

# GOVERNMENTAL AFFAIRS WEEKLY REPORT

## Weekly Highlights At-A-Glance

### FEDERAL – Legislative

**Buffalo Tract Protection Act – H.R. 2640.** On January 15, the House Natural Resources Committee held a hearing on H.R. 2640, known as the *Buffalo Tract Protection Act*. The bill, sponsored by Rep. Debra Haaland (D-NM), would withdraw “specified Bureau of Land Management (BLM) lands in Placitas, New Mexico, from all forms of mineral development under all laws pertaining to mineral leasing or mineral materials, including locatable minerals. Any disposal of the surface estate of the BLM lands shall be subject to the condition that the mineral estate of those lands shall remain under the ownership of the BLM, subject to the withdrawal under this bill.” [Read more.](#)

**Migratory Bird Protection Act of 2020 – H.R. 5552.** On January 15, [H.R. 5552](#), known as the *Migratory Bird Protection Act of 2020*, was approved by the House Natural Resources Committee for the bill introduced January 8 by Rep. Alan Lowenthal (D). Oil and gas companies would face the risk of criminal prosecution for the unintentional killing of migratory birds. A new regulatory system would be due from the U.S. Fish and Wildlife Service within five years of enactment of the legislation. However, Rep. Lowenthal stressed during a [January 15 hearing](#) in the Natural Resources Committee that companies would be exempt from criminal prosecution if they adhere to the regulations, even if birds are killed. But Republicans on the committee objected to a new array of regulations and fees and uncertain liabilities. Even if the bill passes the House it is likely dead-on-arrival in the Republican-led Senate. [Read more.](#)

### FEDERAL – Judicial

**BLM Leasing – California.** On January 14, a group

of environmental activists sued the Trump administration in an attempt to halt oil and gas leasing and development on federal lands in California. The litigants in *Center for Biological Diversity v. U.S. Bureau of Land Management* (Case No. 2:20-cv-00371) claim the final Supplemental Environmental Impact Statement (SEIS) adopted by the Bakersfield Field Office of the Bureau of Land Management (BLM) “fails to adequately analyze the serious environmental and health impacts from hydraulic fracturing” on “more than a million acres of federal land and mineral estate that BLM has opened to harmful oil and gas leasing and development, in violation of the National Environmental Policy Act.” The SEIS supports a resource management plan encompassing 400,000 acres of federal land and 1.2 million acres of federal mineral estate across eight California counties. The government has yet to respond to the lawsuit. [Read more.](#)

**BLM Leasing – Washington, DC.** On January 9, environmental activists filed suit against the Interior Department and BLM challenging the BLM’s approval of 2,067 oil and gas leases encompassing almost two million acres of public lands across five western states—Colorado, Montana, New Mexico, Utah, and Wyoming. According to the complaint, in *WildEarth Guardians v. Bernhardt* (Case No. 1:20-cv-00056), the BLM approved the leases at issue “without fully analyzing the direct, indirect, and cumulative impacts of oil and gas leasing on our climate in violation of the National Environmental Policy Act (NEPA).” This case comes as the Trump administration is finalizing rulemaking to relax NEPA climate analysis reviews when approving federal infrastructure and oil and gas leasing projects. The government has yet to respond to the lawsuit. [Read more.](#)

### **Overriding Royalties; Assignments; Leasing –**

**Ohio.** On January 7, in *Talmage v. Bradley* (Case No. 2:17-cv-544), the U.S. District Court for the Southern District of Ohio, Eastern Division, denied motions to reconsider an earlier opinion. In this action, the plaintiffs claimed the assignment granting the overriding royalty (ORRI) was invalid in one of the counties at issue because it was not recorded there. For their part, the defendants sought to invalidate the ORRI as to new wells. The Court denied both motions, allowing a [March 26, 2019 opinion](#) to stand. [Read more.](#)

**Royalties; Leasing – Ohio.** On December 23, 2019, in *Bounty Minerals, LLC v. Chesapeake Exploration, LLC* (Case No. 5:17-cv-1695), Bounty Minerals alleged that Chesapeake breached the royalty provisions of the subject leases because "the royalties that Bounty receives for production under the Leases is not comparable to values that could be obtained in an arms-length transaction and are not 'without any deductions or expenses.'" Chesapeake argued that they are entitled to judgment in their favor with respect to this claim because Bounty Minerals' royalty payment is directly tied to the arms-length sales price that is received downstream and is, therefore, "comparable" to the value that could be obtained in an arms-length transaction. The Court agreed with Chesapeake holding that Bounty Minerals' royalties were properly calculated at the wellhead via the netback method. As such, Bounty Minerals' royalty payments were directly derived from sales made in arms-length transactions with unaffiliated, third-party purchasers. [Read more.](#)

