



EPA publishes sweeping new proposals to regulate oil and gas emissions

**Texas
Independent
Producers and
Royalty Owners
Association**

oil and natural gas sources, and would require states to reduce methane emissions from hundreds of thousands of existing sources nationwide for the first time.

"With this historic action, EPA is addressing existing sources from the oil and natural gas industry nationwide, in addition to updating rules for new sources, to ensure robust and lasting cuts in pollution across the country," said EPA Administrator Michael Regan. "By building on existing technologies and encouraging innovative new solutions, we are committed to a durable final rule that is anchored in science and the law, that protects communities living near oil and natural gas facilities, and that advances our nation's climate goals under the Paris Agreement."

On behalf of the association's membership, the Texas Independent Producers & Royalty Owners Association (TIPRO) has closely monitored developments with this rulemaking by the EPA and has served as a Small Entity Representative with the U.S. Small Business Administration (SBA), Office of Management and Budget (OMB) and the EPA to provide input on federal methane regulations for the oil and natural gas industry. Following this week's regulatory announcement, TIPRO President Ed Longanecker reinforced the organization's commitment to engage with federal regulators on the proposed rules. "We look forward to working with the EPA to minimize the impact of these regulations on smaller producers, particularly as other measures are being considered at the federal level," he said.

Texas Railroad Commission Chairman Wayne Christian also this week reacted to the new methane standards, commenting, "Texas is the number one oil and gas producer in the nation, and these continued anti -oil and -gas policies will kill jobs, stifle economic growth and make America more reliant of foreign nations to provide reliable energy."

TIPRO members may find more information about the EPA's proposed methane rules by visiting <https://bit.ly/3bGxPkN>.

Texans for Natural Gas analysis shows Permian producers charting path to cleaner energy future

Methane emissions intensity in the Permian Basin has declined almost 70 percent since 2011, as oil and gas production rose over 320 percent, according to an analysis by Texans for Natural Gas (TNG), a project of the Texas Independent Producers and Royalty Owners Association (TIPRO). The analysis, *Permian Basin Producers: Charting A Cleaner Energy Future*, is TNG's third report on methane and flaring intensity in the Permian Basin. The report utilizes data from the World Bank, U.S. Energy Information Administration (EIA), Environmental Protection Agency (EPA) and Rystad Energy to show how Permian producers are leading the world when it comes to responsibly meeting growing global energy demand.

Report highlights include:

- **METHANE INTENSITY CONTINUES DOWNWARD TREND:** Between 2011 and 2020, methane emissions intensity fell almost 70 percent in the Permian Basin. Since 2011, total oil and gas production in the Permian has increased by over 320 percent.
- **FLARING INTENSITY DECLINE:** Flaring intensity in the Permian Basin decreased by over 50 percent from 2019 to 2020.
- **PERMIAN PRODUCTION ROSE DESPITE GLOBAL PANDEMIC:** Despite the unusual and unprecedented hurdles the global pandemic presented for oil and gas producers, production in the Permian Basin still managed to increase when compared to 2019, rising over 5 percent.

- **PERMIAN MUCH CLEANER THAN WORLD COMPETITORS:** The Permian Basin stands apart from other global producers not only because of its prolific production, but by remaining well below the flaring intensity of other global producers. For example, Russia's flaring intensity was 239 percent higher than the Permian Basin, and 143 percent higher than the United States as a whole.

"This report affirms the role that Texas oil and gas needs to play in meeting domestic and global energy demand for the foreseeable future," said Ed Longanecker, president of TIPRO. "Over the last decade, we've seen oil and gas operators come together to present new solutions to reduce methane emissions and flaring. These communities are yielding significant results that speak for themselves. Permian Basin producers are at the forefront of energy development for their ingenuity, leadership and dedication to minimizing their impact on the environment."

The full report can be found here: <https://bit.ly/3bE0G9E>.

