



# TEXAS LAND & MINERAL OWNERS ASSOCIATION

## OFFICIAL NEWSLETTER

Volume 16, Number 2

2nd Quarter 2016

### THE INTERSECTION OF OIL AND GAS DEVELOPMENT AND URBAN SPRAWL

Dr. John Baen was shocked to encounter this large, permanent sign on his two-acre tract in a subdivision in Denton County, outside of the Denton city limits. An oil and gas operator posted the sign on Dr. Baen’s land, with more signs at multiple entrances to the subdivision on public roads. There is an old lease for a 320-acre unit there, but eight, defined well-pad sites have already been established, wells drilled about ten years ago, and infrastructure to serve the sites already in place and visible. Public records do not show any new permit applications for the land.



The company removed the sign from his land after Dr. Baen called and complained. Questions remain, though, as to why the signs were installed in the first place, and whether that action was reasonable under the circumstances. An operator has the right to access leased property. Does that implied right extend to every acre? In addition, such conspicuous “notice,” particularly on land under development for residential and retail use, does more harm than good. It unnecessarily frightens property owners, potential buyers, real estate agents, and lenders, and depresses the market value of the real estate.

It is important to remember that, although the mineral estate is dominant to the surface estate in Texas, and leased land carries an access burden, landowners do still have a stake in the game. When actions like this posted sign cause baseless fear and may seriously harm your property value, you are entitled to question whether the act was an unreasonable interference with your surface rights. While an operator may use your surface to access and develop leased land, it should not take actions that effectively condemn the entire property.

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#### **WRITE TO YOUR STATE LEGISLATORS!**

An important property rights issue is sure to come up again next legislative session, and now is the time to educate legislators. As you may recall, last session a bill was filed—HB 1552—to allow oil and gas companies to take away your ability to negotiate your royalty payments for allocation wells. Fortunately that bill did not pass.

Members of the oil and gas industry have indicated that another bill giving them carte-blanche authority to drill allocation wells without giving royalty owners any rights will be filed again next session. One hurdle we faced last year was most legislators simply did not know the issue or comprehend what an atrocious taking of a private-property rights the bill endorsed.

This summer, we ask TLMA members to begin a letter-writing campaign. Help legislators understand the stakes!

*(continued on page 3)*

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## **EXECUTIVE DIRECTOR**

Laura Buchanan

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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## **HAVE YOU VISITED THE TLMA WEBSITE LATELY?**

This spring, TLMA launched a new and improved website with features to make your membership even better!

The website is now mobile-optimized for you to browse on your smart phone or tablet.

Stay informed on current TLMA news, find helpful resources, and use the convenient links to contact your state legislators.

Check the calendar for upcoming events. For TLMA events, like the Statewide Members Meeting in October, you can easily register for the event online.

Members can log in to access more features for members' only, such as:

- Check your contact information to make sure everything is correct and up-to-date.
- When it is time, you can renew your membership online. Pay by credit card, or print the receipt and mail us your check.
- Ask questions and chat with TLMA staff and fellow TLMA members in the online Discussion Forum.
- Choose to list yourself in the online TLMA membership directory, and customize how much information you wish to share (the directory is only accessible by current members).

Give the new website a try! We hope you enjoy the improvements. If you have any questions or run into snags, please do not hesitate to give us a call or email [info@tlma.org](mailto:info@tlma.org).

## **SAVE THE DATE!**



## **TLMA STATEWIDE MEMBERS MEETING OCTOBER 20, 2016 SAN ANTONIO, TX**

## **OTHER EVENTS AROUND THE STATE**

**June 17**—Stakeholder meeting, Rustler Aquifer brackish groundwater mapping project related to HB 30—Pecos County Courthouse, Fort Stockton, TX.

**June 22**—Stakeholder meeting, Gulf Coast Aquifer brackish groundwater mapping project related to HB 30—William B. Travis Building Room 1-100, Austin, TX.

**June 22-24**—Independent Cattlemen's Association 42nd Annual Convention—Inn of the Hills, Kerrville, TX.

**July 14-17**—Texas Wildlife Association Annual Convention—J.W. Marriott San Antonio Hill Country Resort and Spa, San Antonio, TX.

**August 1-3**—Texas A&M AgriLife Extension 62nd Annual Beef Cattle Short Course—College Station, TX.

## WRITE TO YOUR STATE LEGISLATORS!—CONTINUED FROM PAGE 1

Please take some time over the next several weeks to write to state legislators about issues with allocation wells so they can truly understand what is happening and why allocation wells are bad news. Below are several powerful arguments as to why granting operators the unfettered ability to trample your property rights via allocation wells would be a terrible thing for Texas.

