



**Texas
Independent
Producers and
Royalty Owners
Association**

LEGISLATIVE COMMITTEE MEETS IN AUSTIN TO REVIEW IMPACTS OF SHALE OIL AND GAS DEVELOPMENT IN TEXAS

Members of the Texas House Energy Resources Committee convened at the state capitol in Austin on Wednesday afternoon, July 26th to discuss findings from the recent report prepared by the Academy of Medicine, Engineering and Science of Texas (TAMEST), the state's premier scientific organization that includes Texas' top scientists and researchers. The TAMEST report, published in June, offered a

comprehensive review of environmental and community impacts resulting from shale development in the state of Texas. At Wednesday's hearing, TAMEST President Gordon England, joined by other lead authors of the shale study, briefed the Energy Resources Committee on key highlights from the report and spoke on the group's findings on issues relating to seismicity, water and transportation.

TIPRO President Ed Longanecker also testified Wednesday before legislators, reinforcing the industry's commitment to responsible development of oil and natural gas resources and the protection of Texas citizens and the environment. "On behalf of my organization and our 3,000 members, we appreciate the collaborative work that went into developing the TAMEST report and believe it contains a variety of positive data points that illustrate the importance of oil and natural gas development to our state," Longanecker told committee members.

In his testimony, Longanecker drew attention to the minimal percentage of water utilized by Texas producers for drilling and hydraulic fracturing as compared to water levels used for agricultural activities and municipalities' purposes. As noted by TAMEST within their report, water used for hydraulic fracturing activities accounts for less than 1 percent of total statewide water use. Nevertheless, operators continue to work to find innovative ways to further reduce water needs for E&P operations, Longanecker assured lawmakers. With regards to seismicity, in his testimony, Longanecker affirmed the industry's strong support of the state's TexNet Seismic Research program, noting the fact that Texas has led the country with efforts to study this important issue in order to provide more accurate and reliable data on seismic events in the state. "Having accurate data is imperative to developing the right policies, regulations and industry best practices. As an industry, we are committed to supporting continued research, funding and collaboration on this topic," he emphasized. Longanecker also reiterated TIPRO's dedication to helping find long-term solutions for transportation issues impacting Texas communities.

BLM RESCINDING FEDERAL HYDRAULIC FRACTURING REGULATIONS

This week, the U.S. Bureau of Land Management (BLM) unveiled plans to rescind federal regulations for hydraulic fracturing, concluding that the controversial rule finalized in 2015 was "unnecessarily duplicative of state and some tribal regulations and imposed burdensome reporting requirements and other unjustified costs on the oil and gas industry." The move to rollback the 2015 hydraulic fracturing rule, in its entirety, follows directives previously set forth by President Donald Trump under Executive Order 13783, entitled "Promoting Energy Independence and Economic Growth," and a subsequent order issued by Secretary of the Interior Ryan Zinke through Secretarial Order No. 3349, entitled "American Energy Independence" which, among other things, had directed the BLM to proceed expeditiously in proposing to rescind the 2015 regulation.

"The Department of the Interior's approach toward overseeing wells is to be better business partners and environmental stewards which is in alignment with the Trump Administration's across-the-board prioritization of domestic energy production," commented Vincent DeVito, counselor to the secretary of the Interior for energy policy. "This means flexibility to regulate fracking and a rulemaking process open to all members of the public. The Department has not made any prior determinations. We know that being a good business partner includes a commonsense, transparent approach towards regulatory stability, environmental stewardship and growing our energy economy."

Due to pending litigation, the BLM's hydraulic fracturing regulation never went into effect. Nonetheless, in support of President Trump and his cabinet's energy priorities, the agency is taking action to void the policy. In a review requested as part of Secretary Zinke's secretarial order, the BLM found that all of the 32 states with federal oil and gas leases already have regulations to address hydraulic fracturing activities. Furthermore, since the 2015 final rule was published, more companies are using databases, such as FracFocus, to publicly disclose the chemical content of hydraulic fracturing fluids - one of the key requirements mandated under the 2015 regulation.

