

# GOVERNMENTAL AFFAIRS WEEKLY REPORT

## Weekly Highlights At-A-Glance

### FEDERAL – Legislative

**Congressional Holiday Recess.** The U.S. Senate and House of Representatives will be in holiday recess as of December 13, 2019 and will reconvene January 7, 2020. [Read more.](#)

**S. 2818 - Fuel Loss Abatement and Royalty Enhancement Act.** On November 7, Sen. Ed Markey (D-MA) introduced [S. 2818](#), known as the *Fuel Loss Abatement and Royalty Enhancement Act* or *FLARE Act*. The bill would require “the Secretary of the Interior to issue regulations to ban the flaring of natural gas on public land both onshore and offshore to conserve this resource that oil companies are currently treating as waste.” The measure would also “require oil companies to pay royalties to the American people on vented or flared natural gas on public lands” and “require the Government Accountability Office (GAO) to report to Congress on how much natural gas is being vented or flared.” The bill has been referred to the Senate Committee on Energy and Natural Resources but is not expected to be approved in the majority Republican Senate. [Read more.](#)

### FEDERAL – Regulatory

**Energy Secretary Confirmed.** (*Update to 11/4/19 Weekly Report*) On December 2, Dan Brouillette was confirmed as the next U.S. Department of Energy Secretary in a bipartisan U.S. Senate vote of 70-15. President Trump selected Brouillette, a Louisiana native, as Rick Perry’s replacement after Perry announced his departure. Brouillette served as Deputy Secretary of Energy and also worked under President George W. Bush as well as Chief of Staff for the U.S. House of Representatives Committee on

Energy and Commerce. He also served as a member of Louisiana’s State Mineral and Energy Board. [Read more.](#)

**BLM Oil and Gas Lease Sale – Utah.** On December 3, the Bureau of Land Management (BLM) announced a proposal to offer 25 parcels, totaling approximately 32,713.76 acres of BLM-managed lands in the Green River District for the March 10, 2020 quarterly oil and gas lease sale. The notice initiates a 30-day public comment period on the associated environmental documents ending on January 3, 2020. [Read more.](#)

**BLM Oil and Gas Lease Sale – Multiple States.** On December 2, the BLM New Mexico office announced a proposal to offer 72 parcels totaling 17,667.82 acres at its February 6, 2020 quarterly oil and gas lease sale. The proposed parcels are located in Eddy, Lea, Rio Arriba and Sandoval counties in New Mexico; Roger Mills and Kingfisher counties in Oklahoma; and Cheyenne County in Kansas. The notice initiates a 30-day public comment period on the associated environmental documents ending on January 2, 2020. [Read more.](#)

**BLM National Petroleum Reserve – Alaska.** On November 21, the BLM released a [Draft Environmental Impact Statement](#) (Draft EIS) of a new integrated activity plan for the National Petroleum Reserve-Alaska (NPR-A). The BLM initiated the Draft EIS process in November 2018 to develop a new management strategy for all BLM-managed public lands in the 23 million-acre NPR-A as directed in Interior Secretary [Order No. 3352](#). According to the BLM, the “Draft EIS outlines four alternatives providing a range of options for leasing and development. The Final EIS will be informed by public comments received and identify a

preferred alternative that can be a combination of different aspects of the range of alternatives.” BLM’s Alaska State Office said the public will have 60 days to comment on the Draft EIS, which is 15 days longer than customary due to the December holidays. Public comments will be accepted through January 21, 2020. [Read more.](#)

**Idaho Resource Advisory Council – Idaho.** On November 25, the BLM published a *Notice of Public Meeting, Boise District Resource Advisory Council, Idaho* ([84 Fed. Reg. 64915](#)) for its scheduled meeting on January 9, 2020. The 15-member Idaho Resource Advisory Council (RAC) “advises the Secretary of the Interior, through the Bureau of Land Management, on a variety of planning and management issues associated with public land management in Idaho.” Topics to be discussed include a presentation by the Idaho Department of Fish and Game on Sage-Grouse population status in southwest Idaho. The meetings are open to the public, and a public comment period will be held from noon to 12:30 p.m. For further information interested attendees may contact Lara Douglas, District Manager, Boise District, 3948 Development Avenue, Boise, ID 83705; phone: (208) 384-3300; email: ledouglas@blm.gov. [Read more.](#)

