

GOVERNMENTAL AFFAIRS WEEKLY REPORT

Weekly Highlights At-A-Glance

FEDERAL – Legislative

H.R. 7781 - End Polluter Welfare Act of 2020

– **Washington, DC.** In late August, [H.R. 7781](#), known as the *End Polluter Welfare Act of 2020*, was referred to several subcommittees following its summer introduction. The bill, sponsored by Rep. Ilhan Omar (D-MN), and supported by other Democratic congressmen and senators, is described as a bill that would “eliminate certain subsidies for fossil-fuel production.” According to Omar, the measure “would end these absurd corporate giveaways by abolishing dozens of tax loopholes, subsidies, and other special interest giveaways littered throughout the federal tax code, ending energy resource giveaways to polluters on lands and waters owned by the American people, and prohibiting taxpayer-funded fossil fuel research and development - saving taxpayers up to \$150 billion over the next ten years. The bill would also stop the Trump administration from taking coronavirus relief funding away from struggling businesses to bail out fossil fuel corporations.” The bill has little to no chance of being brought up in the Republican-led Senate even if it passes the House. [Read more.](#)

FEDERAL – Regulatory

U.S. Forest Service Leasing – Washington, DC.

On September 1, the U.S. Forest Service published a Proposed Oil and Gas Resources Rule ([85 Fed. Reg. 54311](#)) that is favorable to the oil and gas industry and would “revise the procedures the Forest Service will follow in the future to make lands available for leasing.” According to Bloomberg Law, the new oil and gas development regulations “eliminate references to environmental laws and defer final oil leasing decisions to the Interior Department.” The “Forest Service, which last updated its oil and gas

rules in 1990, is aiming to align its oil and gas leasing practices with the Interior Department’s Bureau of Land Management in order to make quicker oil and gas leasing decisions and ‘streamline’ the approval process, according to the proposal.” The proposed Forest Service rule would look to land bureau officials to make the final leasing decisions in national forests. “The Secretary of the Interior has the final decision whether to issue oil and gas leases on Federal lands, including National Forest System lands,” per the proposal by the Forest Service, part of the U.S. Department of Agriculture. “Development on forest lands is always more cumbersome because there’s an additional federal agency involved. By aligning the environmental review process with BLM’s it provides better consistency, although the Forest Service still conducts the NEPA,” said Kathleen Sgamma, president of the Western Energy Alliance. The public comment period is open through November 2, 2020. [Read more.](#)

BLM Oil and Gas Lease Sale – Utah. On August 20, the Bureau of Land Management (BLM) Utah State Office announced it proposes to offer 21 parcels, totaling approximately 23,649 acres at the December competitive oil and gas lease sale. The parcels are located in Iron, Uintah, and Grand counties on public lands managed by the BLM’s Cedar City, Vernal, and Moab Field Offices. [Read more.](#)

BLM Oil and Gas Lease Sale – Wyoming. On August 24, the BLM announced it will hold an oil and gas lease sale in December to offer 282,731 acres of federal land and minerals for development. Several of the nominated parcels for December’s competitive sale fall north of Casper and north of Rock Springs. [Read more.](#)

FEDERAL – Judicial

National Petroleum Reserve Leasing Plan; Arctic National Wildlife Refuge Leasing – Alaska.

(Update to 8/24/20 Weekly Report) On August 24, environmental activists filed two lawsuits in an effort to sideline the Trump administration's oil and gas leasing plans in the National Petroleum Reserve – Alaska (NPR-A) and Arctic National Wildlife Refuge (ANWR) claiming "this effort to expand fossil fuel exploitation in the western Arctic would increase harmful climate impacts, diminish public health, degrade land, water and air, and encroach on long-protected areas vital to wildlife and people." In one of the suits, [Northern Alaska Environmental Center v. Bernhardt](#) (Case No. 3:20-cv-00207-HRH), the litigants claim "BLM's environmental review failed to address the true impacts of oil and gas on water, land, wildlife and people or to adopt protective measures, and failed to provide a reasonable range of alternatives, including options that maintain or increase protected areas." In the second suit, also dealing with ANWR, [National Audubon Society v. Bernhardt](#) (Case No. 3:20-cv-00206-TMB), the litigants claim that the "proposed land-management plan is a dramatic reversal of course from the current Integrated Activity Plan" and the "change would threaten important subsistence use areas as well as essential habitats for birds, caribou, marine mammals and other species, including most of the highly sensitive Teshekpuk Lake Special Area." [Read more.](#)

BLM Resource Management Plan – Colorado.

