

# GOVERNMENTAL AFFAIRS WEEKLY REPORT

## Weekly Highlights At-A-Glance

### FEDERAL – Legislative

**Congressional Summer Recess.** The U.S. House of Representatives and U.S. Senate have been in summer recess and are back in session as of September 9, 2019. [Read more.](#)

### FEDERAL – Regulatory

**BLM Oil and Gas Lease Sale – Utah.** On September 3, the San Juan County Commission voted 2-1 to oppose a [September 10, 2019 oil and gas lease sale](#) on land maintained by the Bureau of Land Management (BLM) near Hovenweep National Monument. The [Resolution](#) (see page 40) calls on the BLM to “defer the sale to prevent the degradation of cultural heritage resources, dark skies, natural resources, visitor experience, water quality, and air quality in the area.” The BLM has yet to respond to the commission vote or alter its planned sale in response to the resolution that is non-binding on BLM activity. [Read more.](#)

**BLM Oil and Gas Lease Sale – Utah.** On August 29, the BLM announced that it proposes to offer 24 parcels, totaling nearly 13,420 acres, at the December 10, 2019 quarterly oil and gas lease sale. The parcels are located on BLM-managed lands in the Canyon Country, Color Country and Green River districts. The notice opens up a 30-day public comment period that ends September 30, 2019. [Read more.](#)

**BLM Resource Advisory Council – Utah.** On August 30, the BLM, published a [Notice of Public Meetings, Utah Resource Advisory Council, Utah](#) (84 Fed. Reg. 45800) for the next Utah Resource Advisory Council (RAC) meeting on October 29-30, 2019. The RAC meetings provide a forum for public

comment on issues involving natural resource development, among other BLM issues. This meeting will also address the newly-drawn resource management plan for Grand Staircase-Escalante National Monument, which expanded the area to greater oil and gas development. The meeting will take place from 1 p.m. to 5 p.m. on October 29th and 8 a.m. to 5 p.m. on October 30th and be held at the John Wesley Powell River History Museum, 765 E. Main Street, Green River, Utah 84525. For more information, please contact Lola Bird, Public Affairs Specialist, BLM Utah State Office, 440 West 200 South, Suite 500, Salt Lake City, Utah 84101; phone (801) 539-4033; or email: [lbird@blm.gov](mailto:lbird@blm.gov). [Read more.](#)

**BLM Oil & Gas Leasing – Wyoming.** On August 19, the Wyoming congressional delegation – U.S. Senators Mike Enzi (R) and John Barrasso (R) and Congresswoman Liz Cheney (R) – [delivered a letter](#) to Secretary David Bernhardt, U.S. Department of the Interior, to inquire about what steps the agency was taking to ensure that future development on federal oil and gas leases in Wyoming are allowed to continue without interruption. The inquiry follows on the heels of a court decision in March which halted drill permitting on Wyoming oil and gas leases. For background, on March 19, 2019, a federal district court judge issued a memorandum opinion in [Wild Earth Guardians v. Zinke](#) (Case No. 16-724), stating that the BLM did not adequately complete climate reviews for a series of Obama-era oil and gas lease sales. The Court remanded the issue back to the BLM and said that “the BLM must complete a more robust environmental analysis to predict greenhouse gas emissions linked to drilling and downstream uses of the oil and gas from Wyoming leases.” In their letter, the Wyoming delegation urges action, noting that “it is imperative that [Department of the

Interior] continue to expeditiously and thoroughly complete its analyses.” [Read more.](#)

**EPA Methane Emissions Regulations.** On August 28, the U.S. Environmental Protection Agency (EPA) proposed rescinding methane emissions limits for the production and processing segments of the oil and gas industry, among other regulatory rollbacks. Specifically, the Trump administration rule would reverse 2016 regulations imposed by the Obama administration which required oil and gas companies to install technologies to inspect and repair wells, pipelines, and storage facilities that leak methane. According to the EPA, the rule change would save the oil and gas industry \$17 to \$19 million a year from 2019 through 2025. The American Petroleum Institute, Independent Petroleum Association of America, and Interstate Natural Gas Association of America immediately welcomed the proposed changes. The EPA will soon publish their proposed rule, [Oil and Natural Gas Sector: Emission Standards for New, Reconstructed, and Modified Sources Review](#), in the Federal Register, which will open up a 60-day comment period. [Read more.](#)

