



# TEXAS LAND & MINERAL OWNERS ASSOCIATION

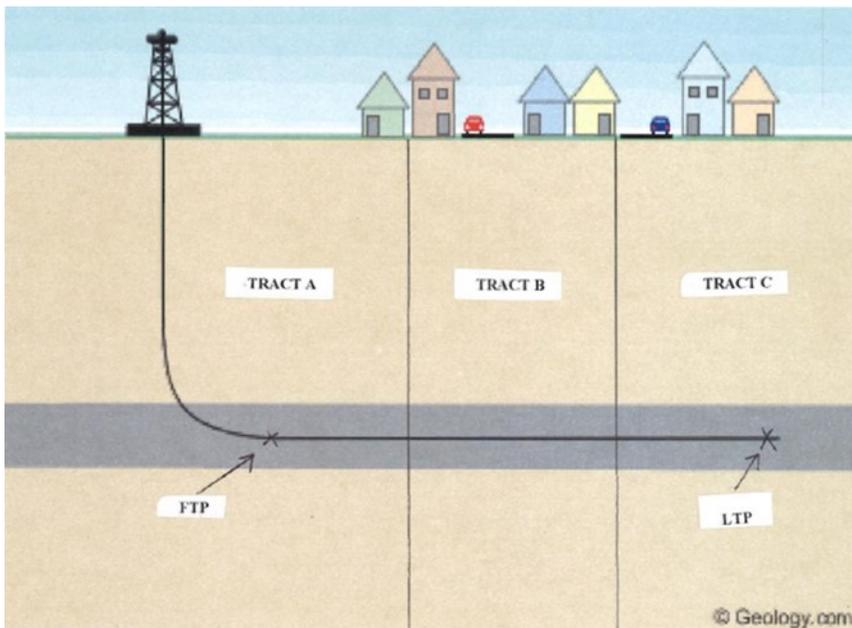
## OFFICIAL NEWSLETTER

Volume 18, Number 3

3rd Quarter 2018

### ALLOCATION WELLS: WHAT ARE THEY AND WHAT IS THE CONTROVERSY?

What is an "allocation well"? It has no formal definition, but has come to mean a horizontal well that crosses one or more lease or unit lines without pooling the tracts together. So the production from the well must be "allocated" among the tracts crossed by the well.



A "production sharing well" is generally referred to as an allocation well for which the royalty owners have agreed on a method of allocating the production among the tracts crossed by the well. A "production sharing agreement" is the agreement by which the royalty owners and the operator agree on the method of allocation.

Unlike pooling, production from an allocation well is generally (although not always) allocated based on the percentage of productive lateral feet of the well located on each tract. "Productive

lateral feet" are measured from the first "take point" or perforation in the casing to the last take point in the casing.

So, in the illustration above, if the lessor owns the minerals in Tract B, subject to a lease reserving a 1/4<sup>th</sup> royalty, and if the productive lateral feet crossing Tract B is 40% of the total lateral length, then the lessor's royalty interest in the well, under the typical allocation formula, is 40% of 1/4<sup>th</sup>.

*Continued on page 5*

**REGISTER TODAY FOR THE TLMA  
STATEWIDE MEMBERS MEETING, OCTOBER 11**

The Texas Land & Mineral Owners Association returns to the Pearl Stable in San Antonio for our Statewide Members' Meeting on October 11, 2018. You won't want to miss it!

See pages 5 through 7 inside this newsletter for more information and a registration form. Call us at (512) 479-5000 with any questions.

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## UPDATE FROM THE EXECUTIVE DIRECTOR

TLMA Members—

It's hard to believe that we are quickly making our way through September!

I have been busy planning and working out all of the details for the Statewide Members Meeting for the past couple of months. I believe we have a great day planned and look forward to seeing all of you there. Don't forget that registration prices increase on **October 1**. We ask that you please register beforehand if possible, but you are allowed to register the day of the event. This will help us ensure that we have plenty of food and seating for everyone. You can register on the TLMA website or by mailing in the form that is included on page 7.

Thank you to all of our sponsors and exhibitors. This day certainly would not be possible without your support! To those attending the Statewide Members Meeting, if you see any of the sponsors or exhibitors around, please make sure to visit with them and thank them.

With all of the upcoming changes in the legislature, there hasn't been too much happening other than rumblings of what may happen come January. Hearings are happening, but we don't anticipate too many things prior to January. The Speaker's race to replace retiring Speaker Joe Straus has started to get more official candidates. At this time, there are seven Representatives that have officially filed to run for Speaker. You will have a more detailed update on legislative issues at the Statewide Members Meeting from Billy Phenix.

Speaking of races, the general election is quickly approaching. While TLMA is a non-partisan association, we always encourage our members to get out and vote. You can vote during the following times:

Early Voting: October 26 through November 2

General Election Day: November 6

We are 26 members away from one of our goals this year. If you know of anyone who would benefit from the work TLMA does (meaning any land or mineral owner in the state!) please encourage them to join. Many people reap the benefits of our work, but are not members of the association.

