

# GOVERNMENTAL AFFAIRS WEEKLY REPORT

## Weekly Highlights At-A-Glance

### FEDERAL – Legislative

**S. 180 – Oil and Gas Permitting.** (*Update to 2/11/19 Weekly Report*). After languishing in the Senate since early 2019, S. 180, an oil and gas permitting bill, was subject to a [U.S. Senate Committee on Energy and Natural Resources hearing on September 16](#), reviving its prospects for consideration. Originally introduced by Sen. John Hoeven (R-ND) on January 17, the bill would “streamline the oil and gas permitting process and to recognize fee ownership for certain oil and gas drilling or spacing units.” The legislation provides that a Bureau of Land Management drilling permit shall not be required under the Federal Oil and Gas Royalty Management Act of 1982 or related regulations for an action occurring within an oil and gas drilling or spacing unit if: (1) less than 50 percent of the minerals within the oil and gas drilling or spacing unit are minerals owned by the Federal Government; and (2) the Federal Government does not own or lease the surface estate within the boundaries of the oil and gas drilling or spacing unit. [Read more.](#)

**S. 4041 - Save American Vital Energy Jobs Act.** On September 9, official bill text was made available for [S. 4041, known as the Save American Vital Energy Jobs Act or the SAVE Jobs Act](#). The measure, originally released by Sen. John Cornyn (R-TX) in late June, “extends energy-related tax provisions and expands incentives for job creation in the energy sector during the COVID-19 (i.e., coronavirus disease 2019) emergency period.” According to Sen. Cornyn, the bill would allow more carbon capture projects to break ground by extending the commence construction window for the 45Q tax credit by one-year. It also allows energy companies to build liquidity by suspending certain capitalization rules, allowing immediate expensing of certain direct and

indirect costs, such as inventory, that would otherwise be required to be capitalized in 2020. The bill also reduces the required deposit of certain motor fuel excise taxes paid every two weeks from 95% to 25%, without reducing the total tax liability these companies owe the government; and allows oil and gas companies to expense 100% of the cost of intangible drilling costs in 2020. The bill also provides immediate relief to those with federal leases by streamlining “existing authority to grant lease extensions, suspensions of production, and suspensions of operations during the pandemic.” The bill also simplifies the existing process for royalty rate reductions “to provide more timely relief during the pandemic” and also “delays the deadline for recalculation of royalty payments” under the [2016 Office of Natural Resources Revenue Valuation Rule](#) until July 1, 2022. [Read more.](#)

### FEDERAL – Regulatory

**BLM Oil and Gas Site Security, Oil Measurement, and Gas Measurement Regulations.** On September 10, the Bureau of Land Management (BLM) published a proposed rule, *Oil and Gas Site Security, Oil Measurement, and Gas Measurement Regulations* ([85 Fed. Reg. 55940](#)) to begin the process of revising the trio of Obama-era onshore operations regulations: (1) *Onshore Oil and Gas Operations; Federal and Indian Oil and Gas Leases; Site Security* ([81 Fed. Reg. 81365](#)); (2) *Onshore Oil and Gas Operations; Federal and Indian Oil and Gas Leases; Measurement of Oil* ([81 Fed. Reg. 81462](#)); and (3) *Onshore Oil and Gas Operations; Federal and Indian Oil and Gas Leases; Measurement of Gas* ([81 Fed. Reg. 81516](#)). Collectively, the BLM refers to these three rules as the “2016 Final Rules.” With the *Oil and Gas Site Security, Oil Measurement, and Gas Measurement Regulations* proposed rule, “the BLM is

seeking to reduce the regulatory burdens associated with the 2016 Final Rules while maintaining appropriate safeguards to ensure production accountability. While the proposed revisions would streamline, reduce, or eliminate some of the burdens associated with the 2016 Final Rules, the BLM believes that the [...] revisions strike an appropriate balance and would not compromise the government's ability to ensure accurate and reliable royalty collection." The BLM public comment period runs through November 9, 2020. In addition, the BLM will host virtual public information meetings "where the agency will be available to answer clarifying questions regarding the regulations up to four hours per session." [Click here for more information and to register for one of the sessions](#) to be held on September 29 and 30, and October 1, 2020. [Read more.](#)

