

GOVERNMENTAL AFFAIRS WEEKLY REPORT

Weekly Highlights At-A-Glance

FEDERAL – Regulatory

Arctic National Wildlife Refuge – Alaska. On November 17, the Bureau of Land Management (BLM) Alaska State Office published a notice, *Call for Nominations and Comments for the Coastal Plain Alaska Oil and Gas Lease Sale* ([85 Fed. Reg. 73292](#)), to call for nominations and public comments on Arctic National Wildlife Refuge (ANWR) lease tracts considered for the upcoming Coastal Plain oil and gas lease sale. The notice represents the official step taken by the Trump administration towards an auction of drilling rights in ANWR's 1.56-million-acre Coastal Plain, possibly before the inauguration of President-elect Joe Biden, who vowed to permanently protect the refuge area. According to Interior Department officials, the Coastal Plain is estimated to hold up to 11.8 billion barrels of technically recoverable oil. In 2017, Congress mandated that two ANWR oil and gas lease sales be held by December 22, 2024, although no date has been provided in this notice for the first sale. The BLM Alaska State Office must receive all nominations and comments on the available tracts on or before December 17, 2020. [Read more.](#)

BLM Oil Shale Management. On November 20, the BLM published a notice, *Agency Information Collection Activities; Oil Shale Management* ([85 Fed. Reg. 74378](#)), proposing to renew an information collection related "to the exploration, development, and utilization of oil shale resources on the BLM-managed public lands." Per the notice, "As part of our continuing effort to reduce paperwork and respondent burdens, we invite the public and other Federal agencies to comment on new, proposed, revised, and continuing collections of information. This helps us assess the impact of our information collection requirements and minimize the public's

reporting burden." Public comments for the proposed information collection are open through January 19, 2021. [Read more.](#)

Greater Sage-Grouse; BLM Environmental Assessments. On November 20, the BLM formally published notice of its "final Supplemental Environmental Impact Statement (EIS) for the management of Greater Sage-Grouse habitat, and by this notice is announcing its availability." The EIS and planning covers the Western states: Idaho ([85 Fed. Reg. 74380](#)), Wyoming ([85 Fed. Reg. 74380](#)), Colorado ([85 Fed. Reg. 74378](#)), Utah ([85 Fed. Reg. 74379](#)), Nevada/Northeastern California ([85 Fed. Reg. 74381](#)), and Oregon ([85 Fed. Reg. 74381](#)). The BLM plans are set to take effect while President Trump is still in office and will reportedly loosen rules on mining, drilling and grazing across millions of acres that the agency says reflect the needs of Western communities and the habitat areas, and that will ease restrictions. The plans "better align the BLM's management of Sage-Grouse habitat while addressing the circumstances and needs of each individual state," said Casey Hammond, BLM principal deputy assistant secretary for land and minerals management. According to Bloomberg Government, "Under former President Barack Obama, the Interior Department delayed lease sales on millions of acres of public land largely because of worries that intensive development could harm sage grouse. In 2015, it adopted a set of wide-ranging plans meant to protect the best grouse habitat and keep the bird off the threatened and endangered species list. After Trump took office in 2017, the agency modified those plans to ease restrictions on development, which meant officials no longer had to prioritize development outside grouse habitat." [Read more.](#)

Offshore Lease Sale. On November 17, the Bureau of Ocean Energy Management (BOEM) announced the *Gulf of Mexico Outer Continental Shelf Region-wide Oil and Gas Lease Sale 257*, which provides notice that on March 17, 2021 the BOEM “proposes to open and publicly announce bids received for blocks offered in the Gulf of Mexico (GOM) Outer Continental Shelf (OCS) Region-wide Oil and Gas Lease Sale 257 (GOM Region-wide Sale 257).” The “BOEM must receive all sealed bids prior to the Bid Submission Deadline of 10:00 a.m. on Tuesday, March 16, 2021, the day before the lease sale.”