Public comments are being accepted on this proposed regulatory rescission and supporting analyses (namely, the Environmental Assessment or the Regulatory Impact Analysis) until September 25, 2017. Input relating to Docket Number 2017-15696 may be submitted online at www.regulations.gov.

CHAIRMAN'S MESSAGE

TIPRO Members:

Two weeks ago, I posted a short comment on LinkedIn that said the following:

"Regulatory agencies that hire people that hate the 'industries they regulate' in the name of 'stakeholder representation' are like parents letting child abusers babysit their children. It's NEVER ok."

-Allen Gilmer, Chairman, Texas Independent Producers and Royalty Owners

To date, it has received close to 20,000 reads, some eight times more than my top 25 percent posts, and some 12 times more than my average post. It seemed to have struck a nerve.

TIPRO staff was in attendance and President Ed Longanecker testified before the Texas House Energy Resources Committee on the Academy of Medicine, Engineering, and Science of Texas (TAMEST) Report released in June that addressed the Academy's findings with regards to the facts surrounding popular opinions pertaining to water pollution, air pollution, and induced seismicity and their relationship to oil and gas operations (see more detail in the front article in this issue). The report lauded the working relationship between the Texas oil and gas industry and the state regulators that oversee them. My experience with TIPRO over the years has shown me countless times that our industry doesn't try to hide or deny facts, and that it is the first to recommend remediation proposals to address whatever shortcomings are found. TIPRO is justifiably proud of its role in crafting the oilfield cleanup fund, operator bonding, and dozens of other efforts that make Texas the unicorn of industrial growth and high paying job creation amidst a depressingly downward spiral of other once great states in the U.S.

This is EXACTLY the goal. No business is the enemy of the citizenry; and certainly not the Texas oil and gas business. We ARE the citizenry, and what we produce educates our children, paves our roads, and creates a real and positive tomorrow for everyone. Somewhere along the way, many of our fellow citizens lost our way about how to think about these things. The depressingly ignorant "firebrand trying to wreck an industry is a hero" has been a recurring meme for at least 140 years.

On a related topic, TIPRO will be having its Summer Conference at Hyatt Hill Country on August 9 and 10. We have a great slate of speakers, and topics ranging from "what will oil and gas prices be in the next 12 months" and "is oil and gas going to be replaced by electric cars and cartoon bluebirds singing Song of the South" to "look how I can cut my drilling costs by 30 percent!" If none of those topics appeal to you, I don't know what to say. Just sign up. Now. Ed's efforts to get Kid Rock and the Motor City Madman down to talk oil and gas with us will probably go unfulfilled, but if I were running for a Michigan Senate seat, I would want to know some crazy, fun-loving Texas oil people!

Lastly, my wife and I road tripped to the old family cabin in Ruidoso two weeks ago. My secret route from my college days forward, when I would make the run from El Paso to Houston and back, was cutting up Highway 285 from Fort Stockton to Oria and shooting down 652 to Highway 62/180 into the Pass of the North. I would be lucky to see five cars along that whole stretch. Not this time. We passed 10,000 trucks, not that I was actually counting. It was a white knuckler like the TV show *Ice Road Truckers* except it was 100 degrees, there were 10,000 of them, and it was traffic jammed like it was Manhattan... In other words, now that I think about it, not like *Ice Road Truckers* at all. During that drive, I kept thinking about the title of the *Texas Tribune Festival* panel I am on September 23 entitled "Is There Another Oil Boom Around the Corner?" I thought to myself, "What corner? The last one? Sure seems like a massive one is here right now... at \$43 a barrel." Whoda' thunk?

