

# GOVERNMENTAL AFFAIRS WEEKLY REPORT

## Weekly Highlights At-A-Glance

### FEDERAL – Legislative

**H. Res. 522.** On July 25, Rep. Ralph Lee Abraham (R-LA) introduced [House Resolution 522](#) (H. Res. 522) in support of domestic oil and natural gas production “Expressing the sense of the House of Representatives that the production of oil and natural gas is essential to the economy and well-being of the United States, and that addressing energy needs requires cooperation instead of coercion.” The resolution, which solely concerns the operations of the House of Representatives and is not presented to the President for action, states “That it is the sense of the House of Representatives that (1) the production of oil and natural gas is critical to the continued prosperity of the United States economy, its national security, and its people; (2) the Federal Government and public leaders throughout the United States should promote policies that encourage greater energy production and independence; and (3) public leaders should work in a spirit of good faith and cooperation with energy producers to address the energy needs and problems facing the United States, rather than in a spirit of coercion and division.” [Read more.](#)

**H.R. 205.** On July 16, [H.R. 205](#), known as the “Protecting and Securing Florida’s Coastline Act of 2019,” was reported by the House Committee on Natural Resources. According to [House Committee Report 116-156](#), the “purpose of H.R. 205 is to amend the Gulf of Mexico Energy Security Act of 2006 to permanently extend the moratorium on leasing in certain areas of the Gulf of Mexico.” According to bill sponsor, Rep. Francis Rooney (R-FL), “Water quality impacts all of Florida’s residents and visitors. Drilling in this area would negatively affect our environment, tourism, and military readiness. I want to ensure that

all areas east of the Military Mission Line in the Gulf of Mexico are permanently protected from offshore oil drilling. In 2022, the moratorium on drilling and exploration will expire unless Congress acts.”

[Read more.](#)

**H.R. 3585.** Related to the above bill, on July 16, [H.R. 3585](#), known as the “Bolstering Economies, Anglers, Coastal Habitats, Ecosystems, and Security (BEACHES) in Florida Act,” was referred to the House Committee on Natural Resources Subcommittee on Energy and Mineral Resources. The bill, sponsored by John Rutherford (R-FL), “creates a moratorium in the South Atlantic and Straits of Florida and extends the existing moratorium in the Gulf of Mexico on oil and gas leasing and exploration in federal waters off the coast of Florida until 2029.” [Read more.](#)

**H.R. 3747.** On July 12, Rep. Joe Neguse (D-CO) introduced H.R. 3747, known as the “On or Under Act.” The bill would ban oil, gas, and mineral drilling beneath federally owned Superfund National Priorities List (NPL) sites. The legislation directs the federal government to acquire mineral rights beneath federal NPL Superfund sites, and prohibits their extraction or disturbance. The congressman notes that while current federal law already “prohibits drilling on the surface of a superfund site, new technologies and the advent of directional drilling have recently provided a pathway for companies to extract oil and gas beneath them.” The bill is currently working its way through committee. [Read more.](#)

**Congressional Summer Recess.** The U.S. House of Representatives and U.S. Senate are in summer recess for the month of August, and are back in session on September 9, 2019. [Read more.](#)

## **FEDERAL – Regulatory**

**Greater Sage-Grouse – Colorado; Idaho; Nevada; Wyoming; Utah.** On August 1, the U.S. Department of Agriculture's (USDA) Forest Service announced proposed changes to how the agency manages Greater Sage-Grouse in Colorado, Idaho, Nevada, Wyoming, and Utah after hearing concerns from states and land users. These changes are expected to relax prior land management plans and allow for greater development on those lands. "The changes strive to improve the clarity, efficiency, and implementation of the current sage grouse plans." Specifically, the plans propose to eliminate the strictest barriers put in place in 2015 by the Obama administration which blocked much new development in "focal areas." Key changes to existing policies "allow for greater flexibility and local control of conservation and management actions related to sage grouse" and the "2019 plans align state and federal conservation standards, so ranchers and other land users have one set of standards instead of dealing with multiple, complex layers of restrictions." The new changes "also align mitigation options with state-based systems so mitigation strategies on how to ensure no net-loss of habitat are locally supported, not a one-size-fits-all standard." Finally, the "2019 plans maintain the goal of preventing any net-loss to critical sage grouse habitat, but no longer require the unreasonable standard that every action increase conservation. This enables local stakeholders to determine what strategies to implement where and how while still conserving sage grouse habitat." [Read more.](#)