Chairman's message

Dear TIPRO members:

The powers in Washington D.C. are still arguing over how much of our grandchildren's money they are going to spend and who they are going to collect it from, but for the most part, thanks to the efforts of our advocacy groups, punitive tax treatment against energy producers is off the table... at least for now. However, across the pond at the COP26 summit, world leaders have committed their constituents to a 30 percent reduction in methane (CH₄) emissions by 2030. To meet these goals, the U.S. Environmental Protection Agency (EPA) has stepped in to regulate CH₄ emissions and has proposed the following rules:

- a comprehensive monitoring program for new and existing well sites and compressor stations;
- a compliance option that allows owners and operators the flexibility to use advanced technology to find major leaks more rapidly and at lower cost than ever before;
- a zero-emissions standard for new and existing pneumatic controllers (with a limited alternative standard for sites in Alaska), certain types of which account for approximately 30 percent of current CH₄ emissions from the oil and natural gas sector;
- standards to eliminate venting of associated gas, and require capture and sale of gas where a sales line is available, at new and existing oil wells;
- proposed performance standards and presumptive standards for other new and existing sources, including storage tanks, pneumatic pumps, and compressors; and
- a requirement that states meaningfully engage with overburdened and underserved communities, amongst other stakeholders, in developing state plans.



Brent Hopkins

TIPRO will continue to work with the EPA to try to minimize the impact of this policy package and any other proposed rulemaking or legislative proposal on the membership, but I would like to take this opportunity to chime in with some food for thought.

According to a recent *Oil and Gas Journal* article, the Supreme Court will review the extent of EPA authority over greenhouse gases (GHG) under the Clean Air Act. Basically, the case considers whether states hold the authority to propose standards or the EPA without specific restrictions authorized by Congress. This should be an interesting battle.

What are the true CH₄ emissions from the oil and gas sector and what impact do they have in the big climate picture? According to the U.S. Energy Information Administration (EIA), total anthropogenic GHG emissions for 2019 were 6,537 million (MM) tons carbon dioxide (CO₂) equivalent. Total oil and gas emissions represent 197 MM tons CO₂ equivalent. So, the oil and gas share of the total emissions was 3 percent on a CO₂ equivalency basis. I do not consider 3 percent very high for an industry that supplies over 69 percent of the U.S. energy.

Recent articles have stated that CH₄ is 80-85 times more potent a GHG than CO₂, and I have even read a very misleading article on the EPA website that suggests methane is responsible for one-third of the human-caused emissions. These statements make great headlines, but they are taken way out of context. Yes, CH₄ absorbs more heat than CO₂ in a steady state environment, but in the real world (or atmosphere in this case) CH₄ only represents .00017 percent of the atmosphere and the infrared light (heat) that it absorbs has a wavelength of 3.5 and 7.5 microns that is also absorbed by water vapor. Likely all of the infrared in those wavelengths have been absorbed by water vapor, which is the GHG "numero uno" and represents roughly 2.5 percent of the atmosphere. It is highly speculative to suggest CH₄ has near the warming represented in this scenario. Like many things in climate science, CH₄'s contribution is highly interpretive.

Meanwhile, I have also recently seen an article that suggests that government mandates will only cost the industry a little over \$1 billion, which is a small amount of the projected earnings of the 10 largest companies. We just have to hope every year is like this year going forward and nothing like last year.... or most years since 2008. Like all things done in D.C., higher costs will just be absorbed by businesses and companies and none of these costs will be passed on to the consumers (sorry I couldn't help myself).

In summary, I would like to stress that I am all for capturing every molecule of CH₄ and doing our absolute best to use it as energy and more importantly sell it. As renowned energy expert Scott Tinker has suggested, CH₄ is only one "C" away from carbon-free energy and we should focus our efforts on reducing emissions instead of attacking a fuel source. On that note, the EPA standards were used in the war against coal and are responsible for the retirement of numerous coal-fired plants across the U.S. Fortunately natural gas was readily available to step in to the electric generation mix and keep the power on. The first round of rules from the EPA only cost \$1 billion or so but they likely will increase with time, and we do not have a readily available reliable alternative in the energy mix.

Again, as always, these words represent my opinion, which I am not afraid to share, but is not necessarily representative of the association's position.

Kind regards,
Brent Hopkins

TIPRO CALENDAR OF EVENTS

NOVEMBER 16, 2021

HOUSTON — IPAA/TIPRO/HPF
Leaders in Industry Luncheon.
For information, please email
adoremus@ipaa.org.

JANUARY 12, 2022

HOUSTON — IPAA/TIPRO
Leaders in Industry Luncheon.
For information, please email
adoremus@ipaa.org.

