

Agriculture and Natural Resources Newsletter

Archer County

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New Beginnings

Hello!

Welcome to the first edition of a quarterly agriculture production newsletter! The information provided in this newsletter will be beneficial to all ag producers within Archer County. First and foremost, who am I? For those of you who haven't met yet, I'm your new county Ag and Natural Resources agent! My name is Amanda Necessary (yes it is necessary!) and I am a central Texas native from Clifton, three hours south of here, just north of Waco.

I attended Tarleton State University in Stephenville after visiting the campus many times for 4-H and FFA events, and

received my bachelor's and master's degree in agriculture from there. After that I went to Iowa to work with a large pork production company for almost a year. When it was time to return back to Texas (after freezing in a super-cold winter) I traveled to the far corners of Texas and landed in Andrews. After three years there it was time to move closer to family which landed me in Archer City!

If we haven't met yet feel free to come by the Extension Office for a visit; and, if you ever have any questions give me a call or e-mail and I'll be glad to help!

-Amanda

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Ways to Receive this Newsletter

As stated above this will be a quarterly newsletter filled with information relative to you as a producer. If I find information more pressing than to wait on the next issue, I will increase the amount of editions per year.

This newsletter will be available by e-mail or postal mail, online at archer.agrilife.org/ag/newsletters/ as well as posted on our new Facebook page—www.facebook.com/archercountyextension/. *This webpage will have all information coming from

the Extension Office including Ag and Natural Resources, Family and Community Health (formerly Family and Consumer Sciences) and 4-H.*

If you have a preference for receiving this e-mail please contact myself or Charla at the Extension Office and let me know which method you prefer. I will send e-mail and postal mail if that is what you prefer!

Also, if you know of topics that need to be discussed, please let me know and I'll add them in here!

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Ag Law Blog

In April, we hosted Tiffany Lashmet, Law Specialist with Texas A&M AgriLIFE Extension Service and Dr. Jason Johnson for a Ranchers Leasing Workshop. They spoke on negotiating and drafting grazing, hunting and livestock leases as well as landowner liability, how to set a lease rate and much more! It was a great program and because of the positive feedback we received, I am working on bringing them back for more ag law-related programs. I highly recommend attending a one of these workshops because the handouts alone are beneficial, much less attending the program and asking questions regarding any law you may potentially or currently deal with.

If you weren't able to attend, she is hosting a question-and-answer webinar online on August 2nd and also having additional workshops in the fall, with the closest one in Fort Worth in September. One of the many beneficial handouts from the leasing workshop was a Ranchers Leasing Handbook with eleven chapters and three appendix's that include reasons why written leases are necessary, landowner liability, lease checklists and sample leases, and recreational and agritourism statutes and farm animal liability acts. This book is available online at <https://cdn-ext.agnet.tamu.edu/wp-content/uploads/2016/06/Handbook-for-Grazing-Hunting-and-Livestock-Leases.pdf> for 24-hour access and you can request a hard copy by contacting Tiffany at 806/677-5681 or tdowell@tamu.edu.

Tiffany has a weekly e-mail blog that you can sign up for on her website, agrilife.org/texasaglaw/. I will be featuring some of her posts in this newsletter when I can. All of the publications she uses in her presentations and recorded webinars are on this website for you to access at any time. She is also on Twitter and Facebook for you to follow!

June 18th Post: Does Grazing Cattle for Years Allow Claim of Adverse Possession?

A recent case from the Waco Court of Appeals deals with a question about which I am often asked: If a fence is built off the property line but has been there for decades and the non-title holding owner grazes the property as his own, does the property ownership change? The court's opinion offers a great analysis of the various arguments landowners may make in this type of case and how such arguments are analyzed.

Background

In 2014, the Parkers purchased two pieces of property from Dick Taylor: a 102 acre property tract and a 20 acre property, which were separated by a fence. It is the 20 acres at issue in this case.

Mr. Weber owned 560 acres on the north, east, and west sides of the 20 acres purchased by the Parkers. The boundary line between the disputed property and Mr. Weber was a creek, which forms the north, east, and west boundary of the 20 acres. There was a fence along the south side of the 20 acres. When Mr. Weber's father bought the land, and when Mr. Weber bought it from him, they assumed they were buying everything under fence, including the 20 acres. Mr. Weber believes the fence was originally built in 1903, although he "rebuilt" it in 1959.

For decades, Mr. Weber used the 20 acres as pasture for grazing goats and cattle. When the Parkers began to work on the 20 acres, Mr. Weber sued claiming ownership to the 20 acres based upon adverse possession.

At trial, the court awarded Mr. Weber title to the property, finding that he satisfied the elements of proving adverse possession under Texas law. The Parkers filed this appeal.