Allen Gilmer



Allen Gilmer

TEXNET SEISMIC MONITORING PROGRAM PLANNING TO ADD MONITORS IN THE PERMIAN

Speaking at an industry conference in Midland earlier this month, Peter Hennings with the University of Texas Bureau of Economic Geology (BEG) said that additional monitors will be installed in the Permian Basin to help geologists and researchers further study any seismic events that may occur in the region. Hennings addressed members of the Midland chapter of the Society of Independent Professional Earth Scientists (SIPES) on July 19, sharing that researchers are about halfway finished with their work in reviewing seismicity in the Fort Worth Basin. Next, Hennings reported that TexNet will turn attention to the greater West Texas region.

In TexNet's most recent report published in May, approximately 113 seismic events were cataloged, most of which had occurred in West Texas. In the May report, the TexNet Seismic Monitoring team also said that it is currently working to develop a website that will offer a continuous seismic data feed. This website is in testing and has not yet been released to the public.

TIPRO Calendar of Events

AUGUST 9, 2017	AUGUST 9-10, 2017	AUGUST 16-17, 2017	SEPTEMBER 13, 2017
HOUSTON — IPAA/TIPRO Leaders in Industry Luncheon, 11:30 a.m. Houston Petroleum Club. For info, call: (202) 857-4733.	SAN ANTONIO — TIPRO's Summer Conference, Hyatt Hill Country Resort. For info, call: (512) 477-4452.	HOUSTON — NAPE Summer Expo, George R. Brown Convention Center. For info, call: (817) 847-7700.	HOUSTON — IPAA/TIPRO Leaders in Industry Luncheon, 11:30 a.m. Houston Petroleum Club. For info, call: (202) 857-4733.

LEGISLATORS RETURN TO AUSTIN FOR SPECIAL LEGISLATIVE SESSION

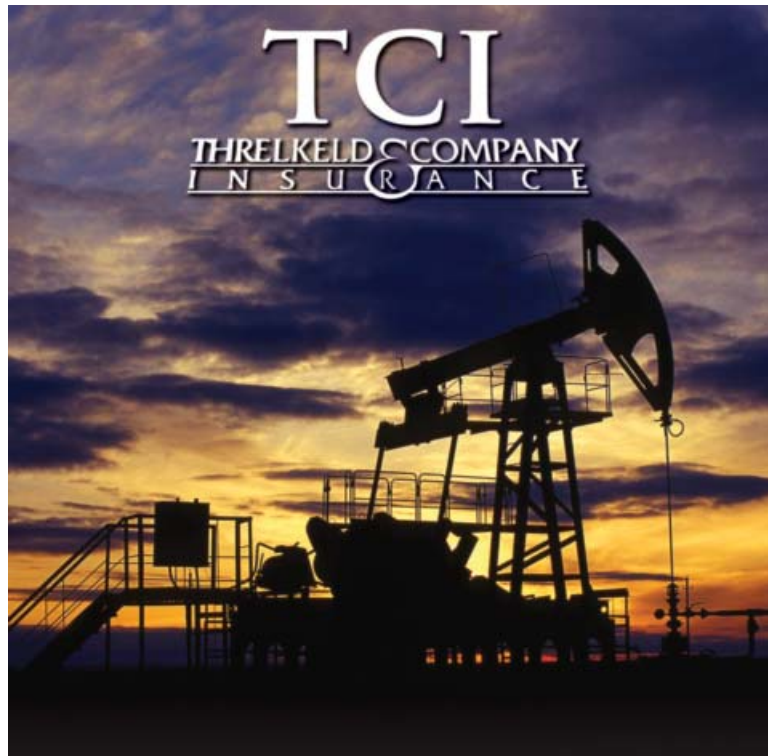
State legislators returned to Austin on Tuesday, July 18th for the start of the special legislative session. Per the governor's first special session proclamation, lawmakers acted swiftly to approve legislation that extends operations at five agencies under Sunset review, including the Texas Medical Board, the Texas State Board of Examiners of Psychologists, the Texas State Board of Examiners of Marriage and Family Therapists, the Texas State Board of Examiners of Professional Counselors, and the Texas State Board of Social Worker Examiners.

