

GOVERNMENTAL AFFAIRS WEEKLY REPORT

Weekly Highlights At-A-Glance

FEDERAL – Legislative

H.R. 2181 - Chaco Cultural Heritage Area Protection Act. On October 30, [H.R. 2181](#), known as the *Chaco Cultural Heritage Area Protection Act of 2019*, passed the House. The bill, sponsored by Rep. Ben Ray Lujan (D-NM), would “withdraw the federal lands around Chaco Canyon from further mineral development. The bill, alongside anticipated actions from New Mexico State Land Commissioner Stephanie Garcia Richard, would help ensure the protection of Chaco ruins and the greater landscape surrounding the Chaco Culture National Historical Park by preventing any future leasing or development of minerals owned by the U.S. government that are located within an approximately 10-mile protected radius around Chaco.” The Senate companion bill, [S. 1079](#), sponsored by Sen. Tom Udall (D-NM), has not moved since May. It is unlikely that H.R. 2181 will move forward in the Republican-controlled Senate. [Read more.](#)

FEDERAL – Regulatory

Bakersfield Hydraulic Fracturing EIS – California. On November 1, the Bureau of Land Management (BLM) published a *Notice of Availability of the Bakersfield Field Office Hydraulic Fracturing Final Supplemental Environmental Impact Statement, California* ([84 Fed. Reg. 58739](#)) which details the preparation of “a Final Supplemental Environmental Impact Statement (EIS) analyzing the potential impacts of hydraulic fracturing on new oil and gas leases within the Bakersfield Field Office planning area, and by this notice the BLM is announcing its availability.” The Bakersfield Field Office planning area is located in eastern Fresno, western Kern, Kings, Madera, San Luis Obispo, Santa Barbara,

Tulare, and Ventura counties in California and encompasses approximately 1.2 million acres of Federal minerals and roughly 400,000 surface acres of BLM-managed public land. The EIS analyzes a full range of Court-approved BLM alternatives for the Proposed Resource Management Plan area regarding resource development. [Read more.](#)

BLM Energy Development Report. On October 18, the BLM released a report, [The BLM: A Sound Investment for America 2019](#), which details how activities like oil and gas development on federal lands has helped contribute \$105 billion in economic output in fiscal 2018. Energy production was the largest contributor to the agency’s increased economic output, with oil and gas development on BLM lands accounting for \$71.5 billion alone. Oil production also increased from 174 million barrels in 2017 to 214.1 million in 2018. [Read more.](#)

New Energy Department Secretary. Following the announcement that U.S. Department of Energy Secretary Rick Perry will be resigning, the Trump Administration has announced that Dan Brouillette, a Louisiana native, has been selected as Perry’s replacement. Brouillette is currently the Deputy Secretary of Energy and also worked under President George W. Bush as well as Chief of Staff for the U.S. House of Representatives Committee on Energy and Commerce. He also served as a member of Louisiana’s State Mineral and Energy Board. Perry will remain in his role through the end of the year. [Read more.](#)

FEDERAL – Judicial

Climate Change Lawsuits – U.S. Supreme Court. (*Update to 7/23/18 Weekly Report*) On October 22, the U.S. Supreme Court allowed state and municipal

litigant government officials to move ahead with three lawsuits that accuse numerous oil and gas companies of contributing to climate change. (See [Baltimore v. BP P.L.C.](#); [Rhode Island v. Chevron Corp.](#); and [Board of County Commissioners of Boulder County v. Suncor Energy \(U.S.A.\), Inc.](#)) The high court denied applications from BP, Chevron Corp., Suncor Energy Inc., Exxon Mobil Corp., and other companies seeking to freeze proceedings in high-stakes cases from Baltimore, Rhode Island, and Colorado municipalities that accuse the industry of creating a public nuisance by producing and selling “planet-warming fossil fuels.” The full court—except Justice Samuel Alito, who didn’t participate in the decision—[denied a request](#) from oil and gas companies defending against the Baltimore case. Justice Stephen Breyer denied a similar petition in the Rhode Island case a few hours later, and Justice Sonia Sotomayor then denied a request to halt a case from Boulder, Boulder County, and San Miguel County. No comments or published dissents were issued by the Court. “The decisions are victories for local governments seeking to put oil companies on the hook for the impacts of climate change. Baltimore and Rhode Island can now make their legal arguments in state courts, seek internal documents from the oil producers, and interview executives.” The oil and gas companies argued they would be subject to “duplicative and unrecoverable” litigation costs if the cases went forward as well as challenging the forum for case adjudications. The cases will now remain in state-level proceedings. [Read more.](#)

