

## Eminent Domain Remains In TIPRO's Headlights

By Danny Boyd  
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SAN ANTONIO—With the 86th Texas Legislature in the rearview mirror, one issue remains squarely in the headlights of the Texas Independent Producers & Royalty Owners Association: eminent domain.

Despite efforts to craft a compromise, TIPRO and other participants in the Coalition for Critical Infrastructure (CCI) were unable to agree with landowner groups and others on a solution to differences over the contentious issue.

Eminent domain likely will be taken up again by the 87th Texas Legislature in 2021 and will be the subject of interim discussions in the meantime, says TIPRO Chairman Eugene Garcia.

Despite differences, Garcia, who is president of San Antonio-based Hurd Enterprises Ltd., says he is adamant about working with groups represented by Texans for Private Property Rights on a long-term solution, not only for the benefit of oil and gas operators within TIPRO's ranks, but for the good of royalty owners as well.

"TIPRO has worked to maintain a good relationship with royalty owners throughout this process, and I don't want to lose sight of that," he says. "A lot of the focus on eminent domain in our previous dealings with the legislature has been on what is good for operators and independent producers, but I also want to emphasize that there are thousands of royalty owners that will benefit and that have as much to gain or potentially lose from bad legislation. We are representing both sides."

That issue is paramount for Garcia, whose company is a surface owner with ranch land throughout Texas as well as an oil and gas operator, he describes.

"We have been on both sides of the eminent domain discussion, and we need to find a good balance and a win-win scenario," Garcia says. "We must be fair to ranchers, farmers and individuals who live in those corridors, but we also have to promote the reality that Texas needs the oil and gas industry, and ultimately the world needs it, too. We have to find the right way to do it so that good information is shared, we have a forthright discussion, it makes economic sense for all, and we aren't just adding overhead or legal expenses."

### Restrictive Procedures

Among a number of eminent domain bills filed this session, TIPRO President Ed Longanecker says, SB 421 gained traction, but did little to remove differences. "The original version contained process challenges and provisions that would have resulted in project delays, denials and increased litigation," he insists.

Authored by state Senator Lois Kolkhorst, R-Brenham, SB 421 included initial offer provisions that were too narrow and failed to recognize a market study by a certified appraiser or permit use of a market study summary as a basis for an offer during rights-of-way negotiations, he reviews.

Easement terms and landowner meeting notice provisions varied by jurisdiction and, because of overly specific requirements, would have invited procedural litigation traps and obstructions, Longanecker adds.

The bill also would have changed what special commissioners could consider compensable, leading to awards based on subjective data and increased appeals of those awards, he says.

Once passed out of the Texas Senate, SB 421 was referred to the House Land and Resource Management Committee chaired by former Speaker Tom Craddick, R-Midland, where it was amended with provisions more amenable to TIPRO and other CCI members, Longanecker says. However, Kolkhorst wouldn't agree to changes and the bill died in conference.

"The status quo is preferable to some of the onerous provisions in the bill that would have resulted in project delays and denials, and a significant increase in litigation," Longanecker assesses. "We wanted to make progress, but ultimately the two sides couldn't agree."

### Trade Wars

While eminent domain and other matters will continue to garner attention at the state level, Garcia says TIPRO plans to continue monitoring federal issues and working to influence the public policy debate in Washington over trade restrictions and oil and gas regulations.

He points to President Trump's May 17 announcement that steel import tariffs on Canada and Mexico under Section 232 would be lifted. TIPRO continues to express its opposition to tariffs, he says, which have dire consequences for members.

"We have been a consistent voice in opposing tariffs and quotas and the sort of retaliatory efforts we are seeing," Garcia emphasizes. "We need some bal-

ance in trade with other countries, but we don't think tariffs are the way to go. We have written letters to the Trump administration and have worked with the Texas governor's office on steel and aluminum tariffs. We also have been very active in sharing the industry's perspective on this issue in the media."

The association also is keeping an eye on China's retaliatory imposition of additional levies on liquefied natural gas imports from the United States, Longanecker says. China announced plans in May to increase tariffs on LNG imports to 25% from 10%, beginning June 1.

"China was the third-largest buyer of U.S. LNG before the trade war started, but now I don't think it even ranks in the top 20 or 25, so it's a very significant market," Longanecker says. "China also was the number one purchaser of oil from the United States and exports to China essentially have dried up because of this ongoing trade war. We will survive, but it will lead to some heartache and pain for the industry until things are worked out."

