

GOVERNMENTAL AFFAIRS WEEKLY REPORT

Weekly Highlights At-A-Glance

FEDERAL – Legislative

H.R. 7010 – Paycheck Protection Program Flexibility Act of 2020. On May 27, the U.S. House of Representatives passed a bipartisan extension of COVID-19 federal stimulus related to the Paycheck Protection Program. The bill, [H.R. 7010](#), known as the *Paycheck Protection Program Flexibility Act of 2020*, will “provide struggling small businesses with more flexibility while using loans provided” under the program. The legislation, authored by Reps. Dean Phillips (D-MN) and Chip Roy (R-TX), expands the terms of the loans from the Paycheck Protection Program (PPP) to give small businesses up to 24 weeks, up from the current eight weeks, to use PPP loans and extend the deadline for rehiring workers from June 30 to the end of this year. It would also give small businesses the ability to spend more of the money on non-payroll costs. The current terms of the loans require recipients to use 75 percent of the funds on payroll and up to 25 percent on other costs to qualify for loan forgiveness. But this legislation would change the ratio to at least 60 percent on payroll and up to 40 percent on rent, overhead and other costs. “As we work to get America open again, we’ve got to be mindful of the fact that times are continuing to move on and these businesses are struggling and they can’t meet some of these restrictions and deadlines,” said Rep. Roy. For background, in April President Trump signed [H.R. 266](#), the Paycheck Protection Program and Health Care Enhancement Act, into law, which replenished some of the program funding. The program originally provided forgivable loans to small businesses that keep employees on their payroll for eight weeks. (For more, see the [U.S. Small Business Administration Paycheck Protection Program fact sheets](#)) The bill will now head to the Senate. [Read more.](#)

FEDERAL – Regulatory

BLM/Bureau of Indian Affairs Draft Resource Management Plan – New Mexico. (Update to 3/16/20 Weekly Report) [The Interior Department has announced](#) it will give the public four more months to comment on a plan to expand oil and gas development near New Mexico’s Chaco Culture National Historical Park. The public comment period, originally set to close May 28, has been extended to September 25. For background, on February 28, the Bureau of Land Management (BLM) Farmington Field Office, in coordination with the Bureau of Indian Affairs Navajo Regional Office, prepared a joint [Draft Resource Management Plan Amendment \(RMPA\) and Environmental Impact Statement \(EIS\)](#) to analyze resource management issues for lands in San Juan, Rio Arriba, McKinley, and Sandoval counties, including lands surrounding the Chaco Culture National Historical Park. “The Draft Resource Management Plan will help guide BIA’s stewardship and development of energy resources on Indian trust lands and assists tribal governments in managing, developing and protecting important cultural sites, surface acres of trust lands, and subsurface trust mineral estates,” said BIA Deputy Director for Field Operations Jim James. This planning effort, *Notice of Availability of the Farmington Mancos-Gallup Resource Plan Amendment and Draft Environmental Impact Statement, New Mexico* ([85 Fed. Reg. 12012](#)), will update management decisions such as oil and gas development, lands and realty, and vegetation. The decisions made will determine how public, Navajo Tribal Trust land, and Navajo Indian allotments and resources within the planning area will be managed for the next 10 to 15 years. During the process of drafting the amendment, the BLM has foregone new oil and gas leasing within a 10-mile radius of Chaco Culture National Historical Park and

rather the preferred action highlighted in the draft documents could open up much of that land to oil and gas leasing by reducing the size of the buffer zone. Public comments may be [submitted here](#). [Read more.](#)

BLM Lease Sales – Mississippi; Nevada; New Mexico; Utah. The Interior Department has reported the postponement of at least two more oil and gas lease sales that had originally been set for later in June. Parcels in both Mississippi and Nevada were set for those sales. A Utah sale of four parcels on more than 4,000 acres scheduled for this week was also removed from EnergyNet’s online lease sale calendar. BLM officials in Utah had not initiated a 10-day public protest period required before a sale may proceed. These come on the heels of a May sale postponement for parcels in New Mexico. [Read more.](#)

