

Legislation could keep good times flowing in Texas shales

Possible infrastructure solution could circumvent state water-transportation issues.

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Long a staple of Texas' economy, the oil and gas industry is again robust, thanks to the shale revolution. According to the Texas Petro Index, for example, Texas oil production is at a 34-year high and comprises 36% of total U.S. production. But a lingering concern for oil and gas companies hoping to continue riding the shale revolution wave is water availability.

Recent activity in the Texas Legislature provides hope for the oil and gas industry to add to the state's water infrastructure and also make easier the use, reuse and recycling of water. This may provide operators with more operational flexibility and conservation options.

Water availability

Drought conditions concern the oil and gas industry not just because of lack of water availability but also for public relations purposes—many critics of the industry and of hydraulic fracturing specifically voice concerns about the

industry's water usage even though the entire usage of water by those involved in hydraulic fracturing is less than 1% of total water con-

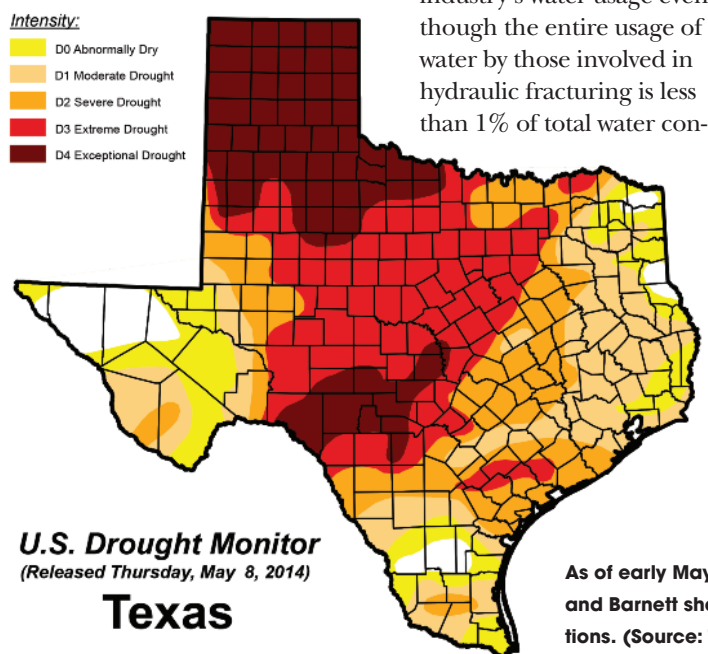
sumed in Texas (although amounts vary widely by region). Water concerns are being expressed especially at the local level, where some groundwater conservation districts have attempted to limit or restrict use of groundwater for hydraulic fracturing through the permitting process.

The backdrop for the water concerns is the persistent drought condition. Texas Gov. Rick Perry issued on July 5, 2011, and subsequently reissued as recently again as March, a proclamation certifying exceptional drought conditions in the state and suspending all rules and regulations that may inhibit or prevent prompt response to drought threats. The review of the U.S. Drought Monitor's Texas drought map reveals that drought effects are much more serious in some areas of the state than others. In particular, the areas around the Permian, Eagle Ford and Barnett shale plays are experiencing "severe" or "extreme" drought conditions.

Infrastructure for water transportation

Water is not easily moved within Texas. With respect to surface water, for example, the Texas Water Code prohibits transfer of surface water from one state river basin to another absent special authorization from the Texas Commission on Environmental Quality. And with respect to groundwater, some groundwater conservation districts have enacted rules making it challenging to transport groundwater outside district boundaries.

The general lack of a large water transportation infrastructure impinges on the use of both water and recycled water. With respect to alleviating problems associated with the lack of infrastructure necessary to convey water over distance, the enactment of Senate Bill 514 should be of immediate interest to oil and gas companies. Trucks are currently the primary means of delivering water to and removing it from production sites. The intent of S.B. 514 was to reduce roadway use by such trucks by authorization to place pipeline facilities to transport waters produced from wells "through, under, along, across or over a public road," i.e. in



As of early May when this map was updated, areas around the Permian, Eagle Ford and Barnett shale plays were experiencing "severe" or "extreme" drought conditions. (Source: The National Drought Mitigation Center)

public rights-of-way. S.B. 514 defines eligible pipeline facilities as those transporting water “containing salt or other substances” produced during drilling or operating an oil, gas or other type of well. Thus, an oil and gas operator producing water from wells ranging from oil and gas to groundwater may possibly rely on S.B. 514 to transport the water for oil and gas sites along public rights-of-way.

To take advantage of this new authorization, pipeline operators must comply with three requirements. First, they must comply with applicable Texas Department of Transportation (TxDOT), county and municipal rules. Second, pipeline operators must restore public roads to former conditions after pipeline installation. And third, they must pay fair market value for use of public rights-of-way.

TxDOT is currently developing rules to implement S.B. 514. It has held a stakeholder meeting to gather industry input but has not yet formally proposed rules. Because S.B. 514 took effect on June 14, 2013, oil and gas companies can approach TxDOT about using these beneficial provisions even before it promulgates rules. Operators will want to watch and perhaps comment on the proposed rules when they issue.

What to expect going forward

The 83rd Texas Legislature considered numerous measures concerning the use of water for oil and gas operations. Environmental issues and encouragement of recycling were the subjects of many bills that did not pass. One of the lesser known bills—S.B. 514—actually became law and is of much more significance than many may think. It offers solutions not just for transportation of produced water but also for other types of water associated with oil and gas activities. The rules coming out of TxDOT will be closely watched to make certain the bill is implemented to allow effective use of pipelines in a manner that promotes conscious water management and minimization of environmental impacts.

Whether S.B. 514 will successfully alleviate the state’s water transportation infrastructure problems or whether oil and gas companies will widely use it remains to be seen. Regardless, oil and gas companies should be encouraged that new opportunities are available to alleviate economic and environmental issues and that will assist in enabling more water conservation and reducing environmental effects while promoting further resource development. **ESP**