

GOVERNMENTAL AFFAIRS WEEKLY REPORT

Weekly Highlights At-A-Glance



Please Note: Governmental Affairs Reports are not published during the holidays and will resume with the January 11, 2021 issue. Wishing you a safe, merry, and joyous holiday season and a very happy new year.

FEDERAL – Legislative

Congressional Holiday Recess. The U.S. Congress is scheduled to be in holiday recess beginning December 18 – with the exception of any action on emergency COVID-19 legislation – and will reconvene for the 117th Congress on January 3, 2021 with the swearing in of new members. [Read more.](#)

FEDERAL – Regulatory

Arctic National Wildlife Refuge – Alaska. (Update to 11/30/20 Weekly Report) On December 3, the Bureau of Land Management (BLM) [announced it will hold its first Arctic National Wildlife Refuge \(ANWR\) oil and gas lease auction on January 6, 2021.](#) On December 7, the BLM published its *Notice of Sale* ([85 Fed. Reg. 78865](#)) providing lease sale details and sets December 31, 2020 as the deadline for lease bids for the January sale. The move provides the Trump administration with an accelerated timetable which will ensure the oil and gas leases are formally issued before President-elect Joe Biden is sworn in on January 20, 2021. As reported, Biden has vowed to permanently protect the ANWR refuge, but once formalized, these leases would be difficult to cancel by a new administration. For background, on November 17, the BLM Alaska State Office published a notice, *Call for Nominations and Comments for the Coastal Plain Alaska Oil and Gas Lease Sale* ([85 Fed. Reg. 73292](#)), seeking nominations and public comments on ANWR lease tracts considered for the upcoming Coastal Plain oil and gas lease sale. The

notice represented the official step taken by the Trump administration towards an auction of drilling rights in ANWR's 1.56-million-acre Coastal Plain before Biden's inauguration. According to Interior Department officials, the Coastal Plain is estimated to hold up to 11.8 billion barrels of technically recoverable oil. In 2017, Congress mandated that two ANWR oil and gas lease sales be held by December 22, 2024. The BLM Alaska State Office must receive all nominations and comments on the available tracts on or before December 17, 2020. [Read more.](#)

Arctic Outer Continental Shelf Rule Revisions.

On December 9, the Interior Department, Bureau of Safety and Environmental Enforcement (BSEE) and Bureau of Ocean Energy Management (BOEM) published a proposed rule, *Oil and Gas and Sulfur Operations on the Outer Continental Shelf-Revisions to the Requirements for Exploratory Drilling on the Arctic Outer Continental Shelf* ([85 Fed. Reg. 79266](#)), which states that "acting through BOEM and BSEE, [it] has reviewed and is proposing to revise its existing regulations for exploratory drilling and related operations on the Arctic Outer Continental Shelf (OCS), to reduce unnecessary burdens on stakeholders while ensuring that energy exploration on the Arctic OCS is safe and environmentally responsible." In particular, this proposed rule would revise certain requirements promulgated through the ["2016 Arctic Exploratory Drilling Rule."](#) This proposed rule would also add new provisions to BSEE's regulations pertaining to suspensions of operations, and BOEM's Exploration Plan and Development and Production Plan regulations. The public comment period is open through February 8, 2021. [Read more.](#)

BLM Central Yukon Draft Resource Management Plan/Environmental Impact Statement – Alaska.

On December 11, the BLM published a *Notice of*

Availability for the Central Yukon Draft Resource Management Plan/Environmental Impact Statement, Alaska ([85 Fed. Reg. 80143](#)). The Central Yukon Draft Resource Management Plan (RMP) and Environmental Impact statement (EIS) “is a comprehensive framework for future public land management actions in the Central Yukon region of Alaska. The planning area consists of about 55.7 million acres of land, including approximately 13.3 million acres of public lands managed by the BLM Central Yukon Field Office. The Record of Decision for the Central Yukon RMP/EIS will guide management of these public lands for the next 15 to 20 years for the benefit of current and future generations as part of BLM’s multiple-use mission. This planning effort is updating management decisions for public land uses and resources, including subsistence resources, mineral exploration and development, and recreation. When complete, the updated Central Yukon RMP will replace the Utility Corridor RMP (1991), the original Central Yukon RMP (1986), and portions of the Southwest Management Framework Plan (1981), as well as provide RMP-level decisions for unplanned lands west of Fairbanks.” The BLM will make future announcements on virtual public hearings for the RMP/EIS. [Read more.](#)

BLM Resource Advisory Council – Utah.

