



TEXAS LAND & MINERAL OWNERS ASSOCIATION OFFICIAL NEWSLETTER

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EASEMENTS EVERLASTING

By: Dennis McBeth

In case you might be wondering how long an easement can last, a recent Texas Fourteenth Appeals Court ruling may be of interest. An easement was signed in 1919, just over one hundred years ago, in Harris County, Texas. Recently, this easement was contested by the current owners of the property in regard to the definition of “oil or gas”. This information was forwarded to me by Tiffany Lashment who operates the Texas Agriculture Law Blog which is part of the Texas A&M Extension Service.

The previous owners of property which is now owned by Texan Land & Cattle Co. II (TLC), granted an easement to Humble Oil Co. which was a predecessor of ExxonMobil Pipeline Co. “The Easement grants the right to lay, maintain, operate and remove a pipeline for the transportation of “oil or gas” across the property. “Oil or gas” was not defined in the easement. Since 1995 ExxonMobil has been transporting gasoline and diesel through the pipeline.”

TLC filed a case against ExxonMobil claiming that ExxonMobil had exceeded terms of the easement by using the pipeline to transport refined products, specifically gasoline and diesel. This apparently was based on the claim that “oil and gas” referred only to crude oil and gas in its natural state.

Since much of Texas Law is based on precedent, it was surprising to learn that “there were no Texas Appellate Court decisions defining the term “oil or gas” used in a pipeline easement”. With all of the oil and gas history and legal cases in Texas, who would have imagined that an Appellate Court would be facing the task of having to define the term “oil or gas” here in 2019.

The Court’s summary states “The parties have not cited and we have not found a Texas Appellate decision addressing directly the meaning of oil or gas in a pipeline easement. Because this easement does not define “oil or gas”, our task is to give those terms their plain, ordinary, generally accepted meaning.” Then the court referred to several sources, including dictionaries and industry publications from near the time that the easement was signed.

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register today.

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2019 TLMA Regional Meetings

You can register online using the "Events" portal on the TLMA website (www.tlma.org) or you can mail a \$50 check to:

TLMA
1005 Congress Ave., Ste. 360
Austin, Texas 78701

Please be sure to include the attendees' name and requested meeting location in the memo line of your check.

If you have already registered to attend, thank you! If you have not, please do so as soon as possible. It is important that we have members in attendance, so we can continue to host regional meetings and have these wonderful guest speakers. These events are open to members and nonmembers, so bring a friend! The registration fee is the same for members and nonmembers.

October 17—Northwood Club, Dallas

Mr. Dave Marshall

Shades of Gray - Lessons Learned from a Billion Dollars of Royalty Audits

October 31—Hotel Emma, San Antonio

Mr. Ryan Lammert

Navigating the Railroad Commission of Texas: A Landowner's Perspective

Mr. Kevin Beiter presented "*Surface v. Minerals - Who owns what, when, where and why?*" at the Houston TLMA Regional Meeting on September 25.



UPDATE FROM THE EXECUTIVE DIRECTOR

Happy fall!

Now that things have returned to normal and I have recovered from the 86th Legislative Session, I've focused my attention on membership development and events.

As you've seen many times hopefully, we have changed the town hall meetings around the state to three regional meetings that feature a guest speaker. The event locations were determined based on the mailing addresses of our membership and where you all are located. If you are unable to attend one of the regional meetings, but know of an event coming up in your area that you will be attending, please let me know. I am happy to send membership applications and copies of our newsletter to you to distribute.

In addition to the regional meetings, we mailed a postcard to potential members encouraging them to join. All land and mineral owners in the state benefit from the work that TLMA does. It would be great if you asked those that you know if they are members. If they are not, invite them to join! We have some of the lowest membership dues compared to similar associations and are working very hard to reach our 1,000 member milestone this year.



