

GOVERNMENTAL AFFAIRS WEEKLY REPORT

Weekly Highlights At-A-Glance

FEDERAL – Legislative

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

FEDERAL – Regulatory

Assistant Interior Secretary Resigns. On August 20, Assistant Interior Secretary Joseph Balash resigned. Confirmed in 2017 as Interior's Assistant Secretary for Land and Minerals Management, Balash oversaw the Bureau of Land Management (BLM) and Ocean Energy Management. Balash has recently been overseeing preparations for the first BLM oil and gas lease sale in the Arctic National Wildlife Refuge. In his resignation letter, Balash does not cite a reason for his departure. Balash will remain in his position through August 30 and a successor has not yet been named. [Read more.](#)

BLM Oil & Gas Lease Sale – Colorado. On August 13, the BLM announced that it will offer six parcels, totaling 4,259 acres in Jackson, Moffat, and Rio Blanco counties at its December 2019 quarterly oil and gas lease sale. This notice initiates a 30-day public comment period on associated environmental documents that ends September 12, 2019. [Read more.](#)

BLM Oil & Gas Lease Sale – Nevada. On August 8, the BLM announced the opening of a 30-day public comment period on its preliminary Environmental Analysis for a proposed December 10, 2019 oil and gas lease sale. A total of 451 parcels encompassing 777,197 acres located in Lincoln and White Pine counties are proposed for lease. This notice initiated the public comment period on the proposed lease

sale and associated environmental documents that closes on September 6, 2019. [Read more.](#)

BLM Oil & Gas Lease Sale – Montana; North Dakota. On August 14, the BLM announced the opening of a 30-day public comment period for nominated oil and gas lease parcels located in Montana and North Dakota. The comment period runs through September 14, 2019, and is intended to solicit public input on issues and potential impacts described in the Environmental Assessment. Parcels nominated for inclusion in the December sale are located in Powder River and Richland counties in Montana and Burke, Divide, and Williams counties in North Dakota. [Read more.](#)

BLM Oil & Gas Lease Sale – Wyoming. On August 12, the BLM announced that it plans to offer 169 oil and gas lease parcels totaling about 174,148 acres at its December 2019 quarterly lease sale. In coordination with the State of Wyoming and the Wyoming Game and Fish Department, the BLM is deferring three parcels containing 1,457 acres within the Baggs Mule Deer migration corridor – meaning the parcels are not currently being considered for lease. This step is consistent with the Interior Department Secretarial [Order 3362](#) on improving habitat quality in the western big-game winter range. The public comment period will be open through September 11, 2019. [Read more.](#)

FEDERAL – Judicial

Endangered Species Act Regulations – California. On August 21, seven environmental activist groups sued the Trump administration in a San Francisco, California federal court challenging recent regulatory changes to the Endangered Species Act (ESA). In [Center for Biological Diversity v. Bernhardt](#) (Case No.

3:19-cv-05206), the plaintiffs take issue with new Interior Department regulations that “include decreasing protections for threatened species and allowing the economic impacts of protecting species to be considered prior to making listing decisions.” The rulemaking “also changes how factors like climate change can be considered in listing decisions and the review process used before projects are approved on certain species’ habitats.” The environmentalists say these regulatory changes are “made largely to benefit industry groups” – such as oil and gas operators – “and landowners.” The Interior Department however, has called the lawsuit a way to “weaponize” the ESA and promised the agency would be “steadfast” in defending the rule change. [Read more.](#)

Independent Contractors – Kansas. On August 1, in *Hancock v. Lario Oil & Gas Co.* (Case No. 2:19-CV-02140-JAR-KGG), the U.S. District Court for the District of Kansas certified a possible class action against an oil and gas company by workers claiming they were misclassified as independent contractors and are due overtime pay. Although not landmen, the class is identified in the case as “oilfield workers who were or are employed by Defendant as a Wellsite/Drill Site Manager or ‘company man,’ and who were classified as independent contractors and paid a day rate at any time within the three years preceding the present date.” The Court also held that the defendant’s challenge to the conditional certification at this initial stage was premature and “[p]ossible defenses or justifications for decertification will be considered should Defendant file a motion for summary judgment or motion to decertify.” [Read more.](#)