On December 8, the BLM published a notice ([85 Fed. Reg. 79031](#)) requesting public nominations to the BLM Utah Resource Advisory Council (RAC). According to the BLM, “Individuals may nominate themselves or others. Nominees must be residents of the State in which the RAC has jurisdiction. The BLM will evaluate nominees based on their education, training, experience, and knowledge of the geographic area of the RAC. Nominees should demonstrate a commitment to collaborative resource decision-making.” The deadline is January 7, 2021. [Read more.](#)

Office of Natural Resources Revenue Notice.

On December 11, the Office of Natural Resources Revenue (ONRR) published a notice, *States’ Decisions on Participating in Accounting and Auditing*

Relief for Federal Oil and Gas Marginal Properties ([85 Fed. Reg. 80147](#)), which details that ONRR regulations provide two types of accounting and auditing relief for Federal onshore or Outer Continental Shelf lease production from marginal properties. “Each year, ONRR provides a list of qualifying marginal Federal oil and gas properties to States that receive a portion of Federal royalties from those properties. Each State then decides whether to participate in relief, and if so, whether to allow one or both relief options. For calendar year 2020, ONRR provides this notice of the affected States’ decision regarding whether relief should be allowed and, if so, which type of relief will be allowed.” The notice contains a table that lists the States with qualifying marginal properties and each State’s decision as to the relief options it will allow in calendar year 2021. [Read more.](#)

Tar Sands Leasing – Utah. On December 9, the BLM released an [Environmental Assessment \(EA\)](#) “to disclose and analyze the environmental consequences of offering for lease one tar sand parcel totaling 2,115.90 acres located in the Asphalt Ridge portion of the Asphalt Ridge-Whiterocks and Vicinity Designated Special Tar Sand Area (STSA).” According to Bloomberg Government, “A federal tar sands program that kept the Asphalt Ridge parcel available for future development was finalized in 2013 under the Obama administration. It’s unclear what the Biden administration may do with it. President-elect Joe Biden has pledged to curtail fossil fuels development on federal lands as part of his climate plan.” In 2013, the BLM closed all Greater Sage-Grouse habitat in Utah to tar sands development, except the 2,100 acres the BLM is now proposing to lease. The public comment period on the EA is open through December 24, 2020. [Read more.](#)

Taking of Migratory Birds. (*Update to 8/24/20 Weekly Report*) On November 27, the Interior Department’s U.S. Fish and Wildlife Service published its [Notice of Availability of its Final Environmental Impact Statement regarding Migratory Birds](#) which “provides responses to

substantive comments.” (See also [85 Fed. Reg. 76077](#).) Following a 30-day public review process the Fish and Wildlife Service will [release its Record of Decision](#). For background, on August 11, the U.S. District Court for the Southern District of New York struck down a 2017 Interior Department legal opinion that the Trump administration relied upon for an easing of regulations under the Migratory Bird Treaty Act. That opinion would have held companies – such as those in the oil and gas industry – liable for the killing of migratory birds only if the acts were “intentional” rather than “incidental.” In consolidated cases, [Natural Resources Defense Council v. U.S. Dept. of the Interior](#) (Case No. 1:18-cv-04596-VEC), the Court held that the Migratory Bird Treaty Act makes it unlawful to kill birds “by any means whatever or in any manner” and thus the administration’s interpretation and relaxing of the meaning could not be squared with the plain language of the statute. The Interior Department criticized the court’s decision, saying it “undermines a commonsense interpretation of the law and runs contrary to recent efforts, shared across the political spectrum, to de-criminalize unintentional conduct.” [Read more](#). The Final Environmental Impact Statement is an outgrowth of that court decision. [Read more](#).