Law Blog Post continued... Adverse Possession Requirements

The doctrine of adverse possession allows a person to claim and obtain title to real property presently owned by another. It is also commonly known as “squatter’s rights.” Essentially, it allows a person who possesses and uses another’s land without permission to eventually become owner if a number of requirements are met. Keep in mind, succeeding on a claim of adverse possession is very difficult. In order to obtain title to land by adverse possession, the party claiming adverse possession must show “actual and visible appropriation of real property, commenced and continued under a claim of right that is inconsistent with and is hostile to the claim of another person” for a certain length of time provided by statute. See [Texas Civil Practices and Remedies Code Section 16.021\(1\)](#). In order to prove adverse possession under the 10-year statute of limitations period (which was the one at issue in this case), the claimant must prove: “property held in peaceable and adverse possession by another who cultivates, uses, or enjoys the property” and “actual and visible appropriation must exist during the entire 10-year period.” See Texas Civil Practice and Remedies Code Section 16.026. Put another way, a claimant must prove (1) he adversely possessed the property under “claim of right” (meaning with intent to claim ownership); (2) peaceable (meaning continuous possession not interrupted by suit to recover the property); (3) open and notorious “use, cultivation or enjoyment” of the property such that an owner would be put on notice; and (4) continuous throughout the 10-year limitations period.

Although not at issue in this case, there are a couple of important points to note. First, it is important to note that a person who uses property with permission cannot obtain title by adverse possession, as the claim must be hostile to the actual owner. Second, possession must be continuous during the limitations period. For example, a farmer who used land for over twenty years, but allowed it to lie fallow every fourth year could not establish adverse possession. See *Parker v. McGinnes*, 842 S.W.2d 357 (Tex. Ct. App. – Houston 1992). Third, under the 10-year statute of limitations, the payment of property taxes for the 10-year period is not sufficient to prove adverse possession. See *Rhodes v. Cahill*, 802 S.W.2d 643 (Tex. 1990).

Appellate Court Opinion

The Waco Court of Appeals reversed the trial court, finding that Mr. Weber failed to prove adverse possession. Thus, the 20 acres remains the property of the Parkers.

Casual Fence v. Designed Enclosure

First, the court held that the fence on the southern edge of the 20 acres was a casual fence. Adverse possession recognizes two kinds of fences: casual fences and designed enclosures. A person who argues that they grazed their cattle within the fenced property must prove that the fencing was designated enclosure in order to succeed on an adverse possession claim. “When a claimant relied on grazing to acquire limitation title, the land must be enclosed to give evidence that it was designedly enclosed and that the claimant is asserting a claim hostile to the true owner.” See *Parker v. Gaines*, 842 S.W.2d 357 (Tex. Ct. App. – Houston 1992). If the disputed tract of land has been enclosed with other land, especially when the other land is owned by the claimant, the enclosure is casual. Further, if a fence existed before the party seeking adverse possession took possession of the land, and the party fails to prove the purpose for which the fence was built, it is a casual fence. A casual fence may be converted into a designed enclosure if there is evidence of substantial modification. Merely repairing or maintaining casual fences—a party replaced the barbed wire and posts of the original fence, the nature was not completely changed and it remained a casual fence. See *Mendoza v. Ramirez*, 336 S.W.3d 321, 329 (Tex. Ct. App. – El Paso 2010).

Here, Mr. Weber offered no proof as to who built the fence or for what purpose it was built in 1903.

Law Blog Post continued... Although Mr. Weber claimed to have “rebuilt” the fence in 1959, the court held there was insufficient evidence to convert the casual fence to a designed enclosure. He did not testify as to why he rebuilt the fence, what the fence was made of prior to the rebuilding, or what the new fence was built with. Thus, the court held the fence was not substantially changed and remained a casual enclosure. Further, in this case,

the property was not entirely enclosed—it was fenced only on the south side of the property and it did not go up the bluff or down the river in order to attach to any other fence. There was also testimony that animals may have been able to leave the 20 acres through a gap between the bluff and the fence. Thus, no designated enclosure existed.

Continuous Grazing

Second, Weber argued the fact that his cattle used the property for grazing was sufficient use to prove adverse possession. Again, without a fence, mere grazing alone likely would not satisfy adverse possession. For example, in *Parker v. McGinnes*, the plaintiff had grazed the land some years, cultivated it some years, and did not enclose for grazing. This was found insufficient to put the owner on notice.

In this case, Mr. Weber testified to running 60 cows on the total of the property under fence—his 560 acres and the 20 disputed acres. The court held that the mere fact that his livestock could have crossed onto the 20 acres to graze was insufficient. He did not offer any evidence of how often the cows or goats were on the 20 acres versus the remainder of his property. The fact that livestock could have crossed onto disputed property from an adjoining tract of land is insufficient to be notice of a hostile claim.

