



TEXAS LAND & MINERAL OWNERS ASSOCIATION

OFFICIAL NEWSLETTER

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NEW LAW IN TEXAS PROTECTS FAMILY FARMS AND RANCHES



Representative Drew Darby,
San Angelo

The Texas Land & Mineral Owners Association celebrates the success of its primary policy initiative in the 85th regular legislative session. On June 1, Governor Greg Abbott signed HB 3198, a bill aimed at protecting open-space landowners with oil and gas well-pad sites on their property from increased property tax burdens.

Authored by Rep. Drew Darby, and sponsored in the Senate by Sen. Craig Estes, the new law provides that as long as the surrounding land continues to qualify for open-space designation, the acreage on the land used for well-pad sites does not lose its eligibility for agricultural, wildlife, or timber tax exemption.



Senator Craig Estes,
Wichita Falls

TLMA first wrote about a new practice in a few county tax appraisal districts in our December 2015 newsletter. One of our members had informed TLMA that the county appraiser sent him a notice of change of use for the areas of the ranch used for oil pad sites. The county removed the open-space exemption, began taxing the bits of carved-out acreage at market value, and imposed five years of roll-back taxes plus interest. This created a considerable financial burden. The practice seemed particularly unfair to surface owners who have no control over, and receive no financial benefit from the mineral estate.

In the 2017 legislative session, Rep. Darby and Sen. Estes both filed bills aimed at preventing county appraisers from penalizing open-space landowners who continue to use their property for agricultural or timber production, but also are subject to use of some surface by a mineral lessee. Rep. Darby's HB 3198, sponsored by Sen. Estes in the Senate, successfully passed both chambers and will be effective as law on September 1, 2017. The legislators fought to honor the intent of the Texas Constitution and the Property Tax Code that recognized the importance of open-space land to the State of Texas and created a special property tax designation to keep family farms and ranches affordable to keep up.

TLMA thanks Rep. Darby and Sen. Estes for their efforts on behalf of its membership, and on behalf of all Texas open-space landowners who depend on affordable property taxes under an open-space exemption to maintain their open-space land for the benefit of Texas.

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85TH LEGISLATURE APPROPRIATES MORE MONEY FOR ORPHANED WELL PLUGGING

The Texas House of Representatives took action to greatly benefit the Oilfield & Gas Regulation and Cleanup Fund, state money used to plug the thousands of orphaned wells that plague Texas.

In the final budget bill, SB 1, the House included a \$38,200,000 appropriation from the state's rainy day fund to be applied to the program tasked with plugging orphaned wells. Despite the tight fiscal budget cycle, the legislature recognized the critical importance of cleaning up abandoned well sites that create an environmental hazard across the state.

The 85th legislative session also saw the passage of the Railroad Commission's sunset bill. The agency will be continued for another 12 years, albeit without many of the improvements recommended by the Sunset Commission staff. For instance, the sunset bill did not include a restructuring and increase in the mandatory bond amounts for oil and gas operators.

Other stand-alone bills aimed at improving enforcement and increasing transparency in the Railroad Commission also failed. HB 247/SB 568, which would have required the Commission to post enforcement actions on its website in a way that is accessible and searchable for the public did not pass. In addition, SB 567, which would have increased penalties and required the Commission to restructure its penalty guidelines with public input, did not pass its committee.

TLMA does have good news to report. Thanks in no small part to excellent testimony by TLMA member Russell Hayter, TLMA Advisory Directors Joseph Fitzsimons and John McFarland, and TLMA District Representative Tom Daniel, the legislature again rejected forced unitization bills that would hurt private property rights in Texas and mineral owners ability to freely contract.

In addition, the legislature passed HB 129 by Representative Tom Craddick to allow royalty owners to receive their check stub information in paper form along with their payment. Some companies had been forcing royalty owners to log-in to a website, sometimes charging a fee, to see the information statutorily required to accompany a royalty payment.

For an update on how TLMA's efforts as part of the Texans for Property Rights push for meaningful eminent domain reform fared, see page 6 of this newsletter.

On June 6, Governor Abbott announced that he will be calling back the Legislature for a special session. The special session will immediately address Sunset legislation that did not pass, but may include up to 19 additional items.

NEAL WILKINS JOINS TLMA BOARD OF DIRECTORS

The TLMA Board of Directors is happy to announce the addition of a new director. Neal Wilkins joined the Board this spring and will bring a land management perspective to his service. Neal had this to say about TLMA and its efforts: "We know the entire state profits when private landowners have what they need to manage their land well. In that regard, I believe it's essential that landowners have the ability to protect their surface interests, and groundwater, especially while the mineral interests are developed. TLMA is a strong proponent of these interests, and I look forward to working with this group to represent private lands."

