

GOVERNMENTAL AFFAIRS WEEKLY REPORT

Weekly Highlights At-A-Glance

FEDERAL – Legislative

H.R. 8332 - Plugging Orphan Wells and Environmental Restoration Act of 2020. On October 1, Rep. Glenn Thompson (R-PA) introduced [H.R. 8332, known as the Plugging Orphan Wells and Environmental Restoration Act of 2020 or the POWER Act of 2020](#). According to the bill sponsor, the legislation “would reauthorize the federal orphan well remediation program under the Energy Policy Act of 2005 for five years at \$50 million per year. The POWER Act would also establish a new grant program for environmental restoration and reclamation of orphaned wells on state, as well as private and tribal lands, authorized at \$400 million per year for five years. It is estimated that Pennsylvania has more orphan wells than any other state.” According to Rep. Thompson, “We have both an economic and environmental responsibility to ensure abandoned wells are plugged. The POWER Act will ensure these legacy sites are appropriately handled in order to protect the environment while also stimulating jobs in the oil and gas sector. This will be a win-win for Pennsylvania.” [Read more.](#)

S. 4589 - Endangered Species Act Amendments of 2020. On October 5, official text for [S. 4589, known as the Endangered Species Act Amendments of 2020](#) was published. The bill, sponsored by Sen. John Barrasso (R-WY), would amend the Endangered Species Act (ESA), transferring more authority to state and local experts as well as delaying certain litigation challenging the delisting of species. “It is past time to modernize the Endangered Species Act. The status-quo is not acceptable,” said Sen. Barrasso. “Species that go on the endangered species list seem to stay there forever and never recover to the point of coming off the list. My bill

promotes the recovery of species and will allow local economies to thrive. State and local experts need to be leading efforts to protect local wildlife. This legislation will increase local input and improve transparency in the listing process. It protects endangered species and helps communities invest in more conservation and recovery activities.” The bill is also supported by Wyoming Governor Mark Gordon (R) who [testified before Congress](#) on September 23 and joins Sen. Barrasso in an effort to give Wyoming, and other states, more control over ESA policies. [Read more.](#)

FEDERAL – Regulatory

BLM Minerals Management Fees. On October 9, the Bureau of Land Management (BLM) published its final rule, *Minerals Management: Adjustment of Cost Recovery Fees* ([85 Fed. Reg. 64056](#)), which updates the annual fees set forth in the BLM “mineral resources regulations for the processing of certain minerals program-related actions. It also adjusts certain filing fees for minerals-related documents. These updated fees include those for actions such as lease renewals and mineral patent adjudications.” These fees are adjusted every fiscal year and this year’s rule is effective as of October 9, 2020. [Read more.](#)

National Energy Awareness Month. On October 6, Presidential Proclamation No. 10089 was published in the Federal Register ([85 Fed. Reg. 62929](#)) wherein President Trump declared October National Energy Awareness Month. “This month, we recommit to supporting our Nation’s workers who produce, transport, and refine our energy. We recognize the vital role they play in creating opportunities, developing technologies, and advancing our country toward an even more

prosperous future,” wrote President Trump. “My Administration will always support these hardworking men and women, and together, we will sustain our energy dominance and independence for years to come.” [Read more.](#)

BLM Resource Advisory Council – Alaska. On October 5, the BLM announced the Alaska Resource Advisory Council (RAC), Subcommittee on Public Lands, will hold virtual meetings on November 17 and 18, 2020, and again on February 9 and 10, 2021, with public comment periods being held each day. According to the BLM, “The 15-member Alaska RAC serves in an advisory capacity concerning issues relating to land use planning or the management of the public land resources located within the State of Alaska. The 8-member Subcommittee on Public Lands was established to gather information, conduct research, and analyze relevant issues and facts on selected topics for future consideration by the RAC.” [Read more.](#)

BLM Oil and Gas Lease Sale – California.