TLMA will be announcing the date and location of the 2020 Statewide Members meeting in December, so please be on the lookout for that information and plan to attend. I learned a lot from planning the 2018 Statewide Members Meeting and have some good ideas for the 2020 meeting.

On September 1, all new laws passed during the 86th Legislative Session without an immediate effective date went into effect. That includes HB 3838, the bogus leasing bill, authored by Representative Ernest Bailes and sponsored by Chairman Brian Birdwell that TLMA helped pass. If you have any questions, feel free to reach out to me and I'll help you the best I can. During the months between legislative sessions, the Lt. Governor and Speaker of the House release interim charges for the committees to study. These charges have not been released, but should be before the end of the year.

During this November election date, there will be ten propositions that the legislature approved to be placed on the ballot. As with all political issues, TLMA does not take a position, but I am happy to help you find information on each of the propositions, if you need it.

We've received a few complaints of the online membership renewal not working. If you have any issues with renewing your dues online or with our phone line, please make sure to email me execdir@tlma.org.

I am so excited to see you at the regional meetings this fall. I think they will be great opportunities for our members and nonmembers to learn from the speakers. One of the most important things you can do as a member is to attend events.

A handwritten signature in black ink that reads "Jennifer". The signature is written in a cursive, flowing style.

EASEMENTS EVERLASTING CONTINUED

One source of definition was from “An Encyclopedic Lexicon of the English Language 4095” (William Dwight Whitney et al. eds Vol. VI, 1914. According to this dictionary, oil is divided into three classes: fatty or fixed oils, essential or volatile oils, and the mineral oils. Id. In turn mineral oils include petroleum and its derivatives....”

ExxonMobil cited sources such as “Webster’s Dictionary (1910-1920) defining gas as any gas or gaseous mixture other than atmospheric gas, specific. any combustible gaseous mixture used for illuminating are as a fuel.” Several other industry publications from that time period were used as reference to support the broad definition of the term “oil or gas”.

One statement which caught my attention was on page 9 of the ruling. It stated “The court acknowledged the long-standing rule discussed above that when a contract leaves a term undefined, courts presume the parties “intended its plain, generally accepted meaning” often determined by dictionaries.

The two big surprises for me in this case were that the term “oil or gas” had never been defined in a Texas court case involving pipeline easements and the other being that the court looked back to the time that the easement was prepared to find definitions. In a time where we see almost everything challenged on some type of technicality it is interesting to see the words “plain, generally accepted meaning”.

The Texas Fourteenth Appeals Court ruled in favor of the defendant ExxonMobil. The entire opinion can be found at: agrilife.org/texasaglaw/2019/08/12

This is a reminder to that easements can go on forever and that words mean things. It also means that a precedent has now been set for defining the term “oil or gas” pertaining to pipeline easements. As always, the recommendation from this corner is to consult a good attorney. Perhaps we should begin referring to easements as “Everlasting Easements” to remind us that easements can go on forever.

BakerHughesGE reported that 916 drilling rigs were at work in the U.S. on August 23, 2019. That is 19 less than the previous week and 128 less than one year ago. Canada had 139 working rigs, down 3 for the week and down 90 on the year. Brent Crude oil near month futures were reported at \$59.34 per barrel and West Texas Intermediate was \$54.17. PlainsAllAmerican pipeline posted bulletin listed WTI at \$50.25-50.75 per barrel. Natural Gas Henry Hub futures were quoted at \$2.15 per mcf. Ethanol was \$1.32 per gallon while gasoline was \$1.64. This puts ethanol at 80% of the price per gallon of gasoline while providing 67% of the BTU’s. In the first half of 2019, 22% of the electricity used in Texas has been generated by wind power.