Neal is the President and CEO of the East Foundation, where he is responsible for leading the Foundation's mission of supporting wildlife conservation and other public benefits of ranching and private land stewardship. With a focus on research, education and outreach, the Foundation's programs are executed within the setting of a large-scale cattle ranching enterprise. The Foundation's field activities are headquartered at the historic San Antonio Viejo Ranch with a nearby operations office in Hebbronville and an administrative office in San Antonio.

Neal has 30 years of experience in land management and applied research across private lands in Texas, Tennessee, Florida, Washington, and Oregon. His primary focus is the management and conservation of land, water, and wildlife resources on private lands. His work integrates science, policy and economics to solve natural resource problems.

Before joining the East Foundation in 2012, Neal was a Professor of Wildlife Science and served as the Director of the Texas A&M Institute of Renewable Natural Resources and the Texas Water Resources Institute. Included in his work at Texas A&M was the oversight and coordination of more than 45 scientists and professional staff. Until 2006, Neal was statewide program leader for wildlife and fisheries with Texas A&M AgriLife Extension. Prior to joining the Texas A&M faculty in 1998, he directed wildlife and fisheries programs for Port Blakely Tree Farms, a 150,000-acre forest landholding in the Pacific Northwest. Neal is a Certified Wildlife Biologist with a PhD in Wildlife Ecology from University of Florida, a Master's of Wildlife Science from Texas A&M University, and a degree in Forestry from Stephen F. Austin State University.

In addition to his service on the TLMA Board of Directors, Neal is a Director and former Vice-President of Texas Wildlife Association. He serves on the Board of Directors for Texan-by-Nature, the Management Council for the King Ranch Institute for Ranch Management, and is a Professional Member of the Boone & Crockett Club. He also serves on the Rio Grande Regional Water Planning Group for the Texas Water Development Board.

Neal and his wife Sandra have two grown children, Ashley and Matt.



TLMA WELCOMES NEW EXECUTIVE DIRECTOR JENNIFER BREMER

Jennifer joins TLMA from Sander Resources, L.L.C. where she focused on policy development and advocacy. There she managed a wide variety of client projects ranging from corporate communications and stakeholder outreach initiatives to regulatory compliance and requirements for pipeline operators. She was engaged in policy development at the state and federal levels, as well as with the legislature and administrative agencies. Bremer additionally represented clients at industry and coalition meetings.

Prior to joining Sander Resources in 2012, Bremer worked in the Texas House of Representatives serving as legislative director for Representative Craig Goldman. Bremer was responsible for drafting and analyzing legislation and preparing the Representative for floor debate. She also served as legislative aide for Chairman Warren Chisum, former chair of the House Committee on Appropriations and former vice-chairman of the House Committee on Environmental Regulation. As a lead staff member for the Texas House Republican Caucus Policy Committee, Bremer prepared daily floor reports, which included each bill and resolution to be discussed on the house floor. She also collaborated with lobbyists, state agencies and interest groups in order to perfect legislation.

While attending college, Bremer worked for the Texas A&M AgriLife Contracts and Grants department, where she coordinated distribution of federal, state and private partnership proposals, contracts, nondisclosure agreements and intellectual property agreements. She successfully completed an internal self-study for the Texas A&M AgriLife Extension Service Department of Agricultural Economics.

Bremer graduated cum laude with Bachelor of Science degrees in Agribusiness and Agricultural Economics from Texas A&M University, where she was awarded numerous awards for leadership and academic excellence.

Raised in Waller, Texas Bremer's family is active in the farming and ranching community. Growing up she was active in the National FFA Organization holding numerous officer positions, competing in competitions and raising and showing livestock. She actively volunteers with Rodeo Austin. She currently lives in Austin, Texas with her dogs Molly, Banks, and Frank.

A note from Jennifer: Thank you for the opportunity to serve the members of TLMA! I am excited to be part of such a wonderful organization that represents such important issues in our state. I look forward to the endless opportunities ahead and the successes we achieve as an Association. Please let me know how I can be of assistance.



A NOTE FROM OUTGOING EXECUTIVE DIRECTOR LAURA BUCHANAN

It has been an honor to serve TLMA as your executive director. I have been impressed with the commitment of TLMA to protecting and enhancing the rights of landowners and mineral owners in Texas. Member funding, participation, and action drives the success of the association in its advocacy in all branches of Texas state government. Thank you for your support of TLMA and its critical mission to make and maintain Texas as a singular state that respects the rights of land and mineral owners. I look forward to following TLMA's continued achievement and will continue to support the association in any way I can.