On October 8, the BLM Bakersfield Field Office announced it will offer seven parcels for lease, totaling approximately 4,133 acres of federal minerals, at its December 7, 2020, oil and gas lease sale. All parcels are located in or adjacent to existing oilfields in Kern County. The Bakersfield Field Office will conduct additional environmental review and may issue site-specific conditions when considering an application for permit to drill, in addition to the stipulations already attached to the lease at the time of sale. The protest and comment period closes on November 9, 2020. [Read more.](#)

BLM Oil and Gas Lease Sale – Montana; North Dakota. On October 6, the BLM announced the opening of a 15-day public scoping period for nominated oil and gas lease parcels located in Montana and North Dakota. The scoping period runs through October 21, 2020, and is intended to solicit public input on nominated lease parcels for the March 23, 2021, lease sale including the preliminary recommendations and stipulations. Parcels nominated for inclusion in the March sale are located

in Carbon, Fallon, Powder River, Richland, and Roosevelt counties in Montana, and McKenzie and Williams counties in North Dakota. This scoping process is intended to solicit public input on relevant issues, potential impacts, and alternatives that the BLM should address in an environmental assessment to be prepared in compliance with the National Environmental Policy Act. [Read more.](#)

BLM Oil and Gas Lease Sale – Nevada. On October 9, the BLM Nevada State Office announced it proposes to offer 20 parcels for lease totaling 24,940.037 acres at its December 8, 2020, oil and gas lease sale. The proposed parcels are located in Nye county. The protest and comment period ends on November 8, 2020. [Read more.](#)

BLM Resource Advisory Council – Utah.

On October 6, the BLM announced the Utah Resource Advisory Council (RAC) is scheduled to meet on November 9-10, 2020. The meeting is scheduled to take place in-person but according to the BLM, a virtual meeting platform and/or teleconference may substitute for an in-person meeting. “The Utah RAC provides recommendations to the Secretary of the Interior, through the BLM, on a variety of public lands issues.” The meeting is open to the public. [Read more.](#)

U.S. Department of Energy Report. On October 6, the U.S. Department of Energy (DOE) issued a new report, “[U.S. Oil and Natural Gas: Providing Energy Security and Supporting our Quality of Life.](#)” that “acknowledges the critical role of advanced energy technology innovation in maintaining U.S. economic success and providing a sustainable domestic energy supply for the future, while recognizing the important benefits the oil and natural gas sector provides in our daily lives.” The DOE report primarily provides public-facing media information for outlets and educators to inform Americans of the value oil and natural gas plays in our economy, its role in manufactured products, and its importance in domestic energy security. [Read more.](#)

EPA State Regulatory Authority – Oklahoma.

On October 1, the head of the U.S. Environmental Protection Agency (EPA) [sent a letter to Oklahoma Governor Kevin Stitt \(R\)](#) turning its oversight of a number of environmental issues on tribal lands over to the state of Oklahoma. The move “will give the state more oversight over environmental issues for Oklahoma’s 38 federally recognized tribes” and “grants Oklahoma’s request to administer the State’s EPA-approved environmental regulatory programs in certain areas of Indian country. EPA’s letter resolves ambiguity and essentially preserves the regulatory status quo in Oklahoma,” said EPA spokesman James Hewitt, “adding that existing exemptions would still stand and that the agency would implement federal environmental programs.” [Read more.](#)

FEDERAL – Judicial

New York Hydraulic Fracturing Ban – U.S.