INAUGURAL TLMA REGIONAL MEETING SPEAKERS

Kevin Beiter—Houston

Kevin represents a diverse clientele in virtually all aspects of the energy industry. With a background in petroleum geology, he has operated and participated in oil and gas exploration and development projects across North America. As a transactional lawyer, he has represented owners and operators with documentation, due diligence, and business counseling for acquisitions and divestitures and for exploration and operation. As a trial lawyer, he has represented plaintiffs and defendants, both majors and independents, in energy and environmental disputes before administrative agencies and at all levels of state and federal courts in Texas, Wyoming, Oklahoma, and New Mexico. Kevin has international experience in the Americas, including Central America and Canada, and in West Africa, Eastern Europe, and Australia.

Kevin is Board Certified in Oil, Gas and Mineral Law by the Texas Board of Specialization. He has been listed in Best Lawyers®, Oil & Gas Law since 2007 and Natural Resources Law since 1995, as well as in Litigation focusing on Construction, Environmental, Real Estate, Mergers and Acquisitions since 2011. He has been selected to the Texas Super Lawyers list, a Thomson Reuters service, since 2003. Kevin is a recognized speaker, lecturer, and author on the energy industry and related policy matters.

Mr. Dave Marshall—Dallas

Dave Marshall's over 35-year career of providing expert financial, tax and legal advice within the oil and gas, renewable energy, real estate and family office environments, is highlighted by a personal dedication to maximizing organization efficiency and empowering others to succeed.

Dave is the founder and President of Meridian Energy Advisors, a privately held company, providing value-added energy advisory services. Meridian offers owners, E&P companies, private equity companies and commercial banks solutions that facilitate organization restructuring, financial and strategic planning and operations improvements through a team approach. Meridian and Mr. Marshall, as CEO of GeoTek Energy, an energy technology developer, drove the effort to refine its business model, raise private equity and DOE research grants and progress toward completion of the first sub-surface expander driven pump.

From January 1987 to September 2008, Dave was Chief Financial Officer, General Counsel (1996-2008), and Member, Board of Directors at J. D. Murchison Interests, a privately held company active in oil and gas exploration, real estate development and financial investments. Murchison Oil and Gas, Inc. has interests in wells located in Colorado, New Mexico, Texas and Louisiana and an active drilling program in the Permian Basin. Murchison Realty, Inc. has developed multifamily projects and holds commercial real estate interests. Murchison Properties, Inc. participates in lot developments and homebuilding in the DFW area.

As Chief Financial Officer, General Counsel, and Member, Board of Directors, Dave was responsible for financial, accounting, tax, legal, administrative, risk management and information systems matters for various companies and majority shareholder. He jointly managed a professional staff of 15.

From August 1981 to December 1986, Dave was President and Owner of D.B. Marshall & Co., a Dallas-based oil and gas tax and litigation consulting practice. Dave founded the firm and grew the company into a comprehensive tax and consulting entity.

From January 1980 to August 1981, Dave was Tax Manager for Peat, Marwick, Mitchell & Co. in Dallas, Texas. As Tax Manager, he specialized in oil and gas, estate tax planning, and compliance. Major clients included the Hunt Families, Richard and Harry Bass Families, and Belo Entities.

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WHAT IMPACT DOES THE RRC BUDGET HAVE ON WELL PLUGGING?

As mentioned in previous newsletters, the Railroad Commission of Texas has been appropriated a significant increase in the well plugging budget. The State is required to plug wells that are considered abandoned or orphaned by operators in Texas. According to the RRC, an orphan well is one that is inactive, non-compliant and that has been inactive a minimum of 12 months and the responsible operator's Organizational Report (Form P-5) has been delinquent for greater than 12 months. Orphan wells are eligible to be taken over by an operator in good standing with the RRC.

As of January 2019, there were over 6,000 orphaned oil and gas wells in Texas and, as of August 31, there were over 1,689 wells on the Statewide Well Plugging program list. The list of wells is growing, even though the state has made significant progress in the number of wells plugged each year. Below is chart of the budget, goal, and actual number of wells plugged for the past 3 biennium and the current biennium. For simplicity purposes I have combined the fiscal year totals by biennium.