Federal Royalty Policy Committee – Montana. On August 13, a federal district judge blocked the Trump administration from relying on the Interior Department Royalty Policy Committee because “the Committee was improperly established.” The Royalty Policy Committee was supposed to help the Interior Department set royalty payments for oil, natural gas, and coal mined from public lands. Specifically, the Committee was established to “advise on current

and emerging issues related to the determination of fair market value, and the collection of revenue from energy and mineral resources on Federal and Indian lands,” as well as “on the potential 3 impacts of proposed policies and regulations related to revenue collection from such development, including whether a need exists for regulatory reform.” However, in the present case, *Western Organization of Resource Councils v. Bernhardt* (Case No. 18-cv-00139), the U.S. District Court for the District of Montana held that the way the agency set up the committee ran afoul of the federal law that dictates how to set up and manage advisory committees and thus its work product and recommendations cannot be relied upon. [Read more.](#)

Climate Change Lawsuit – Rhode Island. On July 22, in *Rhode Island v. Chevron Corp.* (Case No. 1:18-cv-00395), the U.S. District Court for the District of Rhode Island addressed a case where the “State of Rhode Island brings this suit against energy companies it says are partly responsible for our once and future climate crisis. It does so under state law and, at least initially, in state court.” Defendants sought removal to federal court and the State asked that it go back to state court. The Court granted jurisdiction in state court “Because there is no federal jurisdiction under the various statutes and doctrines adverted to by Defendants.” The Court found unpersuasive arguments made by the oil and gas company defendants that federal jurisdiction over the case was appropriate for this cause of action. [Read more.](#)

Environmental Lawsuit – Oregon. In a blow to environmental activists, on July 31, the U.S. District Court for the District of Oregon dismissed a lawsuit that claimed “a right to wilderness” and that by promoting oil and gas resource development the “government’s failure to protect them from the effects of climate change—has violated their constitutional right to a safe and sustainable environment.” In *Animal Legal Defense Fund v. United States* (Case No. 6:18-cv-01860-MC), the Court noted that “Plaintiffs urge this Court to engage in ‘nothing short of revolutionary thinking’ by

recognizing “a right to wilderness.” The Court also ruled that the plaintiffs failed to allege the particularized harm necessary for standing because climate change is “a diffuse, global phenomenon that affects every citizen of the world.” The Court further ruled that it lacked jurisdiction to make the “policy decisions” that would be required to grant the relief sought by the plaintiffs. Moreover, the Court articulated that it “lacks the power” to “review and assess the entirety of Congress’s and the Executive Branch’s programs and regulatory decisions” on various subjects “in the aggregate.” [Read more.](#)

STATE – Legislative

Regulatory Management – California. (*Update to 7/29/19 Weekly Report*) On August 20, AB 1440, sponsored by Asm. Marc Levine (D), advanced to a third reading in the Senate. The legislation, which passed the Assembly in May, 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.](#)

Independent Contractors – California. (*Update to 7/29/19 Weekly Report*) On August 12, [AB 5](#) was referred to the Senate Appropriations Committee suspense file. This means the committee must act on the bill by the fiscal committee deadline of August 30, or the bill will die this session. The legislation, 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.](#)

STATE – Judicial

Hydraulic Fracturing Ban – Colorado. On August 13, environmental activists filed a motion to reopen a case in order to nullify a court’s ruling against a ban on hydraulic fracturing in Longmont. In 2016, the court ruled in favor of the Colorado Oil and Gas Association, Top Operating Company, and the Colorado Oil and Gas Conservation Commission by holding “that the City of Longmont’s Article XVI of the Longmont Municipal Charter, banning hydraulic fracturing within city limits, was in operational conflict with the Colorado Oil and Gas Conservation Act (the “Act”) and Commission rules.” Here, in

the [Colorado Rising for Communities](#) (Case No. 2013CV63) motion to reopen the case, plaintiffs seek to reinstate the ban which was passed by voter referendum prior to the court nullifying that measure. “Banning responsible energy development in Colorado is illegal,” said Dan Haley, president and CEO of the Colorado Oil and Gas Association. “Taking someone’s property is illegal. The courts have said so. Our elected leaders have said so. This is political theater, plain and simple. We trust the state of Colorado will also vigorously defend against this political ploy.” [Read more.](#)

