

# GOVERNMENTAL AFFAIRS WEEKLY REPORT

## Weekly Highlights At-A-Glance

### FEDERAL – Legislative

**Chaco Cultural Heritage Area Protection Act of 2019 – H.R. 2181.** (*Update to 5/20/19 Weekly Report*) On October 4, [H.R. 2181](#), known as the *Chaco Cultural Heritage Area Protection Act of 2019*, was reported favorably out of the House Committee on Natural Resources. The bill, sponsored by Rep. Ben Ray Lujan (D-NM), would “withdraw the federal lands around Chaco Canyon from further mineral development. The bill, alongside anticipated actions from State Land Commissioner Stephanie Garcia Richard, would help ensure the protection of Chaco ruins and the greater landscape surrounding the Chaco Culture National Historical Park by preventing any future leasing or development of minerals owned by the U.S. government that are located within an approximately 10-mile protected radius around Chaco.” The Senate companion bill, [S. 1079](#), introduced by Sen. Tom Udall (D-NM), has not moved since its committee referral in May. Should H.R. 2181 pass the House, it is unlikely to move forward in the Republican-controlled Senate. [Read more.](#)

### FEDERAL – Regulatory

**BLM Drilling Permit Fees.** On October 9, the Bureau of Land Management (BLM) announced the annual adjustment for inflation for drilling permit (APD) fees it charges to process oil and gas drilling permits on public and Indian lands. The adjustment increases the fee by \$180. Congress established the fee and directed the BLM to adjust the APD fee annually for inflation over 10 years as part of the National Defense Authorization Act for Fiscal Year 2015. [Read more.](#)

**BLM California State Director.** On October 9,

the BLM announced the appointment of their new California State Director, Karen Mouritsen, who is a long-serving public lands veteran, having most recently served as the State Director for the BLM Eastern States Office, which manages BLM lands and minerals in 22 states along and east of the Mississippi River. Mouritsen, who is a Dallas native, received her bachelor's degree from the University of Texas at Austin College of Engineering in 1983. She earned her Juris Doctor degree at the University of Texas at Austin Law School in 1992 before launching her federal career. Mouritsen also served as an attorney advisor in the Interior Department's Office of the Solicitor for 10 years. Mouritsen will report to work in Sacramento in January 2020. [Read more.](#)

**Offshore Lease Sale.** On October 7, the U.S. Department of the Interior announced that it is looking to offer roughly 78 million acres in the Gulf of Mexico for an oil and gas lease sale in March 2020. “The sale would include all available unleased areas in federal waters of the Gulf of Mexico that are not subject to Congressional moratorium.” Specifically, [Lease Sale 254](#), will include approximately 14,585 unleased blocks, located from three to 231 miles offshore, in the Gulf's Western, Central and Eastern planning areas in water depths ranging from nine to more than 11,115 feet. “Offshore energy development is about furthering America's energy security, ensuring fair market value to the taxpayers, and producing domestic energy in an environmentally responsible manner,” said Acting Assistant Secretary Casey Hammond. [Read more.](#)

### FEDERAL – Judicial

**BLM Leasing Plan – Colorado.** On October 8, environmental activists filed a lawsuit against the BLM challenging the Resource Management Plan for

the Grand Junction planning area, which includes over one million acres of BLM-administered surface land in western Colorado and 1.2 million acres of BLM-managed federal mineral estate including lands in Garfield, Mesa, Montrose, and Rio Blanco counties. The plaintiffs in [\*Center for Biological Diversity v. U.S. Bureau of Land Management\*](#) (Case No. 1:19-cv-02869) claim the plan failed “to consider the climate impacts of foreseeable oil and gas development when it comes to indirect impacts resulting from the combustion of that oil and gas.” The lawsuit also alleges that the environmental impact statement “failed to take a hard look at the cumulative climate impacts of the foreseeable development when considered in combination with the BLM’s nationwide oil and gas program, or look at management alternatives that would meaningfully limit oil and gas leasing and development.” The government has yet to respond to the litigation. [Read more.](#)