FEBRUARY 9, 2022

HOUSTON — IPAA/TIPRO
Leaders in Industry Luncheon.
For information, please email
adoremus@ipaa.org.

State sales tax collections for oil and gas sector sees strong growth in October

State sales tax revenue continues to show strong gains, Texas Comptroller Glenn Hegar said on Monday, November 1, as Texas brought in \$3.41 billion during October while business activity and consumer spending patterns shift back toward pre-pandemic norms. Sales tax is the largest source of state funding for the state budget, accounting for 59 percent of all tax collections.

"October state sales tax collections again strongly surpassed pre-pandemic levels, reaching a new monthly high," described Comptroller Hegar. "Tax receipts from most major economic sectors were up by double-digit percentages from a year ago, indicating continued brisk spending by both businesses and consumers."

Hegar also noted collections from the oil- and gas-mining sector in October had more than doubled from a year ago. Oil production taxes generated \$410 million in state revenue, up 105 percent from October 2020, and up 18 percent from October 2019. In addition, natural gas production taxes topped \$258 million, up 356 percent from October 2020, and up 206 percent from October 2019.

Republican John Lujan secures victory in special election runoff for House District 118

On Election Day, Republican John Lujan, a 59-year-old retired firefighter, won the special election runoff for Texas House District 118. It remained a tight race until polling locations closed on Tuesday, November 2, with Lujan leading opponent Democrat Frank Ramirez 51.2 percent to 48.8 percent, according to unofficial results. Lujan replaces former state Representative Leo Pacheco, who resigned earlier this year to teach at San Antonio College, to represent District 118 in the Texas House of Representatives.

The race carries particular significance for the Republican party, which had targeted the election as an opportunity to flip the traditionally Democratic-friendly seat in San Antonio. The party has proclaimed that Lujan's election "marks the beginning of Republicans winning Democrat-held seats in South Texas in the 2022 election cycle."

Texas Democratic congressmen say *Build Back Better Act* will adversely impact small producers

In a letter sent November 4th to U.S. House Speaker Nancy Pelosi, three Democratic congressmen from Texas again articulated concerns over provisions within the *Build Back Better Act*, currently being considered by Congress. The federal legislators, including Representatives Vicente Gonzalez (TX- 15), Henry Cuellar (TX- 28) and Filemon Vela (TX-34), criticized the policy for "unfairly" targeting oil and gas companies, while excluding other sources of methane emissions, through the proposed Methane Emissions Reduction Plan (MERP) and applying punitive treatment to the American energy industry. The Texas congressmen have asked Speaker Pelosi to reconsider and remove the MERP from final text of the *Build Back Better Act*.

USFWS moves to rescind 2020 critical habitat regulations

The Biden Administration announced in late October new regulatory efforts aimed at dropping critical habitat regulations finalized in December 2020 by the Trump White House. The U.S. Fish and Wildlife Service (USFWS) and the National Marine Fisheries Service (NOAA Fisheries) on October 26th proposed revoking the Services' joint regulatory definition of "habitat" and USFWS regulations governing critical habitat exclusions under 4(b)(2) of the Endangered Species Act (ESA), in accordance with President Joe Biden's Executive Order 13990 that directed all federal agencies to review and address agency actions to ensure consistency with Biden Administration objectives. Upon further evaluation of the critical habitat rules, the Services have concluded that conservation purposes relating to the ESA are likely better met by resuming the federal government's previous approach - as such, the USFWS and NOAA Fisheries said they are looking to pull the respective regulations to ease the regulatory process designating certain lands and waters as critical for the survival of vulnerable species.

"The ESA is one of the most important conservation tools in America and provides a safety net for species that are at risk of going extinct," said Assistant Secretary for Fish and Wildlife and Parks Shannon Estenoz. "If finalized, [the] proposed actions will bring the implementation of the Act back into alignment with its original intent and purpose – protecting and recovering America's biological heritage for future generations."

Both of these proposed rescissions will undergo rigorous and transparent rulemaking processes before being finalized, said regulatory leaders, and will also be published in the Federal Register for 30-day public comment periods, along with due coordination involving federally recognized Tribes. The comment periods for these actions will close on November 26, 2021. The proposed regulations can be found in the Federal Register at: <https://www.federalregister.gov/public-inspection/current>.

