The Texas Land & Mineral Owners Association (TLMA) advocates on behalf of around 1,000 members across the state of Texas who own the surface of the land, mineral interests under the land, or both. As such, our members have a distinct interest in the rules of the Texas Railroad Commission regarding inactive wells. We have experienced first-hand the problem of inactive and abandoned wells, especially through down-cycles in the oil-and-gas economy, and we would like to at least hold in place the provisions that protect our members' private property rights during these times. TLMA appreciates the Commission's intent to create efficiencies and ease burdens on limited staff. Improved administrative efficiency is always good. However, TLMA feels the proposed rule-change decreases efficiencies in the field by encouraging noneconomic production and delaying, possibly indefinitely, site-cleanup obligations to the detriment of land and mineral owners in Texas.

The proposed amendment to Statewide Rule §3.15 greatly concerns TLMA's membership by making substantive changes to reduce the amount of oil or gas that a well must produce in order for the well to be deemed active. The amendment cuts in half the current amount a well must produce for three consecutive months for active status, but TLMA sees a greater problem with the addition of new language that provides a well may produce <u>any</u> amount greater than zero for twelve consecutive months to be considered active. This proposed new clause renders the three-month provision practically irrelevant. In addition, Commission Statewide Rule §3.15 already allows an operator to seek an extension of the deadline for plugging an inactive well, so adding another way for an operator to avoid site-cleanup is wholly unnecessary.

The amendment to the rule would affect the terms of existing oil and gas leases that refer to Commission rules for determining whether or not a well is an active well that can hold the lease. Under the proposed new clause, royalty owners could see their leases held in perpetuity by marginally-producing wells. This negates a royalty owner's ability to negotiate terms for a lease extension, nor can she terminate a lease held by an uneconomical well to later negotiate a new lease for improved production that benefits all parties. The rule-change denies a mineral owner the freedom of contract. Instead, it allows operators or a subsequent purchaser of an operator's right to hold the lease through unprofitable production on speculation that it might be profitable to it in the future.

Under the proposed amendment, surface owners could find themselves stuck with barely-active wells that affect the health and use of their land. This is particularly problematic for landowners who do not own the minerals beneath their land and have no say-so in what company operates on their land, much less when, how, and for how long. If the revised rule allows any production greater than zero, the landowner may see no triggering of site-cleanup obligations under Texas law, which, notably, already provide a significant time-cushion for remediation and well-plugging.

By bringing up the proposed rule amendment, the Commission also highlights a related concern for land and mineral owners—our inability to audit production reporting to ensure accuracy. An oil field may have productive wells that an operator could take advantage of to hide the marginal activity of unprofitable wells in the field. It is practically impossible for a royalty owner to audit reports to make sure that production from an active well has not been attributed to a marginal well in order to keep that well in the active designation.

TLMA appreciates all of the good and responsible operators in the state, but the possibility that one bad actor takes advantage of the lack of auditing is enough and should put the Commission on guard. Operators can delay payment of royalties until the royalty amount reaches $100. For a marginal well, this

could take the span of the year and provide enough opportunity to creatively allocate production on a lease with many wells. For mineral owners, tracking back through reports to multiple state agencies to find hard data on a specific well's production seems futile, to say the least. It is time-consuming, expensive, and inaccessible to many royalty owners with marginal wells. When even one bad actor takes advantage of the system and lack of transparency, the public perception of the oil-and-gas industry and the Commission seriously suffers.

A remarkably helpful solution would be to require well-specific reporting on production that is easily-accessible by royalty owners who Texas law has tasked with exercising due-diligence in monitoring their property interests, but who have inadequate access to self-help to do so. Another option would be to assign the proposed provisions to only apply to specific, shallow well depths, freeing up the opportunity to reach deeper-held minerals through more modern and efficient means in a profitable-to-all production of Texas's vast mineral resources. Finally, the Commission could require a licensed engineer sign-off on the well-production data reported. Petroleum engineers have a vested interest in their license, and so they have a vested interest in ensuring the accuracy of numbers to which they sign their name.

TLMA also expresses concern that, with the proposed rule amendment, the Commission has presented no data to indicate that the proposed substantive changes are necessary. The published rulemaking memorandum states that the amendment aims at more accurately tracking inactive wells, which leads us to worry that the Commission does not accurately track them currently. Further, the proposed amendment does not change the Commission's own activity tracking wells, only the amount that an operator self-reports to have a well listed as active.

Finally, the memo reports the fiscal impact, or lack thereof, to the Commission, local government, industry, small and micro businesses, and local economy. It does not mention the fiscal impact to tax-paying and locally-spending land and mineral owners. TLMA members and all Texas land and mineral owners impact government, small businesses, and local economy. Our existence should not be left out of the equation.

TLMA appreciates the Commission's efforts to create efficiencies and economies to assist an industry that is vital to the state of Texas; however, assistance to operators should not come at the expense of trampling on the equally-valuable rights and interests of royalty owners and landowners. Our members are also participants in the oil-and-gas industry in Texas. The public benefit cited in the memo is the more accurate classification of inactive wells, but the substantive changes do nothing for accuracy, only expedience for operators. We respectfully ask that the Commission either strike the proposed substantive changes to §3.15(a)(1) or put in place requirements to verify the accuracy of reported production from marginal wells and increase self-held access for land and mineral owners.

Thank you for your consideration of TLMA's comments on this important subject.

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