FEDERAL – Judicial

Non-Operator Costs – Montana. On November 13, in *Continental Resources, Inc. v. Wyotex Oil Company* (Case No. CV 17-148-BLG-TJC), the U.S. District Court for the District of Montana addressed a case in which Continental sought to recover costs associated with two oil and gas wells that Continental drilled in Richland County, Montana in 2014 and to foreclose against its oil and gas well lien. In the matter, Continental drilled certain wells and billed Wyotex for its proportionate share of the actual cost of developing, drilling, completing, maintaining, and repairing the wells. Continental sent joint interest billing statements to Wyotex, which reflected Wyotex’s proportionate share of costs of the materials and services provided by Continental. According to the Court, “Wyotex refused and

continues to refuse to pay its share of the joint interest billing statements.” Among other findings, the Court noted “that when Wyotex was participating in this litigation, it did not dispute that Continental’s Lien was valid” and thus finds Continental’s Lien is valid and enforceable. In sum, the Court upheld a default judgment in favor of Continental for breach of contract, as well as other costs. [Read more](#).

Employee Misclassification – Pennsylvania. On November 3, in [Larsen v. Edgemarc Energy Holdings, LLC](#) (Case No. 2:18-cv-1221), the U.S. District Court for the Western District of Pennsylvania approved a settlement in a 2018 class action lawsuit aimed at recovering unpaid overtime compensation under the Fair Labor Standards Act (FLSA) and wage and hour laws of Pennsylvania and Ohio “that the plaintiff claims is due because he and the other oil field workers were classified as independent contractors and not employees.” As reported by law firm Locke Lord, LLP, the Court [“granted final approval of a \\$1.2 million settlement between 50 oilfield workers and Edgemarc Energy Holdings, Inc.”](#) Although not a case specifically about landmen, but other oilfield workers, “The named plaintiff alleged that the company misclassified him and other oilfield workers because the company controlled all significant aspects of the job duties he performed; afforded him no opportunity for profit or risk of loss; did not require him to incur a substantial investment or to possess or use a specialized skillset; determined the hours and locations worked, tools used, and rates of pay received; and restricted his ability to work for other companies. He further asserted that the daily and weekly activities of the proposed class members were routine and largely governed by standardized plans, procedures, and checklists created by the company or its clients, that virtually every job function was pre-determined by the company or its clients, including the tools to use at job sites, the data to compile, the schedule of work, and related work duties, and that the company constricted the proposed class members to job duties outside of pre-determined parameters.” The workers claimed they were misclassified as independent contractors and were paid a daily rate with no overtime and were

due unpaid wages and other damages as a result of the misclassification. [Read more.](#)

STATE – Legislative

Independent Contractors – California. Once again, Republican lawmakers are attempting to repeal the rigid ABC test for determining if a worker is an employee or independent contractor in California. On December 7, Rep. Kevin Kiley (R) introduced AB 25. The bill would generally repeal provisions relating to the more limiting ABC test and would, instead, require the determination of whether a person is an employee or an independent contractor to be based on the specific multifactor test set forth under the formerly long-standing *Borello* standard, including whether the person to whom service is rendered has the right to control the manner and means of accomplishing the result desired, and other identified factors. The *Borello* standard generally provides greater latitude for recognition of a worker as an independent contractor. [Read more.](#)

Well Stimulation Treatment Projects – California. On December 7, Sen. Melissa Hurtado (D) introduced SB 25. “Existing law authorizes the Geologic Energy Management Division in the Department of Conservation to regulate the drilling, operation, maintenance, and abandonment of oil and gas wells in the state. Existing law requires an operator proposing to perform a well stimulation treatment to apply to the State Oil and Gas Supervisor or a district deputy for a permit to perform the well stimulation treatment and imposes other requirements and conditions on the use of well stimulation treatments. Under existing law, a person who fails to comply with this and other requirements relating to the regulation of oil or gas operations is guilty of a misdemeanor. This bill would express the intent of the Legislature to enact subsequent legislation to (1) strengthen the regulatory review process for well stimulation treatment projects to protect public health and safety, and the environment, while protecting the livelihoods of essential workers in the San Joaquin Valley, and (2) ensure that any jobs or economic activity affected by the strengthening of the

regulatory review process for well stimulation treatment projects are fully compensated for, and retained, in order to ensure the employees and communities affected by these actions are not adversely affected.” [Read more.](#)