**Southwest Resource Advisory Council – Colorado.** On November 18, the BLM published a *Notice of Public Meetings, Southwest Resource Advisory Council, Colorado* ([84 Fed. Reg. 63674](#)) for its scheduled meetings on December 12, 2019 and March 25, 2020. The 15-member Southwest Colorado Resource Advisory Council (RAC) advises the Secretary of the Interior, through the BLM, on a variety of public-land issues in the Southwest District, including the Grand Junction, Uncompahgre, and Tres Rios field offices. Topics of discussion for these RAC meetings include land use planning, energy and minerals management, and cultural resource management, among other topics. The meetings are open to the public, and a public comment period will be held at 2:30 p.m. at each meeting. For further information interested attendees may contact Eric Coulter, Public Affairs Specialist, Southwest District, 2815 H Road, Grand

Junction, CO 81506; phone: (970) 244-3061; email: ecoulter@blm.gov. [Read more.](#)

## **FEDERAL – Judicial**

### **Wells; Environmental Exemptions – California.**

On November 20, environmental activists sued the Trump administration charging the U.S. Environmental Protection Agency failed “to consider threats to the environment and endangered wildlife before approving an aquifer exemption for the Arroyo Grande oilfield south of San Luis Obispo. The exemption lifted Safe Drinking Water Act protection for groundwater in Price Canyon, allowing oilfield operators to move forward with a proposal to drill 450 new wells and turn the area into a permanent dumping ground for oil-waste fluid.” In [Center for Biological Diversity v. U.S. Environmental Protection Agency](#) (Case No. 3:19-cv-07664), the plaintiffs specifically claim the U.S. Environmental Protection Agency Administrator, Andrew Wheeler, and the U.S. Environmental Protection Agency’s (collectively “EPA”) failed to comply with the National Environmental Policy Act and its implementing regulations “when it exempted the Dollie Sands of the Pismo Formation in the Arroyo Grande Oil Field, San Luis Obispo County from the protections of the Safe Drinking Water Act in order to allow injection of oil and gas wastewater and other fluids into the aquifer, without first evaluating and disclosing the foreseeable environmental impacts of that exemption.” We will keep AAPL members updated once the government responds to the lawsuit. [Read more.](#)

**Leasing; Assignments; Formation Depths – West Virginia.** On November 5, in *Mountaineer Minerals, LLC v. Antero Resources Corp.* (Case No. 1:16CV28), the U.S. District Court for the Northern District of West Virginia addressed a dispute over leasehold rights at certain formation depths. The Court held that Mountaineer never received the Marcellus rights but only the Upper Devonian rights above it. By conducting a thorough analysis of the assignments as issue and the extensive chain of title, the Court found that “based on the plain and unambiguous

language of the Subject Assignment” the chain of title shows only that two assigned wells and leasehold rights were assigned to Mountaineer’s predecessors in interests and not the lower formation depths. “This conclusion is supported by references within the Subject Assignment pertaining to certain details regarding the casing of the wells, royalty obligations, and the assignee’s interest in the drilling, producing, and operating rights as they relate to the Assigned Wells.” [Read more.](#)