Supreme Court. (*Update to 3/2/20 Weekly Report*)

On October 5, the U.S. Supreme Court [denied a petition for review](#) from a New York landowner who has long fought New York’s ban on hydraulic fracturing in both state and federal court. New York first blocked “high-volume fracking” in 2014, “citing uncertain health impacts of the oil and gas extraction technique, and it cemented the ban into state law earlier this year.” The Supreme Court provided no explanation for its denial. For background, on February 25, the U.S. Court of Appeals for the Second Circuit, on appeal from the U.S. District Court for the Western District of New York, rejected a landowner’s bid to overturn the state’s hydraulic fracturing moratorium. In [Morabito v. New York](#) (Case No. 18-2499), the plaintiff landowner first challenged the policy in state court in 2015. He and his wife own 400 acres in Allegany County in the Marcellus Shale region. The lawsuit accused the state government of denying them due process. Morabito says he negotiated with dozens of drillers in 2013, hoping to tap into the same resources after the state’s then-short-term moratorium lifted. The Morabitos were the only ones to challenge New York’s ban in court. Morabito lost at three different

levels in state court and then took the case to federal court. Here, the Court concluded, “The New York courts held that David Morabito lacked standing to challenge the constitutionality of the regulation because he did not demonstrate his own actual or imminent injury-in-fact,” the Court wrote. “The standing issue was fully and fairly litigated in the state courts and was necessary to the courts’ decisions.” [Read more.](#)

BLM Waste Prevention Rule – Wyoming. (*Update*

to 5/14/18 Weekly Report) On October 8, in *Wyoming v. U.S. Department of Interior* (Case No. 2:16-cv-00285), the U.S. District Court for the District of Wyoming struck down an Obama-era methane emissions rule, saying the Bureau of Land Management (BLM) “exceeded its statutory authority and acted arbitrarily in promulgating the new regulations.” The 2016 Waste Prevention Rule ([81 Fed. Reg. 83008](#)) was intended “to reduce waste of natural gas from venting, flaring, and leaks during oil and natural gas production activities” on federal and tribal lands and to clarify “when produced gas lost through venting, flaring, or leaks is subject to royalties.” In 2019, the U.S. District Court for the District of Wyoming stayed the proceedings in this case which challenged the Waste Prevention Rule while a related challenge to the Trump administration’s repeal of this rule was pending in the U.S. District Court for the Northern District of California. After that court vacated the repeal in July 2020, the Wyoming federal court lifted the stay. In its order vacating all but two provisions of the Waste Prevention Rule, the court concluded that “a principal purpose and intent” of the rule was to “curb air emissions” and that the Mineral Leasing Act did not delegate authority to the Secretary of Interior to promulgate rules “justified primarily upon the ancillary benefit of a reduction in air pollution, particularly when considered in light of historical context and the comprehensive regulatory structure under the Clean Air Act.” The Court also found that the BLM acted “arbitrarily and capriciously” by failing to consider the rule’s impacts on marginal wells, failing to explain and identify support for the rule’s capture requirements,

and failing to separately consider the rule's domestic costs and benefits. [Read more.](#)

STATE – Legislative

Independent Contractors – Louisiana. As part of the legislature's [30-day Special Session](#), on October 6, SB 68 was introduced by Sen. Jay Luneau (D). The bill provides a definition of "employee" and provides an exemption from the definition of "employment" for those acting as independent contractors under the description provided. [Read more.](#)

Employee Misclassification – Louisiana. As part of the legislature's [30-day Special Session](#), on September 28, HB 34 was introduced by Rep. Mandie Landry (D). Under current law, if an employer fails to properly classify employees and does not pay unemployment insurance contributions, they receive a written warning and progressive fines for subsequent offenses, including the possibility of imprisonment after multiple offenses. This bill would remove the written warning and increases the misclassification fines. The bill also provides that in addition to any penalties assessed for a second or subsequent offense, an employer is ineligible to receive any state tax rebates to which they are otherwise entitled. [Read more.](#)

Tax Credits; Carryforward – Louisiana. As part of the legislature's [30-day Special Session](#), on October 14, SB 1 passed both houses of the legislature. The bill, sponsored by Sen. Rick Ward, III (R), extends the carryforward period for the inventory tax credit for certain businesses. Per the sponsoring bill analysis, "Current law provides a state tax credit against income and franchise taxes for ad valorem taxes paid to local governments on inventory held by manufacturers, distributors, retailers, and on natural gas used in storage facilities. The credit is refundable or nonrefundable depending on various factors applicable to each taxpayer. To the extent a portion of the credit is nonrefundable, a taxpayer has a five-year carryforward period within which to utilize unused credit amounts against tax liabilities.