Orphaned Wells – California. On December 7, Sen. Senator Monique Limón (D) introduced SB 47. “Existing law authorizes the State Oil and Gas Supervisor to order certain operations to be carried out on any property in the vicinity of which, or on which, is located any well or facility that the supervisor determines to be a hazardous well, an idle-deserted well, a hazardous facility, or a deserted facility, as specified. Existing law establishes the Oil and Gas Environmental Remediation Account in the Oil, Gas, and Geothermal Administrative Fund to be administered and managed by the Geologic Energy Management Division, and requires that the moneys in the account be used, upon appropriation by the Legislature, to plug and abandon oil and gas wells, decommission attendant facilities, or otherwise remediate sites that the supervisor determines could pose a danger to life, health, water quality, wildlife, or natural resources if there is no operator determined by the supervisor to be responsible for remediation or who is able to respond.” This bill would “express the intent of the Legislature to enact legislation relating to orphaned oil and gas wells” but offers no further legislative direction. [Read more.](#)

Notaries Public – Michigan. (*Update to 10/19/20 Weekly Report*) On December 4, SB 1187 passed the Senate. The bill, sponsored by Sen. Peter MacGregor (R), allows for electronic notarization of documents under the criteria as provided. Specifically, the bill “would amend the Michigan Law on Notarial Acts to do the following: Extend a sunset date, from December 31, 2020, to June 30, 2021, for a period of time during which a notary public’s commission that expired after March 1, 2020, would remain valid” and “Extend a sunset date, from January 1, 2021, to July 1, 2021, before which a record signed under the Act could be signed in counterparts” and “State that legislative intent with respect to use of electronic records and signatures and notarial acts performed

electronically would apply until after June 30, 2020.”
[Read more.](#)

Electronic Execution of Documents – Michigan.

(Update to 10/19/20 Weekly Report) On December 3, SB 1189 passed the Senate. The bill, sponsored by Sen. Peter MacGregor (R), allows for the electronic execution of certain documents. Specifically, the bill amends the Estates and Protected Individuals Code to do the following: “Extend a sunset date, from January 1, 2020, to July 1, 2020, before which the act of signing or witnessing the execution of a will, a funeral representative designation, a parental appointment of a guardian of a minor, an appointment of a guardian of a legally incapacitated individual, a durable power of attorney, or a patient advocate designation is satisfied by use of a two-way real-time audiovisual technology if the prescribed requirements are met” and “Extend a sunset date, from December 31, 2020, to June 30, 2021, before which a guardian, guardian ad litem, or visitor may satisfy any requirement concerning a visit with an individual by instead conferring with the individual via two-way real-time audiovisual technology.”

[Read more.](#)

Coronavirus Relief – New Mexico. A single-day special session ended November 24 with “New Mexico lawmakers approving a \$330 million package intended to provide financial relief to workers and businesses harmed by the coronavirus pandemic.” The bipartisan bill, [HB 1](#), passed with broad support and Gov. Michelle Lujan Grisham (D) signed the measure into law on November 25. The Act includes: a one-time \$1,200 benefit for New Mexicans who are currently on an unemployment benefit program; grants to businesses with less than 100 employees; and assistance to low-income residents, up to \$750 per household, that did not receive a stimulus payment from the federal government, among other relief. The Act takes immediate effect.

[Read more.](#)

STATE – Regulatory

Oil and Gas Industry Support – Wyoming. *(Update*

to 11/16/20 Weekly Report) The [oil and gas stimulus program launched in Wyoming last month](#) may be accomplishing what it intended, according to follow-up reports. “Though applications were only open for about one week, the Wyoming Business Council received 65 eligible applications, with demand for the government relief far outstripping available funding.” According to Josh Dorrell, CEO of the Wyoming Business Council, “The results of this program show the willingness of the oil and gas industry to put people to work in Wyoming, once they get some capital to get them going.” For background, on November 10, [Gov. Mark Gordon \(R\) announced that Wyoming would allocate federal COVID-19 funds to aid the oil and gas industry in the state.](#) “These funds will have a direct impact on Wyoming’s employment rate and put people back to work in our oil and gas sector,” said Gov. Gordon, announcing up to \$15 million in assistance through a new Energy Rebound Program. The Program will utilize federal CARES Act funding “to provide business relief targeted towards drilled, but uncompleted oil and gas wells, wells that were unable to be re-completed, and plugging and abandonment projects which could not be finished due to the impacts of the COVID-19 pandemic.”