## **STATE – Regulatory**

**Well Regulations – California.** On November 19, Gov. Gavin Newsom (D) “stopped the approval of [new hydraulic fracturing](#) in the state until the permits for those projects can be reviewed by an independent panel of scientists.” To be clear, Newsom stated that he hasn’t banning hydraulic fracturing in California and he acknowledges that he isn’t empowered to do that unilaterally. Rather, he has ordered that new hydraulic fracturing permits be subject to scientific review and that the whole permitting process undergo an audit by the state’s Department of Finance. On the same day, the Department of Conservation’s Division of Oil, Gas and Geothermal Resources – which will be renamed the Geologic Energy Management Division, or CalGEM (effective Jan. 1, 2020) – [announced it has halted approvals of new oil wells that use high-pressure steam extraction techniques](#) following recent leaks in Kern County, and the technique will also be subject to state audit. That moratorium will not affect existing wells. The audit process will focus on whether the current permitting processes comply with state regulations and policies and will develop recommendations to strengthen operational processes and procedures. CalGEM will also begin a pre-regulatory process in 2020 “to strengthen protections for public health and safety” which will look at possible “buffer zones around oil wells in or near residential neighborhoods, schools, hospitals and other facilities” and the “first step of this process will be a series of pre-rulemaking workshops with interested parties to seek input on the best ways to protect human health through new rules.” Gov.

Newsom added that, “These are necessary steps to strengthen oversight of oil and gas extraction as we phase out our dependence on fossil fuels and focus on clean energy sources.” The oil industry called Newsom’s changes “[disappointing](#),” with the Western States Petroleum Association (WSPA) saying California’s environmental regulations already lead the world. “Every barrel delayed or not produced in this state will only increase imports from more costly foreign sources that do not share our environmental safety standards,” said WSPA president Catherine Reheis-Boyd. We will keep AAPL members updated regarding any changes to the permitting processes and the public input schedules for proposed rulemaking once announced by California regulators. [Read more.](#)

**Drilling Permits; Completions – Texas.** On November 8, the Railroad Commission of Texas (RRC) announced it had issued a total of 971 original drilling permits in October 2019 compared to 1,149 in October 2018. The October 2019 total included 895 permits to drill new oil or gas wells, 13 to re-enter plugged well bores and 63 for re-completions of existing well bores. The breakdown of well types for those permits is 249 oil, 39 gas, 608 oil or gas, 61 injection, three service and 11 other permits. The RRC also reported in October 2019, Commission staff processed 537 oil, 117 gas, 29 injection and six other completions compared to 987 oil, 170 gas, 49 injection and seven other completions in October 2018. Total well completions processed for 2019 year to date are 7,763; down from 9,254 recorded during the same time period in 2018. [Read more.](#)

**Oil and Gas Production – Texas.** On November 7, the Railroad Commission of Texas (RRC) announced crude oil and natural gas production for August 2019 came from 176,054 oil wells and 88,823 gas wells. The RRC reported that from September 2018 to August 2019, total Texas reported production was 1.427 billion barrels of crude oil and 9.5 trillion cubic feet of total gas. [Read more.](#)



## **STATE – Judicial**

**Leasing; Pugh Clauses – North Dakota.** Although we covered the case, [\*Robert Post Johnson v. Statoil & Gas LP\*](#) (Case No. 2018 ND 227; 918 N.W.2d 58) when the North Dakota Supreme Court issued its opinion in 2018, the law firm, Kiefaber & Oliva LLP recently published a useful analysis of the case and its implications so we are sharing that here. In the case, the plaintiffs argued the district court incorrectly determined the primary three-year terms of two oil and gas leases were extended by continuous drilling operations clauses within the lease agreements. Here, the North Dakota Supreme Court concluded the Pugh clauses at issue were irreconcilable with the habendum and continuous drilling operations clauses, and the Pugh clauses controlled. As such, the Pugh clauses terminated the leases with regard to the disputed units at the end of the primary three-year period because of the lack of oil or gas production in paying quantities within those units. The Court reversed the lower court's determination that the leases could be extended by drilling. [Read more.](#)