I am so excited to meet everyone at the San Antonio Country Club and Pearl Stable in San Antonio next month! Meeting all of the members I work for daily is one of my favorite parts of the job.

As always, please do not hesitate to reach out to me if there is anything that I can do for you!



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### **EXECUTIVE DIRECTOR**

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## TEXAS SUPREME COURT DECIDES ANOTHER FRACTION-OF-ROYALTY CASE

By: John McFarland via [www.oilandgaslawyerblog.com](http://www.oilandgaslawyerblog.com)

In *U.S. Shale Energy II, LLC v. Laborde Properties, L.P.*, the Texas Supreme Court grappled again with a royalty reservation. In a 1951 deed, the grantors reserved the following:

There is reserved and excepted from this conveyance unto the grantors herein, their heirs and assigns, an undivided one-half (1/2) interest in and to the Oil Royalty, Gas Royalty and Royalty in other Minerals in and under or that may be produced or mined from the above described premises, the same being equal to one-sixteenth (1/16) of the production. This reservation is what is generally termed a non-participating Royalty Reservation.

The Bryans, who owned the reserved royalty, sued Laborde Properties, which owned the minerals subject to the reserved royalty, to determine whether the clause reserved 1/2 of the royalty or a 1/16 royalty. The Court, in a 6-3 decision, held that the clause reserved 1/2 of the royalty – a “floating” royalty.

This is the first fraction-of-royalty case to reach the court since *Hysaw v. Dawkins*, decided in 2016. Both the majority and dissent cited *Hysaw* in support of their positions.

The Court had to reconcile to clauses in the reservation: “a 1/2 interest in the royalty,” “being equal to 1/16th of the production.” Obviously, if a lease provides for a larger royalty than 1/8th, the two are not equal. The majority opinion, by Justice Lehrman, started with the proposition that the first phrase expressed the parties’ intent to reserve a floating royalty. The dissent, by Justice Boyd, disagreed: “the first clause, standing alone, does not clearly indicate whether it reserves a floating or fixed royalty interest.” Remarkably, both opinions relied on the fact that, in 1951, 1/8th was the “standard” landowner’s royalty in oil and gas leases. The majority opinion relied on that fact to support its argument that the second clause, “being equal to 1/16th of production,” would be consistent with a reservation of 1/2 of the royalty because the parties assumed that the royalty would always be 1/8th. The dissent relied on that fact to conclude that the reservation of “1/2 of the royalty” could just as well indicate an intent to reserve only 1/16th of the royalty and the additional language served to clarify the first clause.

One might ask the dissent whether, if the deed did not contain the second clause, it would be considered ambiguous. In other words, could a reservation in 1951 of 1/2 of the royalty, without any further “clarifying” language, be either fixed or floating? And would the same deed executed in 2018 be construed differently, in light of the fact that 1/8th is no longer the “standard” landowner’s royalty?

### UPCOMING DATES OF INTEREST

October 1, 2018—Price increase for the TLMA Statewide Member’s Meeting

October 2, 2018—House of Representatives Land & Resource Management Hearing, Dallas, TX

October 3, 2018—House of Representatives Land & Resource Management Hearing, Corpus Christi, TX

October 10, 2018—TLMA Reception

**October 11, 2018—TLMA Statewide Member’s Meeting** ★

October 16—RRC Open Meeting

October 30—RRC Open Meeting

November 13—RRC Open Meeting

\*\*All RRC meetings can be viewed online at [rrc.texas.gov](http://rrc.texas.gov).



## **ALLOCATION WELLS: WHAT ARE THEY AND WHAT IS THE CONTROVERSY?**

### **Continued...**

The controversy over allocation wells stems from the fact that a typical oil and gas lease does not say how royalties from an allocation well will be paid. Unless the operator obtains a production sharing agreement from the royalty owners, there is no agreement by which any royalty owner's share of production can be determined.

The Texas Railroad Commission has historically issued well permits only on leases or units if the mineral and royalty interest on the tract or unit is uniform for all the lands in the tract or unit. If the operator wants to drill on a pooled unit covering more than one tract, it has to certify that it has authority to pool those tracts.

Originally the Commission refused to issue permits for allocation wells. Then for a time it would issue permits for an allocation well if at least 65 percent of the royalty owners had signed production sharing agreements.

Eventually, operators convinced the Commission to issue permits for allocation wells even if the operator had no agreement from royalty owners as to how production will be share among the tracts crossed by the well.

From a legal perspective, the issue is whether a typical oil and gas lease authorizes the lessee to drill an allocation well. A lease does not authorize the lessee to drill a well whose surface location is on the lease but which produces only from a neighboring tract. But what about a well that produces partly from the leased premises and partly from the neighboring tract? No court has ruled on the issue.

To obtain a permit to drill, the operator, if challenged, must only prove that it has a "good-faith" basis for claiming the right to drill the well. The first challenge to an allocation well permit was in 2014, when the Klotzman family challenged EOG's application for an allocation well permit. The administrative law judges who heard the case recommended that the Commission deny the permit, but the Commissioners overruled the judges and issued the permit. The Klotzmans appealed the decision, but the case settled before any ruling was made.