On August 19, environmental activists filed suit against the Trump administration by challenging the Resource Management Plan (RMP) for the BLM's Uncompahgre Field Office. According to the complaint in [Citizens for a Healthy Community v. U.S. Bureau of Land Management](#) (Case No. 1:20-cv-2484), "BLM's approval of the RMP expands lands available to oil and gas leasing and development, committing hundreds of thousands of acres of land to oil and gas development without consideration of reasonable alternatives, without taking a hard look at the plan's greenhouse gas emissions and resulting

impacts to the climate and natural resources, and without defining or taking steps to prevent unnecessary or undue degradation of the lands—particularly resulting from the plan's contribution to the climate crisis." The suit "addresses oil and gas leasing, recreation, livestock grazing and other land uses on some 676,000 acres of BLM lands and nearly 1 million acres of federal mineral estate in parts of Montrose, Delta, Gunnison, Ouray, San Miguel and Mesa counties." The BLM has yet to respond to the complaint. [Read more.](#)

BLM Oil and Gas Leasing – Montana; Wyoming.

(Update to 6/8/20 Weekly Report) On August 25, the U.S. District Court for the District of Montana [stayed part of its ruling](#) that had invalidated oil and gas leases in Greater Sage-Grouse habitat in Wyoming, but suspended oil and gas operations on those parcels pending appeal. In its May ruling in [Montana Wildlife Federation v. Bernhardt](#) (Case No. CV-18-69-GF-BMM) Judge Brian Morris held that the Bureau of Land Management (BLM) failed to follow its own plans for protecting the bird species and failed to prioritize leasing outside habitat areas. The stay order affects only 159 leases in Wyoming and follows a request by the state of Wyoming, the Western Energy Alliance, and the BLM requesting the court stay its May ruling until they could appeal the decision. Wyoming argued that canceling the leases altogether would force the state to repay \$17.5 million to local governments, potentially affecting funding for public schools and other state services. Judge Morris agreed and granted the stay so long as all oil and gas activity on the leases cease during the stay period. "Any drilling or potential production on the challenged lease sales could disturb and fragment sage grouse habitat. This potential disturbance constitutes irreparable harm," wrote Morris. For background, on May 22, the court struck down a Trump Administration leasing plan in the area covering roughly 336,000 acres of Western land. That order invalidated leases on more than 470 square miles of federal public land in Montana and Wyoming. "As for the lease sales, the errors here occurred at the beginning of the oil and gas lease sale process, infecting everything that followed," wrote Morris in that opinion. [Read more.](#)

BLM Director Appointment – Montana; Washington, DC. (Update to 8/24/20 Weekly Report) On July 20, Montana Democratic Governor Steve Bullock filed a lawsuit in federal court to remove William Perry Pendley as Acting BLM Director. Although the Trump administration pulled Pendley's nomination he is still affectively running the agency. In the suit, [*Bullock v. Bureau of Land Management*](#) (Case No. 4:20-cv-00062), the governor claims Pendley's current appointment "directly contravenes the Federal Vacancies Reform Act, which prohibits acting officers from running agencies while their nominations are pending before the Senate." The suit has been deemed politically motivated as Bullock is currently running to unseat first-term Republican Montana Senator Steve Daines. The BLM called the lawsuit "frivolous" and said the governor has no "legal standing" to bring his claim. A similar earlier lawsuit filed by a number of activist groups also sought Pendley's ouster along with that of then-Acting National Park Service Director, David Vela, who stepped down in August. In [*Public Employees for Environmental Responsibility v. Bernhardt*](#) (Case No. 1:2020-cv-01224), the litigants also claimed the appointments were a violation of federal law. [Read more.](#)

Kansas Corporation Commission – Kansas.

On August 20, the U.S. District Court for the District of Kansas ruled in favor of three current and former members of the Kansas Corporation Commission (KCC) in [*Hoedel v. Kirk*](#) (Case No. 2:19-cv-02443-HLT-JPO) by holding them immune from a lawsuit alleging they had a "pattern of targeting" protesters and a "publicly-articulated" policy of reporting protesters for unauthorized practice of law as retaliation for opposing certain injection wells near their homes. The Court held those KCC members, "are entitled to absolute immunity on the individual-capacity claims because the conduct alleged was related to their quasi-judicial duties. Even if absolute immunity did not apply, qualified immunity would shield them from individual liability." The case arose from landowner protests filed with the KCC to oppose injection-well sites. The Court found the arguments without merit, noting in part, that, "Although staff counsel and prehearing officers

have objected to those unlicensed individuals appearing, none of them have been reported. Non-attorney protesters have also tried to appear on each other's behalf, but no complaints were filed with the Kansas Attorney General's office." [Read more.](#)