Following the passage of the sunset legislation in the Senate on July 20, 2017, Governor Greg Abbott promptly issued a second proclamation adding additional items to the special session call. After which time, a flurry of bills were filed to be considered in the House and Senate chambers. Several pieces of legislation that have been filed actually are re-filed bills previously brought up for debate during the regular session (some of which TIPRO was actively engaged on). Unfortunately, most of these bills are not subject to the Special Session Call from the governor, and consequently are unlikely to pass. Of note, House Bill 313 was filed by Representative James White, which would allocate a portion of oil and gas production tax revenue to the counties from which the oil and gas originated. House Bill 303, filed by Representative Geanie W. Morrison, would alter the definition of new property value for purposes of the calculation of certain ad valorem tax rates for a county. And lastly, House Bill 27 by Representative Lyle Larson would amend the Water Code to encourage development of brackish groundwater.

As of Thursday, July 27, 2017, more than 480 bills have been filed in the Texas House and nearly 200 bills have been filed in the Texas Senate during the 85th Special Session.

TIPRO SIGNS ON TO COMMENTS DISCUSSING EFFORTS TO OVERHAUL FEDERAL TAX SYSTEM

As federal officials consider reforming the U.S. tax code, associations representing America's independent oil and gas producers are advocating for the continuation of tax provisions that are critical to allowing companies to continue to invest in new production, such as Intangible Drilling Costs (IDCs), the Percentage Depletion deduction and the Passive Loss Exception for Working Oil and Gas Interests. On Monday, July 17, 2017, the Independent Petroleum Association of America (IPAA) and its cooperating associations -- including TIPRO -- submitted comments to the Senate Finance Committee discussing efforts to pursue tax reform. The committee had requested information regarding tax reform issues that: would provide much-needed tax relief to middle-class individuals and families through reforms to the individual income tax system; strengthen businesses -- both large and small -- by lowering tax rates and broadening the relevant tax base in order to put the economy on a better growth path and create jobs; and remove impediments and disincentives for savings and investment that exist in the current tax system.



In the comments sent to the congressional committee, the coalition of associations wrote: "The American shale revolution, spurred by horizontal drilling and hydraulic fracturing, has propelled the United States to become one of the biggest oil and natural gas production countries in the world, creating profound economic, trade and geopolitical advantages for the country. This remarkable American energy revitalization could end if tax reform legislation limits independent producers' access to capital by changing oil and natural gas tax provisions. As such, the associations submitting these comments urge you to preserve the current tax treatment of capital formation and recovery provisions such as the expensing on IDC, the Percentage Depletion deduction and the passive loss exception for working interests. For this component of industry, capital recovery provisions are more critical than the tax rate."

To view the full comments submitted from the associations, please visit the following link: <http://bit.ly/2u20KHZ>.

TRUMP ADMINISTRATION BACKS OFF EFFORTS TO BLOCK STEEL IMPORTS

As an update to a story featured in the June 29th *TIPRO Target* newsletter, this week President Donald Trump said that his administration would delay making its decision on whether to block steel imports, saying "we don't want to do it at this moment." Earlier in the summer, TIPRO shared a letter with Texas' complete congressional delegation warning against potential negative effects of additional U.S. tariffs, quotas or other measures that would raise the cost of steel imports for the oil and gas industry.

TEXAS ISSUES \$1 BILLION IN SWIFT FUNDING FOR WATER INFRASTRUCTURE PROJECTS

Leaders of the Texas Water Development Board (TWDB) announced on Thursday, July 20, that more than \$1 billion in financial assistance from the State Water Implementation Fund for Texas (SWIFT) program has been approved. The 2017 SWIFT financing will be used to support 10 projects across the state, including water line replacements, well fields, seawater desalination, capacity expansions, and reservoir planning.

The SWIFT program was approved by the Texas legislature in 2013, and approved by Texas voters through a constitutional amendment, to help Texas communities develop and optimize water supplies by supporting the development of projects included under the state water plan. Grants are not available from the program, but rather, SWIFT provides low-interest loans, extended repayment terms, deferral of loan repayments, and incremental repurchase terms for projects with state ownership aspects. Already, the TWDB has administered two prior cycles of the SWIFT program.

