

COMMITTEE REPORTS

WATER COMMITTEE

Tyler Hussey, Apache Corporation

The Permian Basin Petroleum Association's Water Committee changed leadership in March of 2019. Tim Reed of Concho Resources served as chairman of the PBPA Water Committee over the past several years and helped PBPA on a tremendous number of issues in both Texas and New Mexico. Mr. Reed has decided to hand the baton of chairman off to Tyler Hussey at Apache Corporation.

The first meeting since the transition was held on March 27th at Apache's Midland office. With New Mexico's 54th legislative session ending in March and Texas' 86th legislative session adjourning in May, this meeting primarily focused on legislative issues surrounding water.

New Mexico

The main bill discussed from New Mexico was HB546. The primary purpose of this bill was to promote water recycling efforts in NM oil and gas activity. This bill clarifies delegation of oil and gas produced water (PW) jurisdiction to the NM Oil Conservation District and Water Quality Control Commission. It explicitly defines ownership of PW to the operator who produces it. When PW is transferred, the possessory interest, right to use, and liability transfers with the PW to the transferee. A permit is not required for PW disposition, including recycling for reuse – not including surface discharge. This bill also voids against public policy the following: third party throughput fees on NM state land, freshwater purchase requirements when PW is available, and preclusion of an operator to purchase or use PW when it is available. This bill was amended in the Senate Judiciary Committee to include SB186. The amended bill defines oil and gas minor infraction penalties as \$2,500 per day. Infractions that pose a greater risk are capped at \$10,000 per day. The maximum penalty cap is \$200,000 without going to court. With infraction penalties clarified and recycling efforts promoted, this bill was a win-win for industry and the environment.

NM HB 374 was briefly discussed to inform the committee of a bill that was stopped that could have been detrimental to the NM oil and gas industry. This bill would require the following for a water permit application from the state engineer: water source, beneficial end use, location of a proposed well, surface owner, amount of water, end use location, end user and evidence via contract or agreement. The NM unconventional oil and gas industry heavily relies on third party water midstream companies for water sourcing for completions. These companies purchase thousands of miles of ROW and millions of barrels of water rights to deliver water to oil and gas companies for completions operations. Flexibility in volumes and end users is key in these operations. Predicting the total amount used and by whom at an exact date would be next to impossible and would heavily restrict our industry.

Texas

HB3246 led by Drew Darby is a bill that seeks to clarify its 2013 predecessor HB2767. The original bill stated that when oil and gas fluid waste is transferred for the purpose of recycle and reuse, the transferee takes ownership of that fluid and is responsible for its disposition. The current bill, HB3246, seeks to clarify by stating that when an oil and gas fluid waste is utilized by an operator for the purpose of recycle and reuse, the operator takes ownership of that waste until it is transferred to another party. This bill has passed the house and been sent to the senate.

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WATER COMMITTEE CONTINUED

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SB1585 seeks to transfer state surface discharge permit authority and enforcement for produced water, hydrostatic test water, and gas plant effluent resulting from certain oil and gas activities from the Railroad Commission of Texas (RRC) to the Texas Commission on Environmental Quality (TCEQ). The TCEQ has both state and federal authority to issue surface water discharge permits and the programs in place to monitor and enforce compliance for water and wastewaters discharged into state waters with the exception of that from oil and gas. As these types of permits for oil and gas wastewater are historically rare, the TCEQ's programs and procedures for surface discharge permitting and enforcement are more advanced than that of the RRC. Should the oil and gas industry need to dispose of PW via surface discharge in the future, the TCEQ would be in better position to handle permitting and enforcement. This change in law would apply to discharge permit applications on or after the effective date of federal delegation of discharge permits for these types of waters to the TCEQ.

As PW is highly saline in nature, treating PW to a quality acceptable for surface level discharge would require desalination. There are several bills in the house and senate that would provide a tax incentive for desalination. HB2545 would provide a franchise tax credit to a company who desalinated and sold PW or materials extracted from PW. HB3067 would provide a severance tax credit for a company who desalinated PW to discharge standards, whether or not it is sold. Companion bills SB1999 and HB3717 would provide a severance tax credit for a company who desalinated PW to discharge standards for the purpose of aquifer storage and recharge. HB3067, SB1999, and HB3717 all have a total severance tax credit cap per fiscal year of \$25 million. SB1930 would add desalination project sites to the list of properties eligible for a limitation on appraised value for ad valorem tax benefit. With serious disposal issues looming in the future, it is clear that certain parties are anticipating surface discharge as a PW disposal means in the future.

Additional bills were discussed that may indirectly impact the oil and gas water industry. Companion bills HB2252 and SB1392 would expand the Culberson County Groundwater Conservation District (GCD) to include all of Culberson County. This may affect water exports into New Mexico from water midstream that have assets in northern Culberson County. HB721 would require the Texas Water Development board to conduct aquifer storage and recovery studies on some of the major Texas aquifers. HB3781 would create a GCD for Val Verde County.

Future Topics

In addition to legislation, the future of the water committee and topics that should be covered were also addressed. With billions of dollars flowing into the space, the water midstream business model was one topic of interest. This new industry has emerged within the last several years and is based on water sourcing, both freshwater and recycle, and PW disposal. Another topic is a non-commercial comparison of water treatment technologies and associated costs. With disposal issues troubling both the Midland and Delaware Basins, the committee will also address disposal well permitting, seismicity, and pressure issues.