#### **Greater Sage-Grouse Plan – Western States.**

(*Update to 8/12/19 Weekly Report*) A federal judge has temporarily blocked the implementation of the Trump administration’s updated Greater Sage-Grouse plan. As reported in an earlier Weekly Report, on August 1, the BLM and U.S. 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 were expected to relax prior land management plans and allow for greater development. Specifically, the amended plan proposes to eliminate the strictest barriers put in place in 2015 by the Obama administration which blocked much new development in “focal areas.” However, on October 16, in [\*Western Watersheds Project v. Schneider\*](#) (Case No. 1:16-cv-00083-BLW), the U.S. District Court for the District of Idaho granted environmentalist-plaintiffs a preliminary injunction, temporarily halting implementation of the updated 2019 BLM Sage-Grouse Plan Amendments. The Court found that the BLM “failed to properly analyze the effects of its plan to facilitate more economic activity on more than 51 million acres of sage grouse habitat across seven

western states.” The Court is ordering that energy development, mining and construction in Greater Sage-Grouse habitats be halted while the two sides argue the merits of the case. We will keep you updated with further developments as the case progresses. [Read more.](#)

#### **Leasing; Post-Production Costs – Pennsylvania.**

On September 6, in *Pflasterer v. Range Resources – Appalachia, LLC* (Case No. 2:18-CV-1437-SPB), the U.S. District Court for the Western District of Pennsylvania addressed certain motions to dismiss in a dispute over royalty payments, specifically the deduction of certain post-production costs which the plaintiffs allege should have been capped based upon a prior settlement agreement. Here, the Court denied the defendant’s motion to dismiss on the alleged payment deficiency, holding that accepting the plaintiffs’ allegations as true “it can reasonably be inferred that discovery will reveal evidence of specific underpayments.” The Court also denied a motion to dismiss regarding certain lease terms applying to “natural gas” and “Wet Shale Gas,” finding that “Given the complexity of the underlying contractual dispute and the undeveloped state of the factual record, the Court finds it impracticable to render a dispositive ruling on [the] motion.” Finally, on the plaintiffs’ demand for an accounting of the defendant’s records to determine discrepancies in the calculation of royalty payments, the Court ruled in favor of Range Resources, “inasmuch as there is no independent stand-alone cause of action for a legal accounting, and no basis exists to support an equitable accounting.” [Read more.](#)

**Dunes Sagebrush Lizard – Washington, DC.** On October 1, environmental activists filed a lawsuit against the Interior Department and U.S. Fish and Wildlife Service (FWS) alleging failure by the government to protect the dunes sagebrush lizard, with habitats in southeast New Mexico and west Texas, pursuant to the Endangered Species Act. In [\*Defenders of Wildlife v. Bernhardt\*](#) (Case No. 1:19-cv-02936), the plaintiffs claim the oil and gas industry is threatening the lizard habitat. “In 2010, Fish and Wildlife found the lizard needed federal

protection because industry was threatening its habitat. But after then-Texas Comptroller Susan Combs worked with the oil and gas industry to create a voluntary conservation plan for companies, the agency backed away from listing the species.” Environmentalists call that plan “hastily drafted” and “inadequate.” Then “In December 2018, current Texas Comptroller Glenn Hegar rescinded the plan and announced a new plan was in development.” The plaintiffs say that it “is unclear whether the [new] plan would be adequate to protect the species.” Neither the Interior Department nor the FWS has yet responded to the complaint. [Read more.](#)

## **STATE – Legislative**

**Franchise Tax – California.** *(Update to 9/9/19 Weekly Report)* On October 13, Gov. Gavin Newsom (D) vetoed [SB 349](#). The bill, sponsored by Sen. Anthony Portantino (D), would have reduced 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 was intended to provide tax relief to corporate entities operating in the state. According to the bill’s author, “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.” In his [veto message](#), the governor expressed support for the measure but stated that “this proposal would be better addressed through the annual budget process.” [Read more.](#)

**Regulatory Management – California.** *(Update to 9/23/19 Weekly Report)* On October 12, Gov. Gavin Newsom (D) vetoed [AB 1440](#). The bill, sponsored by Asm. Marc Levine (D), would have revised 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 would have to take

public health and the environment into consideration when reviewing new oil or gas drilling permits. In the governor’s [veto message](#), he stated his opposition to the bill was due to it being “unnecessary and does not go far enough in protecting public health and safety.” [Read more.](#)