STATE – Legislative

Uniform Electronic Wills Act – Utah. On August 31, H.B. 6001 was signed into law by Gov. Gary Herbert (R) after quick passage in the special session. The Act, sponsored by Rep. V. Lowry Snow (R), enacts the Uniform Electronic Wills Act and specifically amends provisions related to disqualifying notarial acts; creates definitions; establishes the applicability of electronic wills; addresses the effect of a will electronically executed in another jurisdiction; sets requirements for executing and revoking an electronic will; addresses records that are not executed in compliance with the requirements for an electronic will; provides requirements for an electronic will to be self-proving; allows for certified paper copies of an electronic will; addresses uniformity of the law; and provides that the Uniform Electronic Wills Act applies to wills of decedents who die on or after the effective date of the Act, which took immediate effect at the governor's bill signing. [Read more.](#)

Corporate Franchise and Income Tax – Utah.

On August 31, H.B. 6013 was signed into law by Gov. Gary Herbert (R) after quick passage in the special session. The Act, sponsored by Rep. Robert Spendlove (R), amends corporate franchise and income tax provisions related to Utah net loss, specifically, the bill removes the 80% limitation on a Utah net loss carry forward for the 2018 through 2020 income tax years. The Act takes immediate effect and "has retrospective operation for a taxable year beginning on or after January 1, 2018." [Read more.](#)

STATE – Regulatory

Produced Water Rulemaking – New Mexico.

(Update to 5/11/20 Weekly Report) On September

3, [the state Oil Conservation Commission approved final produced water rulemaking](#) as it relates to hydraulically fractured wells. “The new rules sought to clarify the Oil Conservation Division’s (OCD), an arm of New Mexico Energy, Minerals and Natural Resources Department (EMNRD), role in regulating the management of produced water within the industry while the New Mexico Environment Department would oversee any future uses of the water outside of the industry in sectors such as agriculture.” According to Bloomberg Law, state law outlines how that water could eventually be recycled for use outside of oil fields and the changes made start that process within the oil industry by requiring additional reporting on produced water and clarifying how the water is regulated. Two commissioners voted in favor of the rule and one abstained. The rule will take effect within 45 to 60 days, depending on when it is officially published, according to Todd Leahy, Deputy Secretary of the state Energy, Minerals, and Natural Resources Department. ([Read more about the rulemaking here.](#)) Some environmental groups argue that this rulemaking move opens the door to greater reuse of water containing contaminants. New Mexico law includes an appeal process for the rule. Apart from this rulemaking, the [New Mexico Environment Department is also considering produced water rulemaking](#) and on September 2 released its report, [Summary of Initial Public Input on Produced Water](#), to document the initial stages of their public policy process. [Read more.](#)

Methane Emissions Rulemaking – New Mexico. The New Mexico Environment Department (NMED) and New Mexico Energy, Minerals and Natural Resources Department are each in the process of developing rules that will regulate methane emissions. To that end, the New Mexico Environment Department has [released draft methane emissions rules](#) for public comment. According to the announcement, “This preliminary draft rule was released for public review and input in advance of NMED filing a formal rulemaking petition with the Environmental Improvement Board (EIB) later this year. In releasing the preliminary draft rule, NMED

seeks to foster greater transparency and facilitate continued engagement from stakeholders, members of the public, and other interested parties.” The public comment period is open through September 16, 2020. [Read more.](#)

STATE – Judicial

Mineral Reservations; Warranty Deeds – Colorado.

On July 23, in *Moeller v. Ferrari Energy, LLC* (Case No. 020COA113), the Colorado Court of Appeals addressed a quiet title action in a mineral interest subject to duplicative lease agreements. “The dispute originates in a warranty deed conveying a parcel of land but reserving an undivided one-half interest in the mineral estate. The interpretative challenge arises from the fact that one-half of the estate had already been accounted for in a prior reservation. A division of the court of appeals concludes that in light of the prior reservation, the warranty deed is ambiguous because it is susceptible of two interpretations: (1) that the warranty deed conveyed to the grantees the half of the mineral estate that had not previously been reserved; or (2) that the warranty deed reserved one-half of the mineral estate to the grantors, in addition to the previous reservation, leaving no portion of the mineral estate for the grantees.” The Court held that the parties “entered into lease agreements at different times, apparently with no objection from the other (or the other’s predecessors-in-interest), and so the evidence suggests only that both believed themselves to be the owners of the minerals, presumably in reliance on the language of the 1964 Deed. In other words, this extrinsic evidence does not help to resolve the ambiguity.” The Court overturned the quiet title judgment in favor of Ferrari and instead found for the Moellers and concluded that the Court does “therefore default to the rule that an ambiguous deed is construed against the grantor.” [Read more.](#)

