

GOVERNMENTAL AFFAIRS WEEKLY REPORT

Weekly Highlights At-A-Glance

FEDERAL – Legislative

Fossil Energy Research – H.R. 3607. On July 10, the House Science, Space, and Technology Subcommittee on Energy voted in favor of sending [H.R. 3607](#) to the full committee following a bill mark-up session (See [session recording and mark-up documents here](#)). The bipartisan measure known, as the “Fossil Energy Research and Development Act of 2019,” reauthorizes the U.S. Department of Energy’s Fossil Energy Office to work on “carbon capture, utilization, and sequestration, carbon dioxide removal, improvements in efficiency, and methane leak detection.” According to bill sponsor, Rep. Marc Veasey (D-TX), the legislation “will help the energy industry continue to flourish in our country.” [Read more.](#)

Methane Waste Prevention Act – H.R. 2711. (Update to 6/3/19 Weekly Report) On June 3, [H.R. 2711](#), known as the “Methane Waste Prevention Act of 2019,” was referred to the House Subcommittee on Energy and Mineral Resources by the House Committee on Natural Resources. The bill, introduced by Rep. Diana DeGette (D-CO), is reportedly aimed at limiting methane emissions from oil and gas operations by requiring oil and gas producers to capture 85% of all gas produced on public lands within three years of bill enactment, and 99% of all gas produced on such lands within five years of enactment. The measure would also ban venting of any natural gas on public lands, and prohibit methane flaring at any new wells established two years after the bill is passed. While it is unlikely the bill would receive consideration in the Republican-controlled Senate, we will continue to monitor this bill should it move forward in the Democrat-controlled House. [Read more.](#)

Congressional Summer Recess. The U.S. House of Representatives and U.S. Senate are in summer recess for the month of August, and back in session as of September 9, 2019. [Read more.](#)

FEDERAL – Regulatory

BLM Headquarter Relocation – Colorado. On July 16, Joseph R. Balash, Assistant Interior Secretary for Land and Minerals Management, confirmed reports that the Bureau of Land Management (BLM) is set to relocate its headquarters from Washington, DC to Grand Junction, Colorado in a [July 16 letter](#) to Sen. Lisa Murkowski (R-AK), Chair of the Senate Appropriations Committee’s Interior and Environment Subcommittee. “The implementation plan will delegate more authority and responsibility down to the field, optimize services to the American people, is demonstrably cost-effective, and will provide an increased presence closer to the resources the BLM staff manages,” said Balash. The move was praised by Colorado Senator, Cory Gardner (R). “The problem with Washington is too many policymakers are far removed from the people they are there to serve. Ninety-nine percent of the land the BLM manages is west of the Mississippi River, and so should be the BLM headquarters.” [Read more.](#)

BLM Leasing – Nevada. On July 15, the BLM announced that the agency will be holding its quarterly competitive oil and gas lease sale on September 10, 2019. The agency will offer 28 parcels for lease totaling 32,342.43 acres in Elko and White Pine counties in north central Nevada. According to the BLM, the sale complies with the terms of a 2018 preliminary injunction issued by the U.S. District Court of Idaho in [Western Watersheds Project v. Zinke](#) (No. 1:18-cv-00187-REB), which required

lengthier comment periods on environmental compliance documents associated with parcels that intersect Priority or General Habitat Management Areas for Greater Sage Grouse. [Read more.](#)

FEDERAL – Judicial

BLM Leasing – Arizona. On July 15, environmental activists filed suit against the Bureau of Land Management (BLM) to halt a BLM leasing plan to open up more than 4,000 acres of Arizona land near Petrified Forest National Park for oil and gas exploration. The suit, [Center for Biological Diversity v. Suazo](#) (Case No. 3:19-cv-08204-CDB), alleges that “the agency failed to look at the consequences, environmental impacts and adverse effects of oil and gas drilling. Those include effects not just in the immediate area but also on water supply and quality farther away.” Specifically, the plaintiffs challenge the BLM “decision to issue oil and gas leases in Navajo and Apache Counties, Arizona during September 2018 without ever analyzing the impacts of these leases on local communities, public lands, wildlife, and the environment.” The activists also argue that the BLM violated several federal laws by refusing to conduct new environmental reviews, or consult with area tribes, when it approved the leases and relied on a National Environmental Policy Act resource management plan that predated the use of hydraulic fracturing and thus failed to meet adequate assessment reviews. The BLM has yet to respond or comment on the lawsuit. [Read more.](#)

