TEXAS LAND & MINERAL OWNERS ASSOCIATION

OFFICIAL NEWSLETTER

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PROPERTY TAX ROLLBACKS FOR OIL PADS ON AGRICULTURAL LAND

Property owners of agricultural land with oil and gas production in Zavala County received a shock from the appraisal district this year. In April 2015, the Zavala County Appraisal District (ZCAD) sent out Notice of Change of Use Determination letters. The letters state that the chief appraiser determined the use for the property changed, and the property no longer qualifies for a 1-d-1 special appraisal for agricultural land.

The special appraisal for agricultural land bases the appraised value on the land's productivity value rather than what the land would sell for on the open market. Though technically it is a special valuation, this is commonly referred to as an ag exemption.

Under new ZCAD practices, acreage used for oil-pad sites is identified separately from the ag-exempt property as a whole. ZCAD issued the notices of change of use, and it has begun taxing oil-pad sites based on market value. This can be especially detrimental for surface owners who do not own the mineral rights being developed—they derive no financial benefit from the well, have no other use for the acreage but for grazing, and yet they are the ones who must pay increased property tax for the site.

To make matters worse, when appraisal districts determine that an agricultural property has changed use, they not only tax the property at market value moving forward, they also rollback taxes for five years. The appraisal district calculates the difference in taxes that were paid based on the agricultural appraisal and what would have been paid at market value, plus 7% interest for each year. A tax lien attaches to the property on the date the change-of-use occurs to secure payment of the increased taxes, rollback taxes, and interest.

The change of use for oil-pad sites can result in a major financial hit to surface owners. For one Zavala County landowner, the recalculation from agricultural value to market value meant the appraised value in 2014 jumped from $73 per acre to $2,000 per acre. When looking at a total carve-out of 54 acres for seven oil-pad sites, this increase in taxable value has significant impact. Add in the fact that the taxes roll back five years, and the surface owner suddenly owes a sizeable amount of money, and the property is subject to a tax lien until the total is paid.

The landowner protested the change-of-use designation and tax increase. Zavala County had never before excluded oil pads from ag-exempt property, and the amount of acreage allotted to a few of the pad sites seemed excessive. Notably, the change-of-use designation included oil-pad sites that were not constructed five years ago, but rollbacks extend back five years regardless.

At the protest, one key question was whether or not the oil-pad sites were fenced. For sites that were not fenced, thus allowing cattle to graze or a rancher to feed hay on top of the pad, the agricultural

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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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AG APPRAISALS—CONTINUED FROM PAGE 1

designation was allowed to stand. However, the ZCAD decided that it would instead remove the agricultural designation for area covered by frac-water ponds, which were lined with plastic and fenced to prevent cattle and wildlife from sliding in. The landowner still had to pay rollbacks.

Landowners in Texas should pay attention to this issue. There has been talk of other counties also starting to carve out acreage used for oil and gas production for appraisal purposes. For surface owners who do not own the minerals, it is particularly troublesome to be subject to a much higher property tax because of activities over which they have scant control and from which they do not financially benefit.

Whether or not it is coincidental, in the interim charges that Speaker Strauss submitted to the House, he included the following: "Study the appraisal of agricultural land for taxation and related issues, including the change-of-use "rollback" provision. Examine the impact of the current appraisal system of agricultural land for taxation on rural economic development."

TLMA will keep an eye on interim studies and any news on this subject.

SAVE THE DATE!

TLMA STATEWIDE MEMBERSHIP MEETING
OCTOBER 20, 2016
SAN ANTONIO, TX

TLMA FALL TOUR

Thank you to everyone who attended the TLMA's educational meetings this fall. TLMA Chairman of the Board Carolyn Frost Keenan and Executive Director Laura Buchanan visited communities across Texas to meet members and provide information about the most recent legislative session and one ongoing issue in particular—allocation wells.

A huge thank you to Chairman Keenan for volunteering her time for the meetings, making many long drives and taking time away from work and family. In addition, Dr. John Baen, TLMA's Regional Vice President in North Texas, very generously shared his expertise, giving an outstanding presentation at the TLMA meeting in Decatur. Thank you, Dr. Baen.

By bringing educational events to your town, TLMA hopes to not only educate land and mineral owners about current issues, but also energize our membership to stay involved with what is happening at all levels of state government. Please contact TLMA if there is a subject of particular interest in your area.

TWO KEY CASES BEFORE THE TEXAS SUPREME COURT

Chesapeake v. Hyder: The Texas Land & Mineral Owners Association (TLMA) and the National Association of Royalty Owners-Texas Inc. (NARO-TX) have again jointly filed an *amicus curiae* brief in the *Chesapeake v. Hyder* case. As reported in the last TLMA newsletter, the Texas Supreme Court this summer correctly ruled in favor of the royalty owners.