"Texas communities understand the importance of proactively addressing their long-term water demands," said TWDB Chairman Bech Bruun. "The quality and diversity of applicants in the third cycle of SWIFT testifies to the success of the program."

In the latest round of SWIFT financing, state grants will support the following projects:

- \$1,350,000 to the City of Azle (Parker and Tarrant counties) for water system improvements;
- \$1,390,000 to the City of Springtown (Parker and Wise counties) for a water supply project;
- \$16,995,000 to the Brushy Creek Regional Utility Authority, Inc. (Williamson and Travis counties) for a water supply project;
- \$12 million to the City of Justin (Denton County) for water system improvements;
- \$2,750,000 to the City of Corpus Christi (Nueces County) for a seawater desalination project;
- \$677,120,000 to the North Texas Municipal Water District for a water supply project; and
- \$213,410,000 to the Hays Caldwell Public Utility Agency for a water supply project

In addition, the TWDB reports that it has committed \$127,900,000 in financing for an existing large water supply project in the Houston area, which will be provided to the Central Harris County Regional Water Authority, North Harris County Regional Water Authority, and West Harris County Regional Water Authority. More than \$13 million was also approved by the TWDB for conservation and rural projects.

"The SWIFT program's low-cost loans incentivize communities around the state to participate in creating the State Water Plan and encourage stakeholders to expeditiously develop the water infrastructure our state needs. Committing \$5.6 billion in the first three years of SWIFT is a tremendous start, and the Board will continue to actively manage the program to ensure it fulfills its long-term goal of providing water for all Texans."

- TWDB Board Member Peter Lake

NOTICE: UNIVERSITY LANDS TO HOST OIL & GAS LEASE SALE THIS FALL

University Lands (UL) is planning to conduct a lease sale this Fall for oil and gas exploration and development rights across tracts of UL acreage. The sale will be hosted online by EnergyNet, an industry leader for easy-to-use oil and gas auction and sealed bid transaction services. All bidders must be pre-qualified through EnergyNet in order to participate in the upcoming UL lease sale, and all bidding will be done through EnergyNet's website. Bids for the UL lease sale will be accepted from August 20 - September 20, 2017.

Revenue generated from the UL lease sale will benefit the Permanent University Fund (PUF). The PUF is one of the largest university endowments in the United States and supports more than 20 educational and health institutions across both the University of Texas and Texas A&M University systems.

For additional details on the upcoming sale of oil and gas leases from University Lands, including the complete tract list, please visit: www.utlands.utsystem.edu.

AS ENERGY PRODUCTION RISES, RAILROAD COMMISSION CHAIR EMPHASIZES INFRASTRUCTURE NEEDS

With oil and gas production output continuing to rise - especially in the Lone Star State - Christi Craddick, chairman of the Texas Railroad Commission, highlighted the vital importance of keeping pace of development of the nation's energy infrastructure in conjunction with thriving domestic oil and gas production. Craddick underscored this point while speaking this week at the Aspen Institute's 2017 Global Energy, Economy and Security Forum, an annual conference that covers changes in global energy markets and the associated links between energy and national economic and security concerns.

"The recent expansion of domestic energy production in Texas and across the country has created new, high demand for infrastructure to transport our growing energy supply to consumers," Craddick said. "Over the last few years in Texas, our pipeline mileage has increased exponentially, and our ports have seen billions of dollars of investment related to the export of oil, liquid natural gas and other petrochemicals."

"The current energy opportunity presents us with a challenge," added Craddick. "If we want domestic energy production to continue to grow, we need sound policies that allow for the timely expansion of our nation's energy infrastructure. This essential infrastructure will support our economy for the long-term future by allowing us to develop our domestic energy resources to their full potential, providing consumers with low-cost energy options, and reaching energy independence while also supplying energy to our allies overseas."

