

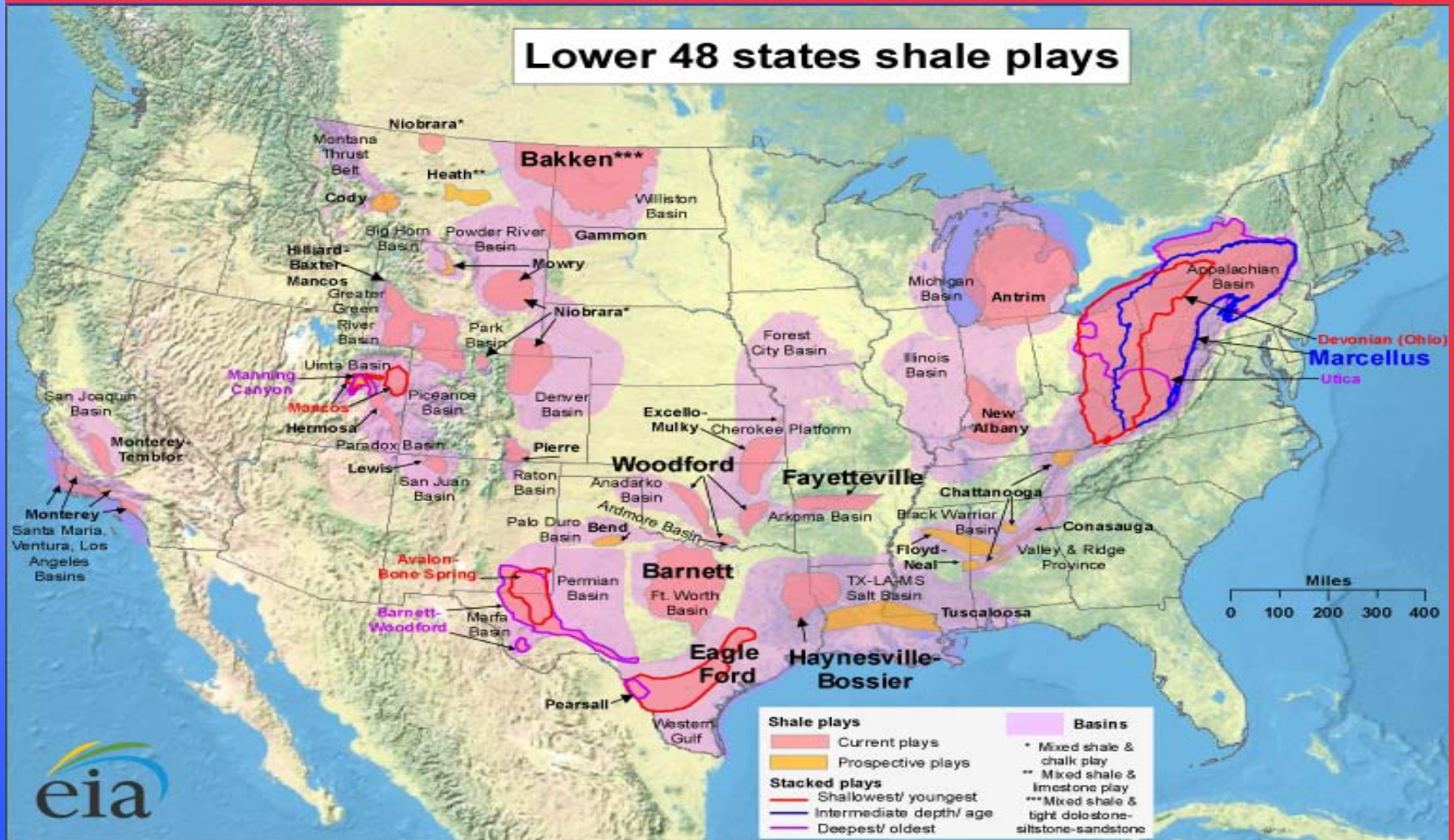
# *Oil and Gas in Texas*

*Where is it and What can you do about it?*

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*Bojorquez Law Firm, PLLC*  
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***TCCFUI Legislative Wrap Up***  
***Irving 2011***

# Where is It?



Source: Energy Information Administration based on data from various published studies.  
 Updated: May 9, 2011