**Seated Lands; Mineral Rights – Pennsylvania.** On December 18, in *Pennsylvania v. Thomas E. Proctor Heirs Trust* (Case No. 1:12-CV-1567), the U.S. District Court for the Middle District of Pennsylvania addressed a dispute between the state and a private trust over the ownership of subsurface estates. The case touched on the pre-1948 issue of [title washing](#) in Pennsylvania and its application to unseated lands and tax sales. Here, the Court held that in applying that legal framework to the facts at issue, a 1908 tax sale extinguished the mineral rights claimed by the

trust. Hence, "a 1920 deed conveyed the entire warrant to the [Pennsylvania] Game Commission, including the subsurface estate." [Read more.](#)

### **STATE – Legislative**

**Oil and Gas Production Taxes – Alaska.** On January 10, SB 129 was pre-filed by Sen. Bill Wielechowski (D) for the legislative session beginning January 21. The bill would make certain changes to the oil and gas production tax as well as credits taken against tax payments. The bill also makes public certain information related to the oil and gas production tax. [Read more.](#)

**Supervision of Oil and Gas – California.** On January 15, an amended version of AB 1441 was referred to the Appropriations Committee after passing the Committee on Natural Resources. The bill was originally introduced by Asm. Marc Levine (D) in February 2019 and stalled in committee. "Under existing law, the Geologic Energy Management Division in the Department of Conservation regulates the drilling, operation, maintenance, and abandonment of oil and gas wells in the state. Existing law requires the State Oil and Gas Supervisor to supervise the drilling, operation, maintenance, and abandonment of wells and the operation, maintenance, and removal or abandonment of tanks and facilities related to oil and gas production within an oil and gas field, so as to prevent damage to life, health, property, and natural resources, as provided; to permit owners and operators of wells to utilize all known methods and practices to increase the ultimate recovery of hydrocarbons; and to perform the supervisor's administrative duties in a manner that encourages the wise development of oil and gas resources to best meet oil and gas needs in this state. This bill would revise and recast the duty on the supervisor to supervise the drilling, operation, maintenance, and abandonment of wells so as to permit the owners or operators of the wells to utilize methods and practices known to the oil industry that, in the opinion of the supervisor, are suitable in each proposed case. The bill would revise the declared

policy of the state relating to the grant in an oil and gas lease or contract of the right or power to explore for and remove hydrocarbons from any lands in the state. The bill would instead require the supervisor to perform their administrative duties in a manner so as to help ensure the wise oversight of oil and gas development used to meet oil and gas needs in this state.(2) Existing law authorizes the State Lands Commission to make leases for the extraction and removal of oil and gas deposits from state-owned lands to the highest qualified bidder, or to joint bidders, as provided by law, and requires that a lease include all oil and gas deposits in the leased land and be for a term of 20 years and for so long thereafter as gas or oil is produced in paying quantities from the leased land, or that the lessee be diligently conducting production, drilling, deepening, repairing, redrilling, or other necessary lease or well maintenance operations on the leased land. Existing law establishes a finding and determination by the Legislature that the people of the State of California have a direct and primary interest in assuring the production of the optimum quantities of oil and gas from lands owned by the state, and that a minimum of oil and gas be left wasted and unrecovered in such lands." [Read more.](#)

**Employee Misclassification – Indiana.** On January 13, SB 309 was introduced by Sen. David Niezgodski (D). The bill would require relevant state agencies to report certain information to the interim study committee on employment and labor for the immediately preceding state fiscal year before November 1 of each year for three years, beginning November 1, 2020. The bill also provides "that the worker's compensation board of Indiana may impose monetary fines on an employer for failure to procure worker's compensation coverage for its employees, if required to do so under the law." The bill also increases certain civil penalties assessed by the worker's compensation board of Indiana and requires relevant state agencies to enter into a memorandum of understanding concerning issues relating to the investigation and enforcement of employee misclassification laws. [Read more.](#)

