Texas Legislative and Regulatory Update

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I. GAS MARKET DEVELOPMENTS

A. Legislative Action: House & Senate

The 86th Legislature covered a variety of topics with the potential to significantly impact the oil and gas market in Texas, including: Eminent Domain, Pipelines, Exploration & Production, and Taxes/Budget. Below is a brief summary the most impactful legislation.

SB 533, Relating to the severance tax exemption for oil and gas produced from certain inactive wells.

The bill amends the Tax Code provisions relating to a severance tax exemption for oil and gas produced from certain inactive wells to remove those provisions relating to the designation of a well as a three-year inactive well for purposes of that exemption and to reduce the duration of the exemption for a two-year inactive well from 10 years to five years. The bill also excludes from the wells designated as two-year inactive wells a well that either is part of an enhanced oil recovery project or that is drilled but not completed and does not have a record of hydrocarbon production reported to the Railroad Commission (RRC). Finally, the bill removes the prohibition against the RRC designating a two-year inactive well after February 28, 2010. The bill was signed into law on May 7, 2019 and is effective on September 1, 2019.

SB 925, Relating to calculation of daily production for purposes of the oil and gas production tax credits for low-producing wells and leases.

The bill amends § 201.059(a)(3) of the Tax Code to amend the definition of "qualifying low-producing well" to change the calculation for production per well per day to be "the average daily production from the well using the greater of the monthly production from the well as reported in the monthly well production reports made to the commission and the monthly production from the well as reported in the producer's reports made to the comptroller under § 201.203 [of the Tax Code], including any amendments to those reports." The bill also amends the calculation of production per well per day in § 202.058(b) to be "the average daily per well production from the lease using the greater of the monthly production from the well as reported in the monthly lease production reports made to the commission and the monthly production from the well as reported in the producer's reports made to the comptroller under § 201.201 [of the Tax Code], including any amendments to those reports." The bill was signed into law on May 20, 2019 and is effective on September 1, 2019.

HB 2256, Relating to procedures for tax auditing, determining amounts of overpayments, and obtaining reimbursements of overpayments of gas production taxes.

The bill sets for the requirements for a person who overpaid taxes under certain sections of Chapter 201 to obtain reimbursement. The bill also adds a new section regarding managed audits that are conducted or initiated by the comptroller's office. The bill was signed into law on June 14, 2019 and is effective September 1, 2019.

HB 4280, Relating to the grant program distributing money from the transportation infrastructure fund.

The bill amends certain provisions of the county transportation infrastructure fund grant program, including eligibility for grants and the formula for distribution. Under the bill's revisions, a county would be eligible for a grant under the program if at least $10 million in oil and gas production taxes were collected in the county in the previous fiscal year, as determined by the comptroller. Additionally, the bill amends the grant distribution so that the percentage allocated to weight tolerance permits would be decreased by 20 percent to 10 percent; the allocation accorded to well completion would be split between horizontal (45 percent of grant allocation) and vertical wells (15 percent of grant allocation). The bill also adds a new section requiring a county to use a competitive bidding process to enter into a contract for a transportation infrastructure project involving construction or maintenance of roads funded by a county transportation infrastructure program grant, among other requirements specific to the bidding process. The bill was signed in to law on June 14, 2019 and is effective on September 1, 2019.

SB 483, Relating to permits for certain injection wells that transect a portion of the Edwards Aquifer.

The purpose of SB 483 is to amend the Injection Well Act of the Water Code to revise provisions relating to permits for injection wells that transect or terminate in certain portion of the Edwards Aquifer that is within the external boundaries of the Barton Springs-Edwards Aquifer Conservation District. The bill requires that rules and permits issued under the provision ensure that an engineered aquifer storage and recovery facility project is consistent with applicable statutory requirements. Additionally, the bill authorizes the TCEQ to authorize the injection of fresh water into a well that transects the aquifer provided that (1) the well isolates the aquifer and meets applicable construction and completion standards, (2) the well is part of a engineered storage and recovery facility, and (3) the injected water is sourced from a permitted public water system and meets applicable water quality standards for public drinking water. The bill was signed into law on June 10, 2019 and is effective immediately.

HB 3226, Relating to the terms of dissolution of an oil or gas pooled unit.

This bill was the first amendment to the Texas Mineral Interest Pooling Act (MIPA at Natural Resources Code § 102.001, *et seq.*) since 1977. The bill changes one of the terms for automatic dissolution of an oil and gas pooled unit from one year after it effective date (if no production or drilling operations have been had on the unit) to two years after the date if no production or drilling operations have been had on the unit or surface location for the unit. The amendments are designed to "reflect modern drilling technology and practices" by allowing off-lease surface hole locations and allowing an extended two-year term to begin drilling to comport

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