

# GOVERNMENTAL AFFAIRS WEEKLY REPORT

## Weekly Highlights At-A-Glance

### FEDERAL – Legislative

**U.S. Congress Back in Session.** The U.S. Congress is back in regular session following the scheduled holiday recess. [Read more.](#)

### FEDERAL – Regulatory

**BLM Resource Advisory Councils.** On January 10, the Bureau of Land Management (BLM) published *FY2020 National Call for Nominations for Resource Advisory Councils* ([85 Fed. Reg. 1323](#)) for the purpose of requesting public nominations for 27 of the BLM's statewide and regional Resource Advisory Councils (RAC) located in the West that have vacant positions and/or members whose terms are scheduled to expire. RACs provide advice and recommendations to the BLM on land use planning and management of the National System of Public Lands within their geographic areas. All nominations must be received by February 24, 2020. [Read more.](#)

**BLM Oil and Gas Lease Sale – Colorado.** On December 30, the BLM announced it is seeking public scoping comments on approximately 6,095 acres of public lands proposed for the upcoming June 2020 competitive oil and gas lease sale in Jackson, Lincoln, Moffat, Rio Blanco, and Weld counties. Some of the parcels include those in Greater Sage-Grouse habitat areas. The public comment period ends January 15, 2020. [Read more.](#)

**BLM Director Appointment.** (*Update to 10/7/19 Weekly Report*) Interior Secretary David Bernhardt has extended the tenure of William Perry Pendley as acting BLM Director until a Senate-confirmed appointee is in place. Pendley's assignment will continue until April 3, 2020, unless extended again

or Pendley is formally nominated by President Trump. Pendley had been BLM Deputy Director of Policy and Programs. Prior to holding this position, Pendley, an attorney, was the president of the Mountain States Legal Foundation. [Read more.](#)

**EPA Midwestern States Administrator.** On January 8, U.S. Environmental Protection Agency (EPA) Administrator Andrew Wheeler announced Kurt Thiede, a former Wisconsin Department of Natural Resources deputy secretary, will succeed Cathy Stepp as EPA Region 5 regional administrator. Region 5 has a focus on Midwestern state protection and oversees federal environmental protection matters in Illinois, Indiana, Michigan, Minnesota, Ohio, and Wisconsin. "I look forward to helping to continue to advance this administration's priorities of protecting public health and the environment, while promoting a strong and vibrant economy," said Mr. Thiede. [Read more.](#)

**NEPA Rulemaking.** On January 10, the Trump administration [published a notice of proposed rulemaking](#) to overhaul National Environmental Policy Act (NEPA) regulations making it easier for federal agencies, like the Bureau of Land Management, to approve infrastructure, construction, and oil and gas development projects without considering climate change. The *Update to the Regulations Implementing the Procedural Provisions of the National Environmental Policy Act* ([85 Fed. Reg. 1684](#)) "would modernize and clarify the regulations to facilitate more efficient, effective, and timely NEPA reviews by Federal agencies in connection with proposals for agency action." The move has been widely praised by the pipeline, construction, and oil and gas industry as well as legislators in energy producing states. "I applaud President Trump's decision to overhaul burdensome

NEPA requirements, which for too long have thwarted energy development and critical infrastructure projects in Wyoming,” said Rep. Liz Cheney (R-WY). “NEPA’s out-of-date regulations have been abused by far-left environmental extremists to delay countless energy and infrastructure projects across the country.” The public comment period is open through March 10, 2020. [Read more.](#)

## **FEDERAL – Judicial**

**Gathering Agreements – Texas.** On December 20, in [\*Alta Mesa Holdings, LP v. Kingfisher Midstream, LLC\*](#) (Case No. 19-35133), the U.S. Bankruptcy Court for the Southern District of Texas held that midstream gathering agreements created covenants running with the land under Oklahoma law that could not be rejected by bankrupt debtors. In the case, debtors sought a declaration that certain gathering agreements were subject to rejection pursuant to sections of the Bankruptcy Code, which included a provision that a debtor may, subject to the court’s approval, “assume or reject any executory contract or unexpired lease of the debtor.” The declaratory relief requested by the debtors directly implicated whether a gathering agreement constitutes a covenant running with the land. “Significantly, covenants running with the land do not qualify as executory contracts that a debtor can reject under the Bankruptcy Code.” Here, the Court found the debtors’ gathering agreements satisfied all elements required to form real property covenants under Oklahoma law and the precedent set by other federal courts. Accordingly, the Court ordered that the midstream contracts qualified as covenants running with the land under Oklahoma law that could not be rejected pursuant to the Bankruptcy Code. [Read more.](#)

## **STATE – Legislative**

**Severance Tax – California.** An oil and gas severance tax bill that stalled in the state legislature throughout 2019 has been revived and referred to the Senate Governance and Finance Committee.

