

Master Marketer Newsletter

<http://mastermarketer.tamu.edu>

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2018 Waco Master Marketer Course

Online registration has opened at <https://agriferegister.tamu.edu/MasterMarketer> for the 2018 Master Marketer Program to be held in Waco at the Texas Farm Bureau Conference Center (7410 Fish Pond Road). Dates for the 2018 program include: January 16 - Leveling Workshop; January 17 & 18 – Session I; January 30 & 31 – Session II; February 13 & 14 – Session III; and February 27 & 28 – Session IV.

The program has a \$350 registration fee and will be available to the first 60 participants or until January 15. Registration is also available by phone at (979) 845-2604. More information can be found on <http://mastermarketer.tamu.edu/> or by contacting Mark Welch at (979) 845-8011 and Jason Johnson at (254) 968-4144 ext 282.

Choice Website

<https://cropwatch.unl.edu/2017/developing-grain-marketing-plan-5-easy-steps>

Do your New Year's resolutions for 2018 include developing a marketing plan? The University of Nebraska's Institute of Agriculture and Natural Resources has outlined developing a grain marketing plan in just 5 steps. If you're having trouble getting started, check out these tips to help you meet your goals. Be sure to have your pencil ready, having your plan on paper can help in keeping you on track and accountable. Go ahead, take that first step for making the right step into the year ahead.

FARM Assistance Update

Steven Klose

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How was your 2017? What does 2018 have in store for you? As we come to the end of the year, it is often time to reflect a little on the past and make plans for the future. Maybe you'll look back on things that went well, things that didn't, and what you could have done differently. At some point, we start to consider New Year's resolutions to do better next year. The turn of a year is a simple signal to stop, evaluate how things are going, and strive to do better. Most of us will think about eating better or exercising more, but how much time will you put into evaluating last year's business performance and making specific business plans for 2018?

What is it that makes some resolutions stick and others last only a few weeks? I'll venture a guess that the more thought that goes into the process of making a resolution; the more likely it is to stick.

You've got little chance of making it to February, if your resolution to exercise came from no more than the fact that it was January 1st and you saw a gym commercial on TV. But if that commercial leads you to see a doctor and evaluate your current condition vs. examples of a healthy weight and a healthy diet. Then you get blood results, and discuss the consequences of not getting your cholesterol and blood sugar under control. Develop a plan to reach a specific goal in a specific timeframe, and you have a resolution built on solid information and commitment that has a real chance. Continued on Page 4.



Season's Greetings!

In keeping spirit with the holiday season and being thankful for the many opportunities we have been provided, Master Marketer would like to give a Texas-Sized Thank You to the 2017 Master Marketer sponsors. With their support, we have taught workshops year-round to bring you the latest in market news and provide up-to-date trends while using current data and connecting professionals throughout the field. We could not have had this successful run without the continued support from our sponsors. Along with *Texas A&M AgriLife Extension Service*, funded grants have been provided by *USDA-RMA*, *Texas Corn Producers*, *Texas Farm Bureau*, *Cotton State Support Committee-Texas*, *Texas Wheat Producers Board*, *Texas Grain Sorghum Board*, and *Capital Farm Credit*.



Guest Column: 2017 Ag Law Year in Review - Texas

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There were several important cases and issues related to agricultural law this year in the Lone Star State.

Parties reach settlement in Red River boundary dispute.

The dispute between landowners and the federal government regarding the line where private property ends and federal property begins along the Red River was extremely heated and received a great deal of media coverage. When BLM agents marked survey stakes in 2009, landowners were concerned as some stakes were more than a mile from the current bank of the river, indicating that the BLM may be claiming ownership of property that Texas residents believed belonged to them. A lawsuit was filed in 2015 by 7 families and 3 counties all owning land along the Red River against the BLM. In November, the parties entered and the court approved a settlement in the litigation challenging the location of the boundary. The parties agreed that the northern boundary of private property is the gradient boundary line, which may change over time based on principles of erosion or accretion. Where the boundary bank changes, ownership follows as well. Additionally, the BLM will withdraw and disclaim any maps or surveys that were conducted under erroneous methodologies, such as those from 2009. Interestingly, the settlement neither specifically identifies the current location of the gradient boundary line, nor does it determine any ownership boundaries. This means that future disputes certainly could arise.

***Denbury Green* decision highlights requirements for pipelines to use eminent domain.**

The procedural history of the case named *Denbury Green Pipeline-Texas, LLC v. Texas Rice Land Partners, Ltd.* is long and complex. It all began when Denbury Green planned to build a CO₂ pipeline from Mississippi to Brazoria and Galveston counties in Texas. The company declared themselves a common carrier and sought to survey across land owned by Texas Rice Partners. TRP denied access, and Denbury sought an injunction to gain survey access to the property. TRP then challenged Denbury's common carrier status, which is critical, because by virtue of being a common carrier in Texas, the company can exert eminent domain power to condemn property for the pipeline.