# *Overview of Legal Concepts*

**Mineral Agreements Grant Ownership Rights**

**The Mineral Estate is the Dominant Estate**

**Surface Easement; Reasonable Use**

**Accommodation Doctrine**

*Getty Oil v Jones*, 470 S.W.2d 618 (Tex. 1971)

*Haupt. Inc. v Tarrant County Water Control and Improvement District*, 854 S.W.2d 909 (Tex. 1993)

**Constitutional Takings**, Texas Constitution Art. 1, Sec. 17; *Mayhew v Town of Sunnyvale*, 964 S.W. 922 (Tex. 1988)



# *Regulatory Power*

State Regulation – Texas Railroad Commission,  
[www.rr.state.tx.us](http://www.rr.state.tx.us)

Preemption

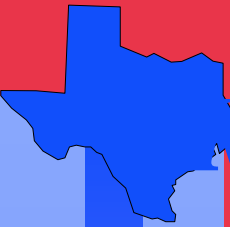
Municipal Regulatory Powers

Ordinance, Rule or Regulation to Carry Out Other Powers -  
Tex.Loc.Gov'tCode Sec. 51.001; 54.001 Enforcement

Land Use, Structures, Businesses - Tex.Loc.Gov'tCode Title 7  
(Zoning, Platting, Moratoriums, ETJ Development  
Agreements, Comprehensive Plans, Dangerous Structures)

Water Pollution & Abatement – Tex.WaterCode Sec. 26.177;  
26.179; Tex.Loc.Gov'tCode Sec. 551.002 (Home Rule)

Tex.Health & Safety Code Sec. 121.003 – city or county authority to  
enforce any law to protect public health.

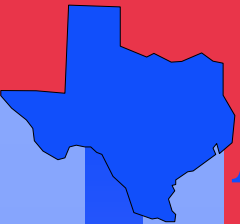


# *Regulatory Authority – Home Rule*

## **Tex.Loc.Gov't Code Sec. 217.041; 217.042**

Authority to regulate nuisances within the limits of the municipality and within 5,000 feet outside the city limits

Municipality may enforce all ordinances necessary to prevent and summarily abate and remove a nuisance



## *Regulatory Authority – General Law*

**Tex.Loc.Gov't Code Sec. 217.001; 217.002**

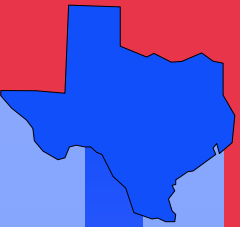
Authority of Type A to regulate nuisances

**Tex.Loc.Gov't Code Sec. 217.021; 217.022**

Authority of Type B to regulate nuisances

***Domengeaux v. Kirkwood Co.***, 297 S.W.2d  
748 (Tex.App.- San Antonio, 1956)

Drilling oil well not a “nuisance per se”.



# *Extraterritorial Jurisdiction*

## **Tex.Loc.Gov't Code Sec. 42.001**

Designation of certain areas as ETJ for Preservation of Health, Safety and Welfare of Persons residing in and adjacent to ETJ

## **Op.Tex.Att'y.Gen. No. JC-0025(1999)**

Municipal court implied jurisdiction for nuisance ordinance over cases in ETJ.



# *Municipal Enforcement*

## **Criminal Enforcement**

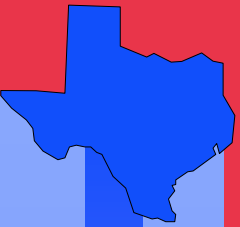
Municipal Court – Tex.CodeCrimProc. Art 14.14;  
Tex.Gov'tCode Sec. 29.003

Class C Misdemeanor – fine not to exceed \$2,000

Appeal to County Court – not de novo if Municipal  
Court of Record

## **Civil Enforcement**

Penalties or Injunctive Relief – Tex.Loc.Gov't  
Code Sec. 54.012; 54.013



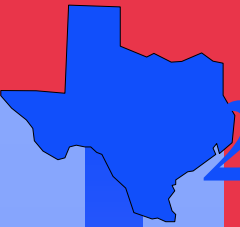
# *Regulation of Pipelines*

## ***Texas Midstream Gas Services v. City of Grand Prairie***, 608 F.3d 200 (5<sup>th</sup> Circuit 2010)

Challenge to City's ability to regulate safety, aesthetics and design of intrastate compressor gas facility

