Rebuilding the Texas Railroad Commission
by J.W. Coleman
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Rebuilding the Texas Railroad Commission

James W. Coleman

Abstract

This article explains how the Railroad Commission of Texas became the world’s most prominent oil and gas regulator and how it can become the world’s role model again. It explains how the Railroad Commission built the world’s modern oil and gas industry by stopping oil and gas waste and ensuring stable prices. And it describes the crisis now facing the industry—overproduction of oil and gas is wasting resources that will be worth more in the future. The United States is emerging from the biggest oil and gas boom that the world has ever seen and its production now dwarfs that of any other country. Texas now produces far more oil than any other state, and more than any Middle Eastern country other than Saudi Arabia. As a result, the eyes of the global oil industry are again on Texas. The article lays out an agenda for rebuilding a world-class oil and gas regulator, explaining how better data and smart limits can protect both the economy and the environment.

“The elimination of gas flaring in Texas must be counted as one of the great victories for conservation in the history of the United States.”


“America’s hottest oil patch is producing so much natural gas that by the end of last year producers were burning off more than enough of the fuel to meet residential demand across the whole of Texas.”

Kevin Crowley, Permain Basin Is Flaring More Gas Than Texas Residents Use Daily, Bloomberg, April 10, 2019

I. Introduction

The Railroad Commission of Texas is the world’s most prominent oil and gas regulator. Texas dominated the first seven decades of modern oil production, from the Spindletop blowout in 1901, to the discovery of the East Texas Oil field in 1930, through the energy crisis of the 1970s. From 1931-1953, Texas produced one quarter of the world’s oil. Texas fueled the global economy, powering the United States to global dominance, and creating the modern oil and gas industry. The Railroad Commission made this American success story possible by stopping waste of oil and gas and letting the free market work within overall production levels that it set in coordination with the Interstate Oil Compact Commission and the federal government.

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In the past decade, Texas has again moved to the forefront of global oil and gas production. The United States has become, by far, the world’s leading oil and gas producer. It now produces more than 60% more oil than the other leading producers, Russia and Saudi Arabia. Texas alone produces over 40% of U.S. crude oil—more oil than any other member of the Organization of Petroleum Exporting Countries other than Saudi Arabia. The Texas Railroad Commission must now show the same leadership to match its world-class industry. Texas is a global energy superpower and it deserves a world-class regulator.

The Railroad Commission is still the world’s most-watched oil and gas regulator because of the reputation it developed as it fostered the modern oil industry in the Twentieth Century. Texas’s production limits ensured that oil and gas was not wasted during times of low prices. The production limits it negotiated with other states saved Texas’s industry during the Great Depression.

Figure 1

The Railroad Commission is still the world’s most-watched oil and gas regulator because of the reputation it developed as it fostered the modern oil industry in the Twentieth Century. Texas’s production limits ensured that oil and gas was not wasted during times of low prices. The production limits it negotiated with other states saved Texas’s industry during the Great Depression.


4 The second most important member of OPEC, Iraq produced just 4.74 million barrels per day in 2019. Texas produced over 5 million barrels per day in this same period. Railroad Commission of Texas, Texas Monthly Oil & Gas Production, https://www.rrc.state.tx.us/oil-gas/research-and-statistics/production-data/texas-monthly-oil-gas-production/. And the rest of OPEC’s 13 members produced between 4 million barrels per day (UAE) and 167 thousand barrels per day (Equatorial Guinea). U.S. Energy Info. Admin., International: Petroleum and Other Liquids Production, https://www.eia.gov/international/data/world/petroleum-and-other-liquids/annual-petroleum-and-other-liquids-production.

Depression. And its limits on flaring preserved the state’s natural gas. Oil and gas was produced over time to ensure smooth prices and maximum value for Texas’s industry.