Meanwhile, as the Biden Administration pushes regulatory rollbacks of Trump-era ESA reforms, Republican members of the U.S. House Committee on Natural Resources this Fall introduced five bills in Congress to codify Trump's ESA regulations and make the prior policies permanent. The legislation specifically would cement each of the following ESA regulations into law: process for considering critical habitat exclusions (stemming from a Supreme Court decision and requiring an economic analysis be conducted by the USFWS when designating critical habitat); clear definition of habitat under the ESA; withdrawal of the "Blanket 4(d) rule" under the ESA which otherwise allowed the federal government to extend most protections for endangered species to threatened species; evaluation requirement for critical habitat designations and species listings; and, the interagency cooperation/Section 7 consultation regulation.

"We are pushing back against the tone-deaf rollback of Trump-era ESA reforms with the introduction of these bills," commented House Committee on Natural Resources Ranking Member Bruce Westerman (R-Arkansas), a joint author of the ESA legislation. "No one should have power to weaponize the ESA against rural Americans, bogging them down in years of litigation, burdensome regulations and government overreach. The Biden Administration's proposed changes will result in greater inefficiency in the federal permitting process and less proactive conservation work to help save species. They are also legally questionable, as the regulations they aim to replace were the result of a Supreme Court decision. By reinstating these reforms and codifying them into law, we are putting the power back in the hands of Americans."

Martha Williams nominated to become director of the U.S. Fish and Wildlife Service

In late October, President Joe Biden announced Martha Williams as his selection for the next director of the Interior Department's Fish and Wildlife Service (USFWS). Williams, who has already been serving at the USFWS as principal deputy director since January, currently has been exercising the delegable authority of the director of the agency. Her nomination for USFWS director will now be sent to the U.S. Senate for consideration and confirmation.

"Martha brings with her decades of experience, deep knowledge, and a passion for conservation, wildlife management, and natural resources stewardship," remarked Interior Secretary Deb Haaland. "I look forward to continuing to work with her as the department carries out its mission to protect America's most precious resources and as we answer President Biden's call to action to conserve, connect, and restore the lands, waters, and wildlife upon which we all depend on."

Preceding her appointment to USFWS, Williams previously served as the director of the Montana Department of Fish, Wildlife and Parks from 2017 to 2020. From 1988-2011, Williams was agency legal counsel for the Montana Department of Fish, Wildlife & Parks, where she advised and represented the department on real estate transactions, Endangered Species Act (ESA) policy and litigation, and on state and national environmental policy acts. Earlier in her career, Williams also was an assistant law professor at the Blewett School of Law at the University of Montana and co-directed the university's Land Use and Natural Resources Clinic. She earned a bachelor's degree from the University of Virginia and a Juris Doctor degree from the University of Montana School of Law.

William's latest service at USFWS marks a return to the Department of the Interior, where she had previously served as deputy solicitor parks and wildlife, providing counsel to the National Park Service and the USFWS.

Leading the USFWS, Williams would run a federal agency tasked with managing wildlife and habitat across the country and would be in charge of the government department responsible for administering the ESA. Her nomination to USFWS comes while the Biden Administration has already pursued regulatory changes to the ESA, including associated ESA policies and rules finalized in recent years by the Trump Administration. At this time, the agency also notably is reevaluating the need to list two distinct population segments (DPS) of the Lesser Prairie-Chicken under the ESA, an effort which TIPRO, industry stakeholders and state officials have expressed opposition to.

Congressional bill introduced to protect independent producers from excessive emission fees

Before November, three federal lawmakers announced new legislation aimed at blocking the U.S. Environmental Protection Agency (EPA) from imposing excessive methane emission fees for marginal wells – wells that produce less than 15 barrels of oil and less than 90 Mcf (90,000 cubic feet) of natural gas per day. U.S. Representatives Jodey Arrington (TX-19), Ron Estes (KS-4) and Kevin Hern (OK-01) introduced in the U.S. House the *Marginal Well Protection Act*, which would protect small oil and gas producers around the country from harmful policies being promulgated by the Biden Administration.