Biennium	Budget	% Budget Increase From Previous Biennium	Wells in Goal	Wells Completed	Percent of Goal Wells Plugged
2014-2015	\$ 39,477,812.00		2,400	1255	52%
2016-2017	\$ 38,161,113.00	97%	1,750	1462	84%
2018-2019	\$ 105,629,910.00	277%	1,958	3074	157%
2020-2021	\$ 109,291,152.00	103%	2,800		

As the chart shows, the percentage increase in the budget does not directly correlate with the percent increase in wells plugged. However, the RRC has significantly improved the number of wells plugged per year and surpassed their well plugging goal for the previous biennium.

If you have a well on your property that has been abandoned, you can check on the Railroad Commission's website to see where it falls in the RRC's priority ranking system, if you have all of the appropriate information. Need help? Send me an email and I'll help the best I can.

UPCOMING DATES OF INTEREST

- October 17—TLMA Regional Members Meeting, Northwood Country Club, Dallas
- October 31—TLMA Regional Members Meeting, Hotel Emma, San Antonio
- November 8—GDHM Land & Mineral Owners Seminar, Hotel Ella, Austin
- December 5—*SWEPCO v. Lynch* Oral Arguments, Livestream



Be sure to watch for emails relating to deadlines to register for the TLMA Regional Meetings.

INAUGURAL TLMA REGIONAL MEETING SPEAKERS CONTINUED

Dave Marshall Continued...

Dave attended the University of Texas School of Law where he earned his Doctor of Jurisprudence in December 1979. Dave received his Bachelor of Accountancy with Special Distinction from the University of Oklahoma in Norman in May 1975. While in law school, he was a Law Clerk for Scott, Douglas & Keeton in Austin, Texas as well as McAfee Taft in Oklahoma City. Dave also worked as a Financial Analyst for the Gas Utilities Division of the Railroad Commission of Texas.

Dave is licensed as an attorney in Texas and as a Certified Public Accountant in Texas and Florida. He is a member of many Professional Boards and Societies including: the American Bar Association, the State Bar of Texas, and the Dallas Bar Association, the Texas Society of CPA's; Member, Board of Directors; Dallas CPA Society; Past Board of Directors Member; Past Chair - Public Affairs Committee and Political Action Committee, the Dallas Petroleum Accountants Society, American Association of Attorney-CPA's, Financial Executives International, COPAS of Dallas, NARO Post-Production Deduction Committee and the National Association of Royalty Owners. Mr. Marshall has served as a mentor to the Health Wildcatters business incubator center in Dallas.

Mr. Ryan Lammert—San Antonio

Ryan Lammert, a fourth-generation Texan, represents land and mineral owners before multiple state agencies, including the Railroad Commission of Texas and the State Office of Administrative Hearings. Previously, Ryan served as an Administrative Law Judge at the Railroad Commission of Texas, presiding over the Commission's oil and gas docket involving complex complaint, enforcement, and compliance proceedings. His knowledge of the Railroad Commission of Texas' rules and regulations is particularly useful in litigating oil and gas lease disputes and evaluating transactional matters, such as oil and gas leases, joint operating agreements, production sharing agreements, and farmout agreements.

Ryan holds degrees from South Texas College of Law (JD), and Texas A&M University (MS, BS). At Texas A&M, his graduate studies focused on rangeland ecosystems and ranch management, where he was heavily involved with the Society for Range Management. During law school, he was recognized on the Dean's Honor List, as a Dean's Scholar, was a recipient of the Fant Foundation Scholarship and South Texas College of Law Academic Merit Scholarship, and clerked for both the Texas Parks and Wildlife Department and the Office of the Attorney General of Texas. He is a member of Phi Delta Phi International Legal Honor Society and Gamma Sigma Delta Honor Society, the oldest and largest agricultural honor society.

Thank you to the speakers for donating their time to share their knowledge and expertise with our members. They set the bar high for future meetings!



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