**Protect your private property rights.** Mineral owners have the power to negotiate the terms of the oil-and-gas lease of their private property. You may have carefully negotiated a lease that does not allow the comingling of your production. A bill stating that, unless your lease specifically prohibits them, allocation wells are allowed under your lease instantly unravels your intent. What is the point of having bargained for your valuable property interest if the legislature can undo it?

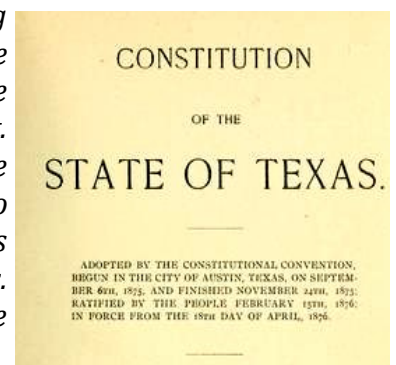


**Texas does not support forced pooling.** Unlike other states that allow the taking of private property through forced pooling, Texas recognizes your long-established right to your minerals. When you lease your minerals for production, you have the right to say whether or not an operator can drill a shared-production well. Although industry claims allocation wells are not the same as pooling—pooling refers only to vertical wells, allocation wells are lateral wells—the result is the same. Your minerals are comingled with others, and your interest in a well is diluted. This should not be forced on you!

**You deserve notice and the right to consent.** With industry's current practice, an operator applying for an allocation-well permit at the Railroad Commission does not have to send notice of the application to affected royalty owners. In fact, you'll likely never know an allocation well was drilled until it is already in production and you receive a division order with a decimal interest that is a fraction of the agreed-to royalty rate for your lease. You should have knowledge of a permit application, the right to consent, or not, to share production from your property, and the chance to agree to the method of allocation.

**Legality of allocation wells is still an open question.** No Railroad Commission rule addresses allocation wells or recognizes the existence of these types of wells. There is no law in the Texas Natural Resources Code that speaks to the drilling of allocation wells. No Texas court-of-law has had the opportunity to weigh-in on whether an oil-and-gas lease allows the drilling of allocation wells because industry has a very strong incentive to settle the cases before they go to trial. The question of their legality is open, and it should not be instantly closed by industry influence in the legislature with no legal analysis of how an allocation well fits within the specific, negotiated terms of your lease.

**A bill "blessing" allocation wells may be unconstitutional.** Texas has long supported parties' freedom to contract. The Texas Constitution and the United States Constitution both include provisions that prohibit the passing of a law that interferes with obligations under a private contract. The contractual terms of your lease should not be dictated by legislative directive, questions deserve evidence and fact-finding in a court-of-law to settle a dispute. A bill stating that your lease, unless it expressly prohibits it, allows an allocation well runs contrary to your constitutional rights. How could any lease prior to the invention of the term in 2010 include the term allocation well? This is not a matter for the legislature to decide.



Visit the **Contact Texas Legislators** tab on the TLMA website to find links to contact information for state officials, or call the TLMA office at (512) 479-5000 for help finding who represents you and the lawmakers' contact information.

Please write to your State Representative, State Senator, as well as members of the House Committee on Energy Resources and the Senate Committee on Natural Resources and Economic Development. Now is the time to educate legislators so they understand the many problems with allocation-well legislation *before* we see it again in the 2017 legislative session.

## TLMA COMMENTS ON SUNSET COMMISSION STAFF REPORT ON THE RRC

On April 29, the Sunset Advisory Commission staff released a report on its sunset review of the Railroad Commission of Texas. The staff addressed seven issues and made recommendations. In response to the staff report, TLMA submitted the following comments to the Sunset Advisory Commission. The Sunset Commission will schedule a hearing on the Railroad Commission sunset review this summer. The Commission will consider testimony presented at the hearing and then make final recommendations to the legislature on changes to the Railroad Commission in the 85th state legislative session, which begins in January 2017. You can find the staff report and public comments on the Sunset Advisory Commission's website [www.sunset.texas.gov/reviews-and-reports/agencies/railroad-commission-texas-rrc](http://www.sunset.texas.gov/reviews-and-reports/agencies/railroad-commission-texas-rrc).