Leasing; Forum Selection – Ohio. On October 3, in *TERA II, LLC v. Rice Drilling D, LLC* (Case No. 2:19-cv-2221), the U.S. District Court for the Southern District of Ohio addressed a case in which the plaintiffs claimed their mineral rights were infringed upon by the defendants drilling on property outside of the terms of the leases. The plaintiffs sued in state court and the defendants removed the case to federal court. The plaintiffs claimed the “forum selection clauses in the leases bar removal of this action to federal court.” Ruling against the plaintiff-lessors, the Court held that “forum selection clauses cannot waive the right of removal without explicitly

mentioning either removal or the party seeking to remove [...] Because the forum selection clauses here do neither, they do not waive the right of removal.” [Read more.](#)

Leasing; Royalties – Ohio. On September 30, in *Henceroth v. Chesapeake Exploration, L.L.C.* (Case No. 4:15-CV-2591), the U.S. District Court for the Northern District of Ohio ruled in favor of Chesapeake regarding a dispute over how royalties were calculated. The plaintiffs argued that “the royalties must be calculated on the gross proceeds paid by the third-party buyers, without cost deductions because the costs are incurred after title transfers.” The plaintiffs also argued “that the downstream price must be used because the Class Leases require that the royalties be paid on products that are ‘marketed,’ and there is no marketing in the transaction at the well.” Finally, the plaintiffs argued that “costs cannot be deducted from the price paid by the third-party buyers.” However, the Court disagreed and found that the lessee “paid royalties consistent” with the leases, and the “lease language is plain and unambiguous.” [Read more.](#)

Leasing; Royalties – Pennsylvania. On September 26, in *Kave Consulting v. Chesapeake Appalachia, LLC* (Case No. 4:19-CV-00196), the U.S. District Court for the Middle District of Pennsylvania addressed an action for an accounting of royalty interests in certain oil and gas leases regarding non-party royalty owners. The defendants contended that this action would impede non-parties’ protected interests in certain production royalties. But the Court disagreed, holding “that since Defendants concede that royalties attributable to a reserved portion of mineral rights currently owned by the Plaintiffs had been previously paid to [the non-parties] pursuant to the terms of their leases no interest of the non-parties could be impeded if they are not joined in this action.” [Read more.](#)

Leasing; Delay Rental Payments – Pennsylvania. On September 20, in *Northeast Natural Energy LLC v. Larson* (Case No. 3:18-cv-240), the U.S. District

Court for the Western District of Pennsylvania addressed a case where a lessor sought to vacate an arbitration award pursuant to obligations under several oil and gas leases. The lessor sought to eliminate an obligation to pay delay rentals through the end of the primary lease term by surrendering the leases. The Court affirmed the arbitration award by holding that although the lessor argued that the Arbitration Panel “rewrote the Leases by adding delay rental language to the Leases” however “it was not the Panel that rewrote the Leases, but the parties to the Leases that did so through the Addendum.” The Court noted that “After examining relevant cases, the Panel concluded that Defendants’ right to payment had vested under the Leases because the Addendum made rental payments mandatory rather than optional.” [Read more.](#)

STATE – Legislative

Employee Misclassification – Pennsylvania.

(Update to 7/15/19 Weekly Report) On October 30, HB 716 was laid on the table (set aside or made inactive) in the Senate. The Democrat-sponsored bill passed the House in June but was of concern to AAPL members. The bill would have addressed the issue of employee misclassification by creating a joint agency task force on employee misclassification. According to the [sponsor’s memorandum](#), “The task force will investigate the practice and develop and implement a comprehensive plan to reduce misclassification in Pennsylvania. With this task force in place, we will be able to properly identify the scope of the problem and create a plan to solve it.” The tabling of the measure is a positive development and should the bill become active again we will report on it. [Read more.](#)

Lease Operations – Pennsylvania. *(Update to 10/7/19 Weekly Report)* On October 30, [SB 694](#), sponsored by Sen. Gene Yaw (R), was presented to the governor for signature after passing the Senate and House. This legislation 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 version of the bill, [HB 247](#), sponsored by Rep. Donna Oberlander (R), has been inactive in lieu of the Senate version. [Read more.](#)

Conventional Wells – Pennsylvania. On October 21, [SB 790](#), sponsored by Sen. Joseph Scarnati (R), passed the Senate and has been referred to the House Environmental Resources and Energy Committee. The bill establishes the Conventional Oil and Gas Well Act “providing for standards for protections, plugging of wells, and imposing power and duties on the Department of Environmental Protection (DEP) as it relates to conventional wells and well sites only.” According to the sponsoring memo, the bill “will provide a legislative framework for regulations specific to conventional oil and gas drillers in a way that protects the environment while preserving this valuable industry.” Specifically, the bill would require a permit to be obtained to drill or alter a well and to operate an abandoned or orphaned well; addresses DEP enforcement and remedies; and provides for funding and other miscellaneous provisions. [Read more.](#)

STATE – Judicial

Due Diligence; Dormant Mineral Act – Ohio.

