

GOVERNMENTAL AFFAIRS WEEKLY REPORT

Weekly Highlights At-A-Glance

FEDERAL – Legislative

BLM Leasing – H.R. 3225. On June 28, [H.R. 3225](#), known as the “Restoring Community Input and Public Protections in Oil and Gas Leasing Act of 2019” was referred to the House Committee on Agriculture Subcommittee on Conservation and Forestry. In June, the bill, sponsored by Rep. Mike Levin (D-CA), was subject to a hearing in the House Natural Resources Subcommittee on Energy and Mineral Resources (See [hearing record](#)). The legislation would eliminate noncompetitive oil and gas leasing, requiring companies to pay a fee to nominate lands for leasing, raise the onshore oil and gas royalty rate, rental fee, and the minimum bid amount as well as require companies that nominate lands for oil and gas leasing and bid on leases to disclose their identities. The bill also provides for greater public notice and input regarding oil and gas lease sales, among other provisions. Should the bill pass the House, it is unlikely to receive consideration in the Republican-controlled Senate. [Read more.](#)

FEDERAL – Regulatory

BLM Leasing – Alaska. On June 20, the Bureau of Land Management (BLM) announced that the agency is seeking tract nominations and comments to be considered for its 2019 oil and gas lease sale in the National Petroleum Reserve in Alaska (NPR-A). According to the BLM, “There are 879 tracts on approximately 10.2 million acres that will be available for nomination and comment. Currently, there are 215 authorized oil and gas leases, totaling 1,558,396 acres in the NPR-A. “The BLM Alaska State Office must receive all nominations and comments on these NPR-A tracts on or before July 22, 2019. [Read more.](#)

BLM Leasing – New Mexico; Oklahoma. On July 8, the BLM announced a public comment period on the environmental analysis for its November 7, 2019 oil and gas lease sale for parcels in New Mexico and Oklahoma. Sixteen parcels, totaling approximately 7,600 acres, of federal minerals are proposed for lease. The parcels are located in Eddy, Lea, and Sandoval counties, New Mexico; and Dewey and Woodward counties, Oklahoma. The comment period will run through July 26, 2019. [Read more.](#)

BLM Onshore Energy Assistant Director. On June 25, the BLM announced that Nicholas Douglas, formerly director of the U.S. Forest Service's Minerals and Geology Management program, is now BLM's assistant director of energy, minerals and realty management. “The assistant director's position is a significant one within BLM, overseeing all onshore energy development, including oil, natural gas and coal, as well as renewable energy. The assistant director also handles the development of energy corridors on federal lands, as well as overhead power line and pipeline rights of way grants.” [Read more.](#)

FEDERAL – Judicial

Subsurface Rights; Interference with Drilling Operations – Third Circuit (Pennsylvania). On June 4, in *Duhring Resource Co. v. United States* (Case No. 18-1289), the U.S. Court of Appeals for the Third Circuit, on appeal from the U.S. District Court for the Western District of Pennsylvania, held in favor of an oil and gas operator in a case involving federal governmental interference with subsurface rights in the Allegheny National Forest. Duhring brought the case against the U.S. government for “tortious interference with its ability to exercise its oil, gas, and mineral” rights where the U.S. Forest Service

controlled the surface estate and stymied efforts by the operator to develop those resources. Here, the Court held that Duhring had an easement over the surface estate and under Pennsylvania law was permitted to seek damages against the government. The Third Circuit, thus, remanded the case back to the District Court for determinations regarding loss of profits to the operator. [Read more.](#)

Royalties; Title; Leasing – Texas. On May 31, in *Verde Minerals, LLC v. 1893 Oil & Gas, Ltd.* (Case No. 2:16-CV-463), the U.S. District Court for the Southern District of Texas (Corpus Christi), addressed a case of withheld royalty payments where clouds over title existed. In dismissing the action, the Court held the “facts establish that there is a ‘dispute over title’ and that Burlington has ‘reasonable doubt’ that Verde has clear title to the proceeds. Thus, the statute allows Burlington to withhold payments until the issue of Verde’s ownership interests is resolved. Thus, Verde has failed to plead facts that lead to a reasonable inference that Burlington violated the payment requirements.” [Read more.](#)

