



TEXAS LAND & MINERAL OWNERS ASSOCIATION

OFFICIAL NEWSLETTER

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WHY MINERAL AND LAND OWNERS SHOULD MONITOR FIELD RULES AT THE RRC?

It is simple. Money. Lots and lots of money. RRC rulings have cost mineral owners millions of dollars.

The Railroad Commission of Texas (RRC) is charged with preventing the waste of natural resources and protecting the correlative rights of owners over common oil and gas reservoirs. Therefore, the RRC created field rules in hopes of setting broad sweeping rules per reservoir to require operators to conduct oil and gas activities in ways that best develop that specific field. However, the operators have seen a window of opportunity in this system and it is costing mineral owners millions.

1. Operators can easily apply to amend these field rules to vastly improve their position. While according to the RRC, leased mineral owners forfeit their rights to gain standing at a Field Rule Hearing to their lessee, who is often times the applicant.
2. There are NO requirements to notify mineral owners of hearings for Field Rule changes. Therefore, unless you have easy access to the RRC and take the very active role of checking with them weekly or bi-weekly you will miss them. Which is why the General Land Office (GLO), the biggest land and mineral owner in Texas, now sends an employee to the RRC every Monday to check for applications for Field Rule Amendments.

Therefore, the operators are playing the broken system and applying for Special Field Rules to be set so they can hold countless more acres than their wells can drain. The RRC is routinely granting those amendments without requiring any engineering data such as permeability or porosity. The approval of the amendments seems to be based on the fact that no one shows up to oppose.

To give you an idea of the amount of waste, here are some examples using a 5,000 foot lateral as the comparison on the acreage amounts allowed as a result of Special Field Rules:

Phantom Wolfcamp – Culberson, Loving, Reeves,
704 acres Ward, & Winkler Counties
Hoefs TK – Reeves County
734 acres

Sandbar Bonespring – Ward, Winkler, Culberson,
800 acres & Reeves Counties
Fordwest—Culberson County
1,102 acres

More Inside This Issue:

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WHY MINERAL AND LAND OWNERS SHOULD MONITOR FIELD RULES AT THE RRC? CONTINUED

The same operators that are asking for these variances are claiming in their annual reports potential earnings based on spacing of 40 acres per vertical well and 80-160 acres per horizontal well. Their engineers admit that the shale play formations have very little permeability and often don't even show signs of draining 100 ft on each side of the lateral which would equate closer to 22.9 acres, not 700-1,100 acres that they are being granted in the Amended Field Rules. These are acres that the mineral owners may never see fully developed since the operators can retain the acreage with just one well as is displayed above. By operator's own engineering, this results in an under developed resource for the mineral owners.

Therefore, educate yourself on Field Rules (spacing, allowables, and density), be vigilant, protest them, and accommodate for these issues in your lease.

Fortify your lease to defend your minerals by considering the following:

- Discontinue using the RRC to define any of your lease terms
- Require that you be granted standing by your lessee in any RRC Hearing pertaining to your acreage
- Require that you be given notification of any application to establish or amend the field rules pertaining to your acreage
- Do NOT allow Allocation Wells unless your lessee gets additional written approval from you
- Use a proration formula to limit the number of acres a well can hold. See the General Land Office's formula below
- Include Continuous Drilling language to protect your own minerals. Don't count on the RRC to do so for you.

The GLO Horizontal Well Formula:

Acreage assignable to individual horizontal oil or gas wells shall be the greater of:

40 acres; or

The amount of acreage (A) determined by the following formula

$A = 0.032 \times L$, where L = the length (in feet) of the horizontal lateral component of the well from the first takepoint to the last takepoint and A = the area retained (in acres) provided that, if A is not divisible by the number 20, A will be rounded up to the next number divisible by 20, i.e. $(0.032 \times 4500 \text{ feet} = 144 \text{ acres}$, which rounds up to 160 acres);

This formula grants 160 acres for a mile long lateral.

HOW TO FILE A COMPLAINT ON OIL AND GAS OPERATIONS

TLMA has worked for nearly 20 years to protect and enhance private property rights for land and mineral owners in the State of Texas. While TLMA engages in relevant court cases and passing or defeating legislation to further our mission, it is equally as important to ensure that the laws, rules, and rulings are implemented and enforced in the intended manner to better protect our members. With the benefits that our members see from the production of oil and gas, there are also the consequences. Many of these can be addressed by communicating with the operator. However, we are aware of instances that, even after diligent efforts from our members, the issue remains unresolved.

