



RAILROAD COMMISSION OF TEXAS

Commissioner WAYNE CHRISTIAN

September 28, 2023

Ms. Martha Williams
Director
U.S. Fish and Wildlife Service
1849 C Street, NW
Washington, D.C. 20240

Re: Opposed to Proposal Listing Dunes Sagebrush Lizard Under the Endangered Species Act

Director Williams:

I write to oppose the U.S. Fish and Wildlife Service (USFWS) proposed rule (88 Fed. Reg. 42661) ("The Rule") to designate the Dune Sagebrush Lizard (DSL) as protected under the Endangered Species Act (ESA). This proposed designation does little to protect the DSL population and will do more harm to domestic energy production in the Permian Basin, the State of Texas and our nation.

As Texas Railroad Commissioner, I am charged by Texans with responsibly regulating Texas' oil and natural gas production and empowered by their votes to ensure that the industry thrives. Texas oil and gas production is vitally important to the state and our nation through its energy production and the adjacent industries it supports like petrochemical production, manufacturing, transportation and infrastructure, technology, and so much more.

Texas is the top crude oil- and natural gas-producing state in the nation, representing 43% of oil production and 27% of natural gas production.¹ Oil and gas production is Texas' economic lifeblood and a part of the very fabric of our state. The industry roughly makes up one-third of our state's economy² and has contributed \$203 billion in taxes and royalties since 2007³, directly benefiting our state-funded programs. In fact, if our state were its own nation, Texas would be the world's third largest producer of natural gas and fourth largest oil producer.⁴

This proposed ESA designation of the DSL specifically targets the Permian Basin, the state of Texas, and would have serious consequences for the domestic oil and gas producers in the region.

¹ <https://www.eia.gov/state/?sid=TX>

² <https://www.txoga.org/texas-oil-and-natural-gas-legislative-district-vital-statistics/>

³ <https://www.txoga.org/our-industry/economic-benefits/>

⁴ https://www.thecentersquare.com/texas/article_769ab0b0-5a49-11ed-a9ed-83199dd4cd54.html

The Permian Basin is perhaps the most important hydrocarbon producing formation in the nation, representing about 30% of U.S. oil production and 14% of gas production.⁵ Listing the DSL under the ESA would likely bring with it a “critical habitat” designation that could certainly lead to strict federal rules that would limit and/or prohibit activities necessary to hydrocarbon exploration and production.

This Rule would hit small to mid-size producers the hardest. Small, independent producers make up an oversized majority of production in the U.S., representing about 90% of domestic production⁶. Many of these family-run businesses struggle with the boom-and-bust nature of the industry itself and don’t have the resources to comply with such an overarching law and regulatory requirements. As such, this Rule could put a lot of them out of business, hurt the economy, and jeopardize our energy independence and national security at critical time during unstable global events.

I want to highlight the flaws in the Rule itself. In the notice it features perceived threats to the DSL population as “(1) habitat loss, fragmentation, and degradation from development by the oil and gas and frac sand mining industries; and (2) climate change and climate conditions...”⁷ However, these threats are not clear and present dangers to the DSL population. Additionally, the timing for such a rule does not merit stifling American energy production at a crucial time of growing energy demand around the world.

This action on the DSL is nothing new for the USFWS and has been a battle dating back to the 1980s. Despite the back-and-forth debate on this issue over the last forty years, the evidence shows that there has been booming hydrocarbon production in the region, while also maintaining a clean environmental and a thriving ecological ecosystem. In that time, the DSL population is still alive and thriving.

First, current DSL conservation efforts have had a positive impact thanks to the oil and gas industry. Over the years various partners, from ranchers to producers, have taken voluntary conservation measures and utilized avoidance techniques to protect the habitats in Texas and New Mexico. As of December 2022, more than 1.9 million acres have been enrolled in state and privately led conservation efforts by the ranching community and more than 2.2 million acres have been enrolled in these efforts by the oil and gas industry.⁸ These enrollments have increased acreage for the species’ habitat and led to significant financial contributions funding dozens of reclamation and conservation programs to support the DSL.