STATE – Legislative

Regulatory Management – California. (*Update to 6/3/19 Weekly Report*) On July 10, AB 1440 passed the Senate Committee on Natural Resources and Water has been re-referred back to the Senate Appropriations Committee. The bill passed the Assembly in May. The measure, sponsored by Asm. Marc Levine (D), revises the purpose of the state’s Oil and Gas Supervisor regarding supervision of the drilling, operation, maintenance, and abandonment of wells to remove references encouraging oil production. Per the [legislature bill analysis](#), the major provisions are: “(1) Revises the purposes of the Supervisor supervision of the drilling, operation, maintenance, and abandonment of wells to remove references encouraging oil production; (2) Prohibits the Supervisor from supervising the drilling, operation, maintenance, abandonment of well in a way that allows operations that risk damage of life, health, property, and natural

resources; damage to underground oil and gas deposits from infiltrating water and other causes; loss of oil, gas, or reservoir energy; or damage to underground and surface waters suitable for irrigation or domestic purposes by the infiltration of, or the addition of, detrimental substances; (3) Requires the Supervisor to administer California’s oil and gas laws so as to help ensure the wise oversight of oil and gas development instead of encouraging the wise development of oil and gas resources; and (4) Deletes findings relating to State Land Commission oil and gas leases that states, “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.](#)

Leases; Security Interests – Louisiana. (*Update to 6/10/19 Weekly Report*) On June 19, SB 242 was signed into law by Gov. John Bel Edwards (D). The Act, sponsored by Sen. R.L. Bret Allain (R), authorizes the Mineral and Energy Board to include in “state, any state agency, or any political subdivision after July 31, 2019” leases a clause granting a continuing security interest in and to all as-extracted collateral attributable to, produced, or to be produced from the leased premises as security for the prompt and complete payment of royalties or other sums of money due under the lease. The Act applies to any new lease or previously executed lease that is subsequently assigned, amended or modified by agreement of all parties after July 31. Prior to entering into any lease containing a continuing security interest clause, the Board would be required to submit the clause to both the House and Senate Natural Resources committees for their approval. The Act is effective August 1, 2019. [Read more.](#)

Mineral Rights – Louisiana. (*Update to 6/10/19 Weekly Report*) On June 11, SB 115 was signed into law by Gov. John Bel Edwards (D). The Act is effective August 1, 2019. The legislation, sponsored by Sen. Rick Ward (R), reduces the consent threshold from 80 percent to 75 percent to exercise

mineral rights, grant a mineral lease or conduct operations in instances of co-ownership. Final amendments specify that the Act would only apply to contracts entered into on or after the effective date of the bill. [Read more.](#)

Hydraulic Fracturing Moratorium – Oregon.

(Update to 6/3/19 Weekly Report) On June 17, Gov. Kate Brown (D) signed HB 2623 into law. The Act temporarily bans hydraulic fracturing in the state. The bill passed the House in March. The initial House version, introduced by Rep. Julie Fahey (D), imposed a “statewide moratorium on hydraulic fracturing used in the exploration for, or production of, oil or gas until 2030.” The Senate version, which was adopted in the final Act, reduced the moratorium period to instead run through January 2, 2025. The Act exempts natural gas storage wells, geothermal activities, and existing coal bed methane extraction wells from the definition of “hydraulic fracturing” subject to the moratorium. The Act became immediately effective upon passage. [Read more.](#)

Employee Misclassification – Pennsylvania.

On June 17, HB 716, sponsored by Rep. John Galloway (D), unanimously passed the House. According to the sponsoring memorandum, the bill will address the issue of employee misclassification “by creating a joint agency task force on employee misclassification. The task force will investigate the practice and develop and implement a comprehensive plan to reduce misclassification in Pennsylvania. With this task force in place, we will be able to properly identify the scope of the problem and create a plan to solve it.” [[Legislative Session Note](#): The Pennsylvania House is in recess until September 17, 2019 and the Pennsylvania Senate is in recess until September 23, 2019.] [Read more.](#)

Well Reporting – Pennsylvania. On June 18, HB 1649 was introduced by Rep. Christopher Rabb (D). According to the sponsoring memorandum, “This legislation would provide for the reporting of impacts on communities and public resources caused by unconventional natural gas production.” Specifically,

the bill, which amends existing law, requires well operators to annually report [certain information](#) to be made publicly available through the state Department of Environmental Protection’s website. [[Legislative Session Note](#): The Pennsylvania Senate is in recess until September 23, 2019 and the Pennsylvania House is in recess until September 17, 2019.] [Read more.](#)

Conventional Oil and Gas – Pennsylvania.