Proposed law changes the carryforward period from five years to ten years, and provides that the ten-year carryforward period only applies to applicable taxes paid on or after January 1, 2020." [Read more.](#)

Severance Taxes – Louisiana. As part of the legislature's [30-day Special Session](#), on September 28, Rep. Phillip DeVillier (R) introduced HB 28 which reduces the rate of severance tax on oil produced from incapable wells under certain conditions. "Current law imposes a severance tax on the production from incapable wells (no more than 25 barrels of oil and at least 50% salt water per producing day) of 6.25% of the value of the oil when severed. Proposed law reduces the tax rate to 3.125% in any month when the average value is less than \$75 per barrel. The Dept. of Revenue shall determine the oil value quarterly based on the average New York Mercantile Exchange Price in the prior three months. This exemption is available for nine years, from January 1, 2021, through December 31, 2029." [Read more.](#)

Severance Taxes – Louisiana. As part of the legislature's [30-day Special Session](#), on September 28, Rep. Phillip DeVillier (R) introduced HB 29 which suspends severance taxes on production from certain oil wells. The bill, which passed the House on October 5, would exempt oil produced from any newly drilled or from a completed well undergoing well enhancements that require a Department of Natural Resources permit such as re-entries, workovers or plug backs from the severance tax. The exemption would apply to production on or after October 1 and before December 31, 2025. The exemption would expire after 24 months or until the payout of the well cost is achieved, whichever occurs first. [Read more.](#)

Electronic Execution of Documents – Michigan. On October 8, HB 6294 as introduced by Rep. Sarah Lightner (R). The bill allows for the electronic execution of certain documents. Specifically, the bill text notes, "the act of signing or witnessing the execution of a will under article II, a funeral representative designation, a parental appointment

of a guardian of a minor under section 5202, an appointment of a guardian of a legally incapacitated individual under section 5301, a durable power of attorney under section 5501, or a patient advocate designation is satisfied by use of a 2-way real-time audiovisual technology." A similar bill, [SB 1189](#), was also introduced in the Senate on October 8 by Sen. Peter MacGregor (R). [Read more.](#)

Notaries Public – Michigan. On October 8, HB 6297 was introduced by Rep. Sarah Lightner (R). The bill allows for electronic notarization of documents under the criteria as provided. A similar bill, [SB 1187](#), was also introduced in the Senate on October 8 by Sen. Peter MacGregor (R). [Read more.](#)

STATE – Regulatory

Mission Change Rulemaking – Colorado. On October 10, the Colorado Oil and Gas Conservation Commission (COGCC) released [draft Mission Change rulemaking](#) for the 1200 Series rules (protection of wildlife). The COGCC rulemaking would require proposed oil and gas operations on new or amended oil and gas locations to submit certain filings and provide wildlife protection and/or mitigation plans, among other regulations. No date has been provided by COGCC for final rulemaking at this stage. On October 21-23, the COGCC will hold virtual hearings on the rule. For more information [click here](#). You may also email the COGCC at dnr.ogcc@state.co.us or call them at (303) 894-2100 with any questions. [Read more.](#)

Employee Misclassification – Missouri. On September 11, Missouri Gov. Mike Parson (R) signed [Executive Order 20-15](#) creating the Interagency Task Force on Worker Classification between the Department of Labor and Industrial Relations, Department of Revenue, Department of Commerce and Insurance, and the Attorney General to promote the proper classification of Missouri workers and create a more prosperous economy. According to the governor's office, "In coordination with other Missouri state agencies, the task force will work collaboratively with business, labor, and community

groups to assess the effectiveness of existing investigative and enforcement mechanisms for identifying and preventing worker misclassification. The task force will also engage in community outreach campaigns designed to inform and educate stakeholders on the legal difference between independent contractors and employees and the harms caused by worker misclassification." [Read more.](#)