Royalties; Leasing – Kansas. On July 16, in *Hitch Enterprises, Inc. v. OXY USA Inc.* (Case No. 18-1030-EFM-KGG), the U.S. District Court for the District of Kansas denied class action certification in a case alleging underpaid royalties. In a setback to royalty owners, the Court will instead require a well-by-well analysis of individual claimants. If the class action had been certified the case would have included royalty owners for more than 630 wells. The Court also denied a separate claim by the plaintiffs seeking interest on Conservation Fees that Oxy previously deducted from its royalty payments and later refunded, as well as dismissing a royalties claim on

fuel used or lost in the field. However, the Court denied Oxy’s motion to recognize a statute of limitations defense on certain claims. [Read more.](#)

Hydraulic Fracturing – Oklahoma. On July 23, in *Adams v. Eagle Road Oil LLC* (Case No. 18-CV-00568-GKF-FHM), the U.S. District Court for the Northern District of Oklahoma remanded a proposed class action to state court from federal court in which certain Oklahoma residents alleged several oil and gas companies caused earthquakes by injecting wastewater into deep wells near Pawnee. The residents claimed that the federal court should decline jurisdiction based on the “local controversy exception” for which the Court agreed. According to the Court, “This matter constitutes a matter of ‘truly local focus’ that should not be moved to this court because Oklahoma has a strong interest in adjudicating the dispute,” said Judge Gregory K. Frizzell. “The exception ‘is intended to respond to concerns that class actions with a truly local focus should not be moved to federal court under this legislation because state courts have a strong interest in adjudicating such disputes.’” [Read more.](#)

Area of Mutual Interest Agreement – Fifth Circuit (Texas). On June 12, in *Glassell Non-Operated Interests, Ltd. v. EnerQuest Oil & Gas, L.L.C.* (Case No. 18-20125), the U.S. Court of Appeals for the Fifth Circuit (Texas) addressed a case where a group of oil companies alleged breach of an Area of Mutual Interest agreement (AMI) by EnerQuest for refusing to offer a pro-rata share of newly acquired interests. According to the Court, although the contract requires that the parties share interests acquired within the AMI, “the contract excludes interests already owned by parties from the AMI. What is excluded from the AMI at the outset may never be included without a new agreement. Accordingly, we reverse the judgment of the district court and render judgment for EnerQuest.” [Read more.](#)

STATE – Legislative

Independent Contractors – California. (Update to 6/3/19 Weekly Report) On July 11, [AB 5](#) was

re-referred to the Senate Appropriations Committee after recently passing the Senate Labor, Public Employment and Retirement Committee. The bill, sponsored by Asm. Lorena Gonzales (D), would codify the state Supreme Court case [*Dynamex Operations West, Inc. v. Superior Court of Los Angeles*](#) and clarify its application in a case specific to delivery drivers and does not address work performed by landman, but is however instructive on California wage law and employment classification. According to *Forbes*, the *Dynamex* decision saw the court adopt a standard that presumes that all workers are employees instead of independent contractors. The bill would apply the “ABC test” to the Labor Code and Unemployment Insurance Code for instances when a definition of employee is not otherwise provided but exempts specified professions including a securities broker dealer and a direct sales salesperson. The recent amendment would exempt additional professions, including a real estate license holder and a worker providing hairstyling or barbering services. [Read more.](#)

Abandoned Wells; Surety Bonds – California.

On July 10, AB 1057 was re-referred to the Senate Appropriations Committee after passing the Senate Natural Resources and Water Committee. The measure, sponsored by Asm. Monique Limon (D), passed the Assembly in May. According to the Senate Bill Analysis, the “bill would authorize the division to require further financial security in addition to the required indemnity bond amounts for an operator’s well or wells to help ensure the state has the funds available to pay for plugging and abandonment if the well or wells are deserted by the operator, and also continue reform efforts at the division.” Lodging its opposition to the measure, the Western States Petroleum Association states “[a]s currently amended, AB 1057 provides the [division] with near unilateral authority to increase surety bond requirements on an operator without limitation. In addition, the bill identifies several general criteria that the [oil and gas] supervisor must ‘consider’ when evaluating an operator’s bonding obligations, but does not provide limitations to the exercise of

authority.” [Read more.](#)

Notice of Intention to Abandon Wells – California.

On July 10, AB 1328 was re-referred to the Senate Appropriations Committee after passing the Senate Natural Resources and Water Committee. The measure, sponsored by Asm. Chris Holden (D), passed the Assembly in May. According to the Senate Bill Analysis, “this bill tasks the Division of Oil, Gas, and Geothermal Resources (DOGGR), in consultation with the State Air Resources Board (ARB), to study idle, idle-deserted, and abandoned wells in California to better understand their emissions; makes stipulations regarding the scope and execution of that study; and increases the time permitted between announcing the intent to abandon a well and cancellation of that announcement from 12 to 24 months.” [Read more.](#)