"After months of uncertainty because of President Biden's energy retreat, our oil and gas producers now face hostile policies contained in the Democrat's tax and spend package," remarked Congressman Arrington. "I applaud Congressman Estes for his introduction of the *Marginal Well Protection Act*, which will prohibit the EPA administrator from imposing a punitive methane fee on wells that produce less than 15 barrels a day. This legislation will protect our independent producers from the Democrats' assault on the American oil and gas industry. Ultimately, their policies will only impede our global competitiveness, energy independence, and as we have already seen—the price will be borne by American families with higher energy prices."

"Domestic oil producers are struggling while energy costs continue to rise. Biden is begging our foreign adversaries to produce more oil but actively preventing domestic companies from doing the same," Congressman Hern stated. "We need to protect our small oil and gas producers here in Oklahoma and around the country from Biden's harmful policies. I'm proud to join my colleague Ron Estes on this bill to ensure American companies are powering American communities and homes."

Marginal wells are small, often family-owned wells with around 15 employees or fewer that produce almost 7.5 percent of entire U.S. oil production.

Texas congressmen urge EPA administrator to postpone oil and gas NSPS rulemaking

Before the U.S. Environmental Protection Agency (EPA) this week published its proposed updates to the New Source Performance Standards (NSPS) and emission guidelines for the oil and gas industry, congressional leaders from Texas pressed EPA Administrator Michael Regan to wait until more data was made available prior to imposing additional rules and burdens on oil and gas facilities. Texas Congressman Jodey Arrington (TX-19) and nine of his House colleagues sent a letter in mid-October to Administrator Regan explaining the U.S. Department of Energy is currently working to prepare a study of methane emissions from marginal oil and gas wells. This federally-funded analysis is expected to better quantify methane emissions from marginal oil and gas well-sites at various basins across the U.S., including the Permian Basin, noted the congressmen. The study is scheduled for public release in December and would likely provide critical data on emissions from low-producing wells, which "must be considered in any forthcoming EPA emissions rule," advised federal lawmakers.

"To ensure the EPA promulgates a rule relating to emissions in good faith, publication must be postponed until the ongoing study is finalized, and the study's findings must be taken into consideration during the drafting process. Not only would it be irresponsible to do otherwise, it would needlessly jeopardize our nation's small and independent oil and natural gas producers."

Signers of this letter to Administrator Regan included Representatives Kevin Brady (TX-8), August Pfluger (TX-11), Ronny L. Jackson (TX-13), Jake Ellzey (TX-10), Randy Weber (TX-29), Dan Crenshaw (TX-2), Van Taylor (TX-3), Brian Babin (TX-36), Beth Van Duyne (TX-24), Roger Williams (TX-25), Liz Cheney (R-WY), Clay Higgins (LA-3) and Ron Estes (KS-4).

To read the full letter, please see: <https://bit.ly/2ZzfbSU>.

Over 80 federal legislators sign onto resolution opposing punitive natural gas taxes

While a disastrous tax on natural gas is being considered as part of Congress' proposed reconciliation package, more than 80 congressional members have backed a resolution filed in the U.S. House formally expressing opposition to punitive natural gas taxes on United States businesses, families and workers. The resolution was authored by Texas Congressman August Pfluger (TX-11), whose West Texas district includes prolific oil fields part of the Permian Basin.

"Congressional Democrats are pushing a natural gas tax that will reduce our GDP by \$9 billion, kill at least 90,000 jobs and raise energy bills for all Americans," stated Congressman Pfluger. "President Biden's out-of-control spending is already driving up prices on everything—from the grocery store to the gas pump—while causing our national debt to skyrocket. Now, Democrats are desperately searching for new ways to squeeze even more money out of the American people to pay for their big-government programs. A natural gas tax is a tax increase on every single American that will disproportionately harm working families, farmers and ranchers, and our energy producers in the Permian Basin."

Of note, Pfluger's resolution is also co-sponsored by the following representatives from Texas: Michael C. Burgess, M.D. (TX-26), Michael Cloud (TX-27), Dan Crenshaw (TX-02), Beth Van Duyne (TX-24), Louie Gohmert (TX-01), Van Taylor (TX-03), Pat Fallon (TX-04), Jake Ellzey (TX-06), Kevin Brady (TX-08), Michael McCaul (TX-10), Ronny Jackson (TX-13), Randy Weber (TX-14), Pete Sessions (TX-17), Jodey Arrington (TX-19), Tony Gonzales (TX-23), Roger Williams (TX-25), Brian Babin (TX-36) and Lance Gooden (TX-05).