[Read more.](#)

Railroad Commission Form Notice – Texas. On December 8, the Railroad Commission of Texas (RRC) published a notice that it is accepting public comments on proposed revisions to the instructions to Form PR *Monthly Production Report*. “The proposed revisions will support the RRC’s regulation of flaring and venting of produced natural gas. The proposed revisions are to the Form PR Instructions, how operators need to complete the form, not to the structure of the form itself.” The proposed revisions include three changes to the Form PR Instructions: (1) “Disposition Code 4”, which is currently used to report the volume of gas that was vented or flared, will be discontinued; (2) Two new disposition codes will be implemented to allow operators to allocate gas. For gas that was flared “Disposition Code 10” will be used. For gas that was vented “Disposition Code 11” will be used. This change will allow the RRC to quantify the legal disposition of gas that was flared

and vented; and (3) When an operator allocates gas to Disposition Codes 10 or 11, the operator will be required to enter one or more two-letter codes to the existing "REMARKS" field on the form. Those two letter codes correspond to the authority under which the gas was flared or vented and include the following: AR – Authorized by Rule; AE – Authorized by Exception; EP – Exception Pending; and EX – Exempt. Additionally, "The current Form PR Instructions require an operator to 'Indicate why the gas was vented or flared in REMARKS on Form PR'. The proposed revision make[s] these remarks uniform by requiring categorization of the authorization for the release." Public comments will be accepted through January 8, 2021. [Read more.](#)

Interstate Oil and Gas Compact Commission.

The [Interstate Oil and Gas Compact Commission](#) (IOGCC) has announced that Wayne Christian, one of three commissioners of Railroad Commission of Texas (RRC), was named vice chairman of the IOGCC. The "IOGCC, one of the nation's oldest and largest interstate compacts, is a multi-state government group that promotes efficient recovery of U.S. oil and natural gas resources while protecting health, safety and environment." Christian was elected to the RRC in 2016 and was appointed by Gov. Greg Abbott (R) as Texas' representative to the IOGCC. [Read more.](#)

Oil and Gas Annual Survey. On December 4, Steptoe & Johnson PLLC announced that once again it has partnered with the University of Oklahoma College of Law for its [Annual Survey of Developments in Oil and Gas Law in the online energy journal, ONE J](#). This year marks "the fifth year of the survey partnership that examines case developments in the oil and gas industry as well as legislative developments in 25 producing states and sovereign lands." According to Steptoe & Johnson PLLC, "ONE J is a student managed publication, issued six times per year by students at the University of Oklahoma College of Law. The Journal is devoted exclusively to promoting scholarship in the oil, gas, energy and natural resources legal fields and providing helpful case

summaries for practitioners." [Read more.](#)

STATE – Judicial

Severed Oil and Gas Interests; Marketable Title Act; Dormant Mineral Act – Ohio. (*Update to 1/27/20 Weekly Report*) On December 2, the Ohio Supreme Court finally issued its long-awaited opinion in [West v. Bode](#) (Case No. 2020-Ohio-5473), a widely-watched case AAPL has been reporting on and tracking for members since 2019. The Ohio Supreme Court held that either the Marketable Title Act (MTA) or the Dormant Mineral Act (DMA) "may be used to reunite a severed mineral interest with the surface property subject to that interest." ([See full case analysis.](#)) For background, the issue accepted for review was whether the DMA, being the specific statute, supersedes and controls over the MTA, being the general statute, as to the termination of severed oil and gas interests. Prior to the opinion, law firm Vorys, Sater, Seymour and Pease LLP noted, "The Court's decision should provide some clarity to operators in Ohio regarding the ownership of severed oil and gas interests." In affirming the appellate court holding, the Ohio Supreme Court "held that there is no irreconcilable conflict between the general provisions of the MTA as applied to severed mineral interests, and the DMA and, as such, both acts retain effect." According to Steptoe & Johnson PLLC, "The Court stated that it was reasonable to believe that the legislature intended for the DMA to provide surface owners an *additional* mechanism to accomplish reunification of dormant mineral interests with the surface estate in order to promote the use of natural resources when those interests could not be extinguished under the MTA." [Read more.](#)