Rule Against Perpetuities – Kansas. On August 16, in *Jason Oil Company, LLC v. Littler* (Case No. 118,387), the Kansas Supreme Court finally ruled in a long-awaited case addressing the issue of mineral reservations, future interests and the Rule Against Perpetuities. On March 18, 2018, the [Wichita Association of Petroleum Landmen](#) filed an amicus curiae brief on behalf of its members. (See full [case docket here](#)). Specifically, the Court addressed whether when a grantor of real property retains a defeasible term-plus-production mineral interest by exception in the deed of conveyance, thereby conveying to the grantee a future interest in the mineral interest, does that conveyance of a future interest make such conveyance subject to the common-law rule against perpetuities. The Court held that it did not. In so doing, the Court noted that “We are asked to decide a question of first impression in this state that carries the potential of voiding innumerable transfers of mineral interests and creating marketable title problems of epic proportions. Does the common practice of reserving a term interest in minerals that continues so long as minerals are produced create a springing executory interest that must be invalidated by the Rule?” In its holding, the Court noted that “the deeds created in the Grantees a springing executory interest.” Finally, the Court stated that “Our precedent makes clear that the policies behind the common-law Rule include promoting the alienability of property. The practice of retaining a defeasible term-plus production interest in minerals is ingrained in the oil and gas industry and actually promotes the

alienability of land. Applying the Rule here would be counterproductive to the purpose behind the Rule and create chaos. Therefore, we hold that where a grantor creates a defeasible term-plus-production mineral interest by exception, leaving a future 21 interest in an ascertainable grantee, the future interest in minerals is not subject to the Rule.”

[Read more.](#)

State Regulations – Pennsylvania. On July 22, in [Marcellus Shale Coalition v. Department of Environmental Protection](#) (Case No. 573 M.D. 2016), the Commonwealth Court of Pennsylvania issued a mixed opinion regarding a challenge to the state unconventional well regulations seeking to stop the regulations from taking effect prior to implementation. Specifically, the challenge regarded a requirement that a well operator “identify all active, inactive, orphan, abandoned, and plugged and abandoned wells that have a well bore path within 1,000 feet of the operator’s well,” as well as imposing certain reporting, restoration, and plugging requirements. The Court deemed a section of the regulations void and unenforceable that “requires post-drilling site restoration within the statutory 9-month period to approximate original conditions/contours.” The Court also invalidated a section of the regulations which would have required operators to plug abandoned wells that they did not own merely because the wells may be in a survey area that becomes impacted by the well operator’s stimulation activities. However, in other respects, the Court held that the Pennsylvania Department of Environmental Protection had the authority to require operators to identify abandoned wells within certain areas near their wells; impose some additional site restoration requirements; regulate certain impoundments; and require additional reporting for some waste activities.

[Read more.](#)

[INDUSTRY NEWS FLASH](#)

► **U.S. moving towards energy independence.** On August 21, the U.S. Department of Energy reported that last year, the U.S. surpassed Saudi Arabia to

become the world's biggest petroleum producer and domestic petroleum and natural gas production jumped by 16 percent and 12 percent respectively in 2018. The Energy Department also forecasts "that the nation could achieve energy independence by 2020, exporting more oil, gas and other petroleum liquids than it imports." [Read more.](#)

► **Oxy finalizes its \$38 billion acquisition of Anadarko.** On August 8, Occidental Petroleum, known as Oxy, completed its \$38 billion acquisition of Anadarko Petroleum. The merger adds Anadarko's nearly 5,000-person workforce to Oxy's team of 11,000 employees and creates a combined company that is the largest player in the Permian Basin and one of the top producers in the Gulf of Mexico. As part of a post-merger debt reduction and asset sales plan, Oxy's leadership has also indicated it plans to sell the twin-tower Anadarko campus in The Woodlands and then lease back much of the office space. [Read more.](#)

LEGISLATIVE SESSION OVERVIEW

California, Massachusetts, Michigan, New Jersey, North Carolina, Ohio and Wisconsin are in regular session. **Puerto Rico** is also in regular session.