Leasing – Kansas. On June 26, in *Thoroughbred Associates, L.L.C. v. Kansas City Royalty Company, L.L.C.* (Case No. 120,068), the Kansas Court of Appeals addressed a dispute over revenue from gas

leases organized into a single operating unit. According to the Court, “The fight centers on a simple issue: is a lease owned by the unit’s former operator, Thoroughbred Associates, L.L.C. (Thoroughbred), included in the unit? If so, Kansas City Royalty Company, L.L.C. (KC Royalty) and the other defendants are entitled to their share of profits from unit gas production.” Here, the Court affirmed the district court’s conclusion that the lease is in the unit but reversed its decision about the extent of KC Royalty’s interest in the unit. The Court noted that “when parties operating under unitized gas leases incidentally produce other liquid hydrocarbons from a gas well, the gas lease may entitle them to royalties from the production of the non-gas hydrocarbons. But when the production of other hydrocarbons is not incidental to the gas production, the proceeds from it are not covered by the gas lease.” In sum, the Court held that while precedent lets the owner of pooled gas rights benefit from oil that is incidentally gathered as part of the process of producing the gas, production of oil from one of the formations was not merely incidental to gas production, so KC Royalty’s interest in the unit includes liquid hydrocarbons produced from the other gas producing formations, but not from the oil producing formation at issue. [Read more.](#)

Lease Terms; Drilling Operations – North Dakota. On July 23, in *Hess Bakken Investments II, LLC v. AgriBank, FCB* (Case No. 2020 ND 172), the North Dakota Supreme Court addressed “the meaning of the term ‘actual drilling operations’ as used in continuous drilling clauses in two oil and gas leases. The district court interpreted the term as requiring ‘placing the drill bit in the ground and penetrating the soil.’ Concluding the lease term ‘actual drilling operations’ is ambiguous as a matter of law, we reverse the judgment in part and remand for further proceedings.” In its holding to send the case back to the lower court for further determinations, the Supreme Court noted, “Each side has advanced competing readings of the term based on understandings of English grammar and industry usage. Although at odds, both interpretations are supported by rational arguments.” Regarding the

term, “actual drilling operations” and when that occurs, the Court noted, “When ambiguity exists, the parties’ intent becomes a question of fact requiring a factual finding based on extrinsic evidence.” [Read more.](#)

NPRI; Post-Production Costs – Texas. On July 9, in *BlueStone Natural Resources II, LLC v. Nettye Engler Energy, LP* (Case No. 02-19-00236-CV), the Texas Court of Appeals, Second District, addressed a case where BlueStone argued the trial court erred by finding Nettye Engler Energy’s nonparticipating royalty interest (NPRI) prohibits the deduction of postproduction costs for gathering and compressing gas in relation to a deed granting a royalty interest in the land subject to this case. The Court held, “the royalty provisions contained in the 1986 Deed create a traditional royalty interest that is burdened by postproduction costs.” Thus, as to the NPRI, the Court held, “Because we hold that the royalty interest by its express terms creates a standard royalty subject to postproduction costs, we reverse both orders and render judgment in favor of BlueStone.” [Read more.](#)

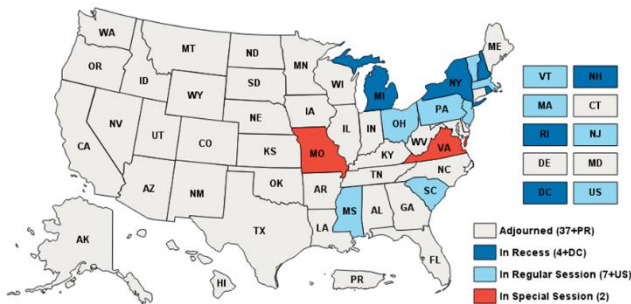
INDUSTRY NEWS FLASH

► **U.S. petroleum demand up for third consecutive month.** According to new American Petroleum Institute data, U.S. petroleum demand in July was up 3.8% from June, or 18.3 million b/d. This was the third consecutive monthly increase although still 11.9% below July 2019 levels. However, the rebound beginning in April is the largest three-month increase since December 1976. [Read more.](#)