The past decade’s oil boom has pushed the Railroad Commission back to the center of the world’s stage. Texas regulators have fallen behind the rapid pace of oil production and oil and gas is once again being wasted. Texas is flaring, leaking, and venting—simply burning off or releasing—staggering amounts of natural gas and selling oil at rock-bottom prices, or paying to store it, when it will be worth more in the future. The Commission now may not have enough data on well-by-well production to begin addressing these problems.6 As a result, companies are being unnecessarily pushed to waste oil and gas that will be worth far more in the future. Both our environment and our natural resources are being compromised by a helter-skelter race for production.

Texas regulators must resume the leadership role appropriate for the world’s dominant oil and gas producer. This means they must:

1. Reinvigorate the Interstate Oil & Gas Compact Commission to coordinate state oil and gas policies. With Texas’s leadership, states can work together to address national problems such as low prices and natural gas flaring, leaking and venting.

2. Work with the Compact Commission, the federal government, and other important global oil producers to smooth prices and curb overproduction, so that oil and gas are not wasted during periods of very low prices. The world’s dominant oil producers always have an interest in negotiating global production cuts to raise global oil prices, helping all oil producers. Now that America is once again the center of global oil production it needs to resume this leadership role.

3. Use production cuts to stop widespread natural gas flaring and reduce methane venting and leaking. Texas and North Dakota both now flare—that is, waste—more natural gas than some states, and even nations use. It makes no sense to burn off natural gas that will be worth far more in the future and can be used to replace dirtier sources of energy and back-up rising solar and wind power.

4. Ensure that state oil and gas regulators have the data they need to effectively conserve state resources. Companies are using new technology that gives them unprecedented ability to remotely monitor and fine-tune production at individual wells. But state regulators do not have the same data. They need to catch up so that they can tailor state regulation to an ever-faster changing market.

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6 Anas Alhajji, *History Tells Proration Would Cause Chaos In The Texas Oil Patch*, FORBES, Apr. 13, 2020, https://www.forbes.com/sites/anasalhajji/2020/04/13/history-tells-proration-would-cause-chaos-in-the-texas-oil-patch/#e76b9b82e5f2; Cassandra Pollock, *Texas Railroad Commissioner Christi Craddick Says Recovering From Oil and Gas Downturn “Is Going To Be Painful”*, TEXAS TRIBUNE, May 12, 2020, https://www.texastribune.org/2020/05/12/texas-oil-and-gas-production-slowed-during-coronavirus-price-war/ (“Craddick said the questions she had about proration ranged from what the procedure would even look like, since it had not been done in roughly 50 years, to how the agency could do it correctly.”); Mitchell Ferman, *Texas’ Oil and Gas Regulators Aren’t Ready to Cut Production Yet – They’re Not Even Sure How It Would Work If They Did*, TEXAS TRIBUNE, Apr. 15, 2020, https://www.texastribune.org/2020/04/15/texas-oil-production-cuts-not-happening-yet-railroad-commission/ (“Craddick, who has not indicated what her decision will be, said during the meeting that she was not sure how they would go about enforcing oil production cuts.”).
This article explains how the Railroad Commission first became the world’s leading oil & gas regulator and how it can again become the global leader, serving as a role model for oil and gas regulators around the world. Part II of this article explains how the Railroad Commission of Texas built the modern oil and gas industry by stopping waste and ensuring stable prices. Part III explains the current dilemma—overproduction of oil and gas is wasting resources that will be worth more in the future. Part IV lays out an agenda for rebuilding a world-class oil and gas regulator, explaining how better data and smart limits can protect both the economy and the environment.