President Biden lifts steel and aluminum tariffs for European Union

As President Joe Biden and other world leaders convened in Italy at the end of October for the G-20 summit, the U.S. government announced a deal has been reached with the European Union to immediately remove tariffs applied against European steel and aluminum products. The agreement, aimed at easing trade relations with the European Union, will lift metal tariffs previously imposed by the Trump Administration on the grounds of national security under Section 232. Retaliatory taxes against the United States will also now be eliminated under negotiated terms of the trade deal.

Some protections will remain in place for the American steel and aluminum industry as the nations utilize a so-called tariff-rate quota, an arrangement in which higher levels of imports are met with higher duties. Specifically, Section 232 steel products from the European Union that are within-quota will enter free of any Section 232 duty, while all Section 232 steel products entering above-quota will continue to be subject to a Section 232 duty of 25 percent. The latest trade policy also establishes a framework through which the United States and European Union agree to take carbon intensity into account in future negotiations as part of amplified actions against climate change. Given that the United States and the European Union both produce steel and aluminum that is "cleaner" than what is produced in much of the world, this new measure aims to create greater incentives for reducing carbon intensity across modes of production of steel and aluminum made by American and European companies.

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brian@emconsultinginc.com

OPEC+ sticks with output plan, despite pressures from Biden Administration to pump more oil

Ahead of the November 4th meeting of the Organization of the Petroleum Exporting Countries (OPEC) nations, U.S. President Joe Biden continued to blame higher oil and gas prices on a refusal by OPEC producers and Russia to produce more crude. Speaking at the international COP26 Climate Summit in Glasgow, America's president said in early November that energy prices, which have in recent months climbed to multi-year highs, were "a consequence of thus far the refusal of Russia or the OPEC nations to pump more oil," adding that "we'll see what happens on that score sooner than later." Despite pressures from America's president and other large oil consumers in Asia, OPEC+ producers rebuffed calls for higher oil production and have said they will maintain production plans to gradually raise oil output by 400,000 barrels per day in December.

Texas upstream employment rises for fifth consecutive month

Employment gains continued for the Texas upstream oil and gas sector for a fifth consecutive month, new analysis from the Texas Independent Producers & Royalty Owners Association (TIPRO) showed. Citing the latest Current Employment Statistics (CES) report from the U.S. Bureau of Labor Statistics (BLS), TIPRO highlighted an increase of 2,900 jobs in September for the Texas upstream sector compared with revised August job tallies, for a total of 181,100 jobs. TIPRO also recently reported strong job posting data for upstream, midstream and downstream sectors for the month of September in line with rising employment, reflecting a continued demand for talent in the Texas oil and natural gas industry. According to TIPRO's workforce analysis, Texas upstream employment in September 2021 represented an increase of 23,600 positions compared to September 2020, which specifically reflected a rise of 22,000 jobs in the services sector and an increase of 1,600 jobs in oil and natural gas extraction.

"Demand for U.S. crude has reached record highs driven by a strong recovery in global demand and continued tightness in supply," said Ed Longanecker, president of TIPRO.

Improving economic conditions and escalating energy prices however come at a time when Congress is still considering a myriad of restrictive domestic oil and natural gas policies that would exacerbate the rising costs of goods and services, including gasoline and utility bills. Chief among them, according to TIPRO, is a disastrous national energy tax in the \$3.5 trillion reconciliation package that could cripple thousands of small energy producers and severely burden American taxpayers. "After months of advancing policies designed to limit domestic production, the White House blames OPEC for not increasing supply more as demand has rebounded," said Longanecker. "The lack of a coherent energy strategy for the U.S. will continue to have very real consequences for American families struggling to pay their bills and put food on the table. Instead of suppressing our industry and begging foreign adversaries to raise oil output, domestic producers should be encouraged to responsibly develop our resources here to help stabilize prices," concluded Longanecker.



"Appellate court upholds Railroad Commission MIPA order"

By Michael K. Reer, Harris, Finley & Bogle, P.C.