Moreover, a 2022 report demonstrates growing DSL populations, “DSL captures in 2022 were 1.7 times greater than 2021 and 3 to 4 times greater than in 2019 and 2020⁹.” During that time, domestic oil and gas production was at peak levels, our nation became a net energy exporter for

⁵ <https://www.eia.gov/todayinenergy/detail.php?id=50016>

⁶ <https://www.ipaa.org/independent-producers/>

⁷ <https://www.federalregister.gov/documents/2023/07/03/2023-13859/endangered-and-threatened-wildlife-and-plants-endangered-species-status-for-the-dunes-sagebrush>

⁸ <https://pbpa.info/newsroom/pbpas-response-to-the-usfws-proposing-listing-dunes-sagebrush-lizard>

⁹ Acre, M. R. and M. T. Hill. 2023. Demographic monitoring of the Dunes Sagebrush Lizard (*Sceloporus arenicolus*) in New Mexico: 2022. Report to Center of Excellence dba CEHMM. 17 pp.

the first time in 67 years¹⁰, and America was achieving energy independence under the Trump administration.

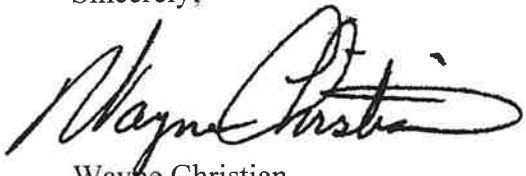
Second, potential “climate change impacts” lack real data to be used as a rationale for such a far-reaching Rule. The Rule claims, “hotter, more arid conditions with an increased frequency and greater intensity of drought,” as reasons for the Rule. But that’s nothing new; it’s hot and dry in West Texas –has been and always will be– and likewise we’re perpetually experiencing droughts. Much of Texas is a desert. The political, policy, and scientific debates on climate change aside, the Rule itself admits the fact that the DSL would be adaptable, “the dunes sagebrush lizard occurs in a semiarid climate that experiences extreme heat and droughts, but the species is adapted to contend with such environmental variability.” Furthermore, the Rule uses terms like *could* and *likely* without any real evidence that potential climate change will have an adverse effect on the DSL.

Despite mainstream media reports, responsible fossil fuel production and a thriving environment are not mutually exclusive. The first oil well drilled in the Permian Basin was dug in 1921.¹¹ For over a century, oil and gas operations in the Permian Basin have produced untold amounts of energy for this nation, helped win world wars¹², and enabled our 21st century way of life. And during that time, the DSL and other animal species in the region have managed to survive just fine.

The ESA is intended to protect animal populations that are dangerously close to extinction from vanishing forever, and the DSL is far from it. A listing of the DSL under the ESA is an incredible threat to our nation’s energy independence and national security. Therefore, I urge you to rescind this Rule notice.

I’d also advise you that the State of Texas passed House Bill 33 (88th-Regular Session), *the Texas Energy Independence Act*, this year which prohibits state agencies from assisting federal agencies in any way that would seek to undermine oil and gas operations.¹³ As such, the Railroad Commission of Texas (RRC) and other Texas state agencies will be unable to participate in or facilitate this Rule in any way. In other words, you’re on your own.

Sincerely,



Wayne Christian
Commissioner
Railroad Commission of Texas

¹⁰ <https://www.eia.gov/energyexplained/us-energy-facts/imports-and-exports.php>

¹¹ <https://www.tshaonline.org/handbook/entries/permian-basin#:~:text=The%20first%20commercial%20oil%20well,well%20of%20the%20Westbrook%20field.>

¹² <https://www.cbs7.com/2022/09/08/how-permian-basin-magic-fuel-powered-america-wwii/>

¹³ <https://capitol.texas.gov/BillLookup/history.aspx?LegSess=88R&Bill=HB33>