### Methane Emissions

TIPRO also continues to weigh in on federal issues and expects a decision from the Environmental Protection Agency by late summer on revisions to Subpart OOOOa regulations on methane emissions,

Longanecker says.

The association submitted formal comments earlier in the year, and any revisions likely will be met with lawsuits, he predicts.

"We will have to work through that process, but this administration understands that OOOOa is an overly burdensome set of regulations that has put a significant strain on the industry," Longanecker says. "We are hopeful things will be improved through the regulation rewrite, but it is going to be a long process. We expect action late this summer, but in the meantime, there is an effort to change the regulated pollutant back to volatile organic compounds instead of methane."

A bill has been introduced in the U.S. House of Representatives to codify the Obama-era regulation, and Longanecker says TIPRO expects to see efforts to attach it as a rider to appropriations bills. "It's a pretty convoluted and confusing process, but progress is being made. We hope to have something to look forward to later in the summer," he reiterates.

### WOTUS Definition

On May 28, U.S. District Judge George Hanks Jr. issued a ruling in favor of plaintiffs Texas, Louisiana and Mississippi that the Obama-era final rule defining "waters of the United States" subject to

regulation under the Clean Water Act violated the Administrative Procedure Act, Longanecker reviews.

While the states' original motion had requested vacating the WOTUS definition, which was promulgated by EPA and the U.S. Army Corps of Engineers in 2015, Longanecker says Hanks ordered the regulation be remanded to the federal agencies, which already are working on a replacement.

"We always have engaged in issues related to WOTUS, generally voicing industry concerns with congressional leaders and with the administration if the opportunity ever presented itself," he notes.

With the state legislative session behind it, Longanecker says he expects TIPRO to work closely with relevant regulatory agencies on matters that include produced water recycling, National Pollutant Discharge Elimination System permitting, and any rewrite warranted on OOOOa.

"We obviously do not want to impose unreasonable restrictions or regulations on operations," Garcia says. "I think Texas operators manage emissions well. We are proactive on that. We work with the Texas Commission on Environmental Quality in making sure we operate responsibly, and I would hate to see unduly burdensome regulations applied where they aren't needed." □

# Association Looks At M&A Dynamics

AUSTIN, TX.—Members of the Texas Independent Producers & Royalty Owners Association who attend the association's 2019 summer conference will hear about the latest developments in a trend of interest to the entire oil and gas industry: the acceleration of mergers and acquisitions expected to gain steam in the months ahead.

TIPRO's meeting is Aug. 7-8 at the Hyatt Hill Country Resort in San Antonio. The event kicks off with a reception the evening of Aug. 7, followed by a full day of speakers on Aug. 8, and culminating with the Chairman's Dinner and casino night.

The meeting will include special insights into the anticipated pick up in upstream M&A activity, says TIPRO President Ed Longanecker.

"Obviously, Occidental and Chevron battling it out for Anadarko Petroleum has piqued the interest of a number of

people in the industry," Longanecker comments. "We are going to bring in ex-

perts to talk about trends and what we can expect in the latter part of 2019 and into 2020."

TIPRO Chairman Eugene Garcia says a chief financial officer who attended the May 8 Leaders Luncheon hosted by TIPRO and the Independent Petroleum Association of America in Houston told him that some larger independents and investors in shale plays were beginning to emphasize free cash flow over aggressive growth, which has changed industry dynamics.

"If you look at commodity prices coupled with that change in focus from a financial standpoint, I think we are going to see more opportunities for mergers and acquisitions such as we saw in the first quarter," says Garcia, president of San Antonio-based Hurd Enterprises Ltd.

Whether large or small, more producers are likely to start examining how to enhance or dispose of their holdings to

## TIPRO Summer Conference – San Antonio

Wednesday, Aug. 7

- 1 p.m. Audit Committee Meeting, Hyatt Hill Country Resort
- 3 p.m. Board of Directors Meeting
- 5 p.m. Welcome Reception

Thursday, Aug. 8

- 8 a.m. Membership Breakfast, Hyatt Hill Country Resort
- 9 a.m. General Session Presentations
- Noon Networking Luncheon
- 2 p.m. General Session Presentations
- 4 p.m. General Session Ends
- 6 p.m. TIPRO Reception
- 7 p.m. Chairman's Dinner

allow for more free cash flow, or to solidify their positions to promote more cash flow within their asset portfolios, Garcia posits.

“I think that is a dynamic we are going to see going forward this year,” he predicts. “We hope to have a slate of operating company representatives and economists at the summer conference who can give our members insight into what they see building.”