Regulatory Management – California. (*Update to 7/15/19 Weekly Report*) On August 12, the Senate Appropriations Committee will hold a [hearing](#) on AB 1440 in the John L. Burton Hearing Room (Room 4203) at 10 a.m. at the State Capitol (10th and L Streets, Sacramento, CA 95814, Phone: 916-324-0333). The measure passed the Senate Committee on Natural Resources and Water on July 10 and 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.](#)

Natural Resources Lawsuits – Ohio. On July 18, Ohio Gov. Mike DeWine (R) signed the [state budget bill](#) which included a [provision](#) barring Ohio residents from bringing lawsuits against polluters on behalf of state natural resources. (See also, [page 482](#) of the 2,600+ page enrolled bill) The "rights of nature" movement, pushed by environmental activists, had sought to give residents ever-increasing power to sue polluters on behalf of ecosystems like lakes and rivers. [Read more.](#)

STATE – Regulatory

Division of Oil, Gas and Geothermal Resources – California. In another assault on the oil and natural gas industry, California Gov. Gavin Newsom (D) ordered the firing of Ken Harris, Oil and Gas Supervisor in the Division of Oil, Gas and Geothermal Resources due to the governor's opposition to the "surge of permits" approved by the agency. "I am very angry about the fact that they signed off on this many permits, period," said Newsom at a news conference. Newsom's action reportedly came in the wake of a July 10 [activist letter](#) claiming conflicts of interests at the agency and the high number of hydraulic fracturing permits issued in the current year. Newsom said the "ethical lapses" at the agency "were real and very concerning." Industry groups, however, have attributed the surge in permits to the resolution of a bottleneck in the approval process. The California Independent Petroleum Association issued a statement saying that while Newsom can

appoint the people he deems best for the job it also asserted he "should reject the activists who want to end domestic production of oil and simply import more crude from Saudi Arabia. That just hurts the Central Valley and its workers." [Read more.](#)

STATE – Judicial

Regulatory Oversight; Environmental Impact Reporting – California. On June 14, in *Center for Biological Diversity v. California Dept. of Conservation* (Case No. C083913), environmental activists were dealt a blow when the California Court of Appeal, Third Appellate district (Sacramento), upheld an environmental impact report (EIR) prepared by the California Department of Conservation, Division of Oil, Gas and Geothermal Resources in regards to well stimulation, or hydraulic fracturing, permitting which provided the public with detailed information regarding "any potential environmental impacts of well stimulation in the state." The plaintiffs claimed the EIR violated the California Environmental Quality Act because "it fails to make findings or adopt a mitigation monitoring and reporting plan." The Court found that neither was required. The plaintiffs also argued that "the field-specific analyses merely cut and paste the discussion of air quality impacts and mitigation proposals from the statewide analysis, and are consequently the same as, and no more specific than, the analysis of significant impacts and mitigation measures for the state as a whole." Again, the Court disagreed, finding that "[t]he Center invites us to assume that the sameness of the analysis establishes a failure of analysis, but we could just as easily assume that the well stimulation treatments at the Wilmington, Inglewood, and Sespe fields are representative of well stimulation treatments statewide. In the absence of an affirmative showing that the EIR's field specific analyses were inadequate, we must presume that the Department's decision to certify the EIR was correct." [Read more.](#)

Prescriptive Easements – Ohio. On June 10, in *Shiloh Ministries, Inc. v. Simco Exploration Corp.*

(Case No. 2018-T-0057), the Ohio Court of Appeals, Eleventh District, addressed the granting by a lower court of a prescriptive easement for oil and gas operations on adjacent church land. Here, the Court affirmed the granting of the easement but also held that “[s]ince a prescriptive easement is essentially an equitable remedy, we find it would be inequitable for [the operator] to be granted a prescriptive easement without addressing the responsibility for future maintenance and repairs of the easement.” As such, the Court remanded the case back to the trial court “for further proceedings to determine the relative use of each party of the easement and accordingly apportion the future expenses incurred in maintaining and repairing the easement as necessary to prevent the use of the easement from becoming an annoyance or nuisance to Shiloh.” [Read more.](#)

INDUSTRY NEWS FLASH

Oil and gas outlook stable over next 12-18 months.

Moody's latest outlook shows the E&P industry's volume growth remaining robust in 2019-20 “despite volatile prices and reduced reinvestments, that will help producers partially offset lower year-on-year price realizations.” Moody's also notes that “improved well productivity and capital efficiency enabling lower breakeven costs will facilitate low double-digit volume growth for both oil and gas. U.S. oil production will increase by about 1.4 million b/d in 2019 and by another 1.1 million b/d in 2020 from 11 million b/d in 2018, when production had soared by an unprecedented 1.6 million b/d, according to recent U.S. Energy Information Administration data.” [Read more.](#)

LEGISLATIVE SESSION OVERVIEW

Massachusetts, Michigan, North Carolina, Ohio and Wisconsin are in regular session. **Puerto Rico** and the **United States Congress** are also in regular session.