BLM Lease Sales – Montana; North Dakota. On May 28, the BLM announced the opening of a 30-day public comment period for nominated oil and gas lease parcels located in Montana and North Dakota. Parcels nominated for inclusion in the September sale are located in Dawson, Sheridan, and Richland counties in Montana, and Burke, McKenzie, Williams, Billings, and Slope counties in North Dakota. The public comment period will be open through June 24. [Read more.](#)

EPA Oil and Gas Extraction Wastewater Report. The U.S. Environmental Protection Agency (EPA) has announced the issuance of its final report on a [stakeholder engagement effort begun in 2018](#) that sought input on how the agency, states, Native American tribes and industry stakeholders regulate and manage wastewater from the oil and gas industry. In late May, the EPA issued its report, entitled [Summary of Input on Oil and Gas Extraction Wastewater Management Practices Under the Clean Water Act](#) (EPA-821-S19-001), to examine available approaches to manage wastewater from both conventional and unconventional oil and gas extraction at onshore facilities. EPA’s effort considered questions such as how existing federal

approaches to produced water management under the Clean Water Act (CWA) can interact more effectively with state and tribal regulations, requirements, or policy needs, and whether potential federal regulations that may allow for broader discharge of treated produced water to surface waters are supported. EPA is particularly interested in working with its regulatory partners at the state level, who are at the forefront of the changing industry, and often manage complex water allocation programs under state law. The EPA report summarizes the input received to date, but it leaves to a later date any announcement of measures that may be undertaken by EPA to address produced water management options under the CWA. [Read more.](#)

FEDERAL – Judicial

Climate Change – Ninth Circuit (California).

On May 26, the U.S. Court of Appeals for the Ninth Circuit, on appeal from the U.S. District Court for the Northern District of California, ruled that climate change lawsuits against major oil and gas companies could proceed in state court rather than a federal venue thought to be more favorable to the energy industry. In the consolidated case opinion, [City of Oakland v. BP PLC](#) (Case Nos. 3:17-cv-06011-WHA; 3:17-cv-06012-WHA), the lawsuits seek to reimburse taxpayers for costs associated with adapting to impacts such as rising sea levels—from building multibillion-dollar sea walls and repairing damage from powerful storms to—perhaps soon—moving whole communities inland. Lawyers for the cities and counties have long argued that such local infrastructure damage raises classic local-level concerns that belong in state court. Industry lawyers, supported by the Trump administration, have countered that climate change is a global issue, pushing the litigation to a federal jurisdiction. Lawyers for cities and counties bringing the lawsuits said in a joint comment, "We are grateful that the Court of Appeals agreed with Judge Chhabria's order to remand our cases back to the state courts where they were originally filed." At this stage in the litigation, the Ninth Circuit remand order puts further

case determinations in the hands of those courts in the ongoing matters. [Read more.](#)

BLM Leasing; Greater Sage-Grouse – Montana.

On May 22, the U.S. District Court for the District of Montana struck down a Trump Administration leasing plan to increase domestic oil and gas output on public lands, saying government officials failed to protect habitat for the Greater Sage-Grouse when it issued numerous oil and gas leases in an area covering roughly 336,000 acres of Western land. In the case, [Montana Wildlife Federation v. Bernhardt](#) (Case No. CV-18-69-GF-BMM), Judge Brian Morris said the Interior Department did not do enough to encourage development outside of areas with Greater Sage-Grouse. The order invalidates leases on more than 470 square miles of federal public land in Montana and Wyoming. “As for the lease sales, the errors here occurred at the beginning of the oil and gas lease sale process, infecting everything that followed,” Judge Morris wrote. Chris Tollefson, a spokesperson for the Bureau of Land Management, said officials were reviewing the decision. [Read more.](#)