### **Abandoned Wells; Surety Bonds – California.**

*(Update to 9/23/19 Weekly Report)* On October 12, Gov. Gavin Newsom (D) signed [AB 1057](#) into law. This Act changes the name of the Division of Oil, Gas, and Geothermal Resources within the Department of Conservation to the Geologic Energy Management Division and specifies “that the purposes of provisions relating to oil and gas conservation include protecting public health and safety and environmental quality, including reduction and mitigation of greenhouse gas emissions associated with the development of hydrocarbon and geothermal resources in a manner that meets the energy needs of the state.” Specifically, the Act focuses on certain operator, well and facilities issues and “authorizes the division to require an operator filing an individual or blanket indemnity bond, as applicable, to provide an additional amount of security acceptable to the division based on the division’s evaluation of the risk that the operator will desert its well or wells and the potential threats the operator’s well or wells pose to life, health, property, and natural resources, and would prohibit that amount from exceeding the lesser of the division’s estimation of the reasonable costs of properly plugging and abandoning all of the operator’s wells and decommissioning any attendant production facilities, or \$30,000,000.” The Act also requires “the division, when making an estimation of the reasonable costs of properly plugging and abandoning an operator’s well or wells and decommissioning any attendant production facilities, to provide the operator with an opportunity to submit the operator’s own estimation and to consider specified factors,” among other related provisions. Since no effective date was provided, under California law the Act takes effect in January 2020. [Read more.](#)



**Careers in Energy – Michigan.** On October 10, Senate Resolution No. 84 was adopted. The measure, sponsored by Sen. Dan Lauwers (R), recognized October 14-18, 2019, as “Careers in Energy Week” to promote energy jobs in Michigan. During the week, the Michigan Energy Workforce Development Consortium was tasked with focusing “on energy career awareness through student tours, energy fairs, and other events to raise awareness about the many benefits of energy careers.”

[Read more.](#)

## **STATE – Regulatory**

**Well Setback Regulations – Colorado.** On October 17, the Colorado Oil & Gas Conservation Commission (COGCC) announced its response to the Colorado Department of Public Health and Environment’s (CDPHE) October 17 release of its oil and gas health effects study, “[Human Health Risk Assessment for Oil & Gas Operations in Colorado](#).” According to *Bloomberg News*, “Companies planning to drill wells within 2,000 feet (610 meters) of a home should now expect additional scrutiny from Colorado’s energy regulator, which will only approve those wells if they can be operated in a way that won’t adversely affect health.” The policy shift “comes after a study commissioned by the state’s health department found heightened risk of benzene exposure within 2,000 feet of drill sites.” The COGCC has adopted the assessment. “The study indicates the potential for short-term health impacts within the range of 2,000 feet,” said Jeff Robbins, COGCC Acting Director. The [COGCC announcement](#) details three next steps the regulator is taking: (1) Immediate Action on Permits under 2,000 Feet; (2) Determine Causation & Evidence-Based Decisions; and (3) Use the data to inform new rulemaking. For background, Colorado voters rejected last year’s ballot initiative that sought to impose a 2,500-foot buffer zone between drill sites and homes but the passage of [SB19-181](#) imposed sweeping oil and gas regulatory changes. [Read more.](#)

**Spacing Regulations – Ohio.** On October 10, revised regulations from the Ohio Department of

Natural Resources Division of Oil & Gas Resources Management (DOGRM) governing spacing of horizontal oil and gas production wells went into effect. Under the prior version of [Ohio Administrative Code §1501:9-1-04](#), which applied to both conventional and horizontal wells, “any oil and gas production well drilled into a pool located at least 4,000 feet in depth must be set back at least 500 feet from the boundary of the leased tract or drilling unit. That prior version of the rule also required a spacing of at least 1,000 feet between wells producing from the same pool.” The regulations were revised “to require only a 150 foot (+/- 10 percent) setback from the first and last ‘take points’ of a horizontal well and the boundary of the drilling unit or subject tract. This change is consistent with industry practice of seeking a setback variance at the heel and toe of horizontal wells in order to more fully develop a drilling unit. The revised regulations also reduce the required setback between the boundary of the drilling unit and the other take points in the well from 500 feet to 400 feet (+/- 10 percent). Finally, the revised regulations now provide no minimum spacing between horizontal wells within a ‘subject tract’ unless ‘adverse communication’ occurs between the wells and the subject tract. Again, these setback reductions should help achieve more complete production of resources within a drilling unit.” [Read more.](#)