**Oil and Gas Leasing Environmental Impact Statement – Texas.** On August 27, the U.S. Forest Service published its notice, [National Forests and Grasslands in Texas: Oil and Gas Leasing Availability Analysis Environmental Impact Statement](#) (84 Fed. Reg. 44843), to initiate the preparation of an environmental impact statement (EIS). The EIS will analyze and disclose the effects of identifying areas as available or unavailable for new oil and gas leasing. The proposed action identifies the following elements: What lands will be made available for future oil and gas leasing; what stipulations will be applied to lands available for future oil and gas leasing, and if there would be any plan amendments to the 1996 NFGT Revised Land and Resource Management Plan (Forest Plan). Public comments concerning the scope of the analysis must be received by October 11, 2019. The draft EIS is expected in the winter of 2019, and the final EIS is expected in the fall of 2020. [Read more.](#)

## **FEDERAL – Judicial**

### **Purchase and Sale Agreements – Pennsylvania.**

On August 12, in *Prime Energy & Chemical, LLC v. Tucker Arensberg, P.C.* (Case No. 2:18-CV-00345), defendants sought to dismiss a case where plaintiffs alleged certain fraudulent representations were made pursuant to a Purchase and Sale Agreement (PSA) in the acquisition of Pennsylvania oil and gas property, an existing oil and gas lease, existing wells on the property, and the rights for the drilling of future wells. As part of the allegations, the plaintiff claims that the defendants misrepresented the true owners of the property, and also concealed pending litigation that affected the property and which would have affected PSA negotiations if known. In denying the defendants’ motion to dismiss the case, the Court held that “Plaintiff has averred that the alleged misrepresentation regarding other actions involving the Property was material to its entry into the PSA and monetary payments made in connection therewith, and had these actions been made known, Plaintiff would not have engaged in the transactions described in the second amended complaint.” As such, the U.S. District Court for the Western District of Pennsylvania allowed the case to proceed. [Read more.](#)

## **STATE – Legislative**

**Franchise Tax – California.** On September 3, [SB 349](#), sponsored by Sen. Anthony Portantino (D), advanced to a third (final) reading in the Assembly. The measure already passed the Senate in May. The bill would reduce the minimum franchise tax for taxable years beginning January 1, 2020 and before January 1, 2025 based on the gross receipts of a corporation. The measure is intended to provide tax relief to corporate entities operating in the state. According to the bill’s author, “Small businesses are the backbone of California’s growing economy. Over 3.6 million of California’s small businesses account for more than 99% of the state’s employers and 45% of California’s exports. Existing law imposes an annual minimum franchise tax of \$800 on every corporation, which leaves many small businesses

struggling to afford this tax. This prohibitive tax stifles growth and job creation and prevents many small businesses from forming C corporations that would benefit their small business.” [Read more.](#)

**Regulatory Management – California.** *(Update to 8/26/19 Weekly Report)* On September 5, the Assembly voted in favor of final approval of [AB 1440](#), after passing the Senate on September 3. The bill, sponsored by Asm. Marc Levine (D), is now cleared for Gov. Gavin Newsom (D) to sign but has not yet been transmitted. The legislation, which passed the Assembly in May, revises the purpose of the state’s Division of Oil, Gas, and Geothermal Resources regarding supervision of the drilling, operation, maintenance, and abandonment of wells to remove references encouraging oil production and will now also have to take public health and the environment into consideration when reviewing new oil or gas drilling permits. However, one of the legislators supporting the bill said the measure does not seek to stymie the oil and gas industry. “This does not stop or discourage oil production,” said Sen. Bill Monning (D). “This puts human health and human safety at the top of the list. I don’t think anyone would disagree with that priority.” However, Senate Republican Leader Shannon Grove, whose Bakersfield-area district produces about 75% of the state’s oil, cautioned that “when California can’t produce its own oil and gas, it must import from Iraq, Saudi Arabia, and elsewhere. About 200 vessels bring supplies from overseas each year, with every load costing approximately \$120 million apiece,” she said. “Think about where our oil comes from when we don’t produce it here.” [Read more.](#)

**Notice Requirements – California.** On August 30, [AB 1328](#) was ordered to a third reading in the Senate. The bill, sponsored by Asm. Chris Holden (D), already passed the Assembly in May. The measure would standardize the valid period for notices of intention approved by the Division of Oil, Gas, and Geothermal Resources to two years, and requires a study of the emissions from idle, idle-deserted and abandoned wells to be conducted and reported on or by January 1, 2023. Specifically,

the bill “requires the operator of any oil or gas well, before commencing the work of drilling the well, to file, as specified, a written notice of intention to commence drilling. Drilling shall not commence until the notice is approved. If operations have not commenced within 24 months of receipt of the notice, the notice shall be deemed canceled, the notice shall not be extended, and the cancellation shall be noted in the division’s records. However, for well abandonment operations, the written notice of intention is valid for a term of one year only.” The legislation also defines “an idle well as an oil and gas well that has not been used for two years or more and has not yet been properly plugged and abandoned to the division’s satisfaction, as specified, and defines an idle-deserted well as an idle well where no party responsible for the oil or gas well can be found.” [Read more.](#)