II. How The Railroad Commission Stopped Waste and Built the Modern Oil Industry

The Railroad Commission of Texas may be history’s most important and most poorly named regulator. In 1917, it was put in charge of Texas’s oil pipelines because oil was also shipped by rail—so in 1919 it was given control of oil production as well.7 Texas was already the center of the global oil industry because of the oil rush kicked off by the Spindletop oil gusher on January 10, 1901.8 But over the following decades this role became more and more important as world transport, industry, and security grew more and more dependent on oil.9

The Railroad Commission’s role as the world’s premier regulator was cemented in the 1930s when the discovery of the East Texas oil field and an unprecedented worldwide economic crisis pushed the Commission to assume new powers over global oil prices. The East Texas oil field was discovered October 5, 1930 and was soon producing 42% of all U.S. production.10 By 1931, Texas was producing 24% of the entire world’s oil output.11 This flood of oil came in the early years of the Great Depression, which had drastically reduced oil demand, and a barrel of oil soon fell from its accustomed price of a dollar to less than a dime.12 These low prices were a crisis for Texas—its producers were pumping millions and millions of barrels of oil at a loss

8 JUDITH WALKER LINSLEY, ELLEN WALKER RIENSTRA, JO ANN STILES, GIANT UNDER THE HILL: HISTORY OF THE SPINDLETOP OIL DISCOVERY AT BEAUMONT, TEXAS, IN 1901 3 (2002) (“the first six gushes in the Spindletop field produced more oil per day than all the rest of the fields in the world put together”).
when they would have been worth far more if they simply left them in the ground until they could be produced later at a profit.

Why would companies engage in such economically irrational behavior, spending millions to pump oil at a loss when they could simply wait and pump the oil later at a profit? The answer is that free markets in oil always operate in the context of laws that artificially encourage or restrict oil production. Until Texas imposed production controls, state and federal laws pushed companies to continue wastefully rapid production.

Like all U.S. states, Texas imposes the rule of capture on oil—if you wait to pump oil from your land, your neighbor may entirely drain a reservoir underlying your two properties. As a result, companies cannot delay production until it would be most profitable.

Even worse, oil companies generally produce oil under leases from landowners that include court-imposed clauses forcing them to forfeit their rights if they do not quickly find oil and unceasingly produce it. So even when rock-bottom prices make producing unprofitable, companies must drill for oil and keep pumping it at a loss if they hope to ever make a profit in the future.

Finally, U.S. antitrust law prevents companies from working together to reduce production. It may be somewhat counterintuitive, but if companies were allowed to freely negotiate, they would agree to reduce their output. Restricted production would raise prices so that every company’s cash flow would increase even as it sold less. As Adam Smith put it: “People of the same trade seldom meet together, even for merriment and diversion, but the conversation ends in a conspiracy against the public, or in some contrivance to raise prices.” So if the government doesn’t help companies coordinate production limits, its antitrust laws force companies to waste vast quantities of oil during periods of low prices.

So oil and gas law pushes artificially rapid production and depletion of oil and gas. Rapid production and depletion means wild swings in oil prices, that would be smoothed out if companies were given more choice about when they produced oil and gas, allowing them to slow oil production when prices are low so they could pump more when prices are high. Companies need the government’s help to coordinate production limits because they cannot do so themselves without violating antitrust laws.

13 Of course, free markets themselves are legally constructed—they are only possible because legal rules enable and enforce contracts, property rights, and commerce. Cass R. Sunstein, Free Markets and Social Justice (1997) 5 (“Free markets” are a “legal construct” that “depend for their existence on law” that is “coercive” including “a system of private property” and “the law of contract”).
14 Coleman, Third Age, supra note 9, at 393–98 (2020)(explaining the rule of capture and how it creates a race to produce oil).
15 Id. at 398–406. Many of these clauses were imposed by the courts, not freely agreed contracts, because the courts believed that oil companies otherwise ignored landowners interest in rapid production. Id. at 403 n.73; Bruce M. Kramer, The Interaction Between the Common Law Implied Covenants to Prevent Drainage and Market and the Federal Oil and Gas Lease, 15 J. Energy Nat. Resources & Envtl. L. 1, 1-8 (1995).
18 Robert McNally, Crude Volatility: The History and the Future of Boom-Bust Oil Prices (2019) 2-3 (explaining why oil markets suffer from “extreme price volatility” unless production is coordinated by companies or governments).
The Texas Railroad Commission met the 1931 crisis by accepting a leadership role as coordinator of global oil production, eventually overcoming initial resistance by the courts. In April 1931, the Railroad Commission imposed limits on how much each well could produce per day, known as “allowable limits” or “allowables.” These allowables were desperately needed to slow production of oil so that the prices could recover and they also helped ensure orderly production of oil reservoirs so that they would not be damaged by too-rapid pumping. The federal courts quickly struck down these production limits, setting off a multiyear struggle to enforce these new limits.