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March 13, 2016

Ken Levine

Director, Sunset Advisory Commission

P.O. Box 13066

Austin, Texas 78711-3066

Dear Mr. Levine:

Thank you for the opportunity to provide comments on the Sunset Advisory Commission Staff Report on the Railroad Commission of Texas. The Texas Land & Mineral Owners Association (TLMA) is a statewide advocacy association of members who are farmers, ranchers, landowners, and mineral-interest owners. The association strives for a business and legal environment that promotes a healthy oil and gas industry in Texas, knowing that in our great state this can only be done while still respecting the private-property rights of surface owners and mineral owners.

The Railroad Commission has the very important purpose of regulating an industry that is more than just iconic, it is integral to Texas's economic health and impacts its environmental health. TLMA would like to commend the Sunset Commission staff on their diligent work reviewing the Railroad Commission in anticipation of its 2017 sunset. Obviously, the agency should continue. The Sunset Commission staff's report makes good recommendations that will not only keep an essential agency, but will also promote transparency and fairness in Railroad Commission actions.

For instance, moving contested-case hearings to the State Office of Administrative Hearings, an independent agency, would create a better public perception of impartiality in proceedings. In addition, closing the regulatory gap to allow the Railroad Commission oversight of interstate pipelines addresses a real concern for public safety and environmental integrity. Authorizing the Railroad Commission to assess a permit fee for pipeline permits also assists the Commission in carrying out its regulatory functions with self-funding.

There are two issues for which the TLMA feels the Sunset Commission staff's recommendations could go even further without undue burden. On Issue 3, improved tracking and reporting oil- and gas-field violations would provide beneficial steps toward increased transparency. TLMA appreciates the recommendation, but believes

the Railroad Commission could do more. A system to allow online filing and tracking of landowner-reported complaints would provide landowners with easier recourse and knowledge of Railroad Commission actions in response to their claims. Currently, landowners may call the district office to report a complaint, but they have no way to follow up on the status.

Allowing landowners online access to report complaints, and the ability to check the progress of their complaint, could alleviate some of the boots-on-the-ground burden on Railroad Commission staff since the landowner has the easiest access to and knowledge of their property and its condition. As stated in the staff's report, the Railroad Commission has "151 oil and gas field inspectors who oversee drilling, hydraulic fracturing, production, and well plugging activities, as well as activities associated with the disposal and cleanup of waste generated by oil and gas exploration and production." That is a huge task for a limited staff, so allowing landowners to participate and report non-compliance enhances the Railroad Commission's ability to enforce timely compliance with its orders.

On Issue 4, TLMA again appreciates the Sunset Commission staff attention to an important issue and recommendation to reevaluate the P-5 permit blanket-bond amounts. Adding levels to the tiered structure would make the bonds better work as intended and generate more fairness for operators. However, TLMA sees no reason to decrease any blanket-bond amounts. This becomes especially relevant since the Sunset Commission staff, who consult with Railroad Commission staff, anticipates an increase in abandoned wells.

The legislature in 1991 deemed the levels appropriate for P-5 blanket bonds for operators with 20 wells or less. The estimated cost of well-plugging has more than doubled over the last 25 years. The Sunset Commission should also note that operators do not have to choose the blanket-bond option, they may instead file an individual bond in an amount equal to \$2 for each foot of well depth. The Natural Resources Code also provides an alternative to bonding—the operator may secure a well-specific plugging insurance policy. Because very small operators have alternatives to the blanket bond, and because operators with 20 wells or less are in the high-risk group for abandoning wells, TLMA sees no reason to decrease the blanket-bond amounts.

TLMA's only additional recommendation is to add more enforcement and compliance staff to the Railroad Commission as necessary. We understand the Railroad Commission is doing the best it can with limited resources; however, the agency needs more enforcement to protect the integrity of lands from which private-property owners earn a living even when oil and gas operations are not in play. As stated in the Sunset Commission's staff report, in 2015 the Railroad Commission employed 151 inspectors for more than 433,000 oil and gas wells operated by 7,100 operators in the state. Add in the projection that the number of abandoned wells will increase, and the inability of Railroad Commission staff to keep up with demand results in a very large mess for Texas.

Reiterating its support for the Sunset Commission staff's report and recommendations that will ensure the responsible regulation of the oil and gas industry in a manner that promotes transparency, fairness, and the ability of the Railroad Commission to effectively address affected-landowners' concerns, TLMA respectfully asks that its positions on Issues 3 and 4 be considered. In addition, TLMA would like to see an increase in enforcement staff at the Railroad Commission.

TLMA thanks you for your attention to our comments on behalf of landowners and mineral owners who are daily impacted by the actions of the Texas Railroad Commission. We appreciate your staff's recommendations, but we feel there are places where the Railroad Commission could make more improvements to increase transparency and protect private property rights for Texans.

