

STAFF REPORTS

FEDERAL UPDATE

Chris Kearney, PBPA

DSL Listing

- On July 3, the US Fish and Wild Service announced its proposal to list the dunes sagebrush lizard as threatened throughout its range under the Endangered Species Act (ESA).
- PBPA has moved swiftly in response:
 - 1) We have met with the Department of Interior's Deputy Secretary's senior staff to express our significant displeasure over the listing, especially given PBPA's close working relationship with the department in the development of the CCA (the deputy secretary indicated he was willing to meet but due to previous private sector work involving the lizard he was prohibited from meeting with us);
 - 2) We have communicated to congressional allies – including Rep. Pfluger – our opposition and deep concern over the potential impacts on such a listing on Permian Basin operations. As a result, in part due to our advocacy, Rep. Pfluger has introduced legislation to block the listing;
 - 3) PBPA has been in direct contact with key congressional committees responsible for oversight of the ESA regarding our concerns. One committee is considering reforms to the ESA in the coming months; and,
 - 4) We are considering litigation options if the proposed listing becomes final.

Biden Administration ESA “Reforms”

- The Biden administration recently announced a regulatory package designed to enhance protections for plants and animals at risk of going extinct, and restoring ESA provisions that were curtailed during the Trump administration. Yet another effort to restrict oil and gas operations.
- Among others, a major direction of these long-awaited proposals from the Fish and Wildlife Service and NOAA Fisheries would be to prohibit the killing or injuring of threatened species, providing them the same level of protection as that for species listed as endangered.
- The package also includes modifications to Section 7 of the law, among others, including addressing ongoing issues such as what is the meaning of the phrase “foreseeable future” is, as the phrase is used in the law.
- The rules package is currently open for comment and PBPA is likely to file comments.

Methane

PHMSA Proposed Methane Leak Regulation

- PBPA provided initial thoughts in response to Hill inquiries we received regarding concerns surrounding the Pipeline and Hazardous Materials Safety Administration's (PHMSA) proposed regulatory amendments that implement congressional mandates in the Protecting our Infrastructure of Pipelines and Enhancing Safety Act of 2020 to reduce methane emissions from new and existing gas transmission pipelines, distribution pipelines, regulated (Types A, B, C and offshore) gas gathering pipelines, underground natural gas storage facilities, and liquefied natural gas facilities.
- Among the proposed amendments for part 192-regulated gas pipelines are strengthened leakage survey and patrolling requirements; performance standards for advanced leak detection programs; leak grading and repair criteria with mandatory repair timelines; requirements for mitigation of emissions from blowdowns; pressure relief device design, configuration, and maintenance requirements; and clarified requirements for investigating failures.
- The rule proposes to add gathering lines. Ironically, many of which -- depending on size -- are statutorily exempt from PHMSA regulation.

STAFF REPORTS

FEDERAL UPDATE CONTINUED

- This is of particular concern given that so many gathering lines having been brought under regulation back 2021 – something on the order of 425,000 miles of lines. It would seem a close examination of how that regulatory oversight is faring should be evaluated and reported on before bringing more lines under PHMSA in this re-authorization.
- Further, there is the issue of hazardous emissions. It's not clear the definition of that so, it casts great uncertainty about gases and liquids that have to be measured and tested for.
- Finally, there is the issue of reporting and enforcement aspects which are unknown at this point – a cause for concern.
- Overall, it is a highly technical and complex rule that is not easily digestible, nor does it lend itself to clear answers – a problem in and of itself.
- An array of relevant trades are expected to comment on the rulemaking.

Sen. Manchin's Letter to EPA on the Methane Tax

During Q2, Senator Joe Manchin (D-WV) took action to address ongoing concerns he – and PBPA as well as a number of oil and gas trade associations – has regarding EPA's implementation of the Methane Emissions Reduction Program (MERP), particularly the methane tax component, which passed as a part of last year's Inflation Reduction Act.

Discussions regarding the concerns, of which PBPA DC staff was a part, have resulted in a letter being sent from Sen. Manchin to EPA Administrator Michael Regan detailing the Senator's frustrations with the agency and its process for implementing the provisions of the statute. These frustrations are also shared by small producers' concerns about the program and its potential impacts. In the letter, areas of concern -- and related unanswered questions -- regarding the program focus on:

- What will be the funding provided to operators to assist in bringing them into compliance?
- What will guidance from EPA indicate regarding what operators need to do and when they need to do it?
- The short timeline to assessment and implementation of the methane tax, and assessment to operators before any of the above has been accomplished.
- The exclusion of small operators from the program, as promised; how small operators demonstrate they are not subject to the tax (and how a "small operator" be defined).
- Time and cost burdens to operators of implementing, or demonstrating they are not subject to the tax.
- The ability to avoid the tax via compliance, rather than assessing that tax as simply a production tax based on formulas and factors.

DC Visit Follow Up

- As a follow up – and at times in response to – PBPA leadership's successful trip to Washington, DC earlier this year, PBPA staff have continued to engage in regular outreach and follow up with members and staff, fielding several calls regarding our views on various pieces of legislation and regulations regarding ESA, methane, and other issues.
- In addition, PBPA provided background materials regarding our operations in Permian Basin.
- In those communications we continued to focus on the need for Congress to pressure EPA for greater accountability and transparency on what they are doing in terms of implementation of the methane emissions tax enacted as part of the Inflation Reduction Act.
- Among our highest concerns remains the Methane Tax (discussed above). It's clear that EPA, if given the opportunity, will bury our small operators in red tape reporting requirements to prove they don't fall under the tax, and broad requirements to capture as many mid to larger companies as possible to pay the tax – in perpetuity – that will result in costly actions (and potentially bankruptcy) that will impact virtually all operators across the Permian Basin come 2024 and 2025 when the tax comes into effect.

STAFF REPORTS

FEDERAL UPDATE CONTINUED

Happenings in DC We Will Engage in and Monitor in Q3 And Beyond

- As described above, continued relationship building with DC staff from March trip.
- Providing information and possible questions to key congressional committee staff for key hearings aimed at relevant administration witnesses regarding key issues of importance to PBPA (e.g. ESA, Methane, WOTUS).
- Continue preparations for US Senate committee level action on permit reform legislation (i.e. hearings; potential markups etc.).
- Continue to monitor, and be available to testify on, important bills moving through various committees.
- Continue congressional and agency outreach on the adverse impact of looming methane tax and regulation; track permit reform developments in the Senate; keep the Hill updated on LPC – and possible DSL – litigation plans.
- Track EPA and other agencies' ongoing and proposed anti-oil and gas regulatory actions.
- Actively participate in IPAA Cooperative Association calls and related partnership work/ outreach with other trades.
- Continue dialogue with congressional allies and open-minded members regarding ESA process reforms that will bring greater certainty to oil and gas operations and likely benefit other sectors – including agriculture – focused on improved scientific credibility and greater transparency to Service listing decisions.