STATE – Judicial

Dormant Mineral Act; Marketable Title Act – Ohio. (*Update to 6/8/20 Weekly Report*) On September 29, the Ohio Supreme Court granted review in two cases AAPL has covered addressing application of the Ohio Dormant Mineral Act and Ohio Marketable Title Act in *Peppertree Farms, L.L.C. v. Thonen* (consolidated cases) and *Fonzi v. Miller*. In the *Peppertree Farms* cases, the Court will address whether the Ohio Dormant Mineral Act supersedes and controls over the Ohio Marketable Title Act as to the termination of severed oil and gas interests. The *Fonzi* case will address several issues related to the application of the Ohio Dormant Mineral Act, "including the level of due diligence required before serving a notice of abandonment by publication." For background, in the consolidated cases [Peppertree Farms, LLC v. Thonen](#) (Case Nos. [2020-Ohio-3042](#); and [2020-Ohio-3043](#)), the Court of Appeals, Fifth District, addressed a dispute over mineral rights purportedly reserved by deed and whether those reservations terminated upon the grantor's death. The Court held that they did terminate because the grantors failed to include words of inheritance in their reservation clauses. As a result, each grantor's reserved oil and gas interest did not transfer to his heirs and assigns. The Court noted that each of the deeds created "reservations" which included fee oil and gas interests. In making their finding, the Court relied, in part, on prior related Ohio Supreme Court case precedent "to find that whenever minerals are severed from the surface, two new and separate estates are created – a surface estate and a mineral estate. Thus, although the grantor had title to the oil

Mills must act on legislation presented within 10 days of adjournment or it becomes law unless returned within three days after the next meeting of the same legislature. **Minnesota** Democratic Gov. Tim Walz has 14 days from presentment to act on legislation or it is pocket vetoed. **Mississippi** Republican Gov. Tate Reeves has 15 days from presentment, Sundays excepted, to act on the legislation or the bill becomes law without signature. **South Carolina** Republican Gov. Henry McMaster has until two days after the next meeting of the legislature to act on legislation or it becomes law. **Vermont** Republican Gov. Phil Scott has five days from presentment, Sundays excepted, to act on legislation or it will become law without signature.

Interim Committee Hearings: The following states are currently holding 2020 interim committee hearings: [Alabama](#), [Alaska](#), [Arizona](#), [Arkansas](#), [California Assembly](#) and [Senate](#), [Colorado](#), [Connecticut](#), [Delaware](#), [Georgia House](#) and [Senate](#), [Hawaii](#), [Idaho](#), [Illinois](#), [Indiana](#), [Iowa](#), [Kansas](#), [Kentucky](#), [Louisiana](#), [Maine](#), [Maryland](#), [Minnesota](#), [Mississippi House](#) and [Senate](#), [Missouri House](#) and [Senate](#), [Montana](#), [Nebraska](#), [Nevada](#), [New Mexico](#), [New York Assembly](#) and [Senate](#), [North Carolina](#), [North Dakota](#), [Oklahoma House](#) and [Senate](#), [Oregon](#), [Rhode Island](#), [South Carolina House](#) and [Senate](#), [South Dakota](#), [Tennessee](#), [Texas Senate](#), [Utah](#), [Virginia](#), [Washington](#), [Wisconsin](#), [West Virginia](#) and [Wyoming](#).

Bill Pre-Files: [Alabama](#), [Florida](#), [Iowa](#), [Kentucky](#), [Montana](#), [Nebraska](#), [Nevada](#), [New Hampshire](#), [Oklahoma](#), [Utah](#) and [Virginia](#) are currently posting 2021 bill drafts, pre-files and interim studies. ■

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