For the next several years, the Railroad Commission and Texas’s governors, Ross Sterling and Miriam “Ma” Ferguson, fought the courts to impose production controls. The legislature initially played an unhelpful role, codifying the federal court’s holding against using “allowables” to raise prices. As prices fell further, the Railroad Commission kept trying, setting new allowable limits again and again, but the courts struck them down each time. Governor Sterling declared martial law and sent the National Guard and the Texas Rangers into the oil fields to enforce compliance with the Railroad Commission’s fleeting production limits, but a combination of court decisions and widespread non-compliance made these limits ineffective.

In November 1932, the tide turned as the Texas legislature reversed course and authorized production controls to boost prices. And the local industry, understanding its shared interest in production controls helped the government enforce the Railroad Commission’s new

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19 PRINDLE, supra note 7, at 31.
20 PRINDLE, supra note 7, at 30; Coleman, Third Age, supra note 9, at 410–411; Ely, Legal History, supra note 12, at 1071–72; P.H. FRANKEL, ESSENTIALS OF PETROLEUM: A KEY TO OIL ECONOMICS (1969) 20; DANIEL YERGIN, THE PRIZE: THE EPIC QUEST FOR OIL, MONEY AND POWER (1991) 222 (“To dissipate gas through helter-skelter production was to lose that essential pressure, and thus to leave large amounts of petroleum unrecovered underground.”); Coleman, Third Age, supra note 9, at 396; Howard R. Williams, Conservation of Oil and Gas, 65 HARV. L. REV. 1155, 1159 (1952) (overdrilling caused “dissipation of native reservoir energy”).
21 DAVIDS, HINTON & OLIEN, supra note 10, at 184; MacMillan v. Railroad Commission of Texas, 51 F. 2d 400, 405 (W.D. Tex. 1931) (holding that Texas law forbid “artificial forcing of prices by governmental action, in cooperation with those in the oil industry interested in raising prices”).
22 PRINDLE, supra note 3, at 31.
24 DAVIDS, HINTON & OLIEN, supra note 10, at 166-72; PRINDLE, note 7, at 31.
allowable limits. As part of the New Deal, President Roosevelt signed first the National Industrial Recovery Act of 1933, and then the Connally Hot Oil Act of 1935, which forbid interstate trade in “hot oil” produced in defiance of state allowable limits. And the federal courts finally changed course and upheld the new allowable limits, rejecting the argument that the Texas legislature’s course reversal had been coerced by the federal government’s support for production restrictions.

The Connally Hot Oil Act also authorized a new interstate compact to coordinate state oil production limits: The Interstate Oil Compact Commission. For decades, Texas and the other states worked through the commission to coordinate the United States’ overall oil production levels, which produced sixty percent of world oil from 1935 to 1953. The federal Bureau of Mines, working with the Compact Commission, would agree on production levels for each state. Each state would then divide its production quota among its individual oil fields and wells.

Texas and the Commission won huge benefits for American producers and consumers and for the free world. They raised oil prices, immediately boosting oil company profitability and allowing them to keep reserves that would grow more valuable over time. But they also ensured smoother prices for consumers over time—rather than being wasted at low prices, oil was conserved for a time when it would be more valuable. Even more important, they ensured that the United States had the long-term reliable supplies of oil that powered its recovery from

