

GOVERNMENTAL AFFAIRS WEEKLY REPORT

Weekly Highlights At-A-Glance



Due to the Thanksgiving holiday, the next report will be published on December 9. Wishing you a safe, happy and healthy holiday.

FEDERAL – Legislative

H. Res. 659 – Hydraulic Fracturing. On October 29, Rep. Bob Bishop (R-UT) introduced [H. Res. 659](#), which affirms “that States should maintain primacy for the regulation of hydraulic fracturing for oil and natural gas production on State and private lands and that the President should not declare a moratorium on the use of hydraulic fracturing on Federal lands (including the Outer Continental Shelf), State lands, private lands, or lands held in trust for an Indian Tribe unless such moratorium is authorized by an Act of Congress.” The Senate companion resolution, [S. Res. 411](#), was introduced by Sen. Pat Toomey (R-PA) on November 7. Resolutions are not bills, however, but do function as an expression or “sentiment” of a legislative body or caucus if they are agreed upon by vote. [Read more.](#)

U.S. Senate Environment and Public Works Subcommittee Hearing on Climate Change. On October 17, the U.S. Senate Environment and Public Works Subcommittee on Clean Air and Nuclear Safety held a hearing entitled, “[Reducing Emissions While Driving Economic Growth: Industry-led Initiatives](#).” The hearing focused on industry efforts to address global climate change and included testimony from the American Petroleum Institute and the Global Energy Institute at the U.S. Chamber of Commerce, among other experts. Sen. Michael Braun (R-IN), who chairs the subcommittee, noted that the U.S. was the world leader in reducing carbon emissions and according to the American Enterprise Institute, for the ninth time in this century the U.S. has led the world in overall emissions declines. “What’s been most impressive is that U.S. industries

have been able to make these impressive emissions reductions while not sacrificing the country’s overall economic competitiveness. But we must constantly remain vigilant of the balance,” said Sen. Braun. “There’s a real risk that in attempting to curb emissions, American families, workers, and businesses will be hit with rising prices, fees, and utility bills.” [Read more.](#)

FEDERAL – Regulatory

BLM Oil and Gas Lease Sale – Wyoming. On November 13, the Bureau of Land Management (BLM) announced plans to offer 105 oil and gas lease parcels totaling about 118,219 acres at its March 2020 quarterly lease sale. In coordination with the State of Wyoming, the BLM is deferring four whole parcels and a portion of one other because they intersect state-designated big game migration corridors. “The BLM reviewed all proposed parcels to ensure leasing them conforms to the 2015 Approved Sage-Grouse Resource Management Plan Amendments for the Rocky Mountain Region, which are currently in effect due to the preliminary injunction of the BLM’s 2019 sage-grouse plan amendments by the U.S. District Court of Idaho.” Public comments will be open through December 13, 2019. [Read more.](#)

BLM Leasing – Utah. (*Update to 3/25/19 Weekly Report*) Last week, the BLM suspended oil and gas production on 130 tracts in Utah due to ongoing litigation where environmentalists allege that agency officials failed to consider greenhouse gas emissions when granting the leases in September. As such, “The BLM has concluded that it is necessary to suspend the referenced leases and complete further environmental analysis.” The suspension arises from a March ruling in [Wildearth Guardians v. Zinke](#) (Case

No. 16-1724), where a federal judge had blocked leases in Wyoming holding that the “BLM failed to take a ‘hard look’ at [greenhouse gas] emissions [...] those sales did not comply with the [National Environmental Policy Act].” Leases in Utah and Colorado were also challenged in that case.

[Read more.](#)

BLM Relocation – Colorado. Last Tuesday, the BLM distributed reassignment letters to employees as the agency implements its staff relocation to its new headquarters in Grand Junction, Colorado. The delivery of the letters means BLM employees will begin moving over the next four months, spreading about 300 Washington-based staffers across various offices out West and leaves just 61 of the agency’s 10,000 employees in Washington, DC. Interior Secretary William Pendley said the BLM would help those who do not want to take “more fulfilling jobs out West” by finding them roles elsewhere within the Interior Department, despite conflicting reports that staff not accepting relocation would be terminated from the federal service. [Read more.](#)