Leasing; Royalties; Post-Production – Ohio. On May 21, in [Henceroth v. Chesapeake Exploration, LLC](#) (Case No. 19-3942), the U.S. Court of Appeals for the Sixth Circuit, on appeal from the U.S. District Court for the Northern District of Ohio, ruled in favor of a lessee in an oil and gas lease dispute, finding that the lessee properly considered post-production costs when calculating the landowners’ royalties. In the case, the landowners sued Chesapeake, claiming it underpaid their royalties because the royalties paid were not based on the higher downstream prices that were realized on sales to third-party purchasers. The Court disagreed with the landowners’ claim that Chesapeake did not “market” the oil and gas and that the only actual marketing occurred when the products were sold to unaffiliated third parties. [Read more.](#)

STATE – Legislative

Occupational Licensing – Colorado. (Update to

3/2/20 Weekly Report) On June 3, bipartisan bill, HB20-1326, passed by unanimous vote in the Senate. The bill passed unanimously in the House in late May. The legislation creates the “occupational credential portability program” to allow the recognition of out of state occupational credentials “to reduce certification, registration and licensure barriers” and foster economic opportunities for workers. [Read more.](#)

Partition Actions – Louisiana. (Update to *5/26/20 Weekly Report*) On May 31, HB 594 was referred to conference committee for concurrence on a final bill. The bill already passed the Senate and House. The measure, sponsored by Rep. Alan Seabaugh (R), amends existing law to provide for partitions by private sale; provides for absentee co-owners, and provides other guidance relative to these partition actions. [Read more.](#)

Energy Industry Support – Louisiana. (Update to *5/26/20 Weekly Report*) On June, SB 386 was signed into law by Gov. John Bel Edwards (D). The Act, sponsored by Sen. R.L. Allain (R), creates the Commission for Louisiana’s Energy, Environment, and Restoration within the Department of Natural Resources for the purpose of supporting programs designed to demonstrate to the general public the importance of Louisiana oil and natural gas exploration, production, and the service industry; encouraging the wise and efficient use of energy; promoting environmentally sound production methods and technologies; developing existing supplies of Louisiana’s oil and natural gas resources; supporting research and educational activities concerning the oil and gas exploration and production industry; and causing remediation of historical oilfield environmental problems. The Act is effective immediately. [Read more.](#)

Notarial Acts – Louisiana. (Update to *3/16/20 Weekly Report*) On May 29, HB 274 passed the Senate. The bill passed the House earlier in May. The measure, sponsored by Rep. Ray Garofalo (R), provides for the execution of electronic notarial acts. [Read more.](#)

Ad Valorem Tax – Louisiana. *(Update to 3/16/20 Weekly Report)* On May 29, HB 360 passed the Senate. The bill passed the House earlier in May. The measure, sponsored by Rep. Mike Huval (R), provides for the methodology of valuation of oil and gas wells for the purpose of ad valorem assessment. [Read more.](#)

Notarial Acts – Louisiana. *(Update to 3/2/20 Weekly Report)* On May 28, HB 122 passed the Senate. The bill passed the House earlier in May. The measure, sponsored by Rep. Gregory Miller (R), provides for the execution of electronic notarial acts and related procedures. [Read more.](#)

Trusts; Mineral Interests – Louisiana. *(Update to 5/26/20 Weekly Report)* On May 27, HB 123 passed the Senate. The bill passed the House in early May. The bill, sponsored by Rep. Gregory Miller (R), provides for the allocation of receipts and expenses to income and principal in trusts, and specifically regarding mineral interests, current law provides for the allocation of proceeds of mineral interests and allocates the royalty payments associated with oil and gas leases in the amount of 27.5% to principal and 72.5% to income. The bill changes current law by providing that royalty payments shall be allocated in accordance with what is reasonable and equitable. The proposed law further provides that allocation of 90% to principal and 10% to income is presumed to be reasonable and equitable but clarifies that other allocations are not necessarily unreasonable or inequitable. The proposed law also abolishes the open mines doctrine as it relates to a trust. [Read more.](#)

Tax Filing and Extensions– Louisiana. *(Update to 5/26/20 Weekly Report)* On June 4, SB 498 was signed into law by Gov. John Bel Edwards (D). The Act, sponsored by Sen. R.L. Bret Allain (R), provides extensions for tax filing and payments in light of the COVID-19 pandemic. The Act is effective immediately. [Read more.](#)