LAST CHANCE TO REGISTER FOR TIPRO'S SUMMER CONFERENCE!

FEATURED SPEAKERS WILL INCLUDE:



**Keynote Presenter
Gary Willingham,**
Executive Vice
President of
Operations for
Noble Energy, Inc.



**Kathleen Harnett
White,**
Energy Expert,
Author and Former
TCEQ
Commissioner



Mark Mills,
Senior Fellow
at Manhattan
Institute and
Strategic Partner
of Cottonwood
Venture Partners



David Ballwin,
Co-President of
SCF Partners



**State
Representative
Lyle Larson,**
Chair of the
House Natural
Resources
Committee
(Invited)



**TIPRO's Chairman
Allen Gilmer,**
Co-Founder and
Executive Chairman
of DrillingInfo

TIPRO's Summer Conference is just two weeks away! TIPRO is excited to return to San Antonio's Hyatt Hill Country Resort on August 9th & 10th for the association's summer meeting, where well-respected leaders and industry experts will share the latest on opportunities and challenges for the Texas E&P sector.

Topics to be discussed:

- Recap of the 85th Texas Regular Legislative Session
- Federal energy policy update
- Outlook for the oil & gas industry
- Panel discussion on innovations in the oil patch
- Responding to industry threats with science, truth and action
- And much more!

Register today to participate in the association's upcoming conference. Sponsorship opportunities are also still available.

To learn more, please call TIPRO at (512) 477-4452.

**VIEW THE COMPLETE AGENDA AND
SIGN-UP TO ATTEND TIPRO'S CONFERENCE AT
WWW.TIPRO.ORG!**



RRC Commissioner Wayne Christian Presses U.S. Senate to Confirm FERC Leaders

Texas Railroad Commissioner Wayne Christian sent a letter on Wednesday, July 26th to U.S. Senators for Texas John Cornyn and Ted Cruz pushing for the confirmation of Federal Energy Regulatory Commission (FERC) nominees, Neil Chatterjee and Robert Powelson, before the Senate adjourns for its August recess. Commissioner Christian wrote in his letter that for the first time in 40 years, FERC lacks the proper number of members to meet a quorum, and as such, without a voting quorum, FERC cannot approve critical energy infrastructure projects. "If the Senate fails to act, nearly two dozen pipeline projects totaling nearly \$25 billion in investments and 75,000 jobs are at risk," explained Christian. "Confirmation of these two nominees will restore a quorum to the commission and allow it to conduct business so these critical projects can move forward."

"It is essential that the Senate move forward with the nomination of these two individuals before August recess," continued Christian. "Tens of millions of investor dollars and thousands of well-paying jobs are on hold while these projects sit in limbo, awaiting approval from FERC. The economic consequences resulting from the delay in confirming the FERC nominees is a tremendous and unnecessary waste to the American taxpayer."

U.S. House Approves Bills Improving Energy Infrastructure Permitting Process

The U.S. House of Representatives passed two bills in July that would streamline oil and gas pipeline permitting. House Resolution 2910, by Texas Congressman Bill Flores (TX-17), was passed by the House last Wednesday, July 19. The resolution would strengthen the Federal Energy Regulatory Commission's (FERC) role and provide for greater certainty, accountability, and transparency to the permitting process for interstate natural gas pipelines. "Thanks to the shale energy revolution, America is one of the world's top producers of natural gas. While our nation's families and industrial and manufacturing bases rely on this abundant fuel source, some areas of the country lack necessary pipeline infrastructure," observed Congressman Flores. "This lack of infrastructure leads to unnecessarily inflated costs for electricity for both consumers and job creators. The *Promoting Interagency Coordination for Review of Natural Gas Pipelines Act* will allow us to fully harness this environmentally friendly, affordable and abundant resource by bringing greater transparency and accountability to the natural gas permitting process for interstate pipelines. These improvements encourage a more robust and reliable pipeline infrastructure system, which in turn will deliver clean, affordable natural gas to hardworking American families."