The Railroad Commission of Texas (RRC) oversees the exploration, production and transportation of oil and natural gas in the state with jurisdiction given to them by the Legislature. There are many examples of complaints that can be filed—including issues with inactive wells.

Within the RRC, there is a division of where the complaints are to be made. If the complaint is related to production activities, the complaint should be made through the appropriate district office of the Oil & Gas Division. A map of the RRC district areas by county is included on the following page along with the phone number to each district office. Once you have made the complaint through the district office, it will progress through the necessary channels and potentially up to the Commissioners for them to decide. If the complaint is related to pipeline safety, those need to be made through the Pipeline Safety Division. They can be reached at safety@rrc.texas.gov or 512-463-7058.

If you plan to file a complaint with the RRC, there are several steps a mineral owner needs to take. Prior to filing the complaint, mineral owners will need to also identify which statute or administrative rule is potentially being violated by the operator. Documentation will also need to be collected. Depending on what the issue you are experiencing is, this documentation could be photographs, company filings from the RRC, written documentation from the operator, or any combination of the above. Land and mineral owners will likely not want to file the complaint as soon as it is noticed, but rather once a case has been built up with sufficient evidence. All complaints should be mailed using United States Postal Service Certified Mail, Return Receipt Requested.

After filing the complaint with the appropriate district office, the person making the complaint will need to follow up on the complaint to ensure that it gets addressed in a timely fashion. As the complaint progresses through the district office, it may receive a hearing with an administrative law judge and hearings examiner who will then make a recommendation to the three elected Commissioners. The Commissioners will then approve or deny the recommendation.

There are some issues that are a result of oil and gas activity, but are overseen by other agencies—including excessive dust, traffic, and environmental.

For dust or traffic complaints, the local law enforcement agency will address this issue.

If your complaint is in regards to an environmental issue, you need to make the complaint through the Texas Commission on Environmental Quality (TCEQ). The TCEQ has three ways to file a complaint, regardless of what area of Texas you are located in:

- Filling out an online form available at www.tceq.texas.gov
- Calling 888-777-3186, toll free
- Emailing cmplaint@tceq.texas.gov (the “o” is excluded from “complaint” in the email address)

If the odor is causing a health threat, the complaint should be made to the TCEQ regional office.

HOW TO FILE A COMPLAINT ON OIL AND GAS OPERATIONS CONTINUED

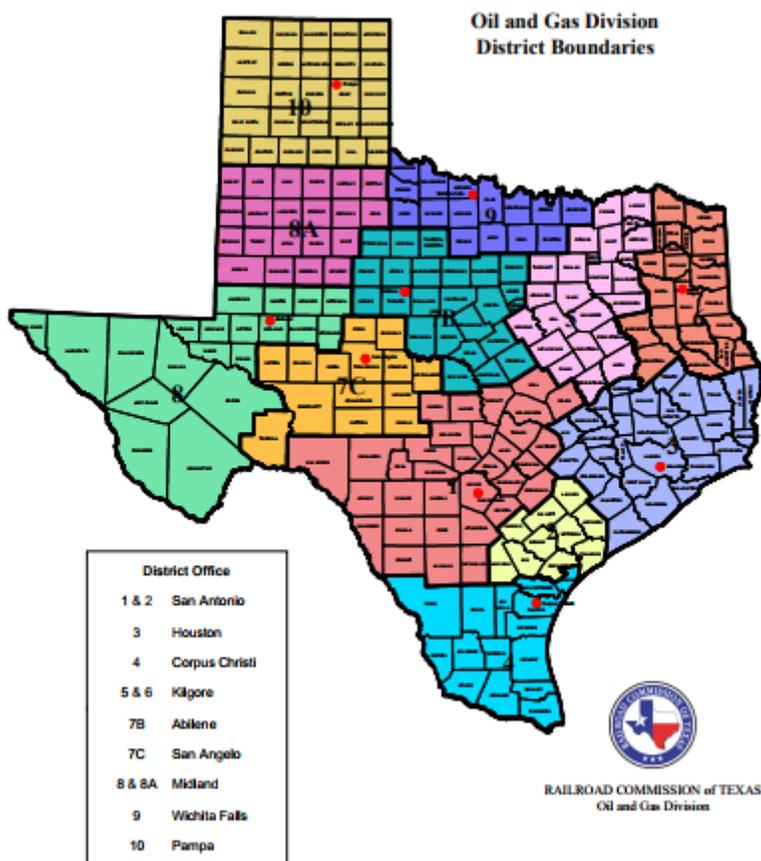
If you are located within the jurisdiction of a municipality, the city may have ordinances and you should report to the appropriate person within the city, as well.