**Employee Misclassification – Indiana.** On January 13, SB 201 was introduced by Sen. Karen Tallian (D). The bill would require "the department of labor (DOL), the department of workforce development (DWD), the department of state revenue (DOR), and the worker's compensation board (WCB) to share information concerning instances in which a construction contractor paid a worker in cash. Establishes the payroll fraud task force (task force), consisting of the commissioners of the DOL, DWD, and DOR, and the chair of the WCB, or their designees, to investigate suspected instances of payroll fraud, employee misclassification, and violations of other state labor and employment statutes occurring on commercial and industrial construction projects. Requires the DOL to hire and assign to the task force an investigator to conduct the task force's investigation and enforcement activities. Establishes a nonreverting and annually appropriated payroll fraud task force administrative fund to carry out the administrative purposes and functions of the task force." [Read more.](#)

**Methane Emissions – Michigan.** On January 8, SB 702 was introduced by Sen. Jeff Irwin (D). The bill amends existing law to require wells to operate "in conjunction with a methane control or capture system capable of reducing fugitive emissions by 99%. This subsection does not apply to a well that consists only of a wellhead." The bill disallows flaring as a method of methane control, imposes civil fines for violations, and provides for reporting and inspections. [Read more.](#)

**Uniform Wills Recognition Act – Nebraska.** On January 13, LB 966 was introduced by Sen. Wendy DeBoer. The bill would adopt the Uniform Wills Recognition Act (1977). The Act implements an international convention calling for all countries and states to adopt a uniform formality for executing wills. The Act also allows probate courts of the enacting state to recognize any will meeting the Act's requirements. As of this report, [19 states](#) have already adopted the Act. [Read more.](#)

**Independent Contractors – New Jersey.** On

January 13, A1526 passed both houses of the New Jersey Legislature. The bill, sponsored by Asm. Andrew Zwicker (D), provides that an independent contractor is required to be paid the remuneration earned according to work terms agreed to by the independent contractor and its client, and requires the Department of Labor and Workforce Development to act as a regulatory agency in certain circumstances regarding these work agreements. Under the bill, an “independent contractor” means an individual who performs services for remuneration, where the services are not regarded as employment for the purposes of the “unemployment compensation law” with certain exceptions. The bill provides that any individual who believes himself or herself to be an independent contractor may file with the Commissioner of Labor and Workforce Development a complaint regarding a violation of the bill by a client, and damages may be assessed. [Read more.](#)

**Employee Misclassification – New Jersey.** On January 13, A5843 passed both houses of the New Jersey Legislature. The bill, sponsored by Asm. Shanique Speight (D), requires employers to post a notice for their employees regarding employee misclassification. The bill also requires the Department of Labor and Workforce Development to maintain a webpage that contains information regarding employee misclassification. [Read more.](#)

**Hydraulic Fracturing Permits – New Mexico.** On January 13, [SB 104](#) was introduced by Sen. Antoinette Sedillo Lopez (D). The bill would impose a moratorium on the issuance of new hydraulic fracturing permits through 2024. The bill also imposes reporting requirements on certain state agencies regarding oil and gas permitting, impacts, and development. If passed, the legislation could reportedly cost the state up to \$3.5 billion. For background, Lopez introduced a similar hydraulic fracturing prohibition bill ([SB 459](#)) in the 2019 legislative session and it never received any votes and died in committee. The Democratic governor understands such oil and gas activities “were the main source of revenue that led to multi-billion

surpluses in the state’s general fund this year and in 2019.” For those reasons and prior bill outcomes we do not expect this bill to move forward but will continue to watch it very closely. [Read more.](#)

**Well Plugging – South Dakota.** On January 9, the House Committee on Agriculture and Natural Resources introduced HB 1025. The bill would revise certain provisions regarding plugging and performance bonds for oil and gas wells. [Read more.](#)

**Well Plugging – South Dakota.** On January 9, the House Committee on Appropriations introduced SB 17. The bill makes an appropriation from state funds for the plugging and surface reclamation of natural gas wells and to declare an emergency. [Read more.](#)

**Notaries Public – Virginia.** On January 7, SB 694 was introduced by Sen. Mark Obenshain (R). The bill would prohibit “a person who has been convicted of a felony offense of (i) fraud or misrepresentation or (ii) robbery, extortion, burglary, larceny, embezzlement, fraudulent conversion, perjury, bribery, treason, or racketeering from qualifying to be a notary, regardless of whether his civil rights have been restored.” [Read more.](#)