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27 CLARK & HALBOUTY, supra note 23, at 186–89.
31 WALLACE F. LOVEJOY & PAUL T. HOMAN, ECONOMIC ASPECTS OF OIL CONSERVATION REGULATION (2013) 33-36 (describing the development of the Interstate Oil and Gas Compact Commission from the Oil States Advisory Committee and noting that “[t]he heart of the immediate emergency program was the limiting of production by the states”). Texas was the dominant player in these negotiations because it often produced more than 40% of U.S. oil. PRINDLE, supra note 7, at 71 (Texas production reached 45% of U.S. production by 1953); for data sources see supra note 11.
32Ely, Legal History, supra note 12, at 1214–17 (describing the development and operation of the Compact Commission and noting that although there was no forma; commitment to abide by production allocations “the compacting states have done so, within reasonable limits”); YERGIN, supra note 20, at 257–59; Howard R. Williams, Conservation of Oil and Gas, 65 HARV. L. REV. 1155, 1160–63 (1952) (describing how these limits were set in cooperation with the federal Bureau of Mines and supported by the oil industry).
33 Pickens v. Railroad Comm’n, 387 S.W.2d 35 (1965) (state, field, well).
III. The Regulator Atrophied and Texas is Now Squandering Its Vast Resources

Texas is now wasting a tremendous amount of oil and gas. It is flaring—simply burning off—more gas than some countries consume.36 With rapid gas production and rock bottom prices, it is also venting and leaking huge amounts of methane directly to the atmosphere.37 And it is selling oil at bargain basement prices, and paying money to store oil, when it could just wait until the oil is worth more. Why is Texas continuing to encourage this waste?

The Texas Railroad Commission has forgotten the tools that made its industry the world’s leader. For the fifty years since the Middle East eclipsed U.S. production, and America became the world’s biggest oil importer, Texas and the rest of the U.S. states have stopped imposing statewide production controls to raise oil prices.38 The newly dominant oil producers in countries such as Saudi Arabia, Iraq, and Venezuela then formed the Organization of Petroleum Exporting Countries (OPEC) to slow oil production to boost global prices, describing it as “a kind of international Texas Railroad Commission.”39 The world’s dominant oil producers always have an interest in slowing oil production to boost prices.40 Conversely, for the past half century the United States’ energy policy focus turned to maintaining low oil prices to boost the economy.

But the United States’ long-term strategic goal of low oil prices has now changed for two reasons. First, the U.S. is now a net energy exporter so it benefits from higher energy prices.41

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35 Coleman, Third Age, supra note 9, at 407–08 (summarizing sources describing why World War II “was the first war fought for oil and determined by oil”); Herbert Feis, The Anglo-American Oil Agreement, 55 YALE L.J. 1174, 1174, 1175–81 (1946) (describing efforts of the U.S. and U.L to develop oil reserves abroad to power post-War expansion); John C. Jacobs, Unit Operation of Oil and Gas Fields, 57 YALE L.J. 1207, 1207 (1948) (“In less than a century, petroleum has changed from ‘a peculiar liquid not necessary nor indeed suitable for the common use of man’ to a substance indispensable to the military security and economic prosperity of a modern nation.”); Rex G. Baker & Erwin N. Griswold, Percentage Depletion – A Correspondence, 64 HARV. L. REV. 361, 362 (1951) (“Both in peace and in war the country must have and is very dependent upon oil and gas. Our civilian economy and the national safety would be jeopardized if we failed to maintain adequate reserves of petroleum.”). See generally ROBERT GORALSKI & RUSSELL W. FREEBURG, OIL & WAR: HOW THE DEADLY STRUGGLE FOR FUEL IN WWII MEANT VICTORY OR DEFEAT (1987).


37 Yuzhon Zhang, Quantifying Methane Emissions From The Largest Oil-Producing Basin in the United States From Space, 6 SCI. ADVANCES 1, 1 (2020) (documenting “Permian methane emissions from oil and natural gas production” comprising “the largest methane flux ever reported from a U.S. oil/gas-producing region”).

38 2006 ENERGY INFO. ADMIN. ANN. ENERGY REV. 309 tbl.11.5; YERGIN, supra note 20, at 664.