The issue in the case was whether, given the language in their lease with the Hyders', Chesapeake had been wrongfully deducting from the Hyders' royalty payment post-production costs such as transportation and marketing costs. The Supreme Court upheld the lower court's ruling that Chesapeake owed additional royalty payments to the Hyder family, plus attorney fees, totaling around a million dollars.

Chesapeake filed a motion for rehearing on August 5. Numerous oil companies as well as industry organizations Texas Oil & Gas Association (TXOGA) and the Texas Independent Producers & Royalty Owners (TIPRO) have filed amicus briefs supporting Chesapeake's position that it is entitled to deduct post-production costs despite the cost-free language of the Hyders' lease.

Asserting that the Court got it right the first time, TLMA and NARO-TX, the City of Forth Worth, et. al., and Chesapeake Barnett Shale Royalty Owners all filed briefs supporting the Court's opinion. The plain language of the Hyders' lease does not allow Chesapeake to take the post-productions costs from the Hyders' royalty. The Chesapeake Barnet Shale Royalty Owners consist of almost 21,000 Barnett Shale royalty owners who were plaintiffs in 430 separate lawsuits filed in Johnson and Tarrant Counties against Chesapeake-affiliated entities for systematically underpaying royalties.

If you would like to look through all of the filings in this case, you can go to www.txcourts.gov/supreme and enter case number 14-0302 in the box for "Find My Case."

Coyote Lake Ranch v. City of Lubbock: The prior owner of Coyote Lake Ranch, a South Plains cattle and gaming ranch, sold some of the groundwater rights to the City of Lubbock in 1953. Recently, the city released plans to develop approximately 80 additional municipal wells across the ranch.

Coyote Lake Ranch filed suit against the city, arguing that the expansion of the water-well field on the ranch would irreparably damage the surface of the ranch. The trial court granted the ranch a temporary injunction to prevent the city from drilling additional wells on the property, but the 7th Court of Appeals reversed and remanded the case. Coyote Lake Ranch appealed the appellate court's decision to the Texas Supreme Court, which listened to oral arguments from the parties in October.

The critical issue in the case is whether the accommodation doctrine applies to groundwater that has been severed from the surface estate in the same way that the doctrine is applied to minerals that have been severed from the surface estate. Although the mineral estate is dominant, and the owner of the minerals is entitled to use the surface to produce those minerals, the accommodation doctrine demands that the mineral owner's activities cannot unreasonably infringe on the surface owner's right of surface use. This principle has been applied in Texas for more than 40 years.

Coyote Lake Ranch, supported by amicus briefs from the Texas and Southwestern Cattle Raisers (TSCRA) and the Texas Farm Bureau (TFB), argue that the accommodation doctrine should apply where groundwater rights have been severed. To access the water, the water owner should not unreasonably interfere with the surface owner's use if it can be avoided.

The City of Lubbock feels that the Court should not equate groundwater with oil and gas because it would create much legal confusion and potentially lead to much litigation. The Canadian River Municipal Water Authority filed an amicus brief in support of the City of Lubbock's position.

If you would like to look through all of the filings in this case, you can go to www.txcourts.gov/supreme and enter case number 14-0572 in the box for "Find My Case."

TWDB REQUESTS COMMENTS ON BRACKISH GROUNDWATER STUDY

In October, the Texas Water Development Board (TWDB) sought public input as it works to implement a new legislative directive. The 84th Texas Legislature passed House Bill 30 instructing the TWDB to identify and designate brackish groundwater production zones in areas of the state with moderate-to-high availability and productivity of brackish groundwater that can be used to reduce the use of fresh groundwater.

In response to the request, TLMA submitted the following comments.



Dear Dr. Kalaswad:

Thank you for allowing us the opportunity to provide comments on efforts by the Texas Water Development Board to implement House Bill 30 from the 84th Legislative Session.

The Texas Land & Mineral Owners Association (TLMA) is a statewide advocacy association of about 1,000 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 by ensuring that the rights of both the mineral and surface owners are protected; a reduction in litigation that impedes the orderly development of the state's mineral resources; and the protection of our precious groundwater resources. We have hands-on experience in the production of valuable natural resources from beneath our land and a vested interest in protecting the rights of Texans to the resources they own.

As the TWDB designates brackish groundwater production zones, TLMA feels it is critical that the agency make it very clear it is not in the business of creating rules that provide for the special treatment of and production of brackish groundwater. As the agency is well aware, brackish groundwater is often not separate and isolated from better-quality water contained within an aquifer.

TLMA recognizes the Legislature gave the agency the responsibility of designating brackish groundwater production zones. While it is always good to know more about the quality of water that lies beneath the surface, we fear that Texas is inching ever more closely to setting up a different regulatory scheme for the different chemical makeup of water below ground. TLMA believes that drawing a regulatory distinction between brackish and fresh groundwater creates concerns on many levels. Such action may lead to an infringement upon a landowner's legally-recognized right to the groundwater beneath his land. It could also very easily cause the same problem that required the State of Texas to create the Railroad Commission and well-spacing rules—too many straws drawing from the same resource.