There have been a few other cases challenging operators' authority to drill allocation wells, but to date all have settled. In 2015 the Texas legislature considered a bill to legalize allocation wells, but it did not get out of committee.

More recently, landowners have included language in their leases expressly prohibiting allocation wells. Clearly, if a lease expressly prohibits such wells, an operator should not be able to get a permit for the well. The Texas General Land Office's current form for Relinquishment Act leases prohibits allocation wells, as does the lease form used by the University of Texas System.

So what is the problem with allocation wells? Landowners view them as a way to get around pooling. With very limited exceptions, Texas -- unlike most oil-producing states -- has no forced-pooling statute. So pooling is purely a matter of contract in Texas. Landowners sometimes prohibit any pooling in their leases, or negotiate limits on the lessee's right to pool. Why negotiate such provisions if the lessee can drill a well in which production is shared among multiple leases without obtaining the lessor's consent? If a lease contains a retained-acreage clause, how much acreage can be retained by an allocation well? How do allocation wells work with Pugh clauses? Is production from an allocation well treated the same as production from a well located wholly on the lease?

Most landowners sign division orders for allocation wells without really understanding how their royalty decimal was calculated. If the landowner signs a division order for an allocation well he has probably forfeited his right to challenge the operator's right to drill the well. But if the landowner refuses to sign, the operator will suspend any royalty payments because the royalty owner has not agreed on his share of royalty from the well.

Allocation wells will continue to be a topic among oil and gas lawyers, law professors, and landowners until their legality is resolved, either by litigation or legislation or both.



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TLMA STATEWIDE MEMBERS  
MEETING SPONSORS !**

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& Wolff, PLLC**



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**C2 Petroleum Consulting**

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**RL Royalty Consulting**

## AGENDA FOR THE 2018 STATEWIDE MEMBER'S MEETING

The meeting is an all-day event featuring outstanding speakers who will present information on a variety of topics related to land and mineral interests. In addition to gaining valuable knowledge affecting your assets, you will have the opportunity to meet fellow TLMA members, connect with long-time friends, and share stories. Breakfast and lunch are included in your registration.

Registration is still **OPEN** for the 2018 Statewide Member's Meeting. We are rapidly approaching the price increase deadline of October 1st. You may still register after the deadline and even on the day of the meeting, but if you can pre-register, please do so. 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 are still seeking sponsors and exhibitors! 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 or exhibiting at the event, please email [info@tlma.org](mailto:info@tlma.org) for a sponsorship or exhibitor form. Exhibitor spaces are limited and selling quickly! We will accept sponsors until the day of the meeting, but we cannot guarantee that you will receive recognition in the printed materials.

We are so excited for this year's speakers! We believe they will provide great information for all of our members. Below is a list of the speakers and the topics they will be presenting on at the meeting.

Registration and breakfast will begin at 8 a.m., and the meeting will begin promptly at 9 a.m.

*Anne Idsal – EPA Region 6 Regional Administrator—Environmental Issues*

*Nicholas Laurent – Partner at Barron, Adler, Clough, & Oddo—Condemnation*

*Mark Houser – CEO of University Lands—Resource Development for Texas Higher Education*

*Keith Franklin & Adolfo Martinez – Associates at Person, Whitworth, Borchert & Morales—Negotiation concerns*

As in years past, we will have a business meeting and Billy Phenix, the TLMA Director of Government Affairs, will give an update. We will adjourn the day at 4 p.m.

## PROPOSED BY LAW REVISIONS FOR TLMA

TLMA is proposing revisions to the Associations' bylaws during this year's Statewide Members Meeting. At past meetings, the proposed changes have been included in meeting packets. This year, we ARE NOT including the changes in each of the packets. We are asking that you view the changes online prior to the meeting. We will have a few copies available at the meeting and will also project the changes during the Business Meeting portion of the day. If you would like a copy and cannot access the online version, please call the TLMA office. The proposed changes can be found on the Statewide Members Meeting page at [www.tlma.org](http://www.tlma.org). A high-level overview of the changes are:

- Creation of the Chairman-Elect position
- Staggers the Chairman and Vice-Chairman terms
- Creates a term limit of 2, 2-year terms, unless approved for a longer term by the Board of Directors
- Combines the Treasurer and Secretary positions into one
- Creates a Nominating Committee and establishes their responsibilities

Any changes to the bylaws must be approved by a vote of the members at the Statewide Members Meeting in San Antonio. If you have any questions or comments about the proposed changes, please do not hesitate to reach out to Jennifer Bremer at [execdir@tlma.org](mailto:execdir@tlma.org) or 512-479-5000.



**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 want to miss!

The meeting is an all-day event featuring outstanding speakers who will 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 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](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 or register online by visiting the Statewide Members Meeting tab at [www.tlma.org](http://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



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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 \_\_\_\_\_

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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).

**Find more information, join TLMA, or renew your membership online at [www.tlma.org](http://www.tlma.org)**