39 Gilbert Burck, A Strange New Plan for World Oil, FORTUNE, August 1959, 94, 94.

40 Coleman, State Energy Cartels, supra note 2.

Second, state and federal policymakers have been increasingly concerned about cheap fossil fuels driving carbon emissions and climate change.42

As a result, there is now a widespread consensus that the United States would benefit from somewhat higher oil and gas prices. Higher prices would help distressed American energy companies. Higher prices would reduce flaring, leaking, and venting of methane by encouraging companies to ensure that all natural gas is sold. Higher prices would encourage more efficient use of fossil fuels and encourage cleaner alternative technology, boosting the United States’ emerging clean energy industry and lowering greenhouse gas emissions.

But what can Texas and the United States do to raise energy prices a bit? Texas policymakers have frequently set their hopes on a production cut by OPEC. Although OPEC, unlike the United States, already restrains its oil production, the Railroad Commission and U.S. Senators have repeatedly asked Saudi Arabia to make further cuts to boost global oil prices and help the American oil industry.43

But why would Saudi Arabia cut its production if Texas will not? The United States produces 60% as much crude oil as Saudi Arabia and it has just emerged from history’s biggest oil boom—increasing its production at a faster rate than any other country in history.44 And Texas alone produces more oil than any other member of OPEC.45 The United States produces over 10 times as much oil as most OPEC members, including important oil states such as Venezuela.46 In fact, the U.S. produces 100 times as much oil as smaller OPEC members like Gabon and Equatorial Guinea.47

So how can America, the world’s premier energy producer, ask all these nations—Iraq and Nigeria, Saudi Arabia and Gabon—to impose cuts on their production if U.S. states are not willing to cut back their much, much greater oil production? The simple answer is that it cannot. If the United States’ biggest producer does not impose any limits at all in these extraordinary times, OPEC countries will have little incentive to restrain their production.

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44 Coleman, Third Age, supra note 9, at 418–19 & n.165. In 2019, the United States produced about 19.5 million barrels of oil and other liquids per day. And Texas alone produced over 40% of U.S. crude oil. U.S. ENERGY INFO. ADMIN., PETROLEUM & OTHER LIQUIDS: CRUDE OIL PRODUCTION, https://www.eia.gov/dnav/pet/pet_crpdn_adc_mbblpd_m.htm.
46 See supra Figure 1. And the rest of OPEC’s 13 members produced between 4 million barrels per day (UAE) and 167 thousand barrels per day (Equatorial Guinea).
47 Id.
IV. Restoring Texas Leadership: Making the Railroad Commission a World-Class Regulator

The Railroad Commission is still the world’s most-watched oil and gas regulator because of the reputation it developed as it fostered the modern oil industry in the Twentieth Century. It accomplished this by letting the free market work within production levels that it set in coordination with the Interstate Oil Compact Commission and the federal government. Texas’s production limits ensured that oil and gas was not wasted during times of low prices. Instead, oil and gas was produced over time to ensure smooth prices and maximum value for Texas’s industry.

The past decade’s oil boom has pushed the Railroad Commission to the center of the world’s stage again. When the Texas Railroad Commission considered oil production cuts in April 2020, 86 countries and 49 states tuned in to watch. Texas is the center of the global energy industry and the oil and gas world is waiting for Texas’s leadership.

The Railroad Commission’s regulatory muscles have atrophied after years of disuse. The Commission must rebuild its capacity to prevent oil and gas waste and lead world oil markets. To accomplish this, it must adopt a three part plan.

- **First**, it must begin phasing in modest, flexible cuts to the total volume of natural gas production to raise prices and reduce gas flaring and venting when gas prices at West Texas’s Waha hub fall below $1.00/MMBTU, as they have several times in the past two years.

- **Second**, it must work to reinvigorate the Interstate Oil & Gas Compact Commission, and work with the federal government and oil states to stabilize oil and gas production.

- **Third**, it must quickly improve its data collection to define the scope of the waste problem, calibrate its response, and assess whether its measures are succeeding.