**Leasing; Lack of Production – Ohio.** On November 26, the Ohio Supreme Court addressed “which statute of limitations applies to a claim for declaratory judgment that an oil and gas lease has terminated by its terms and by operation of law due to lack of production.” In the case, [\*Browne c. Artex Oil Co.\*](#) (Case No. 2019-Ohio-4809), the Court held “that the applicable statute is R.C. 2305.04, which states that an action to recover title to or possession of real property shall be brought within 21 years after the cause of action accrues.” In *Browne*, “the lessee argued that an action like the case at bar was subject to the 15-year statute of limitations for actions upon written contracts in former R.C. 2305.06. The Court disagreed. The Court noted that the lessors were not alleging a breach of the oil and gas lease but were simply requesting a declaration that the oil and gas lease had terminated by its terms through operation of law. This claim was more akin to an action to quiet title than one upon a written contract, the Court found, as the lessee had no obligation to produce

under the lease and the parties did not dispute the lease's provisions.” [Read more.](#)

**Overriding Royalties; Joint Operating Agreements; Leasing – Texas.** Although we covered the case, [\*Burlington Resources Oil & Gas Company LP v. Texas Crude Energy, LLC\*](#) (Case No. 17-0266), when the Texas Supreme Court issued its opinion in March 2019, the law firm, Kiefaber & Oliva LLP recently published a useful analysis of the case and its implications so we are sharing that here. In the case, the Court was tasked with having to “construe an opaquely worded oil and gas agreement” and in so doing reversed the appellate court and held that post-production costs could be deducted when calculating royalty payments. Amber Harvest, an affiliate of Texas Crude Energy, owned overriding royalty interests in the oil and gas leases operated by Burlington. Texas Crude sued Burlington, alleging that the parties' agreements prohibited Burlington from charging post-production costs to the royalty holder. After construing the agreements based on the language the parties chose, the “Texas Supreme Court, reversing the Court of Appeals, explained that Burlington, the lessee and producer, could deduct post-production costs when calculating royalty payments on the amount realized when the royalty interest is to be delivered ‘into the pipeline, tank, or other receptacle to which any well or wells on such lands may be connected.’” [Read more.](#)

**Oil and Gas Development Zones – Pennsylvania.** On November 14, in *Protect PT v. Pennsylvania Township Zoning Hearing Board* (Case No. 1632 CD 2018), environmental group, Protect PT, challenged the constitutionality of the Mineral Extraction Overlay (MEO) District which permits unconventional natural gas development (UNGD) in specific areas. The Court upheld the trial court decision against the environmentalists finding that “the trial court rejected Protect PT's argument that the MEO District allows for UNGD in the majority of the Township's residential areas. The court noted the Township made a great effort to develop and refine the Zoning Ordinance to provide for UNGD only in specifically delineated areas. In considering the setbacks and

other required considerations, UNGD can take place in approximately 9.46% of the Township. Given the Township's thorough analysis of the particulars of oil and gas development evidenced by the Zoning Ordinance's many drafts and revisions, and the countless public meetings from 2010 through 2016, the trial court determined that the Zoning Ordinance provides for an exceedingly heightened level of protection for neighboring property owners." Further, the Court held "the Zoning Ordinance properly balances the rights of citizens to benefit economically from UNGD, which helps them sustain their agricultural-based livelihoods, with the interests of the general public by adopting an extensive regulatory scheme far beyond that imposed on any other use. The Zoning Ordinance addresses issues such as minimum lot size, required yards, setbacks, wastewater, health and safety, access routes, erosion and sediment control, security, site reclamation, road use, and compliance with the [Environmental Rights Amendment] ERA. Also, because the Zoning Ordinance regulates UNGD as a special exception, the Township can impose additional conditions." In sum, the Court held that "Protect PT failed to establish that UNGD posed any substantial actual risk to the environment or health of Township residents." [Read more.](#)