(Update to 8/12/19 Weekly Report) On October 15, the Ohio Supreme Court agreed to hear [Gerrity v. Chervenak](#) (Case No. 2019-Ohio-2687), a case in which the Ohio Court of Appeals, Fifth Appellate District, addressed whether an internet search to

identify or locate the holders of severed mineral interests is always required under Ohio's Dormant Mineral Act (ODMA). Gerrity argued that reasonable diligence required the surface owner to search the internet for the address of the record title owner and for the identity of her devisees and their whereabouts. The Court rejected this argument and cited the plain language of the ODMA, "which only requires certified mail service at the holder's last known address. In this particular case, the surface owner attempted certified mail service at Ms. Richards' last known address. Further, when certified mail service failed, the surface owner conducted a search of two counties' property and probate records. That search too failed to produce Ms. Richards' probate estate or the identity of her devisees." The Court held that this search was reasonable under the circumstances "because the ODMA does not contemplate a worldwide exhaustive search for a holder." The Ohio Supreme Court will consider the following propositions of law on appeal: Whether the ODMA requires strict compliance and a surface owner seeking to capture a severed mineral interest must first attempt service by certified mail before resorting to publication; and in order to satisfy due process and the ODMA publication, a surface owner must employ reasonable search methods conforming to due diligence designed to locate all holder(s) of a severed mineral interest. [Read more.](#)

Statutory Pooling; Unitization; Leasing – Ohio.

(Update to 8/12/19 Weekly Report) On October 15, the Ohio Supreme Court declined to hear an appeal of [Paczewski v. Antero Resources Corp.](#) (Case No. 18 MO 0016), a case in which the Court of Appeals of Ohio, Seventh District, addressed circumstances where parties to a lease had stricken the voluntary unitization clause from the form lease, and according to the mineral owners, this foreclosed the ability to unitize. The operator argued that the deletion of the lease provision rendered the lease silent with respect to unitization. The Court agreed with the operator and held that with the lease silent in respect to unitization, such pooling does not constitute a breach of contract. Thus, the Court found that the applicable Ohio Division of Oil and Gas Resources

unitization order was valid and did not result in an unconstitutional taking of property without just compensation. [Read more.](#)

Leasing – Ohio. On September 30, in *Jacobs v. Dye Oil, LLC* (Case No. 18 MO 0020), the Ohio Court of Appeals, Seventh Circuit, affirmed a lower court ruling in favor of the defendant-lessees in its entirety regarding a dispute over a number of issues in which the plaintiffs sought to hold a lease terminated. Here, the Court held (1) that a failure to pay royalties in light of the plaintiffs failing to provide "reasonable administrative information requested by the lessee prior to the payment of royalties" is "not a breach of contract." Second, the Court held that a successor-lessor has "a good faith obligation to notify the lessee of a change in ownership of the mineral interest, with supporting documentation, as well as a good faith obligation to comply with the lessee's reasonable administrative requests, as conditions precedent to the payment of royalties," which was not done here. Finally, the court rejected the lease terminated for lack of production in paying quantities because "the evidence in the record establishes continuous production in paying quantities during the relevant limitations period, with the exception of 2006." However, the Court held that over the 15 year period, "one year is insufficient in Ohio to establish a lack of paying quantities." [Read more.](#)

INDUSTRY NEWS FLASH

► **President Trump promotes energy production in Pittsburgh.** On October 23, President Trump touted Pennsylvania energy production during a speech at the Shale Insight Conference. "Our goal is to bring 100,000 energy jobs to Appalachia and to rebuild this magnificent region which was forgotten too long by the Democrats," said President Trump. [Read more.](#)

► **U.S. petroleum demand hits high.** The American Petroleum Institute reports that U.S. domestic petroleum demand in September hit its highest level on record at 20.8 million b/d. That represents a 3.5

percent increase over September 2018. This comes on the heels of record production reports by the U.S. Energy Information Administration. [Read more.](#)

LEGISLATIVE SESSION OVERVIEW

Session Notes: Massachusetts, Michigan, New Jersey, 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 adjourned on October 31, putting a temporary end to one of the longest legislative sessions for the state, reports the [News Observer](#). The legislature is set to reconvene on November 13.

Illinois' held a veto session October 28 through 30 and is scheduled to reconvene the veto session November 12 through 14. One of the issues lawmakers will aim to pass include a law capping out-of-pocket insulin costs during the session, reports the [Herald Review](#).

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](#), [Kentucky](#), [Maine](#), [Nebraska](#), [New Hampshire](#), Oklahoma [House](#) and [Senate](#), [Oregon](#), [Tennessee](#), [Utah](#) and [West Virginia](#). ■

CONTENT DISCLAIMER: Information and/or website links provided by sources in this report may be among the many resources available to you. This report does not endorse nor advocate for any particular attorney or law firm, or other private entity, unless expressly stated. Any legal and/or tax information contained herein is neither legal nor tax advice. Links are provided for reference only and any cited outside source is derived solely from material published by its author for public use. Any copyrighted material remains the property of its respective owner and no use or distribution authorization is granted herein.