#### **BLM Oil and Gas Lease Sale – New Mexico.**

On September 14, the BLM New Mexico State Office announced a public comment period on the environmental analysis for its upcoming January 14, 2021 oil and gas lease sale. There are 33 parcels (6,442.36 acres) of federal minerals proposed for lease. The parcels in New Mexico include six in Eddy County and 26 in Lea County. There is one parcel in Wise County, Texas. The public comment period is open through September 25, 2020. [Read more.](#)

**BLM Oil and Gas Lease Sale – Wyoming.** *(Update to 6/22/20 Weekly Report)* On September 11, the BLM announced the cancellation of its upcoming September oil and gas lease sale for Wyoming, with the exception of eight parcels. This follows a cancellation of the June sale for which the BLM provided no public explanation except from Courtney Whiteman, a spokeswoman for BLM's Wyoming office, who originally confirmed the June delay and said those parcels would be wrapped into a September sale but Whiteman did not give a reason for the postponement. The September cancellation notice does reference that "BLM Wyoming is in the process of developing a strategy which will meet the leasing prioritization management requirement set

forth in the 2015 Greater Sage-Grouse land management plan revisions and amendments." A [follow-up BLM notice](#), released September 14, notes as to the June parcels, "The deferred parcels will be offered for sale on the first available quarterly lease sale following implementation of a new BLM WY leasing prioritization strategy." [Read more.](#)

**BLM Cost Recovery Fees.** *(Update to 11/18/19 Weekly Report)* On September 15, the BLM published a notice which serves as a reminder that the cost recovery rule finalized in 2019 is effective October 1, 2020. The rule updates the cost recovery fees that the BLM charges for processing certain actions undertaken by its mineral programs. Per the notice, "Specifically, this final rule updates the fees charged to recover costs incurred in processing certain documents associated with oil, gas, coal, and solid mineral activities on public lands, including fees associated with mineral patent adjudications. Consistent with updates to the fee schedules in prior years, this final rule increases the fee schedule based on inflation." For background, on November 6, 2019, 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 and notes fee increases are negligible and in some cases remain unchanged for Fiscal Year 2020. [Read more.](#)

**EPA Methane Regulations Amendments – Washington, DC.** On September 15, the U.S. Environmental Protection Agency (EPA) published its final rule, *Oil and Natural Gas Sector: Emission Standards for New, Reconstructed, and Modified Sources Reconsideration* ([85 Fed. Reg. 57398](#)), known as the "Inspection Rule," which amends Obama-era New Source Performance Standards (NSPS) unfavorable to the oil and gas industry. This EPA rule relaxes "requirements for oil and gas operators to monitor emissions leaks. This Rule excludes low production well sites (where the total combined oil and natural gas production for the well

site is at or below 15 barrels of oil equivalent per day') from fugitive emissions monitoring, as long as operators maintain records to demonstrate well production remains at or below the requisite threshold. Additionally, all fugitive emissions monitoring may stop when all major production and processing equipment is removed from the well site," according to law firm Reed Smith LLP. The day before, the EPA also published a second methane final rule, *Oil and Natural Gas Sector: Emission Standards for New, Reconstructed, and Modified Sources Review* ([85 Fed. Reg. 57018](#)), known as the "Methane Policy Rule," and which also rescinds Obama-era NSPS rulemaking. According to the EPA, "These amendments remove sources in the transmission and storage segment from the source category, rescind the NSPS (including both the volatile organic compounds (VOC) and methane requirements) applicable to those sources, and separately rescinds the methane-specific requirements of the NSPS applicable to sources in the production and processing segments."