**BLM Oil & Gas Lease Sale – Colorado.** On July 26, the Bureau of Land Management (BLM) announced that it will offer 83 parcels, totaling approximately 78,691 acres, in the September 26, 2019 quarterly oil and gas lease sale. The BLM will offer parcels in the Royal Gorge, Kremmling, Little Snake, and White River field offices in Cheyenne, Kiowa, Weld, Garfield, Jackson, Moffat, Rio Blanco, and Routt counties. The sale notice initiates a 30-day comment period that ends on August 26, 2019. [Read more.](#)

**BLM Oil & Gas Lease Sale – Eastern States.** On July 25, the BLM Eastern States Office announced that it will conduct its quarterly oil and gas sale on September 12, 2019. The sale will include nearly 3,200 acres located in Franklin and Smith counties, Mississippi; Monroe County, Ohio; Escambia County, Alabama; and Winn Parish, Louisiana. [Read more.](#)

**New BLM Deputy Director, Policy and Programs.** (*Update to 5/6/19 Weekly Report*) On July 29, U.S. Department of the Interior Secretary David Bernhardt announced that William Perry Pendley will serve as the replacement for Brian Steed, who left his position as BLM Deputy Director of Programs and Policy in May to serve as the Executive Director of the Utah Department of Natural Resources. As Deputy Director, Pendley, a Wyoming-native, brings a career in public service, formerly serving as an attorney to former Senator Clifford P. Hansen (R-WY) and the U.S. House of Representatives Interior and Insular Affairs Committee. During the Reagan Administration, Pendley served as Deputy Assistant Secretary for Energy and Minerals of the Department of Interior. [Read more.](#)

**New EPA Regional Administrator – New Mexico; Oklahoma; Texas.** On August 5, the U.S. Environmental Protection Agency named former oil and gas executive and professor in petroleum engineering, Ken McQueen, as Administrator for Region 6, which includes Arkansas, Louisiana, New Mexico, Oklahoma, Texas and 66 Tribal Nations. McQueen was most recently the New Mexico Cabinet Secretary for the Energy, Minerals, and Natural Resources Department from 2016 to 2018. "Ken's experience in public service and familiarity with natural resource issues make him an excellent choice to lead the Region 6 office," said EPA Administrator Andrew Wheeler. [Read more.](#)

## **FEDERAL – Judicial**

**BLM Leasing – New Mexico.** (*Update to 5/13/19 Weekly Report*) On August 1, environmental activists sued the BLM challenging its approval of at least 255 applications for permits to drill in the Mancos Shale

formation in New Mexico. In [\*Dine Citizens Against Ruining our Environment v. Bernhardt\*](#) (Case No. 1:19-cv-00703), the plaintiffs claim the BLM approved the permits through “piecemeal, boilerplate environmental assessments” without considering the cumulative aspects of development in the area. The plaintiffs cited the May 7th U.S. Court of Appeals for the Tenth Circuit decision that struck down more than 300 applications for permits to drill in northeastern New Mexico because the BLM violated the National Environmental Policy Act (NEPA). In that ruling in [\*Dine Citizens Against Ruining Our Environment et al. v. Bernhardt et al.\*](#) (Case No. 18-2089), the Court held the BLM failed to consider the cumulative impact of water use associated with the 3,960 reasonably foreseeable horizontal hydraulic fracturing wells in the Mancos Shale area of the San Juan Basin. However, in that case the Court declined to address air pollution impacts of the BLM’s NEPA analysis, finding the environmental activist litigants had not provided a record sufficient to permit assessment. The BLM has yet to respond or comment on the current lawsuit. [Read more.](#)

**Shut-In Provisions; Leasing – Pennsylvania.** On July 3, in *Wheeland Family Ltd. v. Rockdale Marcellus LLC* (Case No. 4:18-CV-01976), the U.S. District Court for the Middle District of Pennsylvania found for the lessee noting the operator “properly exercised its right to maintain the lease in effect by tendering the shut-in royalty payment after wells that were drilled on the units were ‘not producing for any reason whatsoever.’” Plaintiffs also contended that the lessee acted in bad faith because the unitization of certain leases in the unit occurred approximately one month prior to the conclusion of the primary term of the leases. The Court also rejected this argument, noting “Rockdale has met its burden to show that Plaintiffs’ theories regarding Rockdale’s alleged bad faith pooling do not present any material issue of fact precluding judgment as a matter of law in Rockdale’s favor.” [Read more.](#)

**Notice-and-Cure Provisions; Leasing – Pennsylvania.** On July 3, in *Elbow Energy, LLC v. Equinor USA Onshore Properties Inc.* (Case No. 4:19-