Casual Use

Third, Weber argued that he made sufficient “casual use” of the property that a title-holder should have known a hostile claim was being asserted. He claims to have cut brush, rode horses, and otherwise maintained the 20 acres. The court held that such casual activities did not constitute adverse possession, and cited a litany of cases supporting that determination. For example, courts have found that grazing, occasional hunting, and constructing deer blinds and deer feeders was insufficient to prove adverse possession. See *Harlow v. Giles*, 132 S.W.3d 641 (Tex. Ct. App. – Eastland 2004).

Building and Maintaining Roads

Fourth, Weber claimed that he built and maintained roads on the property. Weber offered no testimony that he had built any of the roads on the property, what they were made of, what they were used for, or whether they were maintained by Weber. Without evidence of these roads being a permanent improvement, adverse possession was not proven. Note, Mr. Weber has filed a Motion to Reconsider with the court.

Take Aways

First, keep in mind that it is extremely difficult for a claimant to successfully prove the elements of adverse possession. As you see here, there are numerous elements that must be proven, and courts very strictly apply each of these requirements.

Second, if you own land and the fences are not on the property line, it is important to be aware of these rules and consider taking action to avoid an adverse possession claim. This may involve putting something in the deed records either stating that despite the fence, the landowner continues to use the property or granting permission to the claimant to use the land, as adverse possession cannot be maintained if permission exists.

Third, if you are a person utilizing someone else’s land with the intent to claim adverse possession, it is important to understand the requirements that must be met in order to successfully make that claim,

Law Blog Post continued... such as the designated enclosure. As many of the cases cited above, as well as the [Wells v. Johnson case](#) from the Amarillo Court of Appeals back in 2014 indicate, succeeding in proving adverse possession when relying on grazing or hunting as the use is very difficult.

Cotton

The newly revised, 2018 edition of the Cotton Insect Management Guide is now available at <https://lubbock.tamu.edu/files/2018/01/ENTO075.pdf>. This guide contains information on over 30 pests and provides management principles, biological control and scouting information.

Rocketing Cotton Prices Provide Opportunity

ICE cotton futures first rallied last November, then resumed an up-trend in March, and have been on a real tear since mid-May. New crop Dec'18 in particular has blasted through 80 cents per pound, then 85, then 90, and as of this writing has been holding on in the lower nineties.

Because it's early, the expectations for new crop supply are fraught with uncertainty. We expect more cotton planted acreage in the U.S. compared to last year. Northwestern Texas and the cotton producing regions of Oklahoma, Kansas, New Mexico, and Arizona remain under Extreme or Exceptional Drought classification. Depending on timely moisture, the supply of U.S. cotton could swing three million bales either way. The uncertainty of that outcome will keep a weather premium in Dec'18 cotton futures until football season. Internationally, there is also uncertainty about India's current and future supply, and the major cotton-producing region in China has apparently experienced severe weather at planting.

The other major factor is that new crop demand is off and running. The pace of 2018/19 outstanding exports sales (bales sold, but not shipped until after August 1) is at an historically high level for this time of the year. These export sales contracts obligate merchants to ship remaining old and early new crop bales for Fall delivery. The influence these export commitments should keep the Dec'18 contract supported, especially if there is any remaining production uncertainty.

Considering this, I am not as worried as I was a couple of months ago about Dec'18 falling below 70 cents, or even 75 cents. However, from where we are now, even 75 cents is a long, long way to fall. That is, the market is offering a real opportunity to either price or hedge some of your expected production. That opportunity may not be there at harvest time.

Remember, the only thing you can know for sure is whether a forward contract or hedge on today's futures price will be a profitable, or at least survivable, price floor. With the rally in Dec'18 cotton futures, the cost of insuring downside price protection has gotten cheaper. Amazingly, near the money put options on Dec'18 ICE cotton cost have been surprisingly affordable with this rally. As of this writing, you can insure a minimum cash price in the neighborhood of 80 cents, while maintaining upside potential for cash sales.

For additional thoughts on these and other cotton marketing topics, please visit my weekly online newsletter at <http://agrilife.org/cottonmarketing/>

John Robinson, Professor and Extension Economist—Cotton Marketing

Wildlife

Scholarship—Texas Wildlife Association Foundation, Inc and San Antonio Livestock Exposition, Inc. announce the San Antonio Livestock Exposition, Inc. Scholarships. Rules and applications can be found at www.texas-wildlife.org/resources/other-resources/scholarships/. Applications must be post-marked by July 31st and winners will be announced August 15th.