The **United States Congress** is in recess until September 9. The **District of Columbia** is in recess until September 16. **Pennsylvania** is in recess until September 23. **New Hampshire** and **New York** are in recess subject to the call of the chair.

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

North Carolina's legislative session continues on with no clear adjournment date as lawmakers and Democratic Gov. Roy Cooper are still stalled over a budget compromise and Medicaid expansion, reports [The Charlotte Observer](#).

Tennessee convenes its special session August 23 to formally elect Rep. Cameron Sexton, R-Crossville, to replace former House Speaker Glen Casada, R-Franklin, who stepped down on August 2. Republican Gov. Bill Lee has also called for the chamber to address court rule changes that weren't taken up in

the spring; a possible resolution to expel Rep. David Byrd, R-Waynesboro has been left off the calendar and will require a two-thirds majority to suspend the rules in order to be heard, reports the [Tennessean](#).

Maine Democratic Gov. Janet Mills has [called](#) for the legislature to convene a special session on August 26 to consider four bond packages for transportation, infrastructure and economic development, economic protection and land conservation investment in the state. The possibility exists for consideration of other bills, but the [Portland Press Herald](#) reports that Democratic leaders would prefer the session remain exclusively for considering the borrowing proposals, which if passed will appear on the ballot in November.

Missouri Republican Gov. Mike Parson [announced](#) a limited, technical special session to take place on September 9, which will run into the veto session scheduled to begin on September 11. The session was called to address an inadvertent consequence of the state's tax law, which has been interpreted by the Missouri Supreme Court to restrict the number of vehicle trade-ins that can be used to calculate sales tax on a new vehicle, reports [Missourinet](#).

Alaska Republican Gov. Mike Dunleavy has 20 days from delivery, Sundays excepted, to act on legislation or it becomes law without signature.

Delaware Democratic Gov. John Carney has 10 days, Sundays excepted, to act on legislation or it becomes law. **Illinois** Democratic Gov. J.B. Pritzker has 60 days from presentment to act on legislation or it becomes law without signature. **Maine** Democratic Gov. Janet Mills has three days after the convening of the next meeting of the legislature to act on legislation presented on or after June 8 or it becomes law without signature.

The following states are currently holding 2019 interim committee hearings: [Alabama](#), [Alaska](#), [Arizona](#), [Colorado](#), [Connecticut](#), [Delaware](#), [Florida House](#), [Georgia House](#) and [Senate](#), [Idaho](#), [Illinois Senate](#), [Indiana](#), [Iowa](#), [Kansas](#), [Kentucky](#), [Louisiana](#), [Maine](#), [Maryland](#), [Mississippi House](#) and [Senate](#), [Missouri House](#) and [Senate](#), [Montana](#), [Nebraska](#), [Nevada](#), [New Hampshire House](#) and

[Senate](#), [New Mexico](#), New York [Assembly](#) and [Senate](#), [North Dakota](#), Oklahoma [House](#) and [Senate](#), [Rhode Island](#), South Carolina [House](#) and [Senate](#), [South Dakota](#), [Tennessee](#), Texas [House](#), [Utah](#), [Virginia](#), [Washington](#), [West Virginia](#) and [Wyoming](#).

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

CONTENT DISCLAIMER: Information and/or website links provided by sources in this report may be among the many resources available to you. This report does not endorse nor advocate for any particular attorney or law firm, or other private entity, unless expressly stated. Any legal and/or tax information contained herein is neither legal nor tax advice. Links are provided for reference only and any cited outside source is derived solely from material published by its author for public use. Any copyrighted material remains the property of its respective owner and no use or distribution authorization is granted herein.