thursday, October 11. **Book by September 19 and reference the TLMA Members Meeting** in order to receive the discounted room rates!

Standard King: \$ 132.00 Standard Double Queen: \$ 132.00

Riverview: \$ 152.00 Suites: \$ 229.00

On Wednesday, October 10, there will be a reception for our members at the Concerned Citizen—\$250 level and higher at the San Antonio Country Club. If you would like to increase your membership to attend this event, please call the TLMA office or email execdir@tlma.org. I apologize in advance for any inconvenience, but members are unable to increase memberships online. Members can increase their memberships until September 7, 2018 to receive an invitation.



TEXAS LAND & MINERAL OWNERS ASSOCIATION
STATEWIDE MEMBERS MEETING
OCTOBER 11, 2018
PEARL STABLE — SAN ANTONIO, TEXAS

The Texas Land & Mineral Owners Association will return to the Pearl Stable in San Antonio for our Statewide Members Meeting this fall. It will be a day full of information that you don't miss!

The meeting is an all-day event featuring outstanding speakers who present information on a variety of topics affecting your land and mineral interests. You will have the opportunity to meet fellow TLMA members, connect with old friends, and share stories over a biscuits and gravy breakfast and fajita lunch. In addition, attendees can visit with select exhibitors who offer products or services related to your land and mineral ownership.

Sponsor & Exhibitor Information

If you would like to be a sponsor of or exhibitor at the TLMA Statewide Members Meeting, please contact TLMA at (512) 479-5000 or info@tlma.org. We appreciate your support and participation!

Registration Information

Register for the TLMA Statewide Members Meeting by mailing this form with your check to TLMA. To pay by credit card, please call TLMA at (512) 479-5000 or register online by visiting the Statewide Members Meeting tab at www.tlma.org.

The registration cost listed for non-member registrants includes a TLMA membership at the Individual level.

Early Registration:

Individual Member \$75
Non-Member \$140

Registration after Oct. 1:

Individual Member \$85
Non-Member \$150

2018 TLMA Statewide Members Meeting Registration

Name(s) _____

Organization/Ranch Name _____

Address _____

City _____ State _____ Zip _____

Telephone Number _____

Email Address _____



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 your contact information changes, be sure to update TLMA and avoid delays in receiving your newsletters, renewal notices, and other correspondence.

To change your address or any other membership information, contact Robbie Querner at (512) 479-5000, mail in this form, or log in to your membership account online at www.tlma.org.

Find more information, join TLMA, or renew your membership online at www.tlma.org