[Read more.](#)

**Offshore Leasing – Florida; Georgia; South Carolina.** On September 8, President Trump issued an [Executive Memorandum](#) to the Secretary of the Interior expanding a ban on offshore oil development on Florida's Gulf Coast, and expanding it to the state's Atlantic coast as well as the coasts of Georgia and South Carolina until mid-2032, which is a decade longer than drilling is currently delayed off Florida's Gulf Coast. "I will sign a presidential order extending the moratorium on offshore drilling on Florida's Gulf Coast and expanding it to Florida's Atlantic Coast as well as the coasts of Georgia and South Carolina," said Trump during an appearance in Florida. [According to reports](#), a "congressionally passed offshore drilling moratorium protects Florida's gulf waters from offshore drilling until mid-2022. The state's House delegation has tried to extend that, pushing through legislation that would permanently block drilling near the state, though it has yet to be considered by the Senate." [Read more.](#)

## **FEDERAL – Judicial**

### **EPA Methane Regulations – Washington, DC.**

On the same day the EPA published its final rule (see above), *Oil and Natural Gas Sector: Emission Standards for New, Reconstructed, and Modified Sources Review* ([85 Fed. Reg. 57018](#)), known as the "Methane Policy Rule," 19 states, the District of Columbia, and various localities filed a Petition for Review in the U.S. Court of Appeals for the District of Columbia seeking to block the final rulemaking which upends Obama-era methane regulations unfavorable to the oil and gas industry. In [State of California v. Wheeler](#) (Case No. 20-01357), the litigants allege among other claims "that EPA's new policy on methane emissions violates the federal Clean Air Act, saying they arbitrarily eliminate pollution controls from storage and transmission, and entirely abandon regulation of methane without any justification." On September 14, environmental activist groups also brought their own Petition for Review seeking to halt the newly finalized EPA regulations in [Environmental Defense Fund v. Wheeler](#) (Case No. 20-1359). In a late-breaking development, [a three-judge panel has temporarily paused the new EPA rulemaking](#), preventing the Obama-era rollback from taking effect for the time being. The judges issued a "procedural pause on the rule called an administrative stay while the court decides whether to halt it for a longer period of time." The pause comes as part of the above-mentioned litigation. The panel wrote, however, that the order "should not be construed in any way as a ruling on the merits" of whether to grant the longer pause. According to The Hill, an "EPA spokesperson declined to comment on the pause, saying the agency doesn't comment on pending litigation." [Read more.](#)

**ANWR Development Plan – Alaska.** On September 9, attorneys general representing 15 states filed suit against the Trump administration over its plan to open up nearly 1.6 million acres of the Coastal Plain area in the Arctic National Wildlife Refuge (ANWR) to oil and gas development. "This plan was rushed, it's incredibly flawed, there were more than 1 million



public comments against it, it fails to fully evaluate and consider the devastating environmental impacts of opening up the coastal plain and it will corrupt one of our nation's most pristine and uniquely important habitats," said Massachusetts Attorney General Maura Healey (D). According to the suit in [State of Washington v. Bernhardt](#) (Case No. 3:2020-cv-00224), the Trump administration conducted an "inadequate environmental review" and issued "an unlawful Record of Decision." The suit claims the deficient review "failed to take a hard look at impacts on greenhouse gas emissions and climate" and "failed to take a hard look at impacts on migratory birds," among other issues. The suit comes after the administration announced in August that it would open up the entire Coastal Plain area to oil and gas development. [Read more.](#)

**Methane Regulations – California.** (*Update to 7/27/20 Weekly Report*) On September 14, the Interior Department, Bureau of Land Management, and state of Wyoming, along with industry groups such as the American Petroleum Institute, Independent Petroleum Association of America, and Western Energy Alliance filed notice to the U.S. District Court for the Northern District of California that they were seeking review of the court's July 15 ruling before the U.S. Court of Appeals for the 9th Circuit. For background, on July 15, the U.S. District Court for the Northern District of California overturned the Trump administration's 2018 rescission of the 2016 Obama-era Waste Prevention Rule. This decision arises from consolidated cases, [California v. Bernhardt and Sierra Club v. Bernhardt](#) (Case No. 4:18-cv-05712-YGR), involving industry groups and the states of Wyoming and Montana, and later joined by North Dakota and Texas. The states of California and New Mexico also intervened along with environmental activists to uphold the Obama-era rule. Calling the BLM's rulemaking process "wholly inadequate," the Court found the BLM failed to properly repeal the rule. "In its haste, BLM ignored its statutory mandate under the Mineral Leasing Act, repeatedly failed to justify numerous reversals in policy positions previously taken, and failed to consider scientific findings and institutions relied