**Independent Contractors – California.** *(Update to 8/26/19 Weekly Report)* On September 6, [AB 5](#) was once again amended and has now moved to a second reading in the Senate. The August 30, [amendments](#) made certain clarifications regarding the application of the “ABC test” to whether a worker is an employee or independent contractor. [Further amendments](#) made on September 6 allow for injunctive relief for employee misclassification. To recap from earlier reports, the bill, sponsored by Asm. Lorena Gonzales (D), would codify the state Supreme Court case [Dynamex Operations West, Inc. v. Superior Court of Los Angeles](#) and clarify its application in a case specific to delivery drivers and does not address work performed by landman, but is however instructive on California wage law and employment classification. According to *Forbes*, the *Dynamex* decision saw the court adopt a standard that presumes that all workers are employees instead of independent contractors. The bill would apply the “ABC test” to the Labor Code and Unemployment Insurance Code for instances when a definition of employee is not otherwise provided but exempts specified professions including a securities broker dealer and a direct sales salesperson. The recent amendment would exempt additional professions, including a real



estate license holder and a worker providing hairstyling or barbering services. [Read more.](#)

**Oil and Gas Regulations – Colorado.** Last week, Adams County became the first in Colorado to implement stricter regulations over oil and gas operations in the wake of the enactment of the comprehensive oil and gas regulatory bill, [SB 19-181](#), which was signed into law earlier this year, and with which AAPL was heavily engaged. On September 3, the Adams County Board of Commissioners voted unanimously to adopt [sweeping new rules](#) for oil and gas companies operating in unincorporated areas of the county. “The new Adams County rules adopted Tuesday limit where oil and gas companies can drill, including requiring a minimum 1,000 feet setback between oil and gas drilling and homes, schools and daycare centers. But if applicants can't meet all the necessary criteria, including the setback, they can also go through a public hearing process that could lead to a waiver of some of the requirements.” According to reporting, at the Commission hearing “commissioners heard from representatives from the oil and gas industry, including Extraction Oil and Gas and Great Western Petroleum. The industry has been unanimously opposed to the rules, saying they will essentially ban drilling in much of Adams County.” After approving the new rules, “the Colorado Petroleum Council said it was pleased with some of the changes made to the original proposal but not with the final product.” According to Executive Director, Lynn Granger, “One of our primary concerns with Adams County’s new code is that it would regulate downhole activity, which is explicitly beyond the scope of the newly-minted state law.” [Read more.](#)

**Notaries Public – Illinois.** (*Update to 6/3/19 Weekly Report*) On August 23, Gov. J.B. Pritzker (D) signed HB 2176 into law. The legislation amends the Illinois Notary Public Act to require every notary public who is not an attorney or an accredited immigration representative to, prior to rendering notary services, provide a person seeking notary services with a written acknowledgment and the new law provides the requisite contents for such an acknowledgment

as well as procedures related to the retention of acknowledgments. The Act also modifies the required disavowal of legal representation notice and amends the notice requirement penalties to increase the fine from \$1,000 to \$1,500 for the failure of a notary public to follow the provided requirements. Since the bill sponsors did not provide for an effective date, under Illinois law the measure will be effective January 1, 2020. [Read more.](#)

**Independent Contractors – Illinois.** On August 9, Gov. J.B. Pritzker (D) signed a comprehensive bill package into law, which extends workplace discrimination and harassment protections to now include “nonemployees,” which include “contractors and consultants,” *i.e.*, independent contractors. Specifically, the new law amends existing statutes “to extend protection from harassment to include nonemployees, which includes contractors, subcontractors, vendors, and consultants. Employers could be held liable for harassment that substantially interferes with a nonemployee’s work performance or creates an intimidating, hostile, or offensive working environment as members of a protected class. However, employers are only liable for harassment by a non-managerial and/or non-supervisory employee if the employer became aware of the conduct and failed to take reasonable corrective measures.” The legislation ([Public Act 101-0221](#)) takes effect January 1, 2020. [Read more.](#)

**Employee Misclassification – Michigan.** On August 29, Rep. Jim Haadsma (D) introduced HB 4877, which has been referred to the House Committee on Commerce and Tourism. The bill amends current labor and employment law to provide a definition of an “independent contractor” by applying a three-part test: “(i) The individual is free from control and direction of the payer in connection with the performance of the work, both under a contract and in fact; (ii) The individual performs work that is outside the usual course of the payer's business; and (iii) The individual is customarily engaged in an independently established trade, occupation, or business of the same work performed by the individual for the payer.” The bill also sets forth

the penalties for a violation of misclassifying an employee as an independent contractor. The Senate companion bill, [SB 486](#), was introduced by Sen. Curtis Hertel (D) on September 4. [Read more.](#)