► **Saudi oil shipments to U.S. hit 35 year low.** According to data released September 1, the United States imported just 264,000 barrels per day of Saudi crude during August – down nearly 50% from 2019’s average and if confirmed by official government sources would mark the lowest amount of Saudi oil exports to the United States since 1985. “Saudi crude flows bound for the U.S. have basically dried up,” said Matt Smith, director of commodity research at ClipperData. [Read more.](#)

LEGISLATIVE SESSION OVERVIEW

States in Session



Session Notes (by date): Massachusetts, Mississippi, New Jersey, Ohio, Pennsylvania, South Carolina Senate and Vermont are in regular session. The U.S. Congress is in summer recess.

The following states are in recess until the following dates provided: District of Columbia (September 7), Michigan House (September 8), Michigan Senate (September 9) and New Hampshire (September 16). New York and Rhode Island are in recess subject to the call of the chair.

The Massachusetts House approved a resolution on July 29 to extend the formal session past July 31 to address unresolved policy issues that had been postponed due to the pandemic, reports [MassLive](#).

Missouri convened a special session on July 27 to address current crime rates within the state, reports [KY3](#).

Virginia convened a special session special on August 18 to address police reform, reports the [Richmond Times-Dispatch](#).

Wisconsin convened a special session on August 31 in order to address policing accountability and transparency, but it was adjourned moments later, reports the [Milwaukee Journal Sentinel](#).

North Carolina adjourned their legislative session on September 3.

South Carolina is expected to meet for a two-week special session starting September 15, reports [WLTJ](#).

Signing Deadlines (by date): Wisconsin Democratic Gov. Tony Evers had until September 7 to act on legislation or else it is considered vetoed. Utah Republican Gov. Gary Herbert has until September 9 to act on legislation or it becomes law without signature. Hawaii Democratic Gov. David Ige has until September 11 to act on legislation presented on or after June 26 or it becomes law without signature. Oregon Democratic Gov. Kate Brown has until September 21 to act on legislation or it becomes law without signature. California Democratic Gov. Gavin Newsom has until September 30 to act on legislation or it becomes law without signature. North Carolina Democratic Gov. Roy Cooper has until October 2 to act on legislation or it becomes law on October 12. New York Democratic Gov. Andrew Cuomo has until February 5, 2021 to act on legislation or it is pocket vetoed. Delaware Democratic Gov. John Carney has 30 days after the final adjournment, which typically occurs immediately prior to the beginning of the next session, to act or it is pocket vetoed. Idaho Republican Gov. Brad Little has 10 days from presentment, Sundays excepted, to act on legislation or it becomes law without signature. Maine Democratic Gov. Janet Mills must act on legislation presented within 10 days of adjournment or it becomes law unless returned within three days after the next meeting of the same legislature. South Carolina Republican Gov. Henry McMaster has until two days after the next meeting of the legislature to act on legislation or it becomes law.

The following governors have acted on all legislation as of September 1: Minnesota Democratic Gov. Tim Walz, Nebraska Republican Gov. Pete Ricketts, and Tennessee Republican Gov. Bill Lee.

Interim Committee Hearings: The following states are currently holding 2020 interim committee hearings: [Alabama](#), [Alaska](#), [Arizona](#), [Arkansas](#), [Colorado](#), [Connecticut](#), [Delaware](#), [Hawaii](#), [Idaho](#), [Illinois](#), [Indiana](#), [Iowa](#), [Kansas](#), [Kentucky](#), [Louisiana](#),

[Maine](#), [Maryland](#), [Minnesota](#), [Missouri House](#) and [Senate](#), [Montana](#), [Nebraska](#), [Nevada](#), [New Mexico](#), [New York Assembly](#) and [Senate](#), [North Dakota](#), [Oklahoma House](#) and [Senate](#), [Oregon](#), [South Carolina House](#) and [Senate](#), [South Dakota](#), [Tennessee](#), [Texas Senate](#), [Utah](#), [Virginia](#), [Washington](#), [Wisconsin](#), [West Virginia](#) and [Wyoming](#).

Bill Pre-Files: [Alabama](#), [Florida](#), [Kentucky](#), [Montana](#), [Nevada](#), [Oklahoma](#), [Utah](#) and [Virginia](#) are currently posting 2021 bill drafts, pre-files and interim studies. ■

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