BLM Oil and Gas Lease Sale – New Mexico. The BLM has announced revenues of \$18,394,059 in its New Mexico quarterly oil and gas lease sale held on November 7. For this sale, the BLM offered leases on 16 parcels totaling 7,619.46 acres in Lea and Eddy counties. This sale brought in revenues more than double that of the [September sale](#) which raised more than \$9 million on some 3,178.08 acres. [Read more.](#)

BLM Cost Recovery Fees. On November 6, the BLM published its final rule, *Minerals Management: Adjustment of Cost Recovery Fees* ([84 Fed. Reg. 59730](#)), which details the annual adjustments to certain fees associated with BLM processing of minerals program-related actions, such as lease applications, assignments, and other oil and gas related documents and applications. Fee increases are negligible and in some cases remain unchanged for Fiscal Year 2020. [Read more.](#)

Alaska National Petroleum Reserve Lease Sale. On November 5, the BLM published its formal notice

of its December 2019 National Petroleum Reserve-Alaska (NPR-A) oil and gas lease sale, *Notice of 2019 National Petroleum Reserve in Alaska Oil and Gas Lease Sale and Notice of Availability of the Detailed Statement of Sale* ([84 Fed. Reg. 59642](#)). According to the announcement, “The December 2019 NPR-A Oil and Gas Lease Sale will include 350 tracts (approximately 3.98 million acres) available for leasing under the NPR-A Integrated Activity Plan/Environmental Impact Statement Record of Decision (ROD) finalized in February 2013.” The oil and gas lease sale bid opening will be at 10 a.m. (Alaska Standard Time) on Wednesday, December 11, 2019. The BLM must receive all sealed bids by 4 p.m., December 9, 2019. [Read more.](#)

BLM Leasing; Greater Sage-Grouse – Nevada. (*Update to 10/21/19 Weekly Report*) In the wake of the October 16 ruling in [Western Watersheds Project v. Schneider](#) (Case No. 1:16-cv-00083-BLW), in which the U.S. District Court for the District of Idaho granted environmentalist-plaintiffs a preliminary injunction, temporarily halting implementation of the updated 2019 BLM Sage-Grouse Plan Amendments, the BLM subsequently removed 500 square miles of public lands from the recent Nevada oil and gas lease sale. “The acreage pulled from Tuesday’s auction amounts to more than half of what the Bureau of Land Management initially planned to offer in Nevada. The withdrawn area roughly corresponds to habitat designated in a 2015 sage-grouse plan completed under President Barack Obama for Nevada and northeastern California.” In the case, the Court found the BLM “failed to properly analyze the effects of its plan to facilitate more economic activity on more than 51 million acres of sage grouse habitat across seven western states.” The Nevada lease sale initially covered 263 parcels across about 850 square miles. Kemba Anderson, BLM-Nevada Branch Chief of Fluid Minerals, said she removed more than half of the proposed lease area from the auction on Oct. 28 “for further analysis to comply with the judge’s order.” [Read more.](#)

Gunnison Sage-Grouse Plan. On November 1, the U.S. Fish and Wildlife Service released its draft

recovery plan for the Gunnison sage-grouse. The announcement, *Endangered and Threatened Wildlife and Plants; Draft Recovery Plan for the Gunnison Sage-Grouse* ([84 Fed. Reg. 58734](#)), seeks “review and comment from the public on this draft plan. The draft recovery plan includes objective, measurable criteria, and site-specific management actions as may be necessary to remove the species from the Federal List of Endangered and Threatened Wildlife.” The public comment period is open through December 31, 2019. The plan includes certain [priority actions](#) including the conservation of existing habitats in areas with oil, gas and mineral development. Although the Fish and Wildlife Service’s target numbers for recovery in the Gunnison Basin, the largest of the eight populations of the bird in southwest Colorado and southeast Utah, are lower than they were in 2014 when the species was listed as threatened under the Endangered Species Act, industry groups dispute that the plan is controversial in any way. “Any suggestion that the release of a recovery plan means extinction of the species is histrionics,” said Kathleen Sgamma, president of Denver-based Western Energy Alliance. “The species is being protected, and the recovery plan will aid in the conservation.” [Read more.](#)

[FEDERAL – Judicial](#)

