



# IN THE PIPELINE

TEXAS PIPELINE ASSOCIATION NEWSLETTER

WINTER 2019

## FROM THE CHAIRMAN



Happy New Year and welcome to the first edition of *In the Pipeline* for the year. As you can see from our table of contents, eminent domain continues to be the most pressing issue for our association this year and our board, staff and members are taking it head on in 2019.

Throughout 2018, and together with our partners at TXOGA, TPA has deliberately taken the lead in a proactive effort to engage the leadership of the landowner organizations pressing for eminent domain reform in an effort to better understand their concerns, bring solutions to the table and move forward on a collaborative basis. Ultimately, as with every session, a unified approach will be critical to our long-term success.

We know that landowners plan to focus their efforts on private entities only this session, separating us from public utility companies. Yet, when we look at the facts, in negotiations with the pipeline industry, only 1% of all landowner negotiations ever go to a special commissioners hearing, with a mere 0.03% ever going to trial. To me, that's a success story, not a problem, and reflects the strong efforts our industry commits to when it comes to landowner relations. Of course, for that story to resonate, as we engage at the Capitol this session we must continue to ensure we are implementing our absolute best management practices and treating every landowner with respect.

While eminent domain leads at the legislature, I was proud to also see an incredible amount of leadership on so many fronts at our Annual Meeting on Jan. 11 this year. Thank you to our members who joined us and our staff who made it a great event.

I hope you enjoy this edition of *In the Pipeline*. I encourage our members to stay unified, proactive and collaborative as we move through this legislative session.

Don Baldrige, DCP Midstream  
Chairman, Texas Pipeline Association

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TEXAS PIPELINE  
ASSOCIATION

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## MESSAGE FROM THE PRESIDENT

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Friends,

Welcome to the Session edition of *In the Pipeline*. The next several months will see numerous proposals being introduced in the Legislature that could impact our industry and our state. At the time of this publication, there have already been numerous bills that propose changes in the regulatory and environmental sectors of our industry that would significantly impact the way industry operates. And as you would expect, eminent domain reform bills were filed that would severely overhaul current law and hinder the ability to develop the critical infrastructure to meet the growth needs in Texas. TPA will stay vigilant in working with legislators on these and all bills affecting industry to find areas of mutual agreement, while ensuring that critical infrastructure can still be built and Texas' economy remain strong.

This month marks the 36<sup>th</sup> anniversary of TPA's founding and many accolades go to the Board for hosting the 36<sup>th</sup> annual luncheon last month! The remarks from Sen. Birdwell were informative and it was privilege hearing his remarkable story. With the leadership from the Board and the hard work from the employees of member companies, TPA is well on track to remain successful in advocating on behalf of industry. Thank you for your continued commitment.

As always, please contact us if we may be of any assistance to you or your company and I look forward to seeing many of you around the Capitol!

All my best to you and your families.

Thure Cannon

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## TPA WORKS WITH THE CCI TO ENSURE EMINENT DOMAIN REMAINS FAIR

By Carol Sims, Coalition for Critical Infrastructure

**T**he Coalition for Critical Infrastructure (CCI) (of which TPA is a member) represents public and private entities with eminent domain authority, including cities, counties, water districts, railroads, electric utilities, gas utilities and pipelines. CCI strongly believes that the current Texas eminent domain process strikes an appropriate balance between the interests of property owners and those of public and private entities engaged in building infrastructure projects for public use. *Texas landowners would stand to benefit from additional education about the condemnation process as*

*opposed to any wholesale changes to the law, which would encumber the public purse with substantial new costs and add delays in the construction of urgently needed transportation, water and energy infrastructure.*

During the 2017 session of the Texas Legislature, landowner groups proposed a number of changes to Chapter 21, Property Code, which establishes procedures for the acquisition of property by public and private entities with eminent domain authority. The proposal, which ultimately failed to

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pass, included standard contract provisions for electric utility and pipeline easements, certain procedural changes to the special commissioners process, and mandatory attorney's fees for a property owner if the special commissioners awarded at least 20 percent more to the landowner than the entity's final offer. In 2019, we are seeing similar legislation with some new twists: minimum easement terms for utilities and pipelines, a standard easement form promulgated by the attorney general, mandatory public meetings at the county level for utility and pipeline projects before land acquisition can begin, and specified penalties if the commissioners' award is at least 25 percent greater than the private entity's offer.