[Read more.](#)

FEDERAL – Judicial

Pooling Orders; Leasing – Colorado. On October 27, in *Wolverine Energy Holdings, LLC v. Noble Energy, Inc.* (Case No. 1:20-cv-00905-DDD-STV), the U.S. District Court for the District of Colorado addressed a case where a lessor claimed that Colorado Oil and Gas Conservation Commission pooling orders exceeded the 640-acre maximum permitted by the lease, and so their minerals were effectively unleased. According to the Court, “The crux of this case is whether Wolverine should be deemed a consenting, non-leased working-interest owner, as Wolverine contends it is.” While the Court did acknowledge that “the pooling orders go beyond the approximate-acreage limit in the Lease. And Wolverine cites persuasive authority that supports the common-sense notion that such limits are of financial value and a lessee that wants to pool beyond them ought generally to have to pay to do so[,]” the Court also noted that “just because pooling orders went beyond the Lease’s limits does not mean that a federal court can essentially rewrite the Commission’s orders and require that Wolverine be treated differently under state law and regulation than the state agency has ordered. Wolverine admits it received notice of the proposed pooling orders, and at that time did not object to Noble or the Commission.” The Court concluded that “The orders specify that they include Wolverine’s interest and that that interest was subject to a lease [...] Wolverine now asks this court to declare that that

characterization was incorrect. More to the point, it asks this court to declare that despite the Commission’s orders, Wolverine must be treated as an unleased interest under state law. That the court cannot do. If Wolverine wished to challenge its inclusion as a leased interest under state law it should have objected during the process authorized by state law. To the extent Wolverine is challenging the way its interest is classified under the 2018 pooling orders, that is an action for violation of Article 60 of Title 34 of the Colorado Revised Statutes and is thus barred by the one-year statute of limitations in Colo. Rev. Stat. § 34-60-115. If Wolverine wished to sue Noble for breach of contract, that might be an alternative, but it has not done so either.” As such, the Court dismissed the case in favor of Noble Energy. [Read more.](#)

BLM Leasing – Washington, DC. On November 13, the U.S. District Court for the District of Columbia ruled against the Trump administration and the BLM in *WildEarth Guardians v. Bernhardt* (Case No. 1:16-cv-01724-RC). According to the Court, the agency conducted a “sloppy and rushed” environmental analysis on federal lands at issue in the case. The Court found the BLM’s “supplemental assessment does not comply with federal law and does not adequately consider the climate change impacts of the oil and gas leasing decisions in accordance with this Court’s prior opinion.” According to law firm, Spencer Fane LLP, “The Court concluded that the BLM failed to look closely enough at climate change impacts from oil and gas development. The ruling maintained the prohibition on issuing permits for drilling on over 500 square miles in Wyoming and forces the agency to more accurately consider cumulative greenhouse gas emissions from oil and gas operations on public lands in Wyoming, as well as Colorado and Utah. [Read more.](#)

STATE – Legislative

Severance Taxes; Stripper Wells – Louisiana. (*Update to 10/5/20 Weekly Report*) As part of the legislature’s [30-day Special Session](#), known as the Second Extraordinary Session, HB 8 was

introduced by Rep. Phillip DeVillier (R). The bill died in committee at the end of that session which adjourned October 23, 2020 and has passed the period for the governor to act. "Current law imposes a severance tax on the production from stripper wells (no more than 10 barrels of oil per producing day) of 3.125% of the value of the oil when severed. This tax is exempted in any month when the average value is less than \$20 per barrel. Proposed law will exempt the tax on oil produced from stripper wells and stripper fields in any month when the average value is less than \$75 per barrel." The Department of Revenue "shall determine the oil value quarterly based on the average New York Mercantile Exchange Price in the prior three months. This exemption is available for nine years, from January 1, 2021 through December 31, 2029." The bill would have also required all production reports be filed timely with the Department of Revenue "verifying the average daily production during each month." [Read more.](#)

Severance Taxes – Louisiana. *(Update to 10/19/20 Weekly Report)* As part of the legislature's [30-day Special Session](#), known as the Second Extraordinary Session, HB 28 was introduced by Rep. Phillip DeVillier (R). The bill died in committee at the end of that session which adjourned October 23, 2020 and has passed the period for the governor to act. The bill would have reduced the rate of severance tax on oil produced from incapable wells under certain conditions. "Current law imposes a severance tax on the production from incapable wells (no more than 25 barrels of oil and at least 50% salt water per producing day) of 6.25% of the value of the oil when severed. Proposed law reduces the tax rate to 3.125% in any month when the average value is less than \$75 per barrel. The Dept. of Revenue shall determine the oil value quarterly based on the average New York Mercantile Exchange Price in the prior three months. This exemption is available for nine years, from January 1, 2021, through December 31, 2029." [Read more.](#)

Severance Taxes – Louisiana. *(Update to 10/19/20 Weekly Report)* As part of the legislature's [30-day](#)

[Special Session](#), known as the Second Extraordinary Session, HB 29 was introduced by Rep. Phillip DeVillier (R). Although the bill, which would have suspended severance taxes on production from certain oil wells, passed the legislature it was vetoed by Gov. John Bel Edwards (D) on November 11, 2020. Specifically, the legislation would have exempted oil produced from any newly drilled or from a completed well undergoing well enhancements that require a Department of Natural Resources permit such as re-entries, workovers or plug backs from the severance tax. The exemption would have applied to production on or after October 1 and before December 31, 2025. The exemption would have expired after 24 months or until the payout of the well cost was achieved, whichever occurred first. [Read more.](#)

Employee Misclassification – Louisiana.