**Dormant Mineral Interests – New Jersey.** On August 27, Assemblyman Ronald S. Dancer (R) introduced A.5767, which creates a process for the termination of dormant mineral interests. Specifically, the bill “would allow the surface owner of real property subject to a mineral interest to maintain a quiet title action to terminate a dormant mineral interest. A mineral interest is dormant for the purposes of the bill if the interest is unused for a period of 20 or more years and has not been preserved. Use of a mineral interest would include: (1) active mineral operations on or below the surface of the real property; (2) payment of taxes on a separate assessment of the mineral interest or of a transfer or severance tax relating to the mineral interest; (3) recording an instrument that creates, reserves, or otherwise evidences a claim to or the continued existence of the mineral interest; and (4) recording a judgment or decree that makes specific reference to the mineral interest.” The bill also provides for the owner of a mineral interest to record a document preserving their interest. If passed, the bill would take effect immediately. [Read more.](#)

## **STATE – Regulatory**

**Greater Sage-Grouse – Wyoming.** On August 21, Gov. Mark Gordon (R) issued [Greater Sage-Grouse Executive Order 2019-3](#), which “requires state agencies to use their authority to limit disturbance of key grouse habitat while allowing for mineral development, livestock grazing and other activities. It also requires developers to make up for unavoidable habitat loss in some instances.” The Order rejected calls for “expansion” of the bird’s population and habit, “making such actions voluntary in the statewide conservation plan.” Another key element of the order — “incentivizing and prioritizing development outside of core population areas” — seeks collaboration with federal agencies responsible

for authorizing oil and gas leasing and other land use activities. [Read more.](#)

## **STATE – Judicial**

**Keystone XL Pipeline – Nebraska.** On August 23, the Nebraska Supreme Court unanimously approved the Keystone XL Pipeline’s passage through Nebraska — clearing a major hurdle in the long-contested project. In [IN RE APPLICATION NO. OP-0003 \(TransCanada\)](#) (8/23/2019; Case No. S-17-1331), the Court upheld a 2017 decision by the state Public Service Commission which had approved the project, but that decision received heavy pushback from environmentalists, several Indian tribes, and various landowners. Now given the green light, Keystone XL has moved closer to transporting up to 830,000 barrels of crude oil per day from Canada, through Nebraska, and down to refineries in the Gulf Coast region. “We’re hopeful that this decision will be the push needed to finally get this important energy project completed,” said the American Petroleum Institute in a statement. However, the project still faces a federal lawsuit in Montana that seeks to block construction in that state. [Read more.](#)

## **INDUSTRY NEWS FLASH**

### **► Ohio oil production up nearly 10% in 2019.**

On September 3, the Ohio Department of Natural Resources (ODNR) reported that crude oil production from horizontal well shale plays increased at a higher rate in 2019 year-over-year, and at a higher rate than natural gas production. As of the latest ODNR reporting, year-to-date shale oil production in the Buckeye State is up 9.54% over last year. [Read more.](#)

## **LEGISLATIVE SESSION OVERVIEW**

California, Massachusetts, Michigan, New Jersey, North Carolina, Ohio and Wisconsin are in regular session. California, Massachusetts, Michigan, New Jersey, North Carolina, Ohio and Wisconsin are in regular session. Puerto Rico is also in regular session.

The **United States** Congress is in recess until September 9. The **District of Columbia** Council is in recess until September 16. The **New Hampshire** House is in recess until September 18; the Senate is scheduled to return on September 19. **Pennsylvania** is in recess until September 23. **New York** is in recess subject to the call of the chair.

**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.

**California** is scheduled to adjourn its legislative session on September 13.

**Missouri** Republican Gov. Mike Parson [announced](#) a limited, technical special session to take place on September 9, which will run into the veto session scheduled to begin on September 11. The session was called to address an inadvertent consequence of the state's tax law, which has been interpreted by the Missouri Supreme Court to restrict the number of vehicle trade-ins that can be used to calculate sales tax on a new vehicle, reports [Missourinet](#).

**North Carolina's** legislative session continues on with no clear adjournment date as lawmakers and Democratic Gov. Roy Cooper continue to wrestle over piecemeal budget compromises and Medicaid expansion. [The News and Observer](#) reports that both chambers plan on breaking for a week before returning September 9 to consider another round of 'mini' budgets.

The following states are currently holding 2019 interim committee hearings: [Alabama](#), [Alaska](#), [Arizona](#), [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](#).

The following states are currently posting 2019 bill drafts, pre-files and interim studies: [Alabama House](#), [Arkansas](#), [Florida House](#) and [Senate](#), [Iowa](#), [Kentucky](#), [Nebraska](#), [Oklahoma House](#) and [Senate](#), [Oregon](#), [Tennessee](#), [Utah](#) and [West Virginia](#). ■

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