### Beneficial Changes

Members also will hear updates on challenges and growth opportunities in West Texas, including the build-out of additional infrastructure and what is happening to alleviate take-away capacity constraints, Longanecker reports, with a midstream perspective and general updates planned.

Speakers are expected to review legislation passed by the Texas Legislature related to road expansion and repair, pipeline protection, and water use and waste ownership, among other topics, Longanecker says.

Included will be a review of HB 3246 authored by Representative Drew Darby, R-San Angelo, which amended state statutes to clarify that fluid waste for the purpose of recycling and reducing freshwater consumption is the property of the operator who takes possession of the waste, Longanecker adds. The bill was filed without signature by Governor Greg Abbott on May 24 and became law, he shares.

“There has been some confusion about ownership related to oil and gas waste and produced water,” Longanecker observes. “This bill clarifies who owns the water and is part of the larger strategy to address issues on water management in exploration and production, recycling and disposal.”

TIPRO members already are benefitting from other measures that lawmakers agreed on, he says. Operators within TIPRO’s ranks are looking at reopening inactive wells with the passage of SB 533, which provides a five-year severance tax exemption for wells put back into production after having been inactive for at least two years, Longanecker details. A previous 10-year exemption for three-

year inactive wells expired, but SB 533, which becomes effective in September, keeps the exemptions in place permanently, he adds.

“We were very fortunate this session because House Energy Resources Chairman Chris Paddie, R-Marshall and Senate Natural Resources and Economic Development Chairman Brian Birdwell, R-Granbury, both agreed to sponsor the bill,” Longanecker says.

The measure should have a positive long-term impact on Texas’ orphan well count, which will benefit the state, operators and royalty owners, Garcia says.

“There are companies that, with this kind of incentive and relief from severance taxes, are going to be able to extend the life of wells and there will be a better relationship between these companies and the Railroad Commission,” he says.

### Economic Impact Study

In addition to benefits from legislative measures, TIPRO will continue to utilize its study released May 9 on Permian Basin demographics to point out the economic contribution of TIPRO members and others, Longanecker says. “We want to show the prominence of other industry sectors in the basin while reinforcing the importance of the oil and gas industry,” he explains.

The mining and oil and gas extraction sectors are responsible for 21.3% of almost \$22 billion in gross regional product in the Permian Basin, and account for most of the increase in U.S. oil production, Longanecker points out.

The basin suffers from housing and skilled workforce shortages, but continues to make a major contribution to the state’s economy, he says.

“The jobs multiplier effect is pretty high in the Permian Basin, given the prominence of the oil and gas industry,” Longanecker comments. “The Permian Basin industry has a jobs multiplier of 10.6%, which is very significant.”

Last year, the oil and gas industry purchased \$20 billion worth of goods and services in the basin from 974 business sectors, with 45% of purchases coming from within the industry, he observes. Statewide last year, the oil and gas industry spent \$204 billion on U.S. goods and

services, 82% of which came from Texas businesses, Longanecker adds.

### Transportation Funding

On behalf of its members, TIPRO supported additional appropriations by the state legislature totaling \$250 million that are expected to benefit transportation infrastructure in the Permian Basin, Longanecker reviews.

HB 1, the fiscal 2020-21 general appropriations bill sets aside \$125 million for transportation projects in counties most impacted by oil and gas activity, with the remainder coming from SB 500, the FY 2018-19 supplemental appropriations bill, he says.

“We want our employees, staff and those around us to be able to get to their jobs safely,” Garcia contributes. “If you listen to the folks who work there, they want to make sure roads are safe, and having that infrastructure funding to put in the right facilities and roads helps. We had hoped to establish a permanent funding mechanism, but we took big steps on transportation funding for the time being.”

Longanecker says that a proposal to create the Generate Recurring Oil Wealth (GROW) for Texas Fund unfortunately failed. HJR 82 and HB 2154 by Representative Tom Craddick, R-Midland, and Representative Brooks Landgraf, R-Odessa, would have created the GROW Fund and dedicated 12% of severance taxes to counties with significant oil and gas production, enabling them to expand and improve highways and public roads, increase law enforcement and first responder salaries, establish greater access to healthcare, and revitalize education and skilled-workforce opportunities by dedicating money to teachers, schools, colleges and universities, according to TIPRO.

HB 2154 was defeated on a point of order during a third reading on the House floor, and HJR 82 was left pending in Senate Finance Committee, Longanecker says.

He adds, “We expect solutions proposed as part of this legislative package will continue to be considered during the interim, and could come up again during the state’s next legislative session in 2021.” □