Severance Taxes– Louisiana. On June 2, HB 1746 passed the House and has been transmitted to the

Senate. The bill, sponsored by Rep. John Lamar (R), would temporarily reduce oil and gas severance taxes. [Read more.](#)

Production Payments – Louisiana. *(Update to 5/26/20 Weekly Report)* On May 26, HB 227 passed the Senate by unanimous vote. The bill passed the House in March. The measure, sponsored by Rep. Jean-Paul Coussan (R), provides for clarification of the nature of production payments and eliminates redundancy in terminology. Present law requires written notice of the nonpayment of a production payment to be provided prior to a judicial demand for damages. This new law would retain present law but eliminates the linguistic redundancy and clarifies the application of present law by stating explicitly that the interest at issue is one created out of a mineral lessee's interest. [Read more.](#)

Severance Tax – Louisiana. *Update to 3/16/20 Weekly Report)* On May 22, HB 506 passed the House and has been transmitted to the Senate. The bill, sponsored by Rep. Phillip DeVillier (R), reduces the severance tax rate for oil over a certain period of time and clarifies the severance tax rate for oil produced from certain incapable wells. [Read more.](#)

Local Control of Natural Gas – Oklahoma. On May 19, Gov. Kevin Stitt (R) signed HB 3619 into law. The Act, sponsored by Rep. Terry O'Donnell (R), "prohibits a municipality or county from adopting estate development building or construction ordinances, rules, or codes restricting or prohibiting connections to the facilities of utility providers. The measure also prohibits discrimination in adoption of rules or codes against one or more utility providers based upon the nature or source of the utility service provided." The goal of the legislation is to prohibit local governments from banning certain utility connections, such as natural gas hookups. The electric-versus-natural gas debate heated up last year when Berkeley, California became the first city to ban natural gas infrastructure in new buildings, starting in 2020. Other municipalities have also been pushing to ban natural gas connections in favor of

electric hookups. “What we are trying to do is send a market signal to the rest of the country to say that Louisiana is open for business when it comes to natural gas,” said Tyler Gray, Louisiana Mid-Continent Oil & Gas Association president and general counsel. The Act is effective November 1, 2020. [Read more.](#)

Conventional Wells – Pennsylvania. (*Update to 11/4/19 Weekly Report*) On May 27, [SB 790](#), sponsored by Sen. Joseph Scarnati (R), passed the House. The bill passed the Senate in October 2019. The measure 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 – Regulatory

Ballot Initiatives – Colorado. A number of oil and gas ballot initiatives have once again reared their heads for the November general election. On May 29, the Colorado Supreme Court gave the green light to ballot initiative titles to appear before November voters should the measures collect sufficient signatures. Once a title is set, proponents are allowed to gather signatures for placement on the statewide ballot. Due to the COVID-19 pandemic, circulation by mail and email are permitted following Secretary of State Jena Griswold's [issuance of temporary guidance](#) in the wake of a state court decision (see below). Multiple initiatives pertaining to setbacks were approved for receiving signatures: #173-177, all titled, Setback Requirement for Oil and Gas Development, and each varies in setback

distance from an occupied structure or vulnerable area (2,000' to 2,500') but only apply to new oil and gas development. Some include the restriction of development near Superfund Sites, and others include the opportunity for a homeowner waiver. Another initiative, #178 – Oil and Gas Operator Financial Assurance, require every operator to provide assurance that it is financially capable of fulfilling every obligation imposed. The rulemaking must consider: increasing financial assurance for inactive wells and for wells transferred to a new owner; requiring a financial assurance account, which must remain tied to the well in the event of a transfer of ownership, to be fully funded in the initial years of operation for each new well to cover future costs to plug, reclaim, and remediate the well; and creating a pooled fund to address orphaned wells for which no owner, operator, or responsible party is capable of covering the costs of plugging, reclamation, and remediation. The minimum financial assurance must not be less than \$270,000 per well. Two other initiatives, #284 and #297, both titled, Prohibit Restrictions on the Utilization of Natural Gas, are pro-industry and would prohibit state or local governments from limiting the installation of natural gas in homes and businesses, unless such regulations are grounded in safety protocols. One proposal would amend state statute, while the other is a constitutional change. ([Access all ballot initiatives here](#)) In related news, last Wednesday, a Denver District Court let stand an Executive Order ([D 2020 065](#)) issued by Gov. Jared Polis (D) that allows petition gatherers to collect signatures for ballot initiatives by mail or email during the coronavirus pandemic. In [Ritchie v. Polis](#) (Case No. 2020CV31708), the Court held the executive order “strikes a careful balance that facilitates petition circulation while protecting public health, especially for ‘Vulnerable Individuals.’” In support of the decision, Gov. Polis said, “The constitutional right of citizens to petition the government should not be sacrificed in a pandemic.” [Read more.](#)