A. Phase-In Flexible Gas Production Cuts to Slow Flaring and Venting

Texas law prohibits waste of oil and gas, including “physical or economic waste,” “production of oil in excess of transportation … or reasonable market demand” and “permitting any natural gas well to burn wastefully.” In other words, waste is when companies are forced to produce or flare oil and gas now that would be worth more in the future.

Texas should commit to phasing in cuts on the total amount of gas produced and flared anytime natural gas prices at West Texas’s Waha hub fall below $1.00 per MMBTU. In the last two years, natural gas prices have fallen below zero on multiple occasions. So oil companies that invested in gas gathering lines and paid to transport their gas to the market hub would find that they had to pay others to take their gas away. This plainly destroys the incentive to invest in

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48 Commissioner Christi Craddick, @ChristiCraddick, Twitter, https://twitter.com/ChristiCraddick/status/1250228036642971648?s=20.
50 Coleman, State Energy Cartels, supra note 2.
natural gas capture and transport and drives the staggering amount of flaring and venting seen in Texas in recent years.

A firm commitment to modestly restrain production during these periods of very low prices would encourage companies to invest in gathering lines, pipeline transport, and leak detection to ensure all of the gas they produced would be sold at market. During periods of low prices, Railroad Commission prorationing would help companies coordinate to ensure prices did not drop too low. The Commission should exempt the smallest producers and allow companies to trade their allowable limits, so that companies without flexibility could pay other producers, including the smallest producers to further restrain their production.52

Modest natural gas limits would help consumers and the environment as well. Consumers benefit from consistent low prices, but suffer when prices fall so low that they encourage flaring and venting. Flaring and venting squanders vast quantities of gas that, if properly managed, would ensure a long-term supply of affordable natural gas. And reliable, long-term gas supplies can be used to replace dirtier sources of energy in the United States and around the world.53

B. Re-invigorate the Interstate Compact Commission

As the center of world energy production, Texas should work with the Interstate Oil & Gas Compact Commission to coordinate further state cuts to smooth the price of oil and gas. The Railroad Commission should also take a leadership role in negotiations of world oil and gas producers, helping the U.S. secure stable energy prices. The world’s dominant oil and gas producers have always benefited from coordinating to moderate oil production to ensure higher prices and greater overall profits.54 Texas is in the perfect position to lead a new collaboration, starting with the United States and expanding to include other friendly nations and discussions with OPEC.

If Texas imposes gas prorationing, it will somewhat constrain oil production as well, since flared gas generally comes from wells that are drilled for their oil production. The impact of gas prorationing on oil will be limited by trading, which will allow over-compliance from companies that can cut gas with less impact on their oil production and under-compliance from companies that, conversely, cannot cut their gas production without seriously impacting their gas production.

When Texas, as the premier oil producer in the world’s biggest oil producing country, cuts its oil and gas production, it will give it the credibility to negotiate further cooperation with the other U.S. states and oil producers around the world. Oil and gas production are falling anyway, but if Texas imposes limits on its production, it can ask other oil producers to reciprocate. Many states would be eager to work with Texas, the federal government, and the Interstate Oil and

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52 This is the approach taken by the Canadian province of Alberta in successfully prorationing its oil production to increase the oil industry’s cash flow. Coleman, State Energy Cartels, supra note 2.
54 Coleman, State Energy Cartels, supra note 2; McNALLY, supra note 34.
Gas Compact Commission to boost oil prices across the United States.\textsuperscript{55} Texas should lead and, through the Interstate Oil & Gas Compact Commission, ask other states to cut their production as well—particularly the two other leading oil producers, New Mexico and North Dakota, which are also flaring and venting large quantities of natural gas.