On June 14, HB 1635 was introduced by Rep. Martin Causer (R). According to the sponsoring memorandum, “This legislation 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.” Known as the Conventional Oil and Gas Wells Act, the bill would “(1) Permit the optimal development of the oil and gas resources of Pennsylvania consistent with the property rights of owners of the oil and gas resources and the protection of the health, safety, environment and property of the residents of this Commonwealth; (2) Protect the safety of personnel and facilities employed in the exploration, development, storage and production of natural gas or oil or the mining of coal; (3) Protect the safety and property rights of persons residing in areas where exploration, development, storage or production occurs; (4) Protect the natural resources, environmental rights, property rights and values secured by the Constitution of Pennsylvania; and (5) Provide a flexible and cost-effective way to implement and enforce the provisions of this act. The bill “relates to conventional wells and well sites only.” [[Legislative Session Note](#): The Pennsylvania House is in recess until September 17, 2019 and the Pennsylvania Senate is in recess until September 23, 2019.] [Read more.](#)

Leasing; Minerals and Royalty Interests – Texas.

(Update to 6/3/19 Weekly Report) On June 10, HB 3838 was signed into law by Gov. Greg Abbott (R). The legislation, sponsored by Rep. Ernest Bailes (R), had been amended to remove confusion regarding language which may have appeared to affect oil, gas or mineral *leasing* and the bill was not intended to do

so but rather to provide certain disclosures in the sale of a mineral or royalty interest. According to the Texas Legislature's [bill analysis](#), "Reports indicate incidents in which mineral and royalty interest owners, primarily the elderly and less educated, have been the target of a scam by which they are presented with a document that purports to lease those interests, but instead authorizes their sale. Concerns have been raised that existing fraud statutes do not provide adequate protection for these mineral and royalty interest owners. C.S.H.B. 3838 seeks to provide protection for these owners by requiring a specific disclosure in certain offers to purchase a mineral or royalty interest." Thus, "The bill does not apply to a conveyance of a mineral or royalty interest by an instrument that: is an oil, gas, or mineral lease; conveys a mineral or royalty interest for a term; and provides that the interest conveyed vests in possession after the expiration or termination of all or a portion of the interest conveyed by an existing oil, gas, or mineral lease in effect at the time of the execution of the instrument, commonly referred to as a top lease." The Act is effective September 1, 2019. [Read more.](#)

Eminent Domain – Texas. (*Update to 6/3/19 Weekly Report*) The eminent domain bill, [SB 421](#), sponsored by Sen. Lois Kolkhorst (R), failed to move in the Texas legislative session and has died. Despite extensive negotiations between landowners, the industry and legislators, consensus was not reached before session adjournment. The legislation consisted of components designed to provide additional protections and transparency for landowners who are forced to undergo the private condemnation process while protecting industry interests. According to Texas law firm, Kane Russell Coleman Logan PC, "The original bill submitted by Senator Kolkhorst was viewed by the industry as burdensome, overbroad, and likely to spawn much litigation and expense due to its complexity. Similarly, the industry-backed Committee bill had flaws from the landowners' perspective. It sought to provide a realistic balance of protections and efficiencies, and uphold freedom of contract. The landowners believed it included terms and

requirements that could also spur litigation; was too limited in scope; and removed pieces of penalty and transparency legislation without offering any alternatives. Finally, landowners disliked the moratorium that would prevent the legislature from rewriting the statute for over a decade." [Read more.](#)

