Utah Petroleum Association

UPDATE

THE OFFICIAL PUBLICATION OF THE UTAH PETROLEUM ASSOCIATION

ISSUE 3 2020

FUELING UTAH'S GROWTH AND PROSPERITY

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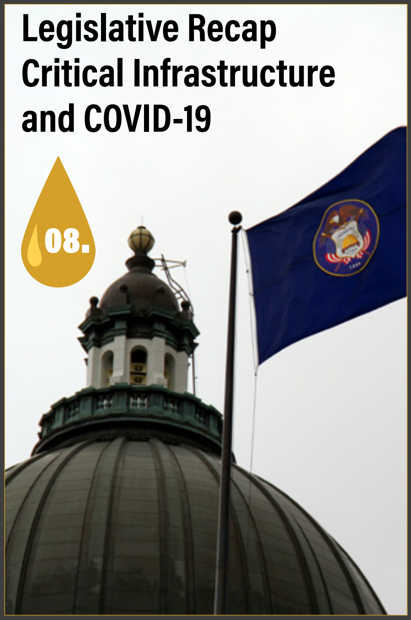
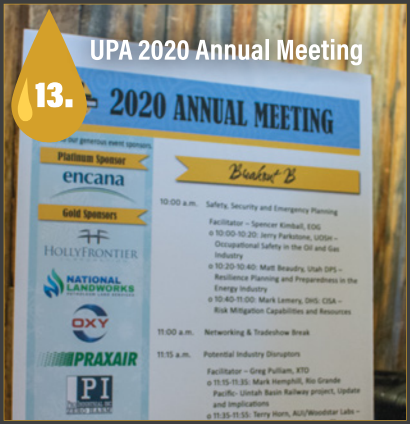
summary

FUELING UTAH'S GROWTH AND PROSPERITY





Utah Petroleum Association

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Who We Are

Misson Statement

"The Utah Petroleum Association (UPA) is a Utah-based, statewide petroleum trade association representing companies involved in all aspects of Utah's oil and gas industry. We exist to serve our member companies and advance the responsible development of Utah's natural resources and manufacture of fuels that drive Utah's economy."

Executive Committee

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- **Mike Swanson,** Big West Oil
- **Josh Jemente,** Holly Frontier
- **Rodney Black,** CH4 Energy-Finley

UPA Administrative Staff & Office

- **Rikki Hrenko-Browning,** *President*

- **Jennette King,** *Administrative Assistant*

536 S 500 W, Salt Lake City, UT 84101 | 801-619-6680

Welcome New Members

- **XCL Resources,** Gold Member
- **US Metals,** Silver Member
- **Great Basin Industrial,** Silver Member
- **Ute Tribe/ Ute Energy Exploration & Management,** Bronze Member

President's Message

Rikki Hrenko-Browning

Dear UPA members and friends,

To say times are uncertain is an overused statement, but also the most fitting description for the businesses and employees working in Utah's oil and gas industry. Life in the US and much of the world has ground to a halt and who knows where we will by the time this is printed and you are reading it. So much has changed in the short window of time between first draft and final proof that we have had more than one re-write. For many of us, myself included, the concept of time has fractured, simultaneously slowing down and speeding up. The impacts of the COVID-19 virus have been felt in nearly every facet of daily life in America. The oil and gas industry in Utah, upstream, midstream and downstream companies, are continuing to meet energy demands while mobilizing crisis management teams and installing enhanced safety measures that protect the health of industry workers and neighbors. I sincerely want to thank our operators who continue to prioritize safety as they work to provide all Utah residents with the energy that powers our way of life. Our industry's top priority will always be the health and safety of their workforce, partners and the communities in which we operate. At this time, our primary focus is on giving our society the greatest chance of "flattening the curve" to keep as many of our loved ones safe as possible and shorten the long-term economic implications of COVID-19.

Looking at what lies ahead, already the early consequences of this pandemic have led to a significant global slowdown and abruptly plummeting demand, which coupled with geopolitical decisions from competing energy rich countries, have led to plunging crude prices at levels we haven't seen since the 2016 crash. This has triggered budget cuts across North American operators and the basin is sure to be hard hit. The Trump administration has contemplated large purchases for the Strategic Petroleum Reserve, Congress has rolled out the CARES Act, with additional stimulus packages on the way, and federal and state agencies are evaluating how they can adjust both fiscal and regulatory policies. However, dramatic impacts on our industry and on the recently announced growth we had eagerly looked forward to in the state's upstream sector are inevitable. My crystal ball is broken beyond repair so I don't dare to predict where the dust will settle. However, witnessing our industry respond and adapt to today's crisis has been a source of immense pride. The oil and gas sector is stepping up to ensure Utah has the energy needed to power our first responders, hospitals, and homes to make sure we weather this storm as a community. In the middle of a historic rescue effort — to save lives, prevent the spread of a pandemic, and soften the blow to our economy — I would like to thank our sector employees for showing us the way forward.

On the downstream side, the same stressors apply. Add to those recent changes to the Renewable Fuel Standard (RFS) program that could allow EPA to require refineries previously exempted from the standard to make up those renewable fuel volumes they were previously exempted from. If allowed to stand, this could put all five of our refineries under severe financial strain. All at a time when we need to recognize the role of our energy system — upstream, midstream, and downstream oil and gas — as critical infrastructure. As we work through how the world and US respond to the COVID-19 pandemic, our industry will be needed to provide essential services that underpin our public health and safety and economic stability.

Just emerging from the legislative session, the closing days were complicated by recommendations discouraging face to face interactions, followed by official and often conflicting federal, state and local guidelines about social distancing, and finally announcements of school closures. Those of us who typically watch — and assess — the final days of session kept up virtual interactions with policymakers and tracked livestream hearings and public discussion about issues impacting the industry. The general consensus was the 2020 session ended the same way it began — full of uncertainty. The first days of the session started with a repeal of the newly minted tax reform package just passed in a December special session. Following months of intense public meetings and legislative and policy deliberations, a surprising victory for the opposition to the package meant a voter referendum lay ahead. Legislators needed to set a state budget for the year and so were left no choice but to repeal tax reform to remove the uncertainty the referendum brought. The session closed with passage of a bill that opens up the income tax to education earmark to a limited window of services for disabled Utahns and children — if the constitutional change is approved by Utah voters in November. While far from sweeping tax reform, it could free up an estimated $500 million from the General Fund annually, giving some much-desired budget flexibility, particularly as our next budget cycle looks set to be significantly more challenging than the last several have been. Overall, the question remains as to how best to address the structural imbalance that for the last several years has left the state with an overall budget surplus but dwindling resources in the general fund — which pay for nearly everything outside of education. The tax reform saga will continue, intensified by the imminent budget stresses.

I suspect it's fair to say that we are all working through jarring changes. Coming out of the busy legislative season UPA had a host of urgent issues waiting to be tackled, ranging from multiple rulemakings to important events meant to bolster the strength of our industry, including our inaugural health and safety awards and EMpower employee communications training amongst others. Many of those items are being re-prioritized with plans to revisit once we address this current crisis. As we all take stock, I wish you strength and calm in navigating these uncertain times, but also ask that we all continue to be mindful and prepare for what are surely to be brighter days ahead.

Downstream Updates

With HollyFrontier's announcement to produce Tier 3 fuels at their Woods Cross refinery, Utah's petroleum industry is celebrating increased Tier 3 fuel capacity and strides made to improve air quality across the state. Moves by Utah refineries to invest and produce Tier 3 drives air quality benefits locally (rather than at out of state facilities) to meet the Environmental Protection Agency's low-sulfur standards, and responds to Governor Gary Herbert's and our legislature's leadership on air quality and ozone issues. Holly Frontier's recent announcement is more evidence that industry is stepping up to partner with policymakers, regulators and consumers to improve the environment and everyone's quality of life. Big West Oil has also announced that Teir 3 production is in their five-year investment plan. Chevron, Marathon and Silver Eagle are already producing Tier 3 fuels.

Burned in a Tier 3 vehicle, Tier 3 gasoline results in an average 80% reduction in tailpipe emissions. According to Utah's Division of Air Quality, this is equivalent to taking four out of five vehicles off the road today. "This is a very proud moment for our retailers across Utah. Tier 3 gasoline burns cleaner and is directly responsible for improvements to our air quality and ozone. This is a reminder that industry is a committed partner on energy and environment," said Rick Reese, Vice President of Sales at Kellerstrass Oil. "With today's announcement from HollyFrontier, I am particularly pleased retailers are putting consumers in the driver seat when it comes to choices that improve air quality in our community." Despite current events and protocols in place driven by the historic COVID-19 response, the industry continues to ensure Utah's access to stable fuel supplies and deliver on Tier 3 fuels' air quality improvements. As we move forward, the industry will continue to do its utmost to meet safety guidelines and environmental standards. "At times like these when most are thinking about business continuity and getting through COVID-19, it is remarkable to see the Utah oil and gas sector expanding availability of T3 fuels to consumers," said Utah Representative V. Lowry Snow. "This is the result of a multi-year partnership between advocates, policymakers and industry to improve air quality in Utah. I think it speaks to the innovation and ingenuity at play when we all pull together on practical solutions."

Our downstream members are also preparing for changes to the Renewable Fuel Standard (RFS) program due to a decision by a three-judge panel of the U.S. Court of Appeals for the Tenth Circuit. If allowed to stand, the decision could put small refineries in the Tenth Circuit, which includes Utah, under severe financial strain and thousands of jobs at risk if EPA were to require those refineries to make up the renewable fuel volumes they were previously exempted from. In Utah, the refining industry employs nearly 1,200 individuals and contributes $1.2 billion dollars to the Utah economy. Nationwide, it likely would have meant that only a handful of the smallest refineries, likely no more than 7, would have been eligible for the exemption. This significant challenge is on top of the knock-on impacts the abrupt global economic downturn is bringing to downstream markets and potential local supply instability the plummeting oil prices could bring in the medium term.

UPA recently worked with the Governor's Office and themselves also wrote a letter to the Trump Administration urging an appeal of this decision to an en banc panel of the Tenth Circuit and, if necessary, the U.