The House of Representatives also voted last week in favor of House Resolution 2883, the *Promoting Cross-Border Energy Infrastructure Act*, by Oklahoma Representative Markwayne Mullin (OK-2). "Our energy sector deserves a regulatory process they can rely on, not one that changes with each incoming administration... [This] Act takes the politics out of energy infrastructure and delivers regulatory certainty and transparency for the construction of energy projects that cross our North American borders," Representative Mullin said.

U.S. House Passes Measure to Delay Updated Federal Ozone Standards

The U.S. House of Representatives last week approved a resolution delaying Obama-era ozone standards. House Resolution 806, authored by Texas Congressman Pete Olson (TX-22), grants states more time - until October 2026 - to meet ozone standards set by the U.S. Environmental Protection Agency (EPA) in 2015. The bill also would limit future regulations that crack down on the pollutant. "Our nation has worked hard to reduce ozone levels and improve air quality," said Representative Olson, who also serves as vice chair of the House Energy subcommittee. "As we continue this progress, we need to give states better tools to meet air quality goals efficiently. As we work to keep this trend moving in the right direction, my bill provides needed flexibility so that states and localities can adequately achieve new, lower standards with time for compliance. Health remains the first priority in setting standards and giving our local officials the tools they need make the Clean Air Act work. I'm proud that this common sense bill received bipartisan support in the House and I urge the Senate to act quickly as well."

U.S. Crude Production Likely to Hit Record Output Next Year



The U.S. Energy Information Administration (EIA) is forecasting that next year total U.S. crude oil production will reach an average of 9.9 million barrels per day (b/d), surpassing the previous record of 9.6 million b/d set in 1970. Most of the growth in U.S. crude oil production through the end of 2018 is expected from tight rock formations within the Permian region in Texas and from the Federal Gulf of Mexico.

More specifically, by the end of 2018, analysts expect that the Permian Basin alone will produce 2.9 million b/d of crude oil, representing nearly 30 percent of total crude oil production output in the United States in 2018. Based on data from Baker Hughes, 366 of the 915 onshore rigs in the Lower 48 states in June were operating in the Permian region. EIA projects that number of rigs in the Permian Basin will grow to 370 by the end of 2018.

“EPA, CORPS TO REVISE ‘WATERS OF THE UNITED STATES’ DEFINITION”

BY MICHAEL K. REER, HARRIS, FINLEY & BOGLE, P.C.

On June 27, 2017, the U.S. Environmental Protection Agency (EPA) and the U.S. Army Corps of Engineers (ACE) released the proposed rule “Definition of ‘Waters of the United States’ – Recodification of Pre-Existing Rules” for publication in the Federal Register. The proposed rule announces a two-step process for revising the regulatory definition of “Waters of the United States” in compliance with President Trump’s February 28, 2017 Executive Order “Restoring the Rule of Law, Federalism, and Economic Growth by Reviewing the ‘Waters of the United States’ Rule.”

The definition of “Waters of the United States” is promulgated by EPA and ACE to codify the agencies’ claimed jurisdiction under the Clean Water Act. The Clean Water Act prohibits the unpermitted discharge of any pollutant to navigable waters, which are defined by the Act as “the waters of the United States.” The Clean Water Act imposes both criminal liability and civil fines on persons that discharge pollutants, including dredge or fill materials, into waters of the United States without a permit.

Since 2006, the agencies have used the “significant nexus” test to determine which waters are jurisdictional, and therefore protected by the Clean Water Act. The “significant nexus” test was articulated by Justice Kennedy in a concurring opinion in *Rapanos v. United States*. In short, the “significant nexus” test allows the agencies to assert jurisdiction on a case-by-case basis over non-navigable waters if they establish that the waters “either alone or in combination with similarly situated lands in the region, significantly affect the chemical, physical, and biological integrity of other covered waters more readily understood as ‘navigable.’”