## **STATE – Judicial**

**Permitting; State Regulations – Colorado.** On October 8 in [Wildgrass Oil and Gas Committee v. Colorado Oil and Gas Conservation Commission](#) (Case No. 2019-CV-33888), a Broomfield citizens group filed a complaint in the Denver District Court requesting a court order for “an immediate stay of all actions by the Colorado Oil and Gas Conservation Commission (COGCC) involving ‘permitting of any drilling, pooling, and spacing units until the COGCC rulemaking is completed.’” The group claims that the passage in April 2019 of Senate Bill 19-181 changed “the oil and gas regulatory mission of the COGCC so completely that no further permits should be issued until the agency proposes and ultimately

promulgates revised regulations to implement the changes to the statute that circumscribes the authority and duties of the agency." Specifically, the group says the applicable rules have "not been updated to include considerations such as public health, safety, welfare, environment and wildlife resources." [Read more.](#)

**Leasing; Lack of Production – Ohio.** On September 6, in *Nau v. Stonebridge Operating Co.* (Case No. 2019 Ohio 3647), the Ohio Court of Appeals (Seventh District), addressed an action seeking a declaratory judgment that an oil and gas lease expired under its own terms due to lack of production in paying quantities. The oil and gas lease at issue contained a habendum clause with a primary term of twenty years and a secondary term of indefinite duration, which continues "so much longer thereafter as oil, gas, or their constituents are produced in paying quantities, thereon, all of that certain tract of land." The defendants contended that the lessors failed to demonstrate a lack of production in paying quantities with respect to the entire leasehold. The Court held that "because the record contains undisputed evidence that the leasehold contained only one well, and the well did not produce any oil or gas for virtually six years," the lease had expired. [Read more.](#)

## INDUSTRY NEWS FLASH

► **Crude oil production hits new record.** According to new data from the U.S. Energy Information Administration, domestic crude oil production has hit a record high of 12.6 million barrels-per-day (bpd), up 200,000 bpd from the previous record. [Read more.](#)

► **Manhattan Institute Energy White Paper.** The Manhattan Institute published a white paper, *The "New Energy Economy": An Exercise in Magical Thinking*, which debunks many of the theories regarding clean energy and the near-term possibility of ending reliance on fossil fuels. (Hat tip to Briggs Donaldson who made this available to AAPL members.) [Read more.](#)

## LEGISLATIVE SESSION OVERVIEW

**Session Notes:** Massachusetts, Michigan, New Jersey, North Carolina, Ohio, Pennsylvania and Wisconsin are in regular session. The District of Columbia Council, Puerto Rico and the United States Congress are also in regular session. New Hampshire and New York are in recess subject to the call of the chair.

After months of negotiation gridlock, **North Carolina's** House Republicans voted to override Democratic Gov. Roy Cooper's budget veto on September 11 while many Democratic lawmakers were absent, reports [The News and Observer](#). The Senate calendar does not yet include a veto override; however, Senate President Phil Berger, R-Caswell, did state he will provide 24 hours' notice to the minority leader before calling the vote, reports [The News and Observer](#). The Senate is scheduled to adjourn on October 31, whereas the House session adjournment date remains unknown.

**Signing Deadlines:** Alaska Republican Gov. Mike Dunleavy has 20 days from delivery, Sundays excepted, to act on legislation or it becomes law without signature. **California** Governor Newsom had a signing deadline on October 13. **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.

**Interim Committee Hearings:** The following states are currently holding interim committee hearings: [Alabama](#), [Alaska](#), [Arizona](#), [California Assembly](#) and [Senate](#), [Colorado](#), [Connecticut](#), [Delaware](#), [Florida House](#), [Georgia House](#) and [Senate](#), [Hawaii](#), [Idaho](#), [Illinois Senate](#), [Indiana](#), [Iowa](#), [Kansas](#), [Kentucky](#), [Louisiana](#), [Maine](#), [Maryland](#), [Mississippi House](#) and [Senate](#).

Missouri [House](#) and [Senate](#), [Montana](#), [Nebraska](#), [Nevada](#), New Hampshire [House](#) and [Senate](#), [New Mexico](#), New York [Assembly](#) and [Senate](#), [North Dakota](#), Oklahoma [House](#) and [Senate](#), [Rhode Island](#), South Carolina [House](#) and [Senate](#), [South Dakota](#), [Tennessee](#), Texas [House](#), [Utah](#), [Virginia](#), [Washington](#), [West Virginia](#) and [Wyoming](#).

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

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