Sincerely,



Laura Buchanan  
Executive Director  
Texas Land & Mineral Owners Association

## PRIMARY RUNOFF ELECTION RESULTS AND 2016 CANDIDATES FOR RAILROAD COMMISSIONER

After May 24 run-off elections, two candidates have now secured their places on the November ballot for Railroad Commissioner. In the Republican primary runoff match-up between former State Representative Wayne Christian and real-estate mogul Gary Gates, Christian emerged the victor, pulling in 50.9% of the vote. Between journalist Cody Garrett and former-schoolteacher Grady Yarbrough, Yarbrough won the Democratic primary runoff with 53.9% of votes.



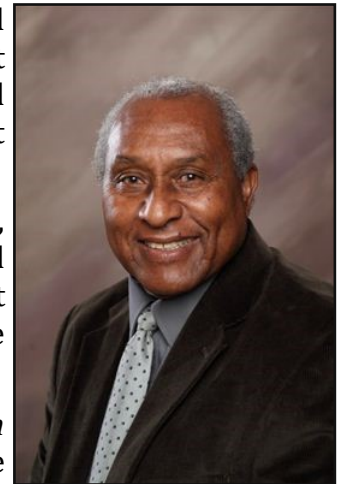
**Wayne Christian**

Republican candidate Wayne Christian spent 14 years in the state legislature, representing East Texas. He served as a member of the Energy Resources Committee and as vice chairman of the Regulated Industries Committee. This is not Christian's first bid for Railroad Commission—Christian ran unsuccessfully for the Texas Railroad Commission in 2014. He lost in the Republican primary runoff election to Ryan Sitton, who was ultimately elected to the Commission.

Christian released a statement saying he was honored to win the nomination, and he stated: "We have a lot of work ahead of us creating an environment that will allow our state's energy sector to once again get hardworking Texans back to work."

Democratic candidate Grady Yarbrough is originally from Smith County, Texas, Yarbrough taught school and retired from the San Antonio Independent School District. He has since returned to East Texas. This is not Yarbrough's first political campaign. He ran unsuccessfully for U.S. Senate in 2012, losing in the Democratic primary runoff election.

Regarding his bid for the Railroad Commission seat, Yarbrough told the *Houston Business Journal*, "I'm going to get in there, fix things up and ride off in to the sunset." Yarbrough faces tough odds, however, since no Democrat has won statewide office in Texas in more than 20 years.



**Grady Yarbrough**

Two additional candidates are also slated for the November 8 election ballot.

Dr. Mark A. Miller, an Austin-based petroleum engineer, will run as the Libertarian candidate for Railroad Commissioner. Dr. Miller worked in the oil and gas industry as a petroleum engineer. He taught petroleum engineering at the University of Texas for 18 years, and went on to establish a petroleum engineering consulting practice and a small company that provided software to the oil and gas industry. Dr. Miller ran for Railroad Commission in 2014 in the race won by current Commissioner Ryan Sitton.



**Dr. Mark Miller**

Martina Salinas, originally from Laredo and currently living in River Oaks, will again run for Railroad Commission as the Green Party candidate. Like Dr. Miller, Salinas also ran in 2014 for the seat now occupied by Commissioner Ryan Sitton. Salinas says: "As a native Texas, I want to bring the Railroad Commission back to its original intent to be the advocate for Texas Citizens and to hold the rights of Texans over rights of industry."



**Martina Salinas**



# TEXAS LAND & MINERAL OWNERS ASSOCIATION

## STATEWIDE MEMBERS MEETING

### OCTOBER 20, 2016

### 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. Don't miss it!

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 hearty breakfast and barbecue 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](mailto: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.

You can also register online by visiting the Statewide Members Meeting tab at [www.tlma.org](http://www.tlma.org).

Please note that you must be a TLMA member to attend. The registration cost listed for non-member registrants includes a TLMA membership at the Individual level.

#### Early Registration:

Individual Member	\$65
Non-Member	\$115

#### Registration after Oct. 1:

Individual Member	\$75
Non-Member	\$125

#### TLMA Statewide Members Meeting Registration

Name(s) \_\_\_\_\_

Organization/Ranch Name \_\_\_\_\_

Address \_\_\_\_\_

City \_\_\_\_\_ State \_\_\_\_\_ Zip \_\_\_\_\_

Telephone Number \_\_\_\_\_

Email Address \_\_\_\_\_

Please make check payable to TLMA and mail to 1005 Congress Ave, Ste 360, Austin, TX 78701



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



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**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](http://www.tlma.org).

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