It is the position of TLMA that, when it comes to landowners' legal right to the groundwater beneath their land, no distinction should be made based on water quality that would diminish that right. In other words, all landowners whose surface covers the aquifer from which water is drawn should have the ability to receive fair and just compensation for the water, whether brackish or sweet.

As you draft your rules and guidelines to study brackish groundwater in our great state, TLMA asks that some language in the formal document certify that, by designating brackish groundwater production zones, the state is in no way suggesting a separate form of regulation for brackish groundwater from that of fresh groundwater.

Thank you for your time and consideration of the positions of TLMA.

Sincerely,
Laura Buchanan
Executive Director, Texas Land & Mineral Owners Association

TLMA ANNUAL AWARDS

TLMA Outstanding Service Award

In 2004 the Outstanding Service Award was established to promote and underscore the association's continuing dedication to oilfield cleanup, protection of surface and groundwater, accurate royalty payments, and to encourage new drilling of the state's oil and gas resources. The Board of Directors will award the TLMA Outstanding Service Award to one member who provides outstanding service to TLMA.

The ideal candidate for the 2015 TLMA Outstanding Service Award:

- is dedicated to reinstating a sense of fairness in the relationship between those that use the land and those who live on it, and
- has made an outstanding contribution to TLMA through active service.

TLMA Outstanding Membership Recruitment Award

The Membership Recruitment Award honors those who have taken an active role in introducing other land and mineral owners to TLMA and helping to bring new members to the association.

Previous award winners are:

Outstanding Service Award
2004 Doug Beveridge
2005 J. Evetts Haley
2006 George E. Tanner
2007 Renato Ramirez
2008 Carolyn Frost Keenan
2009 Roger Welder
2010 Mike Gillean
2012 Kim McTee
2013 Russell Hayter
2014 John McFarland

NOMINATE AN OUTSTANDING MEMBER FOR A TLMA AWARD!



SUBMIT YOUR NOMINATIONS BY JANUARY 15, 2016

Membership Recruitment Award
2005 Rod Litke
2006 Dr. John S. Baen & Morgan Dunn O'Connor
2007 Carolyn Frost Keenan
2008 Billy K. Lemons
2009 Carol Holmes
2010 Rick Walker
2011 Randy Smith
2013 Jim McAllen
2014 Jimmy Broussard

TLMA Awards Nomination Form

Please provide full name and city where member resides.

2015 TLMA Outstanding Service Award Nominee(s):_____

2015 TLMA Membership Recruitment Award Nominee(s): _____

Nomination submitted by (please print):_____

Mail your nomination to TLMA, 1005 Congress Ave., Suite 360, Austin, TX 78701,
fax it to (512) 479-5066, or
email your nomination to membership@tlma.org
by January 15, 2016.

TEXAS HOUSE OF REPRESENTATIVES INTERIM CHARGES

Speaker of the House Joe Straus assigned interim charges to Texas House committees on November 4, 2015. Included in the list of items to be studies in preparation for the 2017 legislative session are the following:

House Committee on Agriculture & Livestock

- Evaluate policy challenges to the state's agriculture and livestock industry, including long-term impacts of price declines in oil and natural gas; the availability of natural resources, including water, necessary to operate the industries; and the mitigation of and preparation for potential future hazards to the industries caused by natural disaster, drought, or disease.
- Study the appraisal of agricultural land for taxation and related issues, including the change-of-use "rollback" provision. Examine the impact of the current appraisal system of agricultural land for taxation on rural economic development.

House Committee on Energy Resources

- Study the impacts of the declining price of oil and the continuously depressed price of natural gas on the Texas economy and the fiscal implications for the Texas budget. Consider impacts on local communities most dependent on oil and gas activity, including impacts on supporting economies such as retail, manufacturing, housing industries, etc. Recommend strategies for sustained energy development and workforce growth during times of depressed energy prices.
- Examine whether current statutes are adequate for the successful prosecution of oilfield theft. Consider the potential economic impact of increasing penalties for oil and gas theft and make recommendations establishing an effective law enforcement response.
- Study current renewable energy regulations in Texas in order to more effectively balance federal, state and local regulations. Review the rights of Texas landowners who receive royalties, operating fees or monthly production payments to ensure fairness. Explore opportunities to maximize existing wind infrastructure toward the promotion of additional renewable energy development such as co-location for generation and transmission. In addition, consider policy solutions to incentivize colocation of simultaneous surface electricity and mineral energy production.
- Study enforcement policies of the Railroad Commission of Texas. Consider the effectiveness of maximum fines as a deterrent of violation, the economic benefit of non-compliance, and greater accessibility to enforcement and complaint data for the public.
- Review how the Mexican energy transformation has bolstered or diminished the energy economy in Texas. Explore opportunities that would encourage binational exchange and commerce of oil, gas, and oilfield materials. Discuss how a competitive market across the border will affect supply, market price, reliability of Texas oil, gas and energy markets, pipeline build-out as well as other economic factors such as workforce and local economy sustainability.
- Determine if sufficient safety standards exist to protect groundwater contamination from disposal and injection wells.