The RRC considers contractual issues out of their jurisdiction. If you are experiencing a problem with royalty payments or getting information from the operator of the well on your property. If you have an issue stemming from your lease, there are other steps you will need to take.

TLMA encourages, and stresses the importance of, land and mineral owners filing complaints with the appropriate regulatory agency. In the age of documentation is everything, we face the same challenge while advocating for changes at the legislature or through the rulemaking process. TLMA must prove that an issue exists, and not just in one case. By filing these complaints, you will assist us in proving that an issue exists. Please keep in mind that once you file the complaint, there will be many follow up actions needed to keep yourself informed of where the complaint is in the RRC or appropriate agencies process.

If you have any questions, please contact the TLMA office at info@tlma.org or 512-479-5000 and we will work with you to ensure you are filing the complaint with the correct agency. Do not get discouraged while working through the steps of filing a complaint. Landowners often face frustration in dealing with the RRC, but taking the time and being persistent will help TLMA continue to have a large impact on the responsible and property-owner friendly development of oil and gas in the State of Texas.

RAILROAD COMMISSION DISTRICT OFFICE INFORMATION FOR FILING COMPLAINTS



District 1 & 2—San Antonio
210-227-1313

District 3—Houston
(713) 869-5001

District 4—Corpus Christi
(361) 242-3113

District 5 & 6—Kilgore
(903) 984-3026

District 7B—Abilene
(325) 677-3545

District 7C—San Angelo
(325) 657-7450

District 8 & 8A—Midland
(432) 684-5581

District 9—Wichita Falls
(940) 723-2153

District 10—Pampa
(806) 665-1653

A NOTE FROM THE EXECUTIVE DIRECTOR

I have been on the job four months and have enjoyed every single day. I am constantly learning about the issues that impact each of you and all land and mineral owners in the State of Texas. While, I'm learning quickly, I still am on a steep learning curve! One of my main priorities is for members to know that I am available to all of you for whatever you may need. If I don't have the answer, I will certainly work until I have an answer for you. Please do not hesitate to contact me with any questions or concerns.

During my time with TLMA, I have attended conferences and seminars on private property rights, and look forward to the many events quickly approaching in the fall. If you are attending any meetings that I am at, please stop and introduce yourself. At more than 800 members, it may take me some time to recognize each one of you! Additionally, if you know of an event that you believe TLMA should attend, please let me know. I will post the information on the website if it is relevant to our members and certainly try to make it to as many as possible. Land and mineral owners are certainly stronger in numbers!

At TLMA, our members are our biggest asset. TLMA is working diligently to ensure that we are constantly serving our members, meeting any needs you all may have, and offering competitive member benefits. TLMA is preparing to take the next step to becoming the premiere advocacy association for private property rights in Texas, but in order to get there we need our membership to grow! The most effective way is through word of mouth of our current members. If you know of any land or mineral owners who are not members, have them join TLMA and tell them to let me know you sent them. We award a member annually for their work in helping bring in new members. New members can join online at www.tlma.org or by sending in the membership application and payment to TLMA Membership, P.O. Box 1841, Austin, TX 78767. A copy of the membership application can be found on the outside cover of this newsletter or email info@tlma.org.



One of the most helpful ways that you can tell us how we're doing or what you would like to see the association doing is to complete our survey online or by phone. If you would like to participate by phone, please call 512-585-4970 and leave a message with your phone number and a good time to call you back. We are always looking for new ideas and issues that we should be aware of. Texas is a big state and while we are covering as much of it as we can, sometimes issues slip through the cracks!

I am excited for the potential that the organization has. Without our members, we would not be able to accomplish all of the significant things that we do. If you would like to become more involved in TLMA, please let me know.

Please do not hesitate to reach out to me if I can ever be of assistance and if you ever find yourself in Austin, you are welcome to stop by the office. I look forward to meeting each of you and achieving many successes in the coming years!

A handwritten signature in black ink that reads "Jennifer". The script is fluid and cursive, matching the name of the Executive Director.

TEXAS SUPREME COURT TO REVIEW CASES IMPACTING OIL AND GAS LEASES

The Supreme Court of Texas recently returned from their summer recess. Upon their return, they will consider several motions for rehearing that will impact cases regarding oil and gas lease language—specifically when a lease terminates. Two of the cases are *BP America v. Red Deer Resources LLC* (Case No. 15-0569) and *Endeavor Energy Resources and Endeavor Petroleum v. Discovery Operating and Patriot Royalty* (Case No. 15-0155). Because of the clauses the cases address, both of these cases will potentially impact a large number of existing leases, as well as leases going forward.