STATE – Regulatory

Methane Mitigation Roadmap – New Mexico. On June 24, the New Mexico Oil and Gas Association (NMOGA) published a Methane Mitigation Roadmap, ([Click here](#) to download the full report) outlining areas where industry and government can work together through cost-effective regulatory strategies to continue reductions in methane emissions. The roadmap identifies the four most reported sources of methane emissions from oil and natural gas production using EPA data and provides specific regulatory suggestions and considerations based on proven industry experience in reducing emissions and the best available science and peer-reviewed data. "We know that we have a responsibility to reduce our methane emissions and this report underscores we are in fact reducing emissions through responsible operations," said Ryan Flynn, NMOGA Executive Director. "We will continue collaborating with willing partners in the public and private sector, while investing in advanced technology and innovation to achieve even greater reductions in methane emissions." [Read more.](#)

Railroad Commission – Texas. Last month, Railroad Commissioner, Wayne Christian, was unanimously elected Chairman of the state agency which regulates the oil and natural gas industry in Texas. Elected to the Railroad Commission in 2016, Christian is a former Texas state representative from the East Texas town of Center. "It has been the honor of my life to serve on the Railroad Commission during this historic period of growth for our state's oil and gas industry," said Christian, who succeeds Christi Craddick in the role. [Read more.](#)

STATE – Judicial

Permitting; Setbacks – Colorado. On June 6, in [*Weld Air & Water v. Colorado Oil and Gas Conservation Commission*](#) (Case No. 2019 COA 86), activist plaintiffs challenged the application approval by the Commission for an operator to conduct oil and gas operations at an existing drilling site. “Petitioners argued that the district court erred when it found that the Commission did not act arbitrarily and capriciously by failing to consider public comments. They contended that the Commission was obligated to respond to substantive public comments because its rules require it to make a record of its decision-making process to show that it considered public comments. The record shows that the Commission considered and responded to public concerns regarding (1) the students’ health, (2) Extraction’s emergency response plan, and (3) alternative siting. The district court did not err in concluding that the Commission did not act arbitrarily or capriciously in granting the challenged permits.” The plaintiffs “also argued that the district court erred when it found that the Commission complied with its own setback rules because it did not require Extraction to conduct an alternative site analysis before granting the permits.” Here, the Colorado Court of Appeals affirmed the lower court ruling against the plaintiffs, holding that “the Commission did not act arbitrarily and capriciously in authorizing” the challenged permits and also complied with setback regulations. [Read more.](#)

Adverse Possession; Reversionary Mineral Interests – Kansas. On June 7, in *Oxy USA Inc. v. Red Wing Oil, LLC* (Case No. 111,973), the Kansas Supreme Court addressed a case arising from a dispute over a one-half mineral interest. Royalties from these mineral rights were being generated by mineral production occurring on adjacent land which is part of the same unitized production unit. The operator initiated a quiet title action in order to determine who was the rightful owner to the royalties generated from the interest. The Court held that “the mere misappropriation of royalties standing alone is not sufficient to establish adverse possession of a

mineral interest. A royalty represents a portion of the value of minerals after production. Thus, being in open, exclusive, and continuous possession of a royalty can never suffice to establish an adverse claim over minerals in place.” Further, the Court noted that adverse possession of a mineral interest requires “actively working the minerals” in the ground. [Read more.](#)

Unitization; Leasing – Ohio. On June 19, in [*Paczewski v. Antero Resources Corp.*](#) (Case No. 18 MO 0016), the Ohio Court of Appeals (Seventh District) addressed a challenge to a state regulatory unitization order as a breach of the oil and gas lease where the voluntary unitization clause was struck from the instrument. In the case, “successor lessors sued, claiming that the producer breached the lease by applying for the unitization order, and that the resulting order effected an unconstitutional taking of property rights.” Here, the appellate court upheld the trial court’s case dismissal, holding that “striking the voluntary unitization clause from the lease rendered the lease silent.” The Court noted that “deletion does not prohibit the parties from engaging in the action that is the subject of the voided clause.” The Court also rejected the lessors’ takings claim, “noting that consistent with Ohio law and decisions from other producing states, Ohio’s statutory unitization process protects correlative property rights in oil and gas—rather than taking such rights away—and serves as a proper exercise of the state’s police power.” [Read more.](#)