Although the bill may stall again in 2020, AAPL will be closely monitoring any developments and whether it moves out of committee. Sen. Bob Wieckowski (D) introduced [SB 246](#) in February 2019 to levy a 10 percent severance tax on oil and natural gas extracted in the state. The severance tax would be based on the average price per barrel of oil or average price per unit of gas extracted. Wieckowski said California should join the roughly 30 other oil and gas producing states that already impose a severance tax. Western States Petroleum Association President Catherine Reheis-Boyd called the proposal an “unnecessary tax” that would harm the state’s economy at a time when elected officials are touting a large budget surplus. “California voters have already rejected this bad idea,” she said, referring to a 2006 ballot measure. Voters “understand it would increase costs, devastate jobs, local services and compromise our state’s sustainable energy future.” [Read more.](#)

**Government Liability for Banning Hydraulic Fracturing – Colorado.** On January 8, HB20-1070 was introduced by Rep. Perry Buck (R). The bill specifies that a local government that bans hydraulic fracturing of an oil and gas well is liable to the mineral interest owner for the value of the mineral interest and that a local government that enacts a moratorium on oil and gas activities shall compensate oil and gas operators, mineral lessees, and royalty owners for all costs, damages, and losses of fair market value associated with the moratorium. [Read more.](#)

**Notaries Public – Missouri.** On January 8, HB 1874 was read the first time in the House since its pre-filing on December 23, 2019. The bill, sponsored by Rep. David Gregory (R), would amend existing notaries public law to allow nonresidents to qualify as notaries; sets effective dates and bond requirements; and sets forth other recordkeeping, notice and form requirements. [Read more.](#)

**Employee Misclassification – Missouri.** On January 2, HB 1920 was pre-filed by Rep. Justin Hill (R). The bill would repeal current law regarding independent

contractors and employee misclassification by providing a checklist of criteria in which a worker may be considered an independent contractor, rather than an employee by default, if those conditions are met. [Read more.](#)

**Division of Land – New Mexico.** On December 16, 2019, Rep. Greg Nibert (R) pre-filed HB 28 for the legislative session beginning January 21. The bill amends existing law regarding an exception to the New Mexico Subdivision Act for parcels divided for oil or gas operations to add “the division of land for oil or gas operations; provided the land continues to be used for oil or gas operations” as an exception to the definition of “subdivision” under the Act. [Read more.](#)

**Hydraulic Fracturing – New York.** In late December 2019, Sen. Jen Metzger (D) introduced, [SB 6909](#), a bill providing for a permanent ban on hydraulic fracturing in the state. This comes despite the December 2014 existing regulatory ban on hydraulic fracturing from Gov. Andrew Cuomo (D). The American Petroleum Institute immediately expressed its dissatisfaction noting, “New York already benefits from abundant, clean and reliable natural gas produced by our neighbors in Pennsylvania and elsewhere, and it’s a shame that New Yorkers aren’t able to tap into those same resources and economic opportunities.” [Read more.](#)

**Forced Pooling – West Virginia.** On January 8, HB 2055 was introduced by Rep. Isaac Sponaugle (D). The purpose of the “bill is to prohibit drilling units from being established without consent of all owners. The bill prohibits coal bed methane units from being established without consents from all owners. The bill prohibits deep oil or gas well units from being established without consents from all owners.” [Read more.](#)