Management Tip—Little Quail: We're to the time of year again where we might start seeing broods of bobwhite chicks. Some bobwhites are still breeding, with the males sounding off in the quintessential "bob-white!" call, while others have already settled down. Keep your eyes peeled for mothers on nests, broods with their parents, and other signs of the next generation of bobwhites taking off. With the nesting season in full swing, it is time to pay special attention to your grazing on warm-season, native grasses, such as little bluestem. Cattle and quail work great together, but when the stubble height drops below roughly 10", it can make things difficult for Mother Quail to raise a brood. If you want to learn more about the effect of summer heat on wildlife, check out the AgriLife Bookstore for the publication E-299 Using Livestock to Manage Wildlife Habitat!

News—Texas Parks and Wildlife Commission Approves Hunting Regulation Changes for 2018-19 South Zone Dove Hunters to See Earliest Opener in Seven Decades

AUSTIN -Hunters will see several hunting regulation changes this fall, including an early opener for dove season in the South Zone, a mule deer season in Lynn County, experimental mule deer antler restrictions, an increase to the northern pintail bag limit, and a one week reduction to the spring Eastern turkey season for 2019 in 13 counties.

The following modifications and clarifications to the 2018-19 Statewide Hunting Proclamation, details of which will be incorporated into this year's Texas Parks and Wildlife Department Outdoor Annual, have been approved by the Texas Parks and Wildlife Commission:

- Open the general dove season in the South Zone on Sept. 14; earliest starting date for the region since 1950.
- Shorten the Eastern spring turkey hunting season in Bowie, Cass, Fannin, Grayson, Jasper, Lamar, Marion, Nacogdoches, Newton, Panola, Polk, Red River, and Sabine by one week while retaining the current closing date of May 14. The Commission also approved closing the Eastern turkey season in Upshur and San Augustine counties.
- Open in Lynn County a 9-day buck-only mule deer season with no special archery season.
- Set a 20-inch minimum outside antler spread of the main beams restriction on mule deer bucks in Briscoe, Childress, Cottle, Floyd, Motley, and Hall counties.
- Clarify that deer antler restriction regulations that state in each county where antler restrictions are imposed, a person who takes a buck in violation of antler restrictions is prohibited from subsequently harvesting any buck deer with branched antlers on both main beams in that county during that current deer season.
- Lastly, The Commission adopted changes that simplified archery regulations by remove requirements for broadhead hunting points to have two cutting edges and a cutting width of 7/8 of an inch. Also removed were the minimum pull requirement of 125 pounds and the minimum crossbow stock length of 25 inches.

After re-evaluating a proposal that would permit the use of air guns and arrow guns to take certain game animals, game birds, alligators, and furbearers, the Texas Parks and Wildlife Commission has rescinded the previous rule they adopted in March and has requested staff to modify their recom-

mendations and propose new rules to be considered by the Commission at their next scheduled meeting in August.

Hunting season dates for the 2018-19 seasons can be viewed on the TPWD website.

Beef Cattle

Beef Cattle Short Course: The 64th annual Beef Cattle Short Course will be held August 6-8th in College Station. Registration is \$210 for each adult. This includes 3 daily breakfasts, two lunches, 1 prime rib dinner, 1 proceedings book, trade show admittance, refreshments, and access to campus shuttle. There is a youth program for ages 13-18yrs for \$100. Registration forms, parking information and schedule is available at beefcattleshortcourse.com/participant/. Registration is due July 30th.

TAHC Merger—Texas Animal Health Commission (TAHC) merged portions of the Fort Worth region with the Lampasas and Mount Pleasant regions on June 29, 2018. This was the final region merge for the TAHC and facilitates cost savings to allow TAHC's region offices to have the resources and personnel necessary to protect the health and marketability of Texas' livestock, exotic livestock and domestic and exotic fowl.

The Lampasas region gains **Archer**, Baylor, Clay, Foard, Hardeman, Haskell, Hood, Jack, Jones, Knox, Montague, Palo Pinto, Parker, Shackelford, Somervell, Stephens, Throckmorton, Wichita, Wilbarger, Wise and Young counties.

The Lampasas region office is located at [1305 South Key Avenue, Suite 204, Lampasas, Texas 76550](#) and may be reached at 512-556-6277. Dr. Pete Fincher will serve as the Region Director and Ann Wagner will be the Supervising Inspector.

TAHC livestock inspectors and veterinarians will continue to be strategically located throughout the merged regions to work with producers, livestock markets and to meet regional and local needs.

In conjunction with the region merge, TAHC has renamed each region to reflect the correlating office location. For questions concerning the region merge or rename, please contact your the Lampasas region office or the Central Office at 800-550-8242.



Save the date(s)... upcoming events

7/25	Montague County Ranchers Leasing Workshop—Bowie
8/2	Ranchers Leasing Questions Webinar—Online
8/6-8	Beef Cattle Short Course—College Station
9/18	Fall Ranchers Leasing Workshop—Fort Worth
9/18	TSCRA Ranching 101—Fort Worth
11/8	Fall Ranchers Leasing Workshop—Waco

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