Arbitration; Leasing – Ohio. On September 30, in *French v. Ascent Resources-Utica, L.L.C.*, (Case No. 2020-Ohio-4719), the Ohio Court of Appeals, Seventh District, addressed a case where Ascent argued that because the arbitration provision in their leases required all issues regarding the leases or performance under the leases to be submitted to arbitration, the trial court should have stayed this

action pending arbitration, which it had not. The Court first addressed whether the exception to mandatory arbitration under the state code in certain instances affecting real estate applies to the oil and gas leases in this case. Here, the Court held that “even though oil and gas leases create an interest in real estate, they are not issues concerning title to or possession of real estate.” The Court further noted that, “Because the oil and gas leases in this case do not grant appellant title to or possession of real property and only permit appellant to use the Sutherland Farm to produce oil and gas, the exception to mandatory arbitration under R.C. 2711.01(B)(1) does not apply.” The second issue was whether Ascent waived its right to arbitrate. On that issue, the Court remanded the case back to the trial court for further determinations since that court had not ruled on the issue. Here, the Court held, “If the trial court determines appellant did not waive the rights to arbitrate, it shall stay the matter pending arbitration.” [Read more.](#)

Railroad Commission Orders – Texas. On December 10, the Travis County District Court halted the Texas Railroad Commission (RRC) from enforcing a series of emergency orders it issued that suspend certain RRC rules arising from the COVID-19 pandemic. In the pending case, [Public Citizen, Inc. V. Railroad Commission of Texas](#) (Case No. D-1-GN-20-003795), litigants claim “The RRC emergency orders were not preceded with proper notice under the Texas Open Meetings Act, did not comply with the Administrative Procedure Act emergency rule making requirements, exceeded the RRC's statutory authority, and violated the Texas Constitution. The orders allow abandoned wells to go unplugged, waste pits to go un-remediated, and oil and gas to be injected and stored underground in a formation other than a salt dome. The orders also waive fees and surcharges on multiple activities regulated by the RRC.” [Under the judge's decision](#), the RRC will not be able to enforce the emergency rule-waivers announced in May 2020. District Court Judge Jan Soifer faulted the agency for failing to give the public adequate forewarning, according to the ruling.

Soifer's order will remain in effect until a suit by accountability watchdog group Public Citizen is heard, or the regulator posts proper notice, the judge said. The Public Citizen case is set to be heard on May 10, 2021. For background, on May 5, 2020 the RRC approved emergency rules that waived fees, extended deadlines for environmental clean-ups and expanded the types of locations where companies could store crude oil. Chairman Wayne Christian said at the May meeting that the regulatory relief was designed to help operators through an unprecedented collapse in oil prices. In response to the latest court ruling, the RRC said in a statement that it “does not agree with the court's order and has filed a notice of appeal.” The RRC claims that all actions taken at the May 5, 2020 meeting “were approved in accordance with the Open Meetings Act, state and federal law, and Commission rules.” [Read more.](#)

[INDUSTRY NEWS FLASH](#)

► **U.S. Energy Information Administration forecasts higher crude prices.** On December 8, the U.S. Energy Information Administration (EIA) forecast higher crude oil prices next year in its latest Short-Term Energy Outlook. This “reflects EIA's expectation that while inventories will remain high, they will decline with rising global oil demand and restrained OPEC+ oil production.” [Read more.](#)

► **Bank of America is latest bank refusing to finance oil and gas exploration in Alaska's Arctic National Wildlife Refuge.** On December 1, Bank of America joined other major U.S. banks refusing to finance oil and gas drilling in the Arctic National Wildlife Refuge. In a statement, the bank said, “that the company had not provided finance for natural resource concerns in the protected region historically, but that public perception prompted executives to ‘codify our existing practice’ against financing drilling in Alaska's Arctic National Wildlife Refuge.” [Read more.](#)