Court held that the City's interest in aesthetic integrity and property values was a legitimate governmental interest

## **Best Practices for Pipeline and Municipality Relations - Barnett Shale**



# *2011 Oil, Gas & Pipelines Bills*

2009 Session -Takings Bill and Model Rules to Regulate Oil and Gas Drilling

HB 2289 (Crownover) **Gas Pipelines/Rights-of-Way** Tex. Utilities Code Sec. 181.005(a)

Right to lay gas pipeline under certain conditions – public road, canal, stream, or municipal street or alley

Clarified – does not apply to railroad

# *Hydraulic Fracturing*

HB 3328 –Tex.Nat.Res.CodeSec. 91.851

First Bill in nation to require disclosure of ingredients that comprise fracking fluid

Effective 9/1/2011

Ground Water Protection Council- form posted on hydraulic fracturing chemical registry internet website

RRC to adopt rules relating to disclosure by 7/1/2012



# *Air Quality*

## Air Quality Research Support Program

SB 527 - Tex.Health&Safety Code Sec. 386.051

Funds additional air quality monitors in the Barnett Shale

## Texas Natural Gas Vehicle Grant Program

SB 20 - Tex.Health&Safety Code Sec. 386.252

Funds to incentivize heavy-duty shipping trucks to switch from diesel fuel to natural gas



# Water

## **2012 DRAFT STATE WATER PLAN RELEASED**

The Texas Water Development Board - 2012 draft State Water Plan, <http://www.twdb.state.tx.us/wrpi/swp/draft.asp>.

**Proposition 2**, would authorize the Texas Water Development Board to issue an additional \$6 billion in general obligation water development bonds on a revolving basis

### **Interim Charge - Senate Natural Resources**

Review water conservation resources and conservation measures in State Water Plan

Evaluate methods to enhance water resources and promote water conservation methods



# *Legislative Issues 2013*

HB 3105 – City regulation that damages, destroys, impairs or prohibits development of a mineral interest subject to Private Real Property Rights Preservation Act

HB 2125 – Co. > 650,000 pop. Gas Well Inspections

HB 2126 – Double Penalties gas well violations in urban counties

HB 3792 – Municipal Authority to regulate gas pipelines

**EPA** – Proposed Regulations to limit air pollution from gas drilling. Final Rule February 2012



# *Recent Cases*

***RRC & Pioneer Exploration v. Citizens for Safe & Clean Water***, 336 S.W3d 619 (Tex 2011) - Court upheld TCEQ interpretation of public interest to not include traffic related impact on roadways in granting well injection permit.

***Range Resources v. EPA***, Case No. 11-60040, appeal to 5<sup>th</sup> Cir on Motion to Dismiss – Issue whether EPA is required to show that Range caused contamination in private drinking water wells.

***Baker, et.al v. Energy Transfer Co.***, No. 10-09-00214-CV (Tex.App.- 10<sup>th</sup> Dist, October 19, 2011) – Lawsuit against Energy Transfer Co. and Burlington Resources Oil & Gas Co. for venting of hydrogen sulfide from natural gas treating plant. Court struck all of the expert witness evidence; no causation evidence; Not a nuisance per se or trespass



# *Amending Municipal Regulations*

Town of Flower Mound [www.flower-mound.com](http://www.flower-mound.com)

Oil and Gas webpage

City of Fort Worth [Gas Well Information](http://www.fortworthtexas.gov/gaswells/)  
[www.fortworthtexas.gov/gaswells/](http://www.fortworthtexas.gov/gaswells/)

City of Denton [www.cityofdenton.com](http://www.cityofdenton.com)

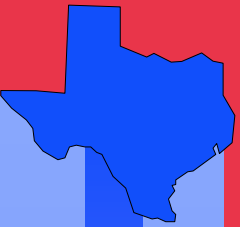
Gas Well Inspection Department

City of Southlake [www.ci.southlake.tx.us](http://www.ci.southlake.tx.us)

Oil and Gas Drilling 411

City of Dallas, [www.dallascityhall.com](http://www.dallascityhall.com)

Gas Drilling Task Force



Questions?



[TexasMunicipalLawyers.com](http://TexasMunicipalLawyers.com)