Leasing; Royalties – Pennsylvania. On June 12, in *Mitch v. XTO Energy, Inc.* (Case No. 2019 PA Super 189), the Superior Court of Pennsylvania affirmed the trial court’s grant of summary judgment in favor of XTO Energy in a case involving lease terms which the landowner claimed he was entitled to additional payments under the lease for drilling in the subsurface of his property. However, the trial court and the Superior Court, held that the lease provisions were unambiguous and additional payments were only triggered if a well pad was built on the plaintiff’s property, which it had not been. [Read more.](#)

Well Siting; Conditional Use Permitting –

Pennsylvania. On June 6, in *Worthington v. Mount Pleasant Township* (Case No. 1149 C.D. 2018), the Commonwealth Court of Pennsylvania upheld a trial court order denying standing to a woman seeking to challenge a conditional-use approval for well siting that she claimed was too close to her granddaughter's school. According to the Court, "the legal requirement that she have a substantial, direct and immediate interest to have standing" was not in evidence. The Court further noted, that "[a]lthough this Court sympathizes with Worthington's concerns regarding her granddaughter's health, based upon the information Worthington supplied to the Board, those theoretical concerns do not satisfy the legal requirement that she have a substantial, direct and immediate interest to have standing." [Read more.](#)

Hydraulic Fracturing; Surface Use – West Virginia.

On June 10, in *Andrews v. Antero Res. Corp.* (Case No. 17-0126), the West Virginia Supreme Court affirmed a Mass Litigation Panel ruling in favor of an operator regarding surface use burdened by horizontal wells. The plaintiff-landowners alleged that the operations caused them "to lose the use and enjoyment of their properties due to the annoyance, inconvenience, and discomfort caused by excessive heavy equipment and truck traffic, diesel fumes and other emissions from the trucks, gas fumes and odors, vibrations, noise, lights, and dust." The Supreme Court, however, held the landowners didn't show they were being overly burdened by hydraulic fracturing from wells not installed on their property. In its decision, the state's highest court agreed with a lower court that the effects on the surface landowners from the horizontal drilling activities at issue were within the proper exercise of their surface use rights provided by mineral severance deeds owned by Antero Resources. According to the holding, "They [plaintiffs] have failed to present evidence that the activities of which they complain are not reasonably necessary for Antero and Hall to develop the Marcellus shale, and they also have failed to present evidence that they are being substantially burdened by these activities, which arise from the extraction of oil and gas from the

Marcellus shale using wells that are not located on their properties, and that have caused no damage to their surface estates." [Read more.](#)

Surface Use; Adjacent Tracts: Leasing – West

Virginia. (*Update to 3/18/19 Weekly Report*) On June 5, the West Virginia Supreme Court issued its ruling in *EQT Production Company vs. Crowder* (Case No. 17-0968). At issue in the case was whether a mineral interest owner's implied right to reasonably use the surface included the right to develop minerals under adjacent tracts. For background, in September 2017, a West Virginia Circuit Court ruled in favor of the surface landowners holding in its summary judgment order that EQT did not have the right to extend underground shale wells to adjacent properties where EQT also owned the mineral rights. At oral argument, in March 2019, EQT argued that "The mineral owner has the right to use the surface so long as that use is reasonable and necessary" and "the right to use comes down to it being reasonable and necessary." However, the West Virginia Supreme Court noted that "EQT had neither an express agreement with the plaintiffs (or their predecessors) nor an implicit right to use the plaintiffs' surface lands to benefit its drilling operations on neighboring lands." In its opinion, the Court held "that a mineral owner or lessee has an implied right to use the surface of a tract in any way reasonable and necessary to the development of minerals underlying the tract. However, a mineral owner or lessee does not have the right to use the surface to benefit mining or drilling operations on other lands, in the absence of an express agreement with the surface owner permitting those operations." [Read more.](#)

Ad Valorem Taxes; Natural Gas Wells – West

Virginia. On June 5, the West Virginia Supreme Court addressed a case involving the calculation of ad valorem taxes on natural gas wells. The lower court "concluded that the Tax Department's valuation violated the applicable regulation by improperly imposing a 'cap' on the amount of operating expenses which may be deducted and was likewise in violation of West Virginia Constitution." In *Steager v.*