Leasing; Royalties – Kansas. On October 15, in *Wheeler v. ExxonMobil Corp.* (Case No. 19-4025-KHV), the U.S. District Court for the District of Kansas fully dismissed a complaint alleging ExxonMobil underpaid royalties in a variety of ways, including taking improper deductions, not paying royalties on all constituents found in the gas and not paying royalties on the full volume of gas. The Court specifically dismissed claims to hold the defendants liable for the actions of unidentified predecessors and successors. The defendants also argued that the plaintiffs had not attached to their complaint the purported leases or provided enough information to identify these leases and had not sufficiently alleged the existence of specific leases between the parties. The Court agreed and dismissed the breach of lease

claim, finding the plaintiffs “have not alleged facts sufficient to plausibly establish leases between themselves and defendants.” Further, the Court held “The complaint’s ambiguous allegation that Wheeler owns royalty interests under a lease ‘in Defendant Exxon Mobil Corporation’s operated unit’ does not improve plaintiffs’ claim.” [Read more.](#)

Deeds; Mineral Reservations – Ohio. On October 4, in *Gorsha v. Clark* (Case No. 2:18-cv-508), the U.S. District Court for the Southern District of Ohio addressed a case in which the plaintiffs sought reformation of a deed to comply with the terms of a real estate purchase contract and the discrepancy over which party retained mineral rights. The Court found the real estate purchase contract convincingly established that the parties intended for the plaintiffs to retain the mineral rights and was supported by evidence of mutual mistake. The Court allowed for reformation of the deed in favor of the plaintiffs “to reflect the true intent of the parties to the Real Estate Purchase Contract, that one hundred percent of the mineral rights are reserved to Plaintiffs.” [Read more.](#)

Office of Natural Resources Revenue; Royalties; Federal Leasing – Washington, DC. On October 3, in *Continental Resources, Inc. v. Gould* (Case No. 14-cv-00065), the U.S. District Court for the District of Columbia held that a remand back to the federal government for further proceedings regarding a dispute over the deduction of post-production costs on certain federal leases should be made to the Interior Department Board of Land Appeals, rather than the Office of Natural Resources Revenue (ONRR). The ONRR decision arose from a March 2019 [case dispute](#) over royalties regarding gas sold to non-affiliated entities under arm’s-length contracts. [Read more.](#)

[STATE – Legislative](#)

Hydraulic Fracturing Ban – Florida. On November 4, [SB 200](#) was reportedly favorably out of the Senate Environment and Natural Resources Committee by unanimous vote. The bill is now under consideration

by the Senate Innovation, Industry, and Technology Committee. The measure, sponsored by Sen. Bill Montford (D), would ban hydraulic fracturing in the state. However, “prospects for its advancing further through the legislative process once the session begins in January appear to be dim.” Senate Agriculture Chairman Ben Albritton (R) expressed skepticism that this re-filing of a similar bill last session which failed would face any better prospects this time around. “Last session I feel like what we did made sense,” said Albritton. “But I don’t sense there’s traction enough to move the ball. We still have the same members. We still have the same process.” The House companion bill, [HB 547](#), was introduced on November 6. [Read more](#).

Lease Operations – Pennsylvania. (*Update to 11/4/19 Weekly Report*) On November 7, [SB 694](#) was signed into law by Gov. Tom Wolf (D) and will be effective in 60 days. The Act, sponsored by Sen. Gene Yaw (R), provides for cross unit drilling and specifically “allows an operator who has the right to drill on separate leases or units when the leases do not prohibit a traversing well, to drill a well horizontally under more than one unit or lease. The operator is required to allocate production from the well among the leases related to the acreage of the units.” According to the sponsoring memo, “This legislation will provide for a process and accounting mechanism to allow well bores to cross multiple units provided the operator has the right to drill wells on the units via leases with all landowners/members of the units. The operator is then required to reasonably and proportionately allocate the production across the various members of the units. The legislation does not impair any current contracts or leases, does not allow for any production from unleased land, and would not apply in cases where this practice would be contractually prohibited.” The House companion bill, [HB 247](#), sponsored by Rep. Donna Oberlander (R), was removed from consideration in October in lieu of the passed Senate version. [Read more](#).

STATE – Judicial

Dormant Mineral Act; Marketable Title Act – Ohio.