California is in recess until August 12. The **District of Columbia** is in recess until September 16.

Pennsylvania is in recess until September 23. **New Hampshire, New Jersey and New York** are in recess subject to the call of the chair.

California is scheduled to adjourn its 2019 legislative session on September 13.

North Carolina's Senate introduced an adjournment [resolution](#) calling for a July 22 adjournment and an August 27 return date for a limited session but the House was unable to concur with the July 22 adjournment date, according to the [Winston-Salem Journal. Adjournment dates are still being discussed in both the House and Senate as the North Carolina budget discussions enter into a stalemate, reports the Carolina Public Press.](#)

Alaska will continue its 30-day [second special session](#) that began on July 8 to determine the state's permanent fund dividend payout amount. Action on Republican Gov. Mike Dunleavy's veto cuts was also under consideration, however there were not enough lawmakers present in Juneau to do so, as legislators were still split between convening their session in both Wasilla and Juneau, reports [KTVA](#). The July 12 constitutional deadline to override Governor Dunleavy's budget vetoes has passed. Lawmakers are resuming in Juneau after Dunleavy's [supplemental proclamation](#) on July 17 changing his original choice of location, as well as adding the capital budget to the agenda, reports [Alaska Public Media](#).

West Virginia's House resumed their special session on July 22 and the Senate on July 23.

Connecticut held a one-day veto session on July 22.

Kentucky adjourned their special session on July 24 when Republican Gov. Matt Bevin signed legislation related to the state's pension system, reports [WFPL](#).

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. Although the House Republicans nominated Rep. Cameron Sexton, R-Crossville, as the new leader on July 24, the legislature will still need to officially vote in Sexton during the one-day

session, reports the [New Haven Register](#).

Oregon Democratic Gov. Kate Brown has until August 9 to act on legislation or it becomes law without signature. **Alaska** Republican Gov. Mike Dunleavy has 20 days from delivery, Sundays excepted, to act on legislation or it becomes law without signature. **Arkansas** Republican Gov. Asa Hutchinson has 20 days from presentment to act on legislation presented on or after April 18 or it becomes law without signature. **Connecticut** Democratic Gov. Ned Lamont has 15 days from presentment 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. **Florida** Republican Gov. Ron DeSantis has 15 days from presentment to act on legislation presented on or after April 27 or it becomes law without signature. **Illinois** Democratic Gov. J.B. Pritzker has 60 days from presentment to act on legislation or it becomes law without signature. **Kansas** Democratic Gov. Laura Kelly has 10 days from presentment to act on legislation or it becomes law without signature. **Kentucky** Republican Gov. Matt Bevin has 10 days from presentment, Sundays excepted, to act on legislation or it becomes law without signature. **Louisiana** Democratic Gov. John Bel Edwards has 20 days from presentment to act on legislation presented on or after May 27 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. **Minnesota** Democratic Gov. Tim Walz has three days from presentment, Sundays excepted, to act on legislation or it becomes law without signature. **Mississippi** Republican Gov. Phil Bryant has 15 days from presentment, Sundays excepted, to act on legislation presented on or after March 24 or it becomes law without signature. **Montana** Democratic Gov. Steve Bullock has 10 days from presentment to act on legislation or it becomes law without signature. **Nebraska** Republican Gov. Pete Ricketts has five days, Sundays excepted, to act on legislation or it becomes

law without signature. **North Dakota** Republican Gov. Doug Burgum has 15 days from presentment, Saturdays and Sundays excepted, to act on legislation or it becomes law without signature.

Rhode Island Democratic Gov. Gina Raimondo has six days from presentment, Sundays excepted, to act on legislation or it becomes law without signature. **South Carolina** Republican Gov. Henry McMaster has until two days after the next meeting of the legislature to act on legislation presented on or after May 3 or it becomes law without signature. **Tennessee** Republican Gov. Bill Lee has 10 days starting the day after presentment, Sundays excepted, to act on legislation or it becomes law without signature. **Vermont** Republican Gov. Phil Scott has five days from presentment, Sundays excepted, to act on legislation or it becomes law without signature.

The following states are currently holding 2019 interim committee hearings: [Alabama](#), [Colorado](#), [Connecticut](#), [Delaware](#), [Georgia House](#) and [Senate](#), [Idaho](#), [Illinois Senate](#), [Iowa](#), [Indiana](#), [Kansas](#), [Kentucky](#), [Louisiana](#), [Maine](#), [Maryland](#), [Mississippi House](#) and [Senate](#), [Missouri House](#) and [Senate](#), [Montana](#), [Nebraska](#), [New Mexico](#), [New York Assembly](#) and [Senate](#), [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](#), [Oregon](#), [Tennessee](#), [Utah](#) and [West Virginia](#). ■

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