(Update to 10/19/20 Weekly Report) As part of the legislature's [30-day Special Session](#), known as the Second Extraordinary Session, HB 34 was introduced by Rep. Mandie Landry (D). The bill died in committee at the end of that session which adjourned October 23, 2020 and has passed the period for the governor to act. Under current law, if an employer fails to properly classify employees and does not pay unemployment insurance contributions, they receive a written warning and progressive fines for subsequent offenses, including the possibility of imprisonment after multiple offenses. This bill would have removed the written warning and increase the misclassification fines. The bill also provided that in addition to any penalties assessed for a second or subsequent offense, an employer would be ineligible to receive any state tax rebates to which they are otherwise entitled. [Read more.](#)

Independent Contractors – Louisiana. *(Update to 10/19/20 Weekly Report)* As part of the legislature's [30-day Special Session](#), known as the Second Extraordinary Session, SB 68 was introduced by Sen. Jay Luneau (D). The bill died in committee at the end of that session which adjourned October 23, 2020 and has passed the period for the governor to act. The bill would have provided a definition of

“employee” under state law and provided an exemption from the definition of “employment” for those acting as independent contractors under the description provided. [Read more.](#)

Conventional Wells – Pennsylvania. (*Update to 6/8/20 Weekly Report*) On November 25, [SB 790](#) was vetoed by Gov. Tom Wolf (D). The bill, sponsored by Sen. Joseph Scarnati (R), would have established the Conventional Oil and Gas Well Act “providing for standards for protections, plugging of wells, and imposing power and duties on the Department of Environmental Protection (DEP) as it relates to conventional wells and well sites only.” According to the sponsoring memo, the bill “will provide a legislative framework for regulations specific to conventional oil and gas drillers in a way that protects the environment while preserving this valuable industry.” Specifically, the bill would have required a permit to be obtained to drill or alter a well and to operate an abandoned or orphaned well; addressed DEP enforcement and remedies; and provided for funding and other miscellaneous provisions. [Read more.](#)

STATE – Regulatory

Ventura County Permitting and Zoning Amendments – California. On November 16, the California Independent Petroleum Association (CIPA) reported that the [Ventura County Board of Supervisors](#) approved “amendments to the coastal and non-coastal zoning ordinances to require discretionary approval of conditional use permits (CUPs). ([See supporting documents here.](#))” The Board stated that this would not violate vested rights of existing permittees. They claimed operators do not have vested rights for new production. This would create a single uniform review process for all new oil and gas operations.” CIPA opposed the amendments, “citing the economic contributions from industry in the County, as well as the risk of potential litigation.” [Read more.](#)

Mission Change Rulemaking – Colorado. (*Update to 10/19/20 Weekly Report*) On November 23,

the Colorado Oil & Gas Conservation Commission (COGCC) announced they have unanimously adopted [SB 19-181](#) new Mission Change Rules, Alternative Location Analysis and Cumulative Impacts which will become effective January 15, 2021. (See all the [rulemakings here](#) and [COGCC Rulemaking Fact Sheet detailing the changes here.](#)) As AAPL has previously reported, the rulemaking includes changes to the practice of flaring and venting, increasing well setbacks, and environmental considerations. According to the COGCC, this “concludes four months of comprehensive oil and gas rulemakings that increase protections for Colorado’s public health, safety, welfare, wildlife and environmental resources.” The COGCC noted, “The rulemakings were required to implement the change to the COGCC’s mission from ‘fostering’ to ‘regulating’ oil and gas development in a manner that protects public health, safety, welfare, the environment and wildlife resources.” COGCC Chair Jeff Robbins said, “Over the past months, the Commission took public comment on all the rules, heard testimony from over 90 parties and diverse stakeholders, conducted hundreds of hours of discussion and deliberation during the rulemaking hearings. The rules not only meet the spirit and mandates of SB 19-181, but they were done so with a unanimous vote and largely with consensus from all sides.” For its part, the Colorado Oil and Gas Association (COGA) said it will take the COGCC at its word that application for permits to drill “will be issued accordingly to keep our industry thriving under the highest global standards.” According to Dan Haley, COGA President and CEO, “Three months of non-stop rulemaking for Colorado’s energy workers and regulators is not common practice, so what’s being done at the COGCC is nothing less than transformative. We have a long way to go to finalize and understand all of the implementation hurdles that lie ahead.” The COGCC also announced it will take up additional rulemakings at future hearings, including Financial Assurances around oil and gas development, Worker Safety, and the enactment of Permit Fees in 2021. [Read more.](#)