CV-00764), the U.S. District Court for the Middle District of Pennsylvania addressed a case where the lessor claimed that Equinor breached the terms of the lease by paying royalties in insufficient sums. “Equinor argues that Elbow has not complied with an express lease provision proscribing the commencement of a judicial action for damages until one year after Equinor was notified and given an opportunity to cure its alleged breach.” Under the case facts, Equinor had until July 31, 2019 to cure its purported deficient performance. But Elbow commenced this action on March 28, 2019. “Therefore, Elbow’s present action is premature and violates the express terms of the notice-and-cure provision.” The Court thus agreed with the lessor and held that “by commencing the present action before July 31, 2019, Elbow has violated the lease, and Elbow’s claims must be dismissed. That dismissal, however, is without prejudice to Elbow to reassert its claims at a time that they become appropriate for judicial intervention.” [Read more.](#)

**Takings – Pennsylvania.** On June 22, the U.S. Supreme Court overruled 34-year-old precedent when it held in [\*Knick v. Township of Scott\*](#) (Case No. 17-647), “that plaintiffs alleging that local governments have violated the takings clause may proceed directly in federal court, rather than first litigating in state court.” Before *Knick*, precedent held “that the plaintiff could not bring a takings claim in federal court until the plaintiff had pursued an inverse-condemnation action—that is, a lawsuit seeking compensation for the alleged taking—in state court.” In its opinion, the Supreme Court majority held that the “state-litigation requirement imposes an unjustifiable burden on takings plaintiffs” and “conflicts with the rest of our takings jurisprudence.” While the fact pattern of this case involved a cemetery on private land subject to a local ordinance which required the owner to make the property open to the public during the day, it will have ramifications for other property takings cases. As noted by the SCOTUS blog, “The theory the Supreme Court relies upon—that a constitutional violation is complete at the time property is taken, even if mechanisms are available to seek

compensation—may have other implications for local, state and federal regulators, though the majority emphasizes that regulatory programs are unlikely to be invalidated or enjoined on the basis of [the] ruling.” [Read more.](#)

**Royalties; Class Actions – Texas.** On July 2, in *Regmund v. Talisman Energy U.S., Inc.* (Case No. 4:16-CV-02960), the U.S. District Court for the Southern District of Texas (Houston) dealt a blow to royalty owners when it denied class certification in a royalty dispute involving 3,957 royalty owners on 2,920 oil and gas leases. The Court held that “although the putative class presents common questions, those common questions do not predominate over the individualized issues in this case.” The Court also noted that the “adequacy” requirement for class certification, which states that the “representative parties will fairly and adequately protect the interests of the class,” was destroyed by the class facing “a high risk of intra-class conflicts of interest.” [Read more.](#)

## **STATE – Legislative**

**State Public Lands Leases – California.** On July 30, Gov. Gavin Newsom (D) signed AB 585 into law. The Act, sponsored by Asw. Monique Limon (D), authorizes the State Lands Commission, when considering the approval of an assignment, transfer, or sublet of an oil and gas lease, to consider whether a proposed assignee is likely to comply with the provisions of the assigned, transferred, or sublet lease for the duration of the lease term. The bill also requires present and future oil and gas leases or permit holders to be liable for specified obligations, which include ongoing responsibilities for plugging and abandoning wells. The Act provisions are effective on or after January 1, 2020. [Read more.](#)

## **STATE – Judicial**

**Royalties; Leasing – North Dakota.** On July 11, in *Newfield Expl. Co. v. N. Dakota Bd. Of Univ. & Sch. Lands* (Case No. 2019 N.D. 193), the State argued before the North Dakota Supreme Court that the

district court’s interpretation of the leases at issue improperly allows the reduction of royalty payments to account for expenses incurred to make the natural gas marketable. Specifically, the State argued that because the price paid to Newfield by its buyer of gas is reduced to account for the cost of processing the gas into a marketable form, the result is no different than if Newfield itself had incurred the expense to process the gas into marketable form or retained title to the gas and paid its buyer to process the gas into marketable form. The State contends it is being required to share in the post-production costs contrary to the leases. Here, in reversing the lower court, the North Dakota Supreme Court held that “gross proceeds from which the royalty payments under the leases are calculated may not be reduced by an amount that either directly or indirectly accounts for post-production costs incurred to make the gas marketable.” [Read more.](#)

**Dormant Mineral Act – Ohio.** On June 28, in *Gerrity v. Chervenak* (Case No. 2019-Ohio-2687), 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.” [Read more.](#)