Consol Energy, Inc. (Case No. 18-0121), the West Virginia Supreme Court held “that the business court erred in crafting relief which permitted an unlimited percentage deduction for operating expenses in lieu of a monetary average, and therefore reverse that aspect of the business court’s decision and remand for further proceedings consistent with this opinion.” [Read more.](#)

INDUSTRY NEWS FLASH

U.S. crude oil production surpasses 12 million b/d for the first time in history. On July 8, the U.S. Energy Information Administration (EIA) reported that in April 2019, U.S. crude oil production totaled 12.2 million barrels per day (b/d) – a milestone in U.S. history. EIA estimates that “crude oil production from tight formations in April 2019 reached 7.4 million b/d, or 61% of the U.S. total” and the “Permian Basin in western Texas and eastern New Mexico continues to drive record national oil production growth.” [Read more.](#)

U.S. oil and gas production to soar through the early 2030s. According to a new report from research firm, Rystad Energy, the U.S. “will account for almost a quarter of global oil and gas production by the early 2030s as the shale boom keeps on booming.” Forecasts predict domestic shale oil and gas output “could climb to as high as 25 million barrels a day.” The report also notes that “the world is so dependent on American production that if fracking were ever banned it would cause a global energy crisis.” [Read more.](#)

LEGISLATIVE SESSION OVERVIEW

California, Massachusetts, Michigan, New Jersey, North Carolina, Ohio, Pennsylvania and Wisconsin are in regular session. The District of Columbia Council, Puerto Rico and the United States Congress are also in regular session.

New Hampshire is in recess to the call of the chair.

West Virginia adjourned their special session on June 24, subject to the call of their leadership, after passage of the education reform and appropriations bills under consideration, reports West Virginia Public Broadcasting.

Alaska convened for a second special session on July 8 to determine the state’s permanent fund dividend payout amount. Action on Republican Gov. Mike Dunleavy’s veto cuts is also under consideration, however there were not enough lawmakers present in Juneau to override vetoes as the legislators are split between convening their session in both Wasilla and Juneau, reports KTOO Public Media. July 12 remains the constitutional deadline to override Governor Dunleavy’s budget vetoes.

Virginia convened a brief special session on July 9 to discuss possible new gun control legislation, the Associated Press reports. However, no bills were considered, and the session was ended by House and Senate Republican leadership after 90 minutes.

North Carolina’s Senate introduced an adjournment resolution calling for a July 22 adjournment and an August 27 return date for a limited session, according to the Winston-Salem Journal. Legislative staff report those dates may change and a vote is expected early next week.

Tennessee Republican Gov. Bill Lee called for a special session of the General Assembly to begin on August 23 to replace House Speaker Glen Casada, R-Williamson County, who is stepping down on August 2. As reported by Nashville Public Radio and the Tennessean, the special session is scheduled to last only the one day, although Governor Lee left open the possibility for further action if the legislators choose to take up other issues, such as a vote on the expulsion of Rep. David Byrd, R-Waynesboro.

The following states adjourned their 2019 legislative sessions on the dates provided: Rhode Island (June 28); Oregon (June 30) and Delaware (July 1).

The following states are scheduled to adjourn their 2019 legislative session on the dates provided: North Carolina (July 22) and California (September 13).

The following states are currently holding 2019 interim committee hearings: [Alabama](#), [Colorado](#), [Connecticut](#), Georgia [House](#) and [Senate](#), [Idaho](#), [Indiana](#), [Kansas](#), [Kentucky](#), [Louisiana](#), [Maine](#), [Maryland](#), Mississippi [House](#) and [Senate](#), [Montana](#), [New Mexico](#), [North Dakota](#), South Carolina [House](#) and [Senate](#), [South Dakota](#), [Tennessee](#), Texas [House](#), [Utah](#), [Virginia](#), [Washington](#), [West Virginia](#) and [Wyoming](#).

The following states are currently posting 2019 bill drafts, pre-files and interim studies: Alabama [House](#), [Arkansas](#), [Kentucky](#), [Nebraska](#), Oklahoma [House](#), [Tennessee](#) and [Utah](#). ■

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