**Setbacks; Monitoring – West Virginia.** On January 8, HB 2073 was introduced by Rep. Terri Sypolt (R). “The purpose of this bill is to implement the recommendations arising out of the studies required by the Natural Gas Horizontal Well Control Act

passed by the Legislature in December 14, 2011. The bill requires continuous monitoring of air, noise, dust and particulates. The bill requires the operator to undertake the best available control technology if standards for air, noise, dust or particulates are exceeded. The bill changes the setback from horizontal well work activity to a residence to 1,500 feet from the limit of well work disturbance.” [Read more.](#)

**Setbacks; Notice – West Virginia.** On January 8, HB 2102 was introduced by Rep. Barbara Evans Fleischauer (D). “The purpose of this bill is to change an elective obligation to a mandatory one. The bill requires notice in certain instances to the occupants of residential property. The bill prohibits the disturbance of a well site be no closer than 1,500 feet of an occupied dwelling. The bill provides notices include certain information. The bill establishes standards relating to air, noise, light and dust. The bill permits landowners be compensated for any decrease in the values of the land for its highest and best use. The bill requires the notice of a claim be also provided to an occupant of residential structure on the property. The bill establishes a statute of limitations for claims being filed.” [Read more.](#)

**Abandoned Mineral Interests – West Virginia.** On January 8, HB 2373 was introduced by Rep. Pat McGeehan (R). “The purpose of this bill is to create a procedure to streamline the process to claim abandoned mineral interests.” [Read more.](#)

**Severance Tax – West Virginia.** On January 8, HB 2489 was introduced by Rep. William Anderson (R). “The purpose of this bill is to remove the severance tax on oil and gas produced from low producing wells.” [Read more.](#)

**Well Production – West Virginia.** On January 8, HB 2641 was introduced by Rep. Joe Canestraro (D). “The purpose of this bill is to require owners of oil and gas wells to install and maintain separate meters that calculate the amount of production from those wells. The bill requires the Secretary of the Department of Environmental Protection to work

with the State Tax Commissioner to implement procedures allowing the Office of Oil and Gas to verify production. The bill requires the information be shared with county assessors and royalty owners.”

[Read more.](#)

**Production Tax – West Virginia.** On January 8, HB 2659 was introduced by Rep. Mick Bates (D). “The purpose of this bill is to provide for a new fee on [...] natural gas produced to fully fund [Public Employees Insurance Agency] benefits at current levels; allow a tax credit for value added jobs in West Virginia for persons paying this fee; and creating a special reserve account to assume that sufficient moneys are collected to preserve the existing insurance program for a 5-year period, then allowing excess proceeds to be directed to general revenue.”

[Read more.](#)

**Partition Actions; Heirs – West Virginia.** On January 8, HB 2802 was introduced by Rep. John R. Kelly (R). “The purpose of this bill is to enact the Uniform Partition of Heirs Property Act. The bill defines terms and provides for a court hearing to determine if the partition action concerns heirs’ property and the manner in which such property and interests may be sold.” [Read more.](#)

**Well Plugging; Bonds – West Virginia.** On January 8, SB 120 was introduced by Sen. Mike Romano (D). “The purpose of this bill is to require money that results from the forfeiture of an oil and gas operator’s bond as a result of the operator’s failure to plug a well or otherwise comply with state statutes and rules to first be applied to correct or mitigate an immediate threat to the environment or hindrance or impediment to the development of mineral resources of this state that caused the forfeiture of the bond.” [Read more.](#)

**Severance Tax Exemption; Abandoned Wells – West Virginia.** On January 9, SB 198 was introduced by Sen. Craig Blair (R). “The purpose of this bill is to exempt low volume oil and gas wells from severance tax, and to provide for a special use fee on sales from oil and gas wells which produce more than 5,000

cubic feet of natural gas or one-half barrel of oil per day but less than 60,000 cubic feet of natural gas or for oil produced from any well which produced an average between ½ barrel per day [and] 10 barrels of oil per day. The special use fee shall be used by the Secretary of the Department of Environmental Protection to plug abandoned oil and gas wells.”