In 2015, the agencies finalized a new definition of “Waters of the United States.” The 2015 definition maintains a “significant nexus” analysis for certain types of waters, including for specific classes of aquatic features and for certain non-navigable waters that occur within a specified distance of certain other jurisdictional waters or their floodplains. However, the final rule significantly increases the use of “bright-line” classifications for enumerated types of waters in order to decrease the total number of case-by-case assessments made by the agencies.

The 2015 rulemaking was largely viewed by industry as impermissibly enlarging the jurisdiction given to the agencies by Congress under the Clean Water Act. Upon publication, the final rulemaking was challenged by several industry and environmental associations in a plethora of federal courts, including several U.S. Courts of Appeals and approximately two dozen U.S. District Courts. The challenges filed at the U.S. Courts of Appeals were consolidated in the U.S. Court of Appeals for the Sixth Circuit, which issued a nationwide stay of the 2015 rulemaking upon a finding that the petitioners demonstrated a substantial possibility of succeeding on the merits of their claims.

President Trump’s February 2017 Executive Order requires the agencies to consider whether the 2015 rulemaking ensures that “navigable waters are kept free from pollution, while at the same time promoting economic growth, minimizing regulatory uncertainty, and showing due regard for the roles of the Congress and the states under the Constitution.” Moreover, the Executive Order also requires the agencies to consider promulgating a definition of “Waters of the United States” that is consistent with Justice Scalia’s plurality opinion in *Rapanos*.

In *Rapanos*, Justice Scalia, joined by three other justices, wrote an opinion arguing that the agencies’ jurisdiction under the Clean Water Act is limited to only those relatively permanent, standing, or continuously flowing bodies of water forming geographic features that are ordinarily described as streams, oceans, rivers, and lakes. Unlike the 2015 definition, Justice Scalia’s “relatively permanent” test would exclude those channels through which water flows intermittently or ephemerally, a potentially enormous quantity of waters currently considered jurisdictional either by bright-line rule or on a case-by-case basis. Moreover, Justice Scalia’s “relatively permanent” test would consider as jurisdictional only those wetlands with a “continuous surface connection” to otherwise jurisdictional waters such that there is no clear demarcation between the waters and wetlands.

The agencies’ announced two-step process appears to signal acceptance of Justice Scalia’s proposed definition in *Rapanos*. In step one, the agencies propose to rescind the 2015 definition and to recodify the pre-2015 definition currently enforced by the agencies because of the Sixth Circuit’s nationwide stay of the 2015 definition. In step two, the agencies state that they intend to pursue a notice and comment rulemaking to engage in a substantive re-evaluation of the definition. As part of the substantive re-evaluation, the agencies expressly state that they “will consider developing a new definition of ‘waters of the United States’ taking into consideration the principles that Justice Scalia outlined in the *Rapanos* plurality opinion.”

The agencies’ jurisdictional drawdown could have significant implications for the oil and natural gas industry. Since 2014, the agencies have concluded major Clean Water Act enforcement actions related to onshore oil and gas operations totaling over \$7.1 million. As the agencies’ claimed jurisdiction shrinks, so too should enforcement actions related to incidental, unpermitted discharges into non-navigable waters.

Michael K. Reer is an associate with Harris, Finley & Bogle, P.C.’s Fort Worth Office. He is manager of the firm’s oil and gas blog, which can be found at www.oilandgaslawblog.com.

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Battle of the Masters

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A&D Conference

SEPTEMBER 7, 2017

The Buyers, The Acres, The A&D-Makers

Even if Permian isn't yet sedated, the usual flourish of deals – most in the Delaware Basin – has started to slumber in 2017. Elsewhere, the bargaining zone – that distance between buyer and seller expectations – remains a negotiation. The next phase of deal activity, may target the Eagle Ford, the Bakken and the D-J Basin.

Learn where the next targets are, how to bridge the bid/ask gap and learn from top E&P insiders on where E&Ps are headed this year at the #1 gathering for BD executives, A&D professionals and capital providers.

THE TIPRO TARGET



**Texas Independent
Producers &
Royalty Owners
Association**

With more than 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.

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