As previously referenced, in 2017 a proposal to award attorney's fees to a landowner who "prevails" by at least 20 percent in a special commissioner's decision went nowhere in the Legislature. This idea has returned in the form of a "landowner's expense payment," tantamount to a penalty for a so-called "low-ball" offer. There are several serious problems with this proposal:

1. Since a bona fide offer already requires a written appraisal report and must be equal to or greater than the amount stated in the appraisal, one might reasonably ask why the entity should have to pay a penalty for making a "bona fide" offer to begin with. Either an offer is "bona fide" or it isn't. If the law sets out the minimum standards for a fair offer, it should not impose a penalty for compliance with those standards.
2. The informal special commissioners procedure was established to give a property owner a fair and inexpensive hearing before three of his or her neighbors in the county in which the property is located. This informal process does not operate like a court of law. It has no formal rules of procedure or evidence. The commissioners can hear whatever evidence they deem pertinent and make any award they determine meets the fair cash value plus damages to the remainder standard. Nowhere else in Texas law do we base a *penalty* on the determination of an informal panel operating under informal guidelines. As a

general matter, Texas law only awards penalties in limited circumstances where the conduct of the parties warrant their imposition. Negotiating between opinions of value does not rise nearly to that level.

3. There is no objective, verifiable evidence that bona fide offers are "low-ball." Quite the contrary. CCI's data indicates that offers reflect at least the appraised value of the property and often significantly exceed it. Until we see evidence of a systematic problem, we should not do anything that will substantially increase the cost of acquiring property for public use. In the end, the *public* will end up paying for it, either through the cost of electricity, fuel, chemical feedstock or any number of other products moved through the pipeline system.
4. Texas has more oil and gas than it can produce, partly because of bottlenecks in pipeline infrastructure. It is also experiencing unprecedented population growth that necessitates building more electric and energy infrastructure into the state's major metropolitan areas. Any changes to the law that delay projects or make them substantially more expensive risk impeding economic growth and diminishing the quality of life of Texans with no real benefits to property owners. If the Legislature considers changes this session, it should carefully evaluate each proposal and quantify the likely financial impact on the public. Legislators who have to make these decisions deserve to know what they will cost.

Texas is not like other states. The size and complexity of the world's 10th largest economy requires gas, electric and water utilities of all shapes and sizes, public and private, to deliver basic public services to the state's 28.7 million residents. Texas already has a solid and well-balanced eminent domain process that we believe fairly compensates landowners in the vast majority of cases. CCI looks forward to working with landowner groups and legislators in 2019 to make the system better for everyone, but let's not, as the old adage goes, throw the baby out with the bathwater.

# UPDATE ON RRC PIPELINE SAFETY FEE PAYMENT DATE

By Phil Gamble, Phil Gamble Law

The Railroad Commission of Texas (RRC) adopted a Pipeline Safety Fee that became effective Sept. 1, 2018. The Pipeline Safety Fee was authorized by the Texas Legislature in 2017 to allow the RRC to recover all pipeline safety and regulatory program costs, including permitting or registration costs, administrative costs and costs of employee salaries and benefits.

The RRC estimated program costs in 2018 were \$4.2 million. The RRC required pipelines to pay a pipeline mileage fee on or before Aug. 31, 2018 for T-4 mileage as of Dec. 31, 2017. A pipeline permit annual renewal fee of \$500 was payable when a T-4 permit was renewed.

The payment due date for the pipeline mileage fee in 2019 has been moved up to April 1, 2019. The pipeline mileage fee for 2019 has not changed and remains at \$20 per mile for Group A pipelines and \$10 per mile for Group B pipelines (not subject to the regulations in 49 CFR parts 192 and 195- PHMSA Class 1 locations). The number of permitted miles assigned to each operator according to RRC records on Dec. 31, 2018, will be the number used to calculate the mileage fee due. The mileage fee does not apply to interstate pipelines. The RRC anticipates collecting approximately \$3.4 million from the pipeline mileage fee.

In addition to the pipeline mileage fee, each pipeline operator is required to pay a \$500 pipeline permit processing fee for each new permit application and permit renewal. Pipeline operators will not be required to pay any fee for permit amendments. The RRC expects to collect approximately \$800,000 in renewal fees. Pipeline operators may review the requirements for payment of the pipeline mileage fee and permit renewal fee by visiting the RRC [website](#). The page contains a link to the 2019 mileage chart. The RRC encourages any operator who disagrees with the pipeline mileage listed to contact them as soon as possible to reconcile any differences. The page also contains a link to monthly pipeline permit expiration dates.

## Where to make payments

Payment of the pipeline mileage fee and permit processing fee must be made online through the Pipeline Online Permitting System (POPS). A link to POPS is [here](#).

Penalties for failure to timely pay the pipeline mileage fee and pipeline permit processing fee range from \$250-\$700, depending on how late the payment is made. If the fees are not paid within 90 days of the due date, the RRC may assess an additional penalty and/or revoke the operator's permit after notice and hearing.