In 2012, the Texas Supreme Court held in *Denbury I* that merely checking a box on a form at the Railroad Commission was insufficient to confer eminent domain power. Instead, the Court held, a party must show a "reasonable probability that the pipeline will at some point after construction, serve the public by transporting gas for one or more customers who will either retain ownership of their gas or sell it to parties other than the carrier." The case was remanded to the trial court to apply this new standard.

Eventually, the case made its way back to the Texas Supreme Court and the Justices issued an opinion in January 2017. This time, the Court sided with Denbury Green, holding that the company had met the standard previously articulated by the Court and, therefore, could exercise eminent domain power. The court considered both the pre-construction intent of the company as well as post-construction contracts the company entered into with third parties to transport their product to find the "reasonable probability" requirement met.

TX Supreme Court holds that drilling through subsurface is not trespass.

When one oil and gas production company signs an agreement with a surface owner to drill through the mineral interest of another oil and gas company to reach minerals owned by the driller, does trespass occur? This was the question at issue in *Lightning Oil Company v. Anadarko*. Anadarko leased mineral interests under the Chaparral Wildlife Management Area in Dimmit County, but they were not allowed to drill on the surface of the Management Area. So, Anadarko contacted the neighboring Briscoe Ranch and secured an agreement whereby they could drill a horizontal well on the Briscoe ranch that would travel through the subsurface and extract minerals from beneath the Management Area. Lightning Oil Company, who held the mineral lease on the Briscoe Ranch, filed suit, claiming this drilling constituted trespass of the mineral estate. The Texas Supreme Court sided with Anadarko, holding that there was no trespass of the mineral estate as there was no evidence of damage to the minerals. Thus, because Anadarko held permission from the surface owner, they did not commit trespass.

Agricultural product purchase contracts required to contain new information.

The Texas Legislature passed a bill this session adding certain requirements to purchase contracts involving "agricultural products." HB338, effective September 1, 2017, requires that all purchase contracts for ag products must expressly state whether it is an acreage or quantity contract. An acreage contract requires the producer to deliver all production of the specified agricultural product on a certain parcel of land identified in the contract, while a quantity contract requires the producer deliver a specific quantity of an identified product, regardless of how much was produced on a particular field. Additionally, the new law limits the situation when a lawsuit may be filed by a purchaser who entered into an acreage contract to situations where the producer "knowingly fails to deliver" the required production.

Texas Railroad Commission does not have exclusive jurisdiction over oil/gas contamination claims.

An important ruling case regarding landowner rights when oil and gas operations contaminate private property was handed down by the Texas Supreme Court in *Forest Oil Corp. v. El Rucio Land and Cattle Co.* When a landowner learned that Forest Oil, a mineral lessee, had contaminated his property, he filed suit against Forest alleging both environmental contamination and physical injuries after he lost a portion of his leg to cancer. An arbitration was held, and arbitrators awarded \$15 million in actual damages, \$500,000 in exemplary damages, \$6.7 million in attorney's fees, and \$500,000 in personal injury damages to the landowner. Forest Oil, not surprisingly, was not happy with this award, and sought to invalidate it on numerous grounds, including an argument that it was the Texas Railroad Commission, as the agency governing oil and gas operations in Texas, rather than the judicial system, which had exclusive jurisdiction over the landowner's contamination claims. The Texas Supreme Court sided with the landowner, holding that the RRC does not have exclusive jurisdiction over the issues in this case as they were "inherently judicial" and were not dependent only on regulatory compliance.

So that's a wrap of the key Texas agricultural legal issues for 2017. No doubt, 2018 will bring even more exciting news and cases. More on agricultural law cases can be found on Tiffany's award-winning Texas Agriculture Law Blog at <http://agrilife.org/texasaglaw/> , Twitter @TiffDowell , and "Ag Law in the Field" iTunes podcasts at aglaw.libsyn.com

TEXAS A&M AGRI LIFE EXTENSION

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If you would like to receive this newsletter by mail,
or have any other questions about the Master Marketer System,
please contact Emmy Kiphen at emmykiphen@tamu.edu or
(979) 847-6143.

An archive of newsletters can be found online by visiting
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FARM Assistance Update, Continued from Page 1

Strategic business planning is not much different. Periodically, we need to seriously stop, review our current condition and where we want to be, and evaluate how to get there. And if our business plans are to have a chance, they need to result from a thorough process with solid information and commitment. Our FARM Assistance analysis service is uniquely designed to help you do exactly that. If you haven't updated your FARM Assistance analysis in a while, or if you have never taken advantage of our service, maybe the turn of the year is your signal.

Contact FARM Assistance toll free at 1-877-TAMRISK or online at: farmassistance.tamu.edu