On September 30, in *West v. Bode* (Case No. 18 MO 0017), the Ohio Court of Appeals, Seventh District, addressed application of the Marketable Title Act (MTA) and Dormant Mineral Act (DMA) to a royalty interest dispute. “The landowners sought a declaration that the severed one-half of the royalty in the oil and gas underlying their land was extinguished. The royalty holders intervened, filed a counterclaim to declare they owned this royalty interest, and sought summary judgment on the basis that [the] MTA does not apply to mineral interests. As argued by the landowners, the trial court erred in holding a mineral interest cannot be extinguished under the MTA due to the existence of the more specific DMA.” According to the court, “Extinguishment under the MTA and abandonment under the DMA are distinct tests and rights, which do not irreconcilably conflict.” [Read more](#).

Dormant Mineral Act; Marketable Title Act – Ohio.

On September 30, in *Warner v. Palmer* (Case No. 18 BE 0012), the Ohio Court of Appeals, Seventh District, decided another case regarding the Dormant Mineral Act (DMA) and the Marketable Title Act (MTA). Here, the appellants asserted that a will or estate cannot be a title transaction under the MTA and that appellees are not proper holders of the subject mineral interests. On cross-appeal, the appellees contended that the trial court should have only applied the 2006 version of the DMA rather than the general provisions of the Marketable Title Act. The Court found that because “there was a title transaction during the 40 years following Appellants’ root of title, Appellees’ oil and gas interest has been saved rather than extinguished under the Marketable Title Act.” Regarding the DMA, the Court held that a notice of abandonment was served via certified mail and by publication and a timely claim to preserve was recorded under applicable law. The Court noted that, “A preservation claim filed by one mineral interest holder is deemed to be a preservation for all of the mineral interest holders.” [Read more](#).

Marketable Title Act – Ohio. On September 30, in *Miller v. Mellot* (Case No. 18 MO 0004), the Ohio Court of Appeals, Seventh District, addressed the interpretation of two provisions of the Marketable Title Act (MTA). A party to this action sought clarification of the application of the MTA in light of earlier rulings by the Court. According to the Court, “At issue in both the application for reconsideration and the motion to certify is our conclusion that a root of title must ‘contain a fee simple title, free of any oil and gas reservation.’” Here, the Court clarified that that “Where the record contains a void in the post-severance/pre-root deed history, and the root of title deed contains what appears to be a repetition of an exception from a prior deed, without any reference to the prior deed, the MTA does not operate to extinguish the prior interest.” [Read more.](#)

INDUSTRY NEWS FLASH

► **U.S. to dominate energy production through 2030.** On November 13, the International Energy Agency released its report, *World Energy Outlook 2019*, in which it predicts the United States will continue to be a dominant force in oil and gas production, controlling 85% of the increase in global oil production through 2030. Moreover, the U.S. will continue as a net energy exporter and overtake the global share of oil production from OPEC countries and Russia combined. [Read more.](#)

LEGISLATIVE SESSION OVERVIEW

Session Notes: Massachusetts, Michigan, New Jersey, North Carolina, Ohio, Pennsylvania and Wisconsin are in regular session. The District of Columbia Council, Puerto Rico and the United States Congress are also in regular session. New Hampshire and New York are in recess subject to the call of the chair. The North Carolina legislature reconvened on November 13 following a two-week break. One of the issues that lawmakers will focus on is approving a new congressional district map, reports [The News & Observer](#). Illinois adjourned its fall veto session on November 14.

Signing Deadlines: Alaska Republican Gov. Mike Dunleavy has 20 days from delivery, Sundays excepted, to act on legislation or it becomes law without signature. Delaware Democratic Gov. John Carney has 10 days, Sundays excepted, to act on legislation or it becomes law. Illinois Democratic Gov. J.B. Pritzker has 60 days from presentment to act on legislation or it becomes law without signature. Maine Democratic Gov. Janet Mills has three days after the convening of the next meeting of the legislature to act on legislation presented on or after June 8 or it becomes law without signature. North Carolina Democratic Gov. Roy Cooper has 10 days from presentment to act on legislation or it becomes law without signature.

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

Bill Pre-Files: The following states are currently posting bill drafts, pre-files and interim studies: [Alabama House](#), [Arkansas](#), [Florida House](#) and [Senate](#), [Iowa](#), [Kansas House](#), [Kentucky](#), [Maine](#), [Nebraska](#), [New Hampshire](#), [Oklahoma House](#) and [Senate](#), [Oregon](#), [Tennessee](#), [Utah](#) and [West Virginia](#). ■

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