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## IN BRIEF

# EPA AND ARMY PROPOSE NEW DEFINITION OF WATERS OF THE UNITED STATES

By Don Lewis, Duggins Wren Mann & Romero, LLP

The EPA and the Department of the Army recently proposed a new definition of "waters of the United States" (WOTUS) that are subject to federal jurisdiction and permitting requirements. The proposal would eliminate case-by-case application of Justice Kennedy's "significant nexus" test and replace it with six specific categories of jurisdictional waters in line with Justice Scalia's opinion in *Rapanos v. United States*.

Under the proposal, a water or water feature would fall under the WOTUS definition only if it fell within one of the following categories:

- Traditional navigable waters (e.g., oceans and large rivers);
- Tributaries (rivers, streams or similar naturally occurring surface channels) contributing perennial or intermittent flow to traditional navigable waters in a typical year. To be a tributary, the channel would have to flow more often than just when it rains;
- Ditches (artificial channels used to convey water) if (1) they themselves are navigable waters (e.g., canals) or are subject to the ebb and flow of the tide; (2) they are constructed in a tributary; or (3) they are constructed in wetlands adjacent to jurisdictional waters;



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- Lakes and ponds if (1) they themselves are navigable; (2) they contribute perennial or intermittent flow to a navigable water in a typical year; or (3) they are flooded by other jurisdictional waters in a typical year;
- Impoundments of otherwise jurisdictional waters; or
- Wetlands that are adjacent to other jurisdictional waters. To be adjacent, the wetland must, in a typical year, either have a direct hydrological surface connection to other WOTUS or it must physically touch other WOTUS.
- Artificial lakes and ponds constructed in upland, in most cases;
- Water-filled depressions created in upland incidental to mining or construction activity;
- Pits excavated in upland to obtain fill, sand or gravel;
- Control features created in upland to convey, treat, infiltrate or store stormwater run-off;
- Wastewater recycling structures constructed in upland; or
- Waste treatment systems.

The following would not fall under the WOTUS definition under the proposal:

- Groundwater;
- Surface features that flow only in response to precipitation;
- Diffuse stormwater run-off;
- Ditches other than those described above;
- Prior converted cropland;
- Artificially irrigated areas that would revert to upland if artificial irrigation ceased (e.g., flooded rice fields);

The proposal would create a narrower definition of WOTUS than prior practice and should add clarity to the issue of what does and does not constitute WOTUS. The proposed definition would focus on relatively permanent flowing and standing waterbodies that are themselves navigable waters, or that have a specific connection to traditional navigable waters, as well as wetlands abutting or having a direct hydrologic surface connection to those waters. If it is finalized, the new definition will undoubtedly be challenged by environmental groups in federal court.

## TPA NEWS

TPA hosted more than 155 members and guests in Houston on Jan. 11 at its Annual Meeting luncheon, which featured a keynote address by Texas State Sen. Brian Birdwell, Chairman of the Senate Committee on Natural Resources & Economic Development. Thanks to all who participated!



Credit: Joseph Markman, HartEnergy.com

# INDUSTRY NEWS

## TEXAS ENERGY DAY February 20, 2019 @ THE CAPITOL

[www.texasenergyday.com](http://www.texasenergyday.com)

### Doors Open/Registration

**9:00 AM**

Schmidt Jones Family Life Center  
1300 Lavaca St.

Light Breakfast

### Morning Program

**10:00 AM - 11:30 AM**

#### Featured Speakers:

TXOGA President Todd Staples  
Lieutenant Governor Dan Patrick  
Railroad Commissioner Ryan Sitton  
TCEQ Commissioner Emily Lindley

### Viewing of Displays

**11:30 AM - 3:30 PM**

Colorado Street Capitol Ground  
Floor Rotunda

13 displays on "Energy Avenue"  
7 displays in the "Tech Hub"

### Lunch on the Lawn

**11:30 AM - 1:00 PM**

Capitol South Lawn



Join us for the official state dish of Texas - Chili!

**Hey Cupcake!**

### Legislator Office Visits & Delegation Meetings

**1:30 PM - 3:30 PM**

Delegation Meetings:  
Texas Capitol Auditorium  
Capitol Extension, E1.004

2:00 PM - Houston & East Texas  
2:30 PM - Permian Basin  
3:00 PM - Dallas/Fort Worth

### Final Briefing & Photo

**4:00 PM - 4:30 PM**

Capitol South Steps

### Reception

**4:30 PM - 7:00 PM**

800 Congress Ave.

## NEWS BRIEF

Read about TPA's thoughts on eminent domain reform legislation [here](#).

Austin American-Statesman

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## COLLATERAL UPDATES



To help communicate the importance of Texas' pipeline industry, TPA has added a piece to its collateral library. Please check the website for the new one-pager you can find [here](#).

## TPA 2019/2020 BOARD MEETING DATES AND LOCATIONS

April 4, 2019	Austin
July 12, 2019	San Antonio
Oct. 10, 2019	Plano
Jan. 10, 2020	Houston