[Read more.](#)

**Unknown Owners – West Virginia.** On January 8, SB 79 was introduced by Sen. Randy Smith (R). “The purpose of this bill is to provide that proceeds from certain oil and gas wells that are due to persons whose name or address are unknown are to be kept in a special fund and if unclaimed within seven years the proceeds shall be transferred to the Oil and Gas Reclamation Fund. The bill provides that if there is a surface disturbance those named surface owners of a leased interest subject to pooling for a horizontal well are the only surface owners insofar as the well permit is concerned. The bill provides that if another surface owner should become known his or her name shall be added as a surface owner on the permit. The bill provides that if proceeds from other mineral tracts in a unit or pool of a horizontal well are not claimed by an unknown, missing or abandoned owner within seven years the proceeds shall be transferred to the Oil and Gas Reclamation Fund. The bill provides that certain provisions take effect beginning when funds have been unclaimed for seven years after the special commissioner’s lease regardless of when the lease was signed.”

[Read more.](#)

**Leasing; Releases; Notice – West Virginia.** On January 8, SB 81 was introduced by Sen. Randy Smith (R). “The purpose of this bill is to provide a requirement for a lessee to execute and deliver to the lessor, within a specified time and without cost, a recordable release for terminated, expired, or canceled oil or natural gas leases; provide for a procedure by which a lessor may serve notice to a lessee, if a lessee fails to timely provide the release; require a lessee to timely notify the lessor in writing of a dispute; provide for a recordable affidavit of termination, expiration, or cancellation with specified



contents; provide that with proper notification in the absence of a dispute, a recorded affidavit creates a rebuttable presumption of termination and cancellation for the oil or natural gas lease regarding certain interests and renders it insufficient notice of the recorded lease under the notice statute.”

[Read more.](#)

**Well Plugging; Permitting Restrictions – West Virginia.** On January 8, SB 82 was introduced by Sen. Randy Smith (R). The purpose of this bill is to create the Orphan Oil and Gas Well Prevention Act which provides for certain well plugging assurances; permitting restrictions related to well plugging; providing for limitations on the transfer of wells; providing for responsibility of previous operators to plug transferred wells; and providing for different methods for operators to provide plugging assurance of wells including for wells not producing in paying quantities. [Read more.](#)

**Permitting – West Virginia.** On January 8, SB 84 was introduced by Sen. Randy Smith (R). “The purpose of this bill is to allow for expedited oil and gas well permitting and expedited oil and gas well permit modifications upon the payment of applicable expedited fees, the designation of the proceeds of such expedited fees, and the daily pro rata refund of the expedited fees if the permit is not approved between the 45th and 60th days after the submission of a permit application, and daily pro rata refund of one half of the modification fees between the 10th and 20th days after the submission of a permit modification application; all generally related to horizontal well oil and gas permitting.” [Read more.](#)

**Sage Grouse Mitigation Credits – Wyoming.** On December 10, HB 13 was pre-filed by the Joint Minerals, Business & Economic Development Committee for the legislative session beginning February 10. The bill would establish a program for compensatory mitigation credits for conservation of the Greater Sage-Grouse. The bill recognizes that industry, including energy development, must be considered when managing the Sage-Grouse and in

some cases where adverse species impacts occur, a system of compensatory mitigation would offset impacts to the species. [Read more.](#)

**Drilling Units; Pooling; Royalties – Wyoming.** On December 10, HB 14 was pre-filed by the Joint Minerals, Business & Economic Development Committee for the legislative session beginning February 10. The bill would amend the calculation of owners' shares for drilling units; provides for the expiration of pooling orders under specified conditions; and provides a royalty during payment of risk penalty. [Read more.](#)

## **[STATE – Regulatory](#)**

**Oil and Gas Emissions – Colorado.** On December 19, 2019, the Colorado Air Quality Control Commission [approved new rules](#) “designed to minimize emissions from oil and gas operations state-wide.” Tougher oil and gas emissions controls were part of the comprehensive oil and gas regulatory bill, [SB 19-181](#), signed into law last year. The rule eliminates the existing 90-day permitting deferral on new oil and gas facilities and now these facilities must be permitted before they can begin exploration and production activities. The rule also imposes new leak detection and repair requirements, emissions reporting and enhanced recordkeeping and new inspection requirements. “The objective is simple – minimize emissions at the source,” said Garry Kaufman, director of the Air Pollution Control Division. “These new rules represent months of hard work and communication with affected communities. They will slash emissions, make Colorado’s air cleaner and improve the quality of life for Coloradans across the state, including those citizens that live or work near oil and gas sites.” During December 2019 hearings on the rulemaking, industry representatives expressed concerns about redundant inspection requirements and rule changes that would significantly increase costs with little to no benefits in reduced emissions. “Unfortunately, politics can often get in the way of effective governance, and that’s what we saw in this rulemaking,” said Dan Haley, president and CEO of the Colorado Oil and Gas