Oil and Gas Lease Accountability and Enforcement Program – New Mexico.

On November 18, the New Mexico State Land Office announced that it “has launched an historic, agency-wide programmatic approach to accountability and enforcement with regard to oil and gas operations on state trust land to ensure lease holders honor their contractual promise to operate and close out responsibly. Oil and gas leases on state trust land are set by state statute and require compliance with State Land Office rules, including remediating spills and restoring the land to its original condition once a lease has expired (19.2.100.66 – 67 of the New Mexico Administrative Code).” The notice states that “The leases under enhanced review are those which pose an immediate environmental threat to the long-term health of state trust land—state land held in trust for New Mexico’s public schools, hospitals, and universities. The specific accountability measures under scrutiny by the Accountability and Enforcement Program, led by the State Land Office Legal Division, include: spill clean-up of oil, gas, produced water, and other extraction by-products; surface reclamation, specifically of site infrastructure including wells, pads, pits, tanks, pipelines, and roads; and recovering royalty payments for oil and gas production in trespass. The Program is also auditing business leases, saltwater disposal leases, and other non-oil and gas related leases for compliance. Work on these efforts has been underway since early 2020, and the successes to-date represent only the tip of the iceberg expected to come of the Accountability and Enforcement Program.” [Read more.](#)

Regional Greenhouse Gas Initiative – Pennsylvania. The Pennsylvania Environmental Quality Board has opened a public comment period on its proposed rulemaking entitled “CO₂ Budget Trading Program,” which would establish Pennsylvania as the newest member of the Regional Greenhouse Gas Initiative (RGGI). The “RGGI is an intergovernmental organization consisting of ten member-states (CT, DE, ME, MD, MA, NH, NJ, NY, RI, VT) that has established a market-based cap-and-trade program for CO₂

emissions.” According to the proposed rulemaking, “The purpose of this proposed rulemaking is to reduce anthropogenic emissions of CO₂, a greenhouse gas (GHG) and major contributor to climate change impacts, in a manner that is protective of public health, welfare and the environment in this Commonwealth. This proposed rulemaking would reduce CO₂ emissions from sources within this Commonwealth and establish the Commonwealth’s participation in the Regional Greenhouse Gas Initiative (RGGI), a regional CO₂ Budget Trading Program. This proposed rulemaking would establish a CO₂ Budget Trading Program for this Commonwealth which is capable of linking with similar regulations in states participating in RGGI (participating states). These independently promulgated and implemented CO₂ Budget Trading Program regulations together make up the regional CO₂ Budget Trading Program or RGGI.” The initiative includes an approach to reducing CO₂ emissions from fossil fuel-fired electric generating units in the state. According to law firm, Manko, Gold, Katcher & Fox, LLP, “Based on an analysis conducted by a consultant retained by [Pennsylvania Department of Environmental Protection] PADEP, most emission reductions are expected to come from reductions in coal use, while a smaller percentage would come from natural gas.” ([Read more for information on submitting comments and attending hearings.](#)) The public comment period is open through January 14, 2021 with public hearings scheduled for December. [Read more.](#)

STATE – Judicial

Takings – Ohio. On September 23, in *State ex rel. AWMS Water Solutions, LLC v. Mertz* (Case No. 020-OHIO-4509), the Ohio Supreme Court addressed a takings issue related to a saltwater injection well. In the case, AWMS, a disposer of waste from oil and gas production and drilling sites, obtained permits to drill and inject saltwater in wells on its property. After an earthquake occurred, AWMS was ordered to suspend its operations at one of its wells. In its petition for a “writ of mandamus” to compel the Ohio Department of Natural Resources and its Division of