**Statutory Pooling; Leasing – Ohio.** On June 18, in *Paczewski v. Antero Resources Corp.* (Case No. 18

MO 0016), the Court of Appeals of Ohio, Seventh District, addressed a case 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 with respect to unitization, such pooling does not constitute a breach of contract. Thus, the Court found that an Ohio Division of Oil and Gas Resources unitization order was valid and does not result in an unconstitutional taking of property without just compensation. [Read more.](#)

**Local Ordinances; Zoning – Pennsylvania.** On June 26, in *Delaware Riverkeeper Network v. Middlesex Twp. Zoning Hearing Board* (Case No. 2609 CD 2015), The state Commonwealth Court ruled against environmentalists who challenged a township zoning ordinance which allowed for oil and gas well site development in a residential/agricultural district. The plaintiffs had argued that their rights were being violated by allowing incompatible industrial use in the zoning district and their rights to a healthy community were being violated, among other allegations. The township zoning board determined that the oil and gas development had “balanced the community’s costs and benefits” and that drilling was specifically excluded from “exclusively zoned residential districts.” The Court held that “the Board properly concluded [... the] view that the totality of oil and gas production, both during drilling and after reclamation, is compatible with an agricultural district is rational.” [Read more.](#)

**Deeds; Reservations; Quiet Title – Pennsylvania.** On June 21, in *Three Rivers Royalty, LLC v. Lorraine Canestrone Trust-C* (Case No. 1302 WDA 2018), the Superior Court of Pennsylvania addressed whether a deed conveying surface tracts including “all the property” in the deed without an explicit exception or reservation of the oil and gas rights severed those rights from the surface. The Court held it did not and that the deed conveyed the oil and gas rights along with the surface of the lands. As the Court noted, “As

the oil and gas rights had not been severed from the surface tracts in the underlying deeds” when conveying “all the property” title was acquired “to the oil and gas when it acquired [predecessor’s] interest in the Property.” [Read more.](#)

**Farmout Agreements; Leasing – Texas.** On June 28, in *Barrow-Shaver Resources Co. v. Carizzo Oil & Gas, Inc.* (Case No. 17-0332), the Texas Supreme Court addressed the interpretation of a farmout agreement to determine whether the Court of Appeals, Twelfth District, erred in: (1) holding that the plaintiff could not prevail on its breach of contract claim as a matter of law because the contract’s consent-to-assignment provision unambiguously gave the defendant an unqualified right to refuse to consent; and (2) holding that the plaintiff cannot prevail on its fraud claim as a matter of law because it could not justifiably rely on an oral promise to do something that was addressed in the written contract. The Court, in affirming the Court of Appeals, held that: (1) the plain language of the contract unambiguously entitled the defendant to withhold its consent to a proposed assignment, and therefore the defendant could not have breached the contract as a matter of law; and (2) the plaintiff could not justifiably rely on an oral statement where the written terms of the contract controlled. [Read more.](#)

**Estoppel by Deed; Duhig Rule – Texas.** On June 21, in *Trial v. Dragon* (Case No. 18-0203), the Texas Supreme Court was tasked with determining whether the estoppel by deed doctrine applied to prevent petitioners from asserting title to an interest they inherited from their mother, when their father previously purported to sell that interest to the respondents. The Court held that the well-known [Duhig rule](#) did not apply to this case nor did estoppel by deed. The Court noted that “at the outset that *Duhig* applies the doctrine of estoppel by deed to a very distinct fact pattern, and its holding is narrow and confined to those specific facts.” Accordingly, the Court held that the petitioners “are entitled to retain the interest inherited from their mother.” [Read more.](#)

## **INDUSTRY NEWS FLASH**

► **American Petroleum Institute releases methane emissions annual report.** On July 30, the American Petroleum Institute (API) announced that The Environmental Partnership, an initiative of America's natural gas and oil producers, released its first [Annual Report](#) which highlights the industry's progress in reducing emissions of methane and volatile organic compounds. "The report contains updates on The Environmental Partnership's three performance programs, as well as its growth from just over 20 participants at launch to now 65 participating natural gas and oil companies, representing more than 80 percent of the top natural gas producers in the United States." The Environmental Partnership Initiative was spearheaded by API and launched by oil and gas companies in 2017 to implement voluntary methane emissions programs, and to make the case against climate change regulations and mandates. The annual report shows companies conducted more than 156,000 leak surveys in 2018 across more than 78,000 production sites, finding a "leak rate" of only 0.16%. In the Permian Basin, the most prolific shale gas producing region, methane emissions relative to production have fallen nearly 40% from 2011 to 2017, the report said. [Read more.](#)

► **U.S. crude oil exports reach record level.** According to the API, U.S. crude oil exports reached a record 3.3 million b/d during June –1.1 million b/d more than in June 2018 – despite petroleum demand reaching its highest level for the month since 2005. "The U.S. appears to be making substantive progress towards becoming a net energy exporter in 2020, as projected by the [US Energy Information Administration], with production continuing to sustain its upward climb despite oil prices having declined 10% between May and June," said API Chief Economist Dean Foreman. [Read more.](#)

## **LEGISLATIVE SESSION OVERVIEW**

Massachusetts, Michigan, North Carolina, Ohio and Wisconsin are in regular session.