On October 27, 2021, the San Antonio Court of Appeals upheld a Texas Railroad Commission denial and dismissal of an application made under the Mineral Interest Pooling Act (MIPA). The applicant was the mineral lessee of state-owned riverbed acreage, and the offset operator drilled and produced 16 Eagle Ford Shale wells on both sides of the riverbed tract. The Railroad Commission found that the mineral lessee did not make a fair and reasonable offer to pool voluntarily under MIPA, a finding which was affirmed by the San Antonio Court of Appeals.

Under MIPA, a mineral interest owner may apply for an order from the Texas Railroad Commission that would force pool a mineral interest with proposed or existing wells within the same proration unit and common reservoir. As a prerequisite to an application for a force pooling order, MIPA requires a fair and reasonable offer to voluntarily create a pooled unit. If a fair and reasonable offer to create a voluntary unit is not accepted, the mineral interest owner may file an application for a forced pooling order with the commission.

As part of the application, the mineral interest owner must also demonstrate that the forced pooled unit would accomplish at least one of three objectives: (1) avoid the drilling of unnecessary wells; (2) protect correlative rights; or (3) prevent waste.

In reviewing the Railroad Commission decision, the San Antonio Court of Appeals considered whether the contested case hearing record contained substantial evidence supporting the proposition that the applicant did not make a fair and reasonable offer to form a voluntary unit. Although the Railroad Commission found that the applicant's offer was not fair and reasonable because the applicant failed to: (1) provide a survey to establish the precise acreage to be pooled; (2) establish that any of the 16 wells at issue drained from the riverbed tract; or (3) include an adequate risk penalty—the appellate court focused its analysis on the risk penalty.

The applicant's offer to form a voluntary unit contained a 10 percent risk penalty for the 16 wells already drilled. The offset operator introduced expert testimony that a 10 percent risk penalty is unreasonably low for Eagle Ford wells, and that a 100 percent risk penalty is more appropriate. The applicant did not introduce any expert testimony to the contrary, and admitted that a higher charge for risk would be fair and reasonable. As such, the appellate court found that substantial evidence existed to support the commission's finding that a fair and reasonable offer was not made. The decision highlights the requirement that MIPA offers contain fair and reasonable terms in every respect, as well as the importance of expert testimony.

Michael Reer is a shareholder with the firm Harris, Finley & Bogle, P.C. and may be reached at mreer@hfblaw.com. The case is *Ammonite Oil and Gas Corporation v. Railroad Commission of Texas et al.*, No. 04-20-00465-CV, 2021 WL 4976324 (Tex. App.—San Antonio Oct. 27, 2021, no pet. h.) (mem. op.).

Good morning:

There's no escaping talk about decarbonization and "the energy transition" these days. Yet one of our cleanest, most abundant fuels – natural gas – is getting short shrift. From public discourse to regulatory policy discussions, the true value of natgas is too often ignored.

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In cooperation with groups like IPAA, INGAA, TIPRO and the Southern Gas Association, our editors are producing a special publication that tells the whole story: Why natural gas is important now, what roles it is ready to play in the transition, and its likely contributions into the future.

"America's Natural Gas" (working title) is designed to garner serious attention on Capitol Hill, within state legislatures and in municipal governments (and perhaps win hearts and minds in schools and on social media). It will be both a print publication and a PDF suitable for online distribution.

Some topics being addressed include:

- **Unparalleled abundance** – Why natural gas resources are key to providing affordable energy and addressing climate change in the most cost-efficient and reliable ways.
- **Demand at home and abroad** – Already the dominant fuel for U.S. power generation (while reducing associated GHG emissions), our gas is increasingly valued in export markets, too.
- **ESG and investors** – Message received loud and clear; U.S. producers have been cutting emissions and putting themselves at the center of climate change solutions.
- **The new leadership** – This isn't your grandfather's industry. Meet the new faces of oil and gas, young climate-conscious leaders who embrace natural gas as the cleaner alternative.
- **Key to energy transition** – How natgas dovetails with renewable sources and the role it plays in producing carbon-free blue hydrogen.
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With nearly 3,000 members, TIPRO is the nation's largest statewide association representing both independent producers and royalty owners. Our members include small family-owned companies, the largest publicly traded independents and large and small mineral estates and trusts.

919 Congress Avenue, Suite 1000
Austin, Texas 78701
Phone: (512) 477-4452
Fax: (512) 476-8070
www.tipro.org