COGCC Mission Change Rulemaking – Colorado. On June 5, the Colorado Oil and Gas Conservation

Commission (COGCC) announced the following upcoming Wellbore Integrity Rulemaking Hearing to implement the ongoing SB19-181 mandated COGCC Mission Changes which AAPL has been reporting on over the past few months. ([Read more about SB19-181 here](#)) The COGCC invites the public and stakeholders to attend their virtual June Wellbore Integrity Rulemaking Commission Hearing on June 10-11. According to the COGCC, "The Wellbore Integrity rulemaking, required by SB 19-181, proposes to improve oversight through the entire lifecycle of the oil and gas well, ensuring protection of groundwater resources." According to COGCC Director Jeff Robbins, "The COGCC Staff worked with a diverse group of stakeholders and the Water Quality Control Division to deliver these proposed rules to cover the life of the well and improve protections for the environment and our groundwater. The draft rules reflect broad consensus across multiple stakeholder perspectives on almost all issues, which shows how COGCC Staff, sister state agencies and our stakeholders can work together to find solutions to complex issues." For more information on how to access the Hearing, [Read more](#). If you need any assistance accessing the online Hearing you may [contact the COGCC here](#).

Voluntary Well Shut-Ins – Oklahoma. On June 3, the Oklahoma Corporation Commission (OCC) gave oil producers the legal liability protection to voluntarily shut in wells as prices for oil remain under \$40 per barrel, but no mandatory order has been issued. "The action ended more than two months of efforts by some oil producers to get the state legal protection to shut-in their wells without the fear of being sued by the owners of the wells in order to stabilize markets." On April 22, the OCC also issued an emergency order allowing operators to shut in wells to prevent waste. That order was also voluntary and was set to expire mid-July. [Read more](#).

STATE – Judicial

Mineral Reservations; Deeds; Inheritances; Life Estates – Ohio. On May 19, in [Peppertree Farms, LLC v. Thonen](#) (Case No. 2019CA00159), the Court of

Appeals, Fifth District, on appeal from the Stark County Court of Common Pleas, 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 and gas at the time he executed the subject deed, his reservation was deemed to be a 'reservation' because the severance created a new oil and gas estate." [Read more](#).

INDUSTRY NEWS FLASH

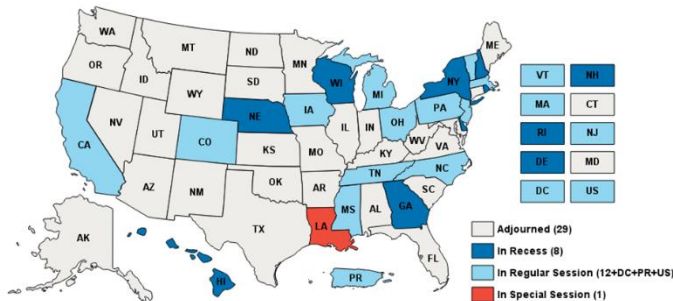
► **Texas Alliance of Energy Producers names new president.** On June 3, the Texas Alliance of Energy Producers named Jason Modglin as its new President. Modglin comes from the Texas Railroad Commission, where he served as director of public affairs for Commissioner Christi Craddick. Previously, he was chief of staff for Texas House Energy Resources Chairman Rep. Drew Darby (R) and was a policy analyst for Texas Agriculture Commissioner Todd Staples. [Read more](#).