California is in recess until August 12, and is scheduled to adjourn its 2019 legislative session on September 13. The District of Columbia is in recess until September 16. Pennsylvania is in recess until September 23. New Hampshire, New Jersey, New York and the West Virginia Senate are in recess subject to the call of the chair.

Alaska continues their [second special session](#) in Juneau following Republican Gov. Mike Dunleavy's [supplemental proclamation](#) on July 17 changing his choice of location, as well as adding the capital budget to the agenda, reports [Alaska Public Media](#). The special session is scheduled to end by August 6, at the latest, and a bill restoring most of Governor Dunleavy's vetoes and setting a Permanent Fund Dividend of about \$1,600 that passed the House and Senate is expected to be sent to Dunleavy next week, according to [KTOO Public Media](#).

Tennessee Republican Gov. Bill Lee called for a special session of the General Assembly to begin on August 23 to replace House Speaker Glen Casada, R-Williamson County, who is stepping down on August 2. Although the House Republicans nominated Rep. Cameron Sexton, R-Crossville, as the new leader on July 24, the legislature will still need to officially vote in Sexton during the one-day session, reports the [New Haven Register](#).

On July 23, West Virginia's House adjourned their special session sine die; the Senate adjourned the same day, subject to the call of the president.

The United States Congress is currently in summer recess.

### **Bill Signing Deadlines:**

Alaska Republican Gov. Mike Dunleavy has 20 days from delivery, Sundays excepted, to act on legislation or it becomes law without signature.

Arkansas Republican Gov. Asa Hutchinson has 20 days from presentment to act on legislation presented on or after April 18 or it becomes law without signature.

**Connecticut** Democratic Gov. Ned Lamont has 15 days from presentment 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.

**Florida** Republican Gov. Ron DeSantis has 15 days from presentment to act on legislation presented on or after April 27 or it becomes law without signature.

**Illinois** Democratic Gov. J.B. Pritzker has 60 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** Republican Gov. Matt Bevin has 10 days from presentment, Sundays excepted, to act on legislation or it becomes law without signature.

**Louisiana** Democratic Gov. John Bel Edwards has 20 days from presentment to act on legislation presented on or after May 27 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.

**Minnesota** Democratic Gov. Tim Walz has three days from presentment, Sundays excepted, to act on legislation or it becomes law without signature.

**Mississippi** Republican Gov. Phil Bryant has 15 days from presentment, Sundays excepted, to act on legislation presented on or after March 24 or it becomes law without signature.

**Montana** Democratic Gov. Steve Bullock has 10 days from presentment to act on legislation or it becomes law without signature.

**Nebraska** Republican Gov. Pete Ricketts has five days, Sundays excepted, to act on legislation or it becomes law without signature.

**North Dakota** Republican Gov. Doug Burgum has 15 days from presentment, Saturdays and Sundays excepted, to act on legislation or it becomes law without signature.

**Rhode Island** Democratic Gov. Gina Raimondo has six days from presentment, Sundays excepted, to act on legislation or it 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 presented on or after May 3 or it becomes law without signature.

**Tennessee** Republican Gov. Bill Lee has 10 days starting the day after presentment, Sundays excepted, to act on legislation or it becomes law without signature.

**Vermont** Republican Gov. Phil Scott has five days from presentment, Sundays excepted, to act on legislation or it becomes law without signature.

The following states are currently holding 2019 interim committee hearings:

[Alabama](#), [Colorado](#), [Connecticut](#), [Delaware](#), Georgia [House](#) and [Senate](#), [Idaho](#), Illinois [Senate](#), [Iowa](#), [Indiana](#), [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](#).

The following states are currently posting 2019 bill drafts, pre-files and interim studies:

Alabama [House](#), [Arkansas](#), [Kentucky](#), [Nebraska](#),  
Oklahoma [House](#) and [Senate](#), [Oregon](#), [Tennessee](#),  
[Utah](#) and [West Virginia](#). ■

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