Association. "Conversations about complicated technologies and emission reductions need to be steeped in facts, not scare tactics or suppositions." [Read more.](#)

**Employee Misclassification – Virginia.** At the close of 2019, Virginia Governor Ralph Northam (D), issued his [Inter-Agency Taskforce on Worker Misclassification and Payroll Fraud report](#) which resulted from the governor's August 2019 appointment of a taskforce charged with providing recommendations on how to "measure and combat misclassification in Virginia." The taskforce included representatives from several state agencies, including the Virginia Employment Commission, the Department of Labor and Industry, the Department of Professional and Occupational Regulation, and the Office of the Attorney General. The report made [11 recommendations](#) but does not have the force of law. However, it may be used as a starting point for future legislative and/or regulatory proposals targeting independent contractors and those that hire them. AAPL will keep an eye on any developments that arise from the taskforce recommendations. [Read more.](#)

## INDUSTRY NEWS FLASH

► **Nationwide hydraulic fracturing ban would invite global recession, says API.** On January 7, American Petroleum Institute president and CEO, Mike Sommers, told an audience at the State of American Energy event that Democratic presidential candidate plans to ban hydraulic fracturing would cost American jobs, spike household energy costs and spur a manufacturing downturn. "You don't abolish the most dynamic asset in the world's leading energy supplier without severe consequences," said Sommers. [Read more.](#)

► **Upstream oil and gas outlook for 2020.** On December 27, IHS Markit Energy Research released their podcast interview of experts revisiting their upstream oil and gas predictions for 2019 and to make their 2020 upstream oil and gas predictions.

Reed Olmstead, from the IHS North America Plays & Basins team, and David Vaucher, one of IHS Markit's onshore services and materials experts, joined the latest episode of *Upstream in Perspective*. To access the podcast recording: [Read more.](#)

## LEGISLATIVE SESSION OVERVIEW

**Session Notes:** California, Colorado, Idaho, Illinois, Indiana, Kentucky, Maine, Maryland, Massachusetts, Michigan, Mississippi, Missouri, Nebraska, New Hampshire, New Jersey, New York, Ohio, Pennsylvania, Rhode Island, Vermont, Virginia and West Virginia are in regular session. The District of Columbia Council, Puerto Rico and U.S. Congress is also in regular session.

The following states are expected to convene their 2020 sessions on the dates provided: **Arizona, Georgia, Iowa, Kansas and Washington** (January 13); **Delaware, Florida, New Jersey, North Carolina, South Carolina, South Dakota, Tennessee and Wisconsin** (January 14); **Hawaii** (January 15), **New Mexico and Alaska** (January 21), **Utah** (January 27), **Oklahoma and Oregon** (February 3) and **Alabama** (February 4).

**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. North Carolina Democratic Gov. Roy Cooper has 10 days from presentment to act on legislation or it becomes law without signature. Wisconsin Democratic Gov. Tony Evers has six days, Sundays excepted, to act on legislation or it becomes law without signature.

**Interim Committee Hearings:** The following states are currently holding 2020 interim committee hearings: [Alabama](#), [Alaska](#), [Arizona](#), [Connecticut](#), [Delaware](#), Florida [House](#), Georgia [House](#) and [Senate](#), [Hawaii](#), [Iowa](#), [Kansas](#), [Louisiana](#), [Montana](#), [Nevada](#), [New Mexico](#), [North Carolina](#), [North](#)

[Dakota](#), Oklahoma [House](#) and [Senate](#), South Carolina [House](#) and [Senate](#), [South Dakota](#), [Tennessee](#), Texas [House](#), [Utah](#), [Washington](#) 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](#), [Iowa](#), Kansas [House](#), [New Mexico](#), Oklahoma [House](#) and [Senate](#), [Oregon](#), [South Carolina](#), [South Dakota](#), [Tennessee](#), [Utah](#), and [Washington](#). ■

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