► **Oil market escapes collapse says research.** On May 26, Rigzone reported that the oil market has escaped a collapse and will begin to see a rebound in the second half of 2020. This comes from energy research firm, Rystad Energy, which notes that the 16 million barrel-per-day oversupply in crude during April could be reversed altogether by June. "As things are now, this year's second half is poised to be the time of partial recovery from Covid-19 and also the path to higher oil prices," noted Rystad Energy's

head of oil market research, Bjornar Tonhaugen.
[Read more.](#)

LEGISLATIVE SESSION OVERVIEW

States in Session



Session Notes: California, Colorado, Iowa, Massachusetts, Michigan, Mississippi, New Jersey, North Carolina, Ohio, Pennsylvania, Tennessee, and Vermont are in regular session. The District of Columbia Council, Puerto Rico and the U.S. Congress are also in regular session.

The following legislatures are postponing their 2020 legislative sessions due to COVID-19 until the dates provided: **Rhode Island** (June 9), **Georgia** and **New Hampshire House** (June 11), **Hawaii** (June 15), **Nebraska** (July 20) and **Delaware, New Hampshire Senate and Wisconsin** (TBD).

Louisiana began a special session immediately after the adjournment of the regular session on June 1, reports [WBRZ](#). The legislature will discuss the spending of federal coronavirus aid and the expansion of tax break programs. This special session cannot last longer than June 30.

Kansas adjourned its special session on June 4 after passing legislation related to coronavirus relief spending, reports the [New Haven Register](#).

New Mexico Democratic Gov. Michelle Lujan Grisham announced a special session beginning June 18. The agenda includes issues ranging from

balancing the budget to coronavirus relief stimulus funding, reports the [Albuquerque Journal](#).

New York is in recess subject to the call of the chair.

South Carolina adjourned on May 12 and is expected to meet for a two-week special session starting September 15, reports [The News & Observer](#).

The following states adjourned on the dates provided: **Oklahoma** (May 29), **Missouri** (May 30) and **Louisiana** (June 1).

The following states are scheduled to adjourn on the dates provided: **Delaware** and **Rhode Island** (June 30).

Signing Deadlines (by date): Arizona Republican Gov. Doug Ducey has until June 6 to act on legislation presented on or after May 21 or it becomes law without signature. **Oklahoma** Republican Gov. Kevin Stitt has until June 13 to act on legislation or it is pocket vetoed. **Missouri** Republican Gov. Mike Parson has until July 14 to act on legislation or it becomes law without signature. **Alaska** Republican Gov. Mike Dunleavy must act on legislation within 20 days of presentment, not including Sundays or it becomes law without signature. **Arkansas** Republican Gov. Asa Hutchinson has 20 days from presentment to act on legislation or it becomes law without signature. **Connecticut** Democratic Gov. Ned Lamont must act on legislation within 15 days of presentment or it becomes law without signature. **Florida** Republican Gov. Ron DeSantis has 15 days from presentment to act on legislation or it becomes law without signature. **Kansas** Democratic Gov. Laura Kelly has 10 days from presentment to act on legislation or it becomes law without signature. **Kentucky** Democratic Gov. Andy Beshear has 10 days from presentment, Sundays excepted, to act or legislation becomes law without signature. **Louisiana** Democratic Gov. John Bel Edwards has 20 days from presentment to sign or veto legislation or it will become law without signature. **Maine** Democratic Gov. Janet 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. **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.

Interim Committee Hearings: The following states are currently holding 2020 interim committee hearings: [Alaska](#), [Arkansas](#), [Indiana](#), [Kentucky](#), [Maine](#), [Maryland](#), [Minnesota](#), [Montana](#), [Nevada](#), [North Dakota](#), [Oregon](#), [South Carolina House](#) and [Senate](#), [South Dakota](#), [Utah](#), [Virginia](#), [Washington](#) and [Wyoming](#).

Bill Pre-Files: [Utah](#) is currently posting 2020 bill drafts, pre-files and interim studies. ■

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