Oil and Gas Resources Management to initiate property-appropriation proceedings, AWMS alleged that it had suffered a taking of its property when the Division suspended AWMS's operation of one of its two saltwater-injection wells. The Division suspended the operation of the well because of concerns that the well had induced a pair of earthquakes in its vicinity. AWMS alleged that the suspension order was a governmental taking of its property requiring the state to pay just compensation. The Court of Appeals granted summary judgment in favor of the State and denied the petition. However, here, the Ohio Supreme Court reversed, holding that AWMS was justified in pursuing compensation through a takings action and that its claim was ripe at the time it instituted its action; and there was a genuine issue of material fact concerning whether the state's suspension of operations at the well deprived AWMS of all economically beneficial use of its leasehold. To that end, the case has been sent back to the Court of Appeals for further determinations. [Read more.](#)

Leasing; Drainage – Texas. On October 1, in *Martin v. Rosetta Resources Operating, LP* (Case No. No. 13-19-00431-CV), the Texas Court of Appeals, 13th District (Corpus Christi), was "called on to interpret and apply 'opaquely worded' 'cryptic language' in an oil and gas lease." On appeal, the lessors argued that the subject leases required Rosetta to protect their undrilled property against drainage; the lease unambiguously required Rosetta to "either spud an offset w[e]ll or release the acreage within 12 months of drainage" and there is no fact issue as to Rosetta's obligations under the lease. This action began in 2014 when the lessors filed the underlying suit claiming in part that the defendants breached their contractual duties under a certain addendum to the subject leases to protect the leases from drainage. The trial court dismissed the lessors' suit, but here, the appellate court held that under the plain language of the lease, "Rosetta was obligated to either (1) spud an offset well within twelve months of drainage or (2) release the undrilled acreage." In the end, the Court of Appeals "conclude[d] that Rosetta's obligations to protect the undrilled Martin acreage from drainage and to spud an offset well

or release the acreage were triggered." The case has been sent back to the trial court for further proceedings in light of this holding. [Read more.](#)

Top Leases – West Virginia. On November 12, in *EQT Production Co. v. Antero Resources Corp.* (Case No. 19-0572), the West Virginia Supreme Court addressed an issue involving a top lease and its validity. In the case, the mineral owners held a base lease with the successor in interest, EQT. The same owners subsequently entered into a top lease with Antero. The top lease was made effective immediately upon expiration of the primary term of the base lease. The mineral owners and EQT subsequently entered into a base lease amendment agreeing to extend the primary term of the base lease. Antero filed a complaint asserting claims for, among other issues, breach of contract and declaratory judgment. The trial court awarded summary judgment in favor of Antero on its declaratory judgment claim, determining that the base lease and its amendment were subject to the Antero top lease. Here, the Supreme Court affirmed, holding that the court did not err in declaring that the top lease was the valid and existing oil and gas lease covering the subject property. [Read more.](#)

Overriding Royalties – West Virginia. On November 10, in *Bison Interests, LLC v. Antero Resources Corp.* (No. 19-0527), the West Virginia Supreme Court reversed a trial court grant of summary judgment for Antero in a dispute involving an overriding royalty interest (ORRI). The trial court ruled against Bison finding it was not entitled to an ORRI in the Marcellus shale formation underlying certain gas wells at issue. Specifically, the court found that the issue of Bison's entitlement to an ORRI had not been finally adjudicated, as claimed, in prior litigation and therefore Antero's action was neither barred by the legal theories of res judicata or collateral estoppel, nor was Antero judicially estopped from advancing its claim. Accordingly, the trial court granted declaratory relief to Antero, "finding that 'Turnkey Drilling Agreements' were incorporated by reference into certain warranty deeds of assignment, which agreements created a depth limitation to Bison's

Democratic Gov. Andrew Cuomo has until February 5, 2021 to act on legislation or it is pocket vetoed. **Louisiana** Democratic Gov. John Bel Edwards has 20 days from presentment to sign or veto 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.

Interim Committee Hearings: The following states are currently holding 2020 interim committee hearings: [Alabama](#), [Alaska](#), [Arizona](#), [Arkansas](#), [California Assembly](#) and [Senate](#), [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 Carolina](#), [North Dakota](#), [Oklahoma House](#) and [Senate](#), [Oregon](#), [Rhode Island](#), [South Carolina House](#) and [Senate](#), [South Dakota](#), [Tennessee](#), [Texas Senate](#), [Utah](#), [Vermont](#), [Virginia](#), [Washington](#), [West Virginia](#), [Wisconsin](#) and [Wyoming](#).

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

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