In the *Endeavor* case, the outcome will impact the retained acreage clause. Endeavor leased two 160 acre tracts from a landowner. The leases contained language stating the proration unit was 160 acres. However, in its filings with the Railroad Commission of Texas (RRC), Endeavor only assigned 80 acres of the 160 acres to a proration flat. Upon learning about only assigning 80 acres, the mineral owner then leased the remaining 80 acres to Discovery Operating through Patriot Royalty. Discovery then drilled 4 wells on those acres. Endeavor contends that the filing was a mistake and that the lease prevails, meaning those 80 acres still belonged to them. The lower courts ruled that Endeavor retained those 80 acres. Discovery believes that Endeavor ceased continuous-development operations, returning the mineral owner rights to the royalty owner when they did not assign all 160 acres to the plat on the filing due to the following language contained within the lease: “lands and depths within a governmental proration unit.” The trial court and court of appeals found in favor of Discovery, meaning that only those acres assigned on the RRC filing were still held by Endeavor.

Endeavor has been granted their motion for rehearing by the Supreme Court. Oral arguments at the Supreme Court will take place on January 9, 2018.

In *BP America v. Red Deer*, the issue at hand is the shut-in royalty clause. Red Deer Resources LLC held a lease, very similar to a “Producers 88” lease, for a marginal well. June 4 was the last day of production for the well and the operator turned off the well on June 12. The Supreme Court determined that the last day the well was “capable for producing” to enact the shut-in royalty clause was June 4. However, this is disputed due to the fact that the well had production on June 4. Additionally, the Court applied the producing in paying quantities incorrectly because the well was incapable of producing when the operation turned off the valve on June 12. The trial court and court of appeals found for Red Deer Resources, but the Supreme Court found for BP America. The Supreme Court’s decision creates confusion in language found in many oil and gas leases.

Red Deer Resources requested the motion for rehearing on June 6, 2017, but the Supreme Court has not determined whether or not they will rehear the case.

TLMA filed an amicus brief in the *BP America v. Red Deer Resources LLC* case in support of Red Deer’s motion for rehearing. You can find a copy of the brief, as well as all other briefs TLMA has filed, on the TLMA website: www.tlma.org.

These cases have the ability to significantly, and potentially negatively, impact a large number of royalty owners in Texas. TLMA will continue to monitor the progress of these cases and inform members of any developments.

NEW LAWS WENT INTO EFFECT SEPTEMBER 1

All laws passed during the 85th Legislative session, as well as during the first called special session, went into effect on September 1. Included among these is HB 3198 by Chairman Drew Darby and sponsored by Chairman Craig Estes—TLMA's primary policy initiative for the 2017 legislative session. This bill protects landowners with open-space tax exemptions and oil and gas well-pad sites from increased property tax burdens. If you become aware of any county appraisal districts not following this law, please let TLMA know..

On July 18, the Texas Legislature was called back for their first special session. Governor Greg Abbott initially placed one item on the call with the stipulation that 19 additional items would be placed on the call when the first item, Sunset legislation that did not pass during the regular legislative session, passed. Of the 20 items listed on the call, few passed both chambers and were signed into law.

In mid September, Speaker Joe Straus began to release interim charges for various House Committees. The charges released to this point are a direct result of Hurricane Harvey, but Speaker Straus expects to release all interim charges near the end of the year. Lt. Governor Dan Patrick has not yet released any interim charges. Eminent domain will likely be released as an interim charge. Interim charges are those areas that the Lt. Governor and Speaker ask their respective committees to study and prepare for potential legislation. Should eminent domain be issued as a charge, TLMA will be monitoring the issue, as well as any other issues impacting our members, closely.

UPCOMING EVENTS

October 5: Texas A&M Extension Service's Leadership Advisory Board and Harrison County's Agriculture and Natural Resources Committee Eminent Domain and Water Rights Issues Meeting; 6 p.m. at the TSTC Library in Marshall. 903-935-8413 FMI.

October 10—RRC Open Meeting; 9 a.m.; Austin

October 25—South Texas Farm & Ranch Show; Victoria, Texas;
www.southtexasfarmandranchshow.com FMI

November 7—RRC Open Meeting; 9 a.m.; Austin

December 5 and 12th—RRC Open Meeting; 9 a.m.; Austin

All RRC open meetings can be viewed live at www.rrc.texas.gov. You can also find the meeting agenda in advance of the meeting on the same webpage.

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
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.

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