COURT UPHOLDS AWARD TO LANDOWNERS IN OILFIELD CONTAMINATION CASE

After more than a decade in a complicated legal dispute, the McAllen family in South Texas finally has some resolution to their lawsuit against Sabine Oil and Gas Corporation (formerly known as Forest Oil). On April 28th of this year, Supreme Court of Texas affirmed the lower courts' confirmation of an multimillion-dollar arbitration award to the McAllens for the oil company's knowing contamination of the McAllens' land. The pending clean-up of the contamination could cost more than tens of millions of dollars.

The fight began in 2004, when the McAllens sued Forest Oil after discovering that Forest had buried mercury-contaminated iron sponge wood chips—waste from Forest's gas plant on the ranch—on the 27,000-acre McAllen Ranch. Forest also gave the McAllens radioactive pipe to build pens on the Santillana Ranch.

After Forest evoked an arbitration clause in a previous settlement, the arbitrators decided the dispute in favor of the McAllens and ordered Forest to pay millions of dollars in damages. The trial court affirmed the award. Forest then appealed, arguing that arbitration was not the proper course of action, ironic since Forest had insisted on the arbitration. Forest claimed that contamination claims fall under the jurisdiction of the Railroad Commission.

TLMA joined other landowner groups in filing an amicus brief asking the Court to reject Forest's claim, which would "leave Texas landowners with no effective remedy to address potentially devastating contamination to their land and water—resources on which many depend for their livelihoods." The Court in this case made the right decision, finding that the Railroad Commission did not have exclusive jurisdiction over the McAllens' claims and preserving remedies for landowners faced with oilfield contamination on their land.

TEXAS SUPREME COURT DECIDES UNDERGROUND TRESPASS CASE

The Texas Supreme Court this spring decided an important case regarding whether, when one operator has leased the mineral estate, a surface owner can allow a different operator to use the surface and drill through the property to reach its own mineral estate. In *Lightning Oil Company v. Anadarko*, the Court found that Anadarko did not commit an underground trespass when it drilled a horizontal well through the mineral interest of Lightning Oil in order to access minerals it leased under adjacent land.

Anadarko leased the minerals under the Chaparral Wildlife Management Area ("CWMA") under an agreement with the Texas Parks and Wildlife Department that it would not use the surface of the CWMA without consent and directing Anadarko to use off-site drilling locations when "prudent and feasible." Anadarko entered into a Surface Use Agreement and Subsurface Easement Agreement with the neighboring Briscoe Ranch, giving Anadarko permission to drill horizontal wells on the Briscoe Ranch that would cross the property line and produce the oil under the CWMA.

Lightning Oil holds the mineral lease for the Briscoe Ranch. It filed suit against Anadarko alleging an underground trespass of its mineral estate and tortious interference with its contract for the minerals under the ranch. It sought an injunction to prevent Anadarko from entering the Briscoe Ranch to drill.

In 2014, the trial court denied Lightning an injunction. The Court of Appeals affirmed this ruling. In May of this year, the Texas Supreme Court upheld the lower courts, citing the "longstanding policy of this state to encourage maximum recovery of minerals and to minimize waste." The Court concluded that off-lease drilling locations provided "most efficient means of fully exploiting the minerals."

The Court decision clarifies that under Texas law, the surface owner, not the mineral owner, holds the power to negotiate a lease for an operator to use the surface and drill through the property to reach the operator's leased mineral estate. The mineral estate owner owns only the minerals in place in the subsurface; the surface owner owns the mass and space surrounding the minerals.

WHAT HAPPENED WITH EMINENT DOMAIN REFORM

The Texas Land & Mineral Owners Association joined a coalition of twenty individual organizations as Texans for Property Rights—spearheaded by the Texas Farm Bureau, Texas and Southwestern Cattle Raisers Association, and Texas Wildlife Association—to push for meaningful eminent domain reform during the recent legislative session. The Texans for Property Rights coalition brought to the 85th Texas Legislature language that became two bills. Senator Lois Kolkhorst filed SB 740, and Representative DeWayne Burns filed HB 2684.

In the language presented to and filed by the state legislators, Texans for Property Rights asked for key provisions set in state law to balance the exchange between a landowner and an entity with eminent domain authority.