upon by both prior Republican and Democratic administrations," wrote U.S. District Court Judge Yvonne Gonzalez Rogers in her opinion. According to reports, if this case is upheld it "will effectively reinstate stricter pollution controls aimed at reducing the flaring, venting and leaking of natural gas." [Read more.](#)

## **STATE – Legislative**

### **Well Notifications; Oil Discharge – California.**

(*Update to 7/27/20 Weekly Report*) On September 15, AB 3214 was transmitted to Gov. Gavin Newsom (D) after passing the legislature for the session ended in August. Under existing law it is a felony to, "among other things, knowingly engage in or cause the discharge or spill of oil into waters of the state, or knowingly fail to begin cleanup, abatement, or removal of spilled oil, as specified" and "makes this crime punishable by a fine of not less than \$5,000 or more than \$500,000 for each day or partial day a violation occurs." Additionally, existing law "makes it a felony to, among other things, fail to notify the Office of Emergency Services regarding an oil spill or to knowingly fail to follow the material provisions of an applicable oil spill contingency plan. Existing law makes this crime punishable by a fine of not less than \$2,500 or more than \$250,000 for each day or partial day a violation occurs for a first conviction, and by a fine of not less than \$5,000 or more than \$500,000 for each day or partial day a violation occurs for a 2nd conviction." This bill, sponsored by Asm. Monique Limón (D), "would double the minimum and maximum amounts of the fines described above. The bill would authorize the court to also impose upon a person convicted of, among other things, knowingly engaging in or causing the discharge or spill of oil into waters of the state, or knowingly failing to begin cleanup, abatement, or removal of spilled oil, as specified, a fine of up to \$1,000 per gallon spilled in excess of 1,000 gallons of oil." The governor has until September 30 to sign or veto legislation in his possession or a bill becomes law without his signature. [Read more.](#)



The **New Hampshire** House adjourned on September 16.

**Virginia** convened a special session special on August 18 to address police reform, reports the [Richmond Times-Dispatch](#). The special session is currently in recess.

**South Carolina** convened a special session to deal with the state budget on September 15, reports [ABC 4](#).

**Minnesota** adjourned a special session on September 11 after Democratic Gov. Tim Walz's emergency declaration and powers were extended for another 30 days, the [Star Tribune](#) reports.

**Missouri** adjourned a special session on September 16 without passing a number of Republican Gov. Mike Parson's proposals to reduce violent crime, the [News Tribune](#) reports. Governor Parson expects to call another special session relating to the budget in October.

**Signing Deadlines** (by date): **Oregon** Democratic Gov. Kate Brown has until September 21 to act on legislation or it becomes law without signature. **California** Democratic Gov. Gavin Newsom has until September 30 to act on legislation or it becomes law without signature. **North Carolina** Democratic Gov. Roy Cooper has until October 2 to act on legislation or it becomes law on October 12. **Missouri** Republican Gov. Mike Parson has until October 31 to act on legislation from the most recent special session or it becomes law. **New York** Democratic Gov. Andrew Cuomo has until February 5, 2021 to act on legislation or it is pocket vetoed. **Delaware** Democratic Gov. John Carney has 30 days after the final adjournment, which typically occurs immediately prior to the beginning of the next session, to act or it is pocket vetoed. **Idaho** Republican Gov. Brad Little has 10 days from presentment, Sundays excepted, to act on legislation or it becomes 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.

**Utah** Republican Gov. Gary Herbert had a signing deadline on September 9. **Hawaii** Democratic Gov. David Ige had a signing deadline on September 15.

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

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

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