Furthermore, OPEC countries understandably want some cooperation from a country that produces 10 or 100 times more than they do. Even if Texas prorationing would be largely symbolic, it would give U.S. negotiators a crucial talking point in encouraging restraint from other oil producers. Russia and the OPEC nations are hurting from low prices and eager for any sign of cooperation from the United States that would justify further cutbacks. If the U.S. oil states imposed even modest prorationing, OPEC countries would have justification for rewarding U.S. restraint with more cuts. And other oil producers, such as Canada and Norway, would likely be willing to join these efforts.

A modest production cut would have other significant benefits for the oil industry. First, by slightly raising oil and gas prices, it would limit economic chaos—fewer bankruptcies and less oil and gas wasted in episodes of negative pricing. Second, it would activate force majeure clauses that would give companies a grace period to satisfy contractual obligations, helping them preserve oil and gas jobs.

\textbf{C. Build a World-Class Data Collection and Presentation}

Texas is the center of the global oil industry and it deserves world-class data to calibrate its regulations, assess their effectiveness in real time, and inform its industry and policymakers. It is inexcusable that when oil companies asked the Railroad Commission to consider prorationing, one of the primary concerns was whether the Commission even had the data to smoothly implement production cuts.\textsuperscript{56}

Oil companies know more than ever about their well-by-well production and the Railroad Commission should collect and present the same information to fine-tune its regulations. Oil companies are now able to remotely monitor their wells’ production and throttle back or increase their production to respond to temporary price swings.\textsuperscript{57} If the Railroad Commission had the same data, it would be much easier for it to phase in production controls so that they would maximize oil revenue and minimize disruption to energy markets.

In particular, the Railroad Commission should collect, and to the extent practical, publicly present, real-time data on:

\begin{itemize}
  \item As in the prime years of the Interstate Oil & Gas Compact Commission, the Compact Commission would be exercising its authority to prevent “wasteful burning of gas” and the “avoidable waste” of oil and gas. Joint Resolution Consenting to an Extension and Renewal of the Interstate Compact to Conserve Oil and Gas, ART. III(c), 90 Stat. 2365, Pub. L. 94-493 (Oct. 14, 1976). The Compact Commission has never, in theory, been authorized to engage in “stabilizing or fixing the price” of oil and gas “or create or perpetuate monopoly”. \textit{Id.} at ART V. But since its inception, it has always coordinated the efforts of states to coordinate production controls designed to raise prices. \textit{See supra} notes 26–33, and accompanying text.
\end{itemize}
1) Well-by-well production to monitor how the market is responding to prorationing and to economic conditions.

2) Transport on oil and gas pipelines to monitor for opportunities to better use midstream infrastructure.

3) Prices of natural gas at the Waha hub and other market hubs to monitor the impact of prorationing.

Real-time data will allow the Commission to immediately see the impact of natural gas prorationing as it is phased in and ensure the public and the industry that it does not cut too much or too rapidly.

If necessary, the Texas legislature should authorize funds to better collect and present this data. For example, if the legislature is considering making funds or financing available for oil companies in response to the downturn caused by the global pandemic, it should ask these companies to share more real-time data with the regulator to upgrade the Commission’s capabilities.

As one model, the Railroad Commission could look to the Electric Reliability Council of Texas (ERCOT), which manages Texas’s electric grid. In 2012, ERCOT launched a mobile application that provides real-time prices, demand, and operating reserves.\(^5\) ERCOT’s nimble management and data transparency has made it a model for energy regulators and policy-makers around the world.\(^6\) Texas’s world-leading oil and gas industry should have an equally transparent and effective regulator.

V. Conclusion

Texas is the center of the world’s oil & gas industry and it deserves a world-class oil and gas regulator. The Texas Railroad Commission built the modern oil and gas industry by slowing its production to ensure its profitability during Texas’ Twentieth Century oil boom. Its success became the model for OPEC and the global oil industry. As it emerges from history’s biggest oil boom, Texas must rediscover and modernize these tools to ensure the continued economic health of the oil industry. It should move quickly to restrain gas production to stop natural gas flaring, venting, and leaking, reinvigorate the Interstate Oil and Gas Compact Commission, and modernize its data collection and presentation.