**State Forest Resource Management Plan – Pennsylvania.** On November 5, the Pennsylvania Environmental Defense Foundation (PEDF) filed a lawsuit against the Pennsylvania Department of Conservation and Natural Resources (DCNR) in [Pennsylvania Environmental Defense Foundation v. Commonwealth Department of Conservation and Natural Resources](#) (Case No. [609 MD 2019](#)), asking the Pennsylvania Commonwealth Court to require DCNR to amend the State Forest Management Plan consistent with its "trustee duties under the Environmental Rights Amendment" to the state constitution. Specifically, PEDF is asking the Court to find that "DCNR has no authority to lease State Forests for the extraction and sale of oil and natural gas for the economic benefit of the Commonwealth; DCNR has no authority to balance the degradation of State Forests as a result of oil and natural gas

development with the rights and benefits of the people to State Forests under the Environmental Rights Amendment; The 2016 State Forest Management Plan has no specific plan to prevent and remedy the degradation, diminution and depletion of State Forests from existing oil and gas extraction; and The 2016 State Forest Plan has no specific plan to implement sound scientific principles of ecosystem management to sustain State Forests." We will continue to monitor the case as it progresses. [Read more.](#)

**Leasing; Royalties – Pennsylvania.** On October 2, in *Hildebrand v. EQT Production Company* (Case No. 1524 WDA 2018), the Pennsylvania Superior Court ordered the lessee to pay royalties held in suspense and those royalties improperly paid to another royalty owner to the plaintiffs. The Court held that "EQT is required to perform its contractual duty to pay all royalties to the Hildebrands, not just those placed in the suspense account." Further the Court noted that the "Hildebrands were not responsible for EQT making payments to an improper party" and that the Hildebrands did not have privity of contract with the party erroneously paid and thus the improper party is not obligated to pay compensation to the plaintiffs. "Rather, the [prior decision of our Court](#) determined it is EQT that owes the Hildebrands all the disputed royalty payments and EQT owes those payments pursuant to its contract with the Hildebrands." [Read more.](#)

## **INDUSTRY NEWS FLASH**

► **U.S. sets natural gas records in 2018.** According to the latest U.S. Energy Information Administration (EIA) report, [Natural Gas Annual 2018](#), the U.S. set new records in natural gas production, consumption, and exports in 2018. This was the largest percentage increase since 1951 and the largest volumetric increase in the history of the series, which dates back to 1930. Natural gas consumption increased by 11% in 2018 and natural gas exports grew by 14% over 2017. [Read more.](#)

► **U.S. energy production limits impact of recent Saudi oil facilities attack.** Speaking at a November 7 Center for Strategic and International Studies event, Sen. John Cornyn (R-TX) [told attendees](#) that increased domestic oil and gas production limited the effects of the September 14 attack on Saudi Arabian oil facilities. "What was so remarkable about this attack was how unremarkable its impact was globally," said Sen. Cornyn. "Hydraulic fracturing and horizontal drilling have dramatically increased the production of American oil and gas [...] it's a win for global security. It has allowed us to provide cheap, reliable energy to other countries for their citizens." [Read more.](#)

## LEGISLATIVE SESSION OVERVIEW

**Session Notes:** Massachusetts, Michigan, New Jersey, Ohio, Pennsylvania and Wisconsin are in regular session. The District of Columbia Council and Puerto Rico are also in regular session.

New Hampshire and New York are in recess subject to the call of the chair.

Utah will convene for a special session on December 12 to consider a sweeping tax reform plan, reports *Deseret News*. GOP leaders hope to pass a net tax cut of up to \$124 million before the start of the new year, when the entire House and half the Senate are up for re-election.

**Signing Deadlines:** 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. North Carolina Democratic Gov. Roy Cooper has

10 days from presentment to act on legislation or it becomes law without signature.

**Interim Committee Hearings:** The following states are currently holding 2019 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](#), [Arizona](#), [Arkansas](#), [Florida House](#) and [Senate](#), [Georgia](#), [Indiana](#), [Iowa](#), [Kansas House](#), [Kentucky](#), [Maine](#), [Missouri House](#) and [Senate](#), [Nebraska](#), [New Hampshire](#), [Oklahoma House](#) and [Senate](#), [Oregon](#), [South Carolina](#), [Tennessee](#), [Utah](#), [Virginia](#), [Washington](#) and [West Virginia](#). ■

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