REIMBURSEMENT OF LANDOWNER EXPENSES

After paying attorney fees and the costs associated with litigation, landowners who challenge condemnation actions in court are often never made whole when their property is taken. Texans for Property Rights asked that, if the court awards damages that significantly exceed the value of the condemnor's initial offer, the condemnor pay the costs incurred by the landowner. Many other energy producing states have this kind of provision.

THIRD-PARTY EVIDENCE

In condemnation proceedings, courts usually do not accept evidence of sales of freely-negotiated, comparable easements as a basis for assessing damages to a landowner from a condemnation. Texans for Property Rights asked that courts admit evidence on the price paid for pipeline or powerline rights-of-way in privately-negotiated transactions made in the absence of the power of eminent domain.

EQUAL APPRAISAL DISCLOSURE

Although entities will make an appraisal available at the time of initial and final offer, they may present a new or updated appraisal immediately before a commissioner's court hearing. Landowners, however, must provide appraisals no later than three business days prior to a hearing. Texans for Property Rights asked that a condemnor also make available a new or updated appraisal or opinion of property value, and damages caused by the condemnation, no later than three business days prior to such hearing.

MINIMUM EASEMENT TERMS

Condemning entities often provide scant information and transparency in their dealings with landowners. This leaves landowners with little protection from bad terms. Texans for Property Rights asked that a deed or easement contract offered to a landowner include more particular information about the project and provide a minimum amount of property-rights protections before granting the condemnor the power of eminent domain.

INSURANCE COVERAGE

Condemning entities do not have to insure landowners against liability for accidents that occur during construction or operation of equipment on a easement, leaving landowners open to lawsuits for damages resulting from those accidents. Texans for Property Rights asked that condemnors carry insurance, similar to that required of private building contractors, to remove landowners as liable parties to a lawsuit.

BOND ON APPEAL

Some condemnors have refused to purchase a bond and then claimed bankruptcy or insolvency to avoid payment to the landowner after a condemnation proceeding that the condemning entity appeals. Texans

WHAT HAPPENED WITH EMINENT DOMAIN REFORM—CONTINUED

for Property Rights asked that, as a condition to appealing a judgment awarding damages to a landowner, a condemning entity either pay the award or secure a bond in the amount of the award, guaranteeing payment to a landowner at the conclusion of the legal proceedings.

ENFORCEABILITY OF AGREEMENTS

Landowners may enter into possession and use agreements with a condemnor, giving possession of their property to a condemning entity. In some instances, public entities have claimed sovereign immunity to avoid upholding their end of the bargain. Texans for Property Rights asked that public entities waive their right to sovereign immunity in cases where they enter into such agreements up front, thereby upholding all good-faith contracts between a landowner and condemnor.

PROPERTY TAXES

When landowners transfer possession of property to condemning entities under possession and use agreements, the landowner still must pay taxes on that property. Texans for Property Rights asked that dispossessed property owners be relieved of the property tax burden once exclusive possession is granted to an entity with the power of eminent domain.

ROYALTY PAYMENTS

Often, landowners do not know they have the ability to request royalty payments as an option in negotiating payment for an easement. Texans for Property Rights asked that condemnors simply notify landowners that this option is available, but not required.

The legislative session saw continuous negotiation over SB 740 and HB 2684 and the much-needed reform to eminent domain laws in Texas. Texans for Property Rights worked diligently toward its goal—a better balance to the exchange between a landowner and an entity with the power of eminent domain. Ultimately, the Texans for Property Rights found that all the concessions asked of the coalition were leading to such diluted versions of the initial requests that the legislation would not affect truly meaningful change. In May, the Texans for Property Rights withdrew its support for SB 740 and HB 2684. Neither bill passed this legislative session.

TLMA will continue to work toward improving property rights for our members and all Texans faced with condemnations. Texas law should ensure a fair process from the moment of the initial offer and just compensation for anyone who challenges a condemning authority. TLMA will continue to advocate for common-sense laws and regulations that do not stop energy development, but insist that it happen in a way that respects the rights of landowners.

If you have any questions about the eminent domain reform struggle this legislative session, please do not hesitate to contact TLMA. You can also learn more about Texans for Property Rights at www.texansforpropertyrights.com.

VISIT THE TLMA WEBSITE

TLMA wants to hear from you! We set up a survey on our website—www.tlma.org—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 to our website and take advantage of features for TLMA members' only. Ask questions and share information in the Discussion Forum, check the membership directory, update your contact information, and renew your membership online.



Texas Land & Mineral Owners Association
1005 Congress Avenue, Suite 360
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TLMA Membership Information Form

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

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