House Committee on Natural Resources

- Examine the regional and state water planning processes, with emphasis on the following:
  - the integration of HB 4 (83R);
  - the appropriate role of the state in ensuring that the process both supports regional goals and priorities and the water needs of the state as a whole, and how the state might encourage strategies to benefit multiple regions;
  - the structure and operation of the regional planning groups;
  - the interaction between the planning process and groundwater management;
  - whether the "drought of record" remains the appropriate benchmark for planning; and
  - any impediments to meeting the conservation, agricultural, and rural project goals set by HB 4 (83R), and possible new approaches to help meet these goals.

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HOUSE INTERIM CHARGES—CONTINUED FROM PREVIOUS PAGE

- Evaluate the status of water markets in Texas and the potential benefits and challenges of expanded markets for water. Include an evaluation of greater interconnections between water systems through both engineered and natural infrastructure. Examine opportunities for incentives from areas receiving water supplies to areas providing those supplies that could benefit each area and the state as a whole.
- Analyze the factors contributing to freshwater loss in the state, including evaporation, excess flows into the Gulf of Mexico, and infrastructure inefficiencies, and examine techniques to prevent such losses, including aquifer storage and recovery, off-channel storage, and infrastructure enhancements.
- Evaluate the progress of seawater desalination projects near the Texas coast as a means of increasing water supplies and reducing strain on existing supplies, building on the work of the Joint Interim Committee to Study Water Desalination (83rd session). Examine the viability of the use of public-private partnerships and of methods by which the state might facilitate such a project.
- Monitor the use of funds made available to Texas in relation to the 2010 Deepwater Horizon oil spill. Consider approaches to maximize the benefit of these funds for the long-term stability of the coastal economy and ecosystems.
- Evaluate the status of legislation to encourage joint groundwater planning, including HB 200 (84R), and monitor ongoing legal developments concerning ownership and access to groundwater and the impact of these developments on property rights and groundwater management.
- Determine the sources of water used by Texans in the production of food and fiber, and examine current water delivery methods and water conservation goals for agricultural use. Evaluate whether there are more efficient and effective water-usage management practices that could be employed in the agricultural industry, and determine the impact of crop insurance requirements on producers.

TEXAS SENATE INTERIM CHARGES

On October 8, Lieutenant Governor Dan Patrick announced interim charges for the State Affairs, Natural Resources and Agriculture, Water and Rural Affairs Committees. Included among the issues that the senate committees will study leading up to the 2017 legislative session are the following:

Senate Committee on State Affairs

- Eminent Domain: Gather and review data on the compensation provided to private property owners for property purchased or taken by entities with eminent domain authority. Examine the variance, if any, between the offers and the fair market values of properties taken through eminent domain. Make recommendations to ensure property owners are fairly compensated.

Senate Committee on Agriculture, Water and Rural Affairs

- Surface Water/Groundwater: Study and make recommendations regarding the ownership, production, and transfer of surface water and groundwater in the state of Texas.
- State Water Plan: Study and make recommendations on improving the process of developing and executing the State Water Plan.

Senate Committee on Natural Resources and Economic Development

- Implementation of Federal Regulations: Study the impact and identify challenges Texas faces implementing proposed federal Environmental Protection Agency regulations, including, but not limited to the Clean Power Plan, Reduction of Methane & Volatile Organic Compounds (VOCs) from oil and gas facilities, Ozone standards, Regional Haze, and Waters of the U.S. Make recommendations for legislative or constitutional action the committee considers necessary.
- Oil Field Theft: Study and make recommendations for solving the oil field theft problems facing Texas, including identifying the proper mechanisms for increasing enforcement effectiveness.

Texas Land & Mineral Owners Association
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Austin, TX 78701



TLMA Membership Information Form

☐ **I would like to learn more, please send me TLMA membership information**

☐ **I'm a member, please update my contact information**

Please return to: TLMA, 1005 Congress Ave., Suite 360, Austin, TX 78701

Name _____

Organization/Ranch Name _____

Address _____

City _____ **State** _____ **Zip** _____

Telephone Number _____

Email Address _____

You can also find more information and join TLMA or renew your membership online at www.tlma.org

Don't forget!

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

To change your address or other membership information, contact Robbie Querner at (512) 479-5000, mail in this form, or email us at membership@tlma.org.