**Offshore Leasing – Virginia.** On January 7, HB 1016 was introduced by Del. Nancy Guy (D). The bill “prohibits any form of leasing for purposes of exploration, development, or production of oil or gas in Virginia’s territorial sea, which encompasses the waters within three nautical miles wide adjacent to Virginia’s coast. The measure prohibits state agencies from leasing, or from authorizing or permitting the construction or location of a structure upon, over, or under, any of the submerged and submersible lands within the limits of the territorial sea for the exploration, development, or production of oil or gas. The measure also removes from the Virginia Energy Plan provisions that state that it is the policy of the Commonwealth to support federal efforts to determine the extent of oil and natural gas resources 50 miles or more off the Atlantic shoreline



and to permit the production and development of oil and natural gas resources 50 miles or more off the Atlantic shoreline." [Read more.](#)

**Oil and Gas Conservation Commission – West Virginia.** On January 13, SB 316 was introduced by Sen. Mark Maynard (R). "The purpose of this bill is to remove the requirements that one member, appointed by the Governor, of the Oil and Gas Conservation Commission must possess a degree from an accredited college or university in petroleum engineering or geology, and be a registered professional engineer." [Read more.](#)

**Abandoned Wells – West Virginia.** On January 15, HB 4090 passed the House Energy Committee following its introduction. The purpose of the bill, introduced by Del. William Anderson (R), "is to reduce the severance tax on marginal oil and natural gas wells, excluding wells utilizing horizontal drilling techniques targeting shale formations, to 2.5% from 5% and to provide that the 2.5% tax paid on such wells is to be used by the Secretary of the Department of Environmental Protection to plug abandoned oil and gas wells without a responsible operator through the use of a new fund called the Oil and Gas Abandoned Well Plugging Fund. The vertical oil and gas wells which are affected by the severance tax reduction produce on average more than 5,000 cubic feet of natural gas or one-half barrel of oil per day and on average less than 60,000 cubic feet of natural gas or 10 barrels of oil per day." [Read more.](#)

**Real Property Excise Tax – West Virginia.** On January 14, HB 4190 was introduced by Del. Joe Canestraro (D). The bill would amend real property excise tax law by making changes to the definitions section of the code regarding mineral interests as they pertain to the "documents" definition. [Read more.](#)

**Partition Actions; Heirs – West Virginia.** On January 10, HB 4081 was introduced by Del. William Anderson (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.](#)

**Unknown/Unlocatable Owners – West Virginia.** On January 10, HB 4088 was introduced by Del. William Anderson (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.](#)

**Expedited Permitting – West Virginia.** On January 15, HB 4091 passed the House Energy Committee following its introduction. The purpose of the bill, introduced by Del. William Anderson (R), "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.](#)

**Severance Tax – West Virginia.** On January 8, HB 2568 was introduced by Del. John Doyle (D). “The purpose of this bill is to increase the tax on the privilege of severing natural gas and oil from 5 percent to 10 percent.” [Read more.](#)

## **STATE – Regulatory**

### **Setbacks; Bonding Requirements – Colorado.**

On January 7, activist group, Colorado Rising, “submitted language for six proposed ballot initiatives to the Colorado Secretary of State’s office.” The [six proposed initiatives](#) include increased well setbacks and increased bonding requirements for new wells. To qualify for the state’s November 2020 ballot, the initiatives will require 124,632 voter signatures. In 2018, voters struck down a setback initiative that would have required new oil and gas activity to occur at least 2,500 feet from schools and parks. A similar measure failed to make the ballot in 2016. The initiative process takes many months and the reported initiatives have not yet even been titled or scheduled for public hearings by the Colorado Secretary of State. AAPL will be on alert for any developments in this initial stage. [Read more.](#)

**Permitting – Texas.** On January 13, *Oil & Gas Journal* reported that the Railroad Commission of Texas (RRC) staff set a record in 2019 by taking [two days on average to process standard drilling permits](#), one day less than the legislative requirement. During calendar year 2019 the RRC processed a total of 11,654 new drilling permits. Also [visit the RRC website](#) for the latest monthly drilling permits and completions statistics. [Read more.](#)

## **STATE – Judicial**

**Leasing – Ohio.** On December 6, 2019, the Ohio Court of Appeals, Seventh District, addressed a dispute in *Fiocca v. AIM Energy, LLC* (Case No. 2019-Ohio-544) over whether certain wells were producing in paying quantities. The appellant argued the leases did not hold all of the acreage to extend the lease terms. This Court disagreed and found the requirement of “production in paying quantities”

was met. The appellant also challenged the trial court finding that common metering satisfied production in paying quantities. This Court disagreed and held that undisputed evidence showed that “the wells on the Property, though common metered with each other, have been producing oil and gas in paying quantities.” [Read more.](#)

### **Dormant Mineral Act; Marketable Title Act – Ohio.**

On December 5, 2019, the Ohio Court of Appeals, Seventh District, addressed a dispute involving co-tenants and claims to certain mineral interests in *Brownfield v. J.A. Jeffers* (Case No. 2019-Ohio-5045). The Court rejected surface owner claims that they were entitled to one-fifth of an oil and gas mineral estate based on their mistaken belief that they reserved the underlying oil and gas by owning that same percentage share of the surface estate. [Read more.](#)

### **Title Defects; Leasing – Pennsylvania.**

On December 16, in *Bastin v. Bassi* (Case No. 682 WDA 2019), the Pennsylvania Superior Court addressed an action against an attorney who purportedly failed to discover title defects affecting the leased property. The Court concluded that the attorney “did not, in fact, conduct a title examination of the Property or issue a title report to Appellants. To the contrary, it is apparent that Attorney Bassi simply obtained title insurance from Fidelity [National Title Insurance] on behalf of Appellants.” The Court also held that even if it assumed the attorney was negligent and failed to advise Appellants of the existence of the lease at issue “this failure did not cause Appellants’ alleged injury.” [Read more.](#)

## **INDUSTRY NEWS FLASH**

► **New record: Texas oil and gas industry paid \$16.3 billion in taxes and royalties.** On January 14, the Texas Oil & Gas Association (TXOGA) reported that the Texas oil and natural gas industry paid more than \$16 billion in state and local taxes and state royalties in fiscal year 2019 – the highest total in Texas history. “Continuous innovation and

policies that encourage safe, responsible energy development are driving our nation, our state and our communities to new heights," said TXOGA President Todd Staples. [Read more.](#)

## **LEGISLATIVE SESSION OVERVIEW**

**Session Notes:** Arizona, California, Colorado, Delaware, Florida, Georgia, Hawaii, Idaho, Illinois, Indiana, Iowa, Kansas, Kentucky, Maine, Maryland, Massachusetts, Michigan, Mississippi, Missouri, Nebraska, New Hampshire, New Jersey, New York, Ohio, Pennsylvania, Rhode Island, South Carolina, South Dakota, Tennessee, Wisconsin, Vermont, Virginia, Washington and West Virginia are in regular session. The District of Columbia Council, Puerto Rico and U.S. Congress are also in regular session.

**North Carolina** convened on January 14 and adjourned later that day; with the Senate failing to override Democratic Gov. Roy Cooper's veto of a teacher pay raise bill, reports [The News & Observer](#). The legislature is in recess until April 28.

**New Jersey** adjourned its 2019 session on January 14.

The following states are expected to convene their 2020 sessions on the dates provided: **New Mexico** and **Alaska** (January 21), **Utah** (January 27), **Oklahoma** and **Oregon** (February 3), **Alabama** (February 4), **Connecticut** (February 5), **Wyoming** (February 10) and **Minnesota** (February 11).

**Signing Deadlines:** Alaska Republican Gov. Mike Dunleavy has 20 days from delivery, Sundays excepted, to act on legislation or it becomes law without signature. **New Jersey** Democratic Gov. Phil Murphy has until January 21 to act on 2018-2019 bills that passed the legislature after January 4 or they are pocket vetoed. **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](#), [Connecticut](#), [Louisiana](#), [Montana](#), [Nevada](#), [New Mexico](#), [North Dakota](#), [Oklahoma House](#) and [Senate](#), [Texas House](#), [Utah](#), and [Wyoming](#).

**Bill Pre-Files:** The following states are currently posting 2020 bill drafts, pre-files and interim studies: [Alabama House](#), [Alaska](#), [Arkansas](#), [New Mexico](#), [Oklahoma House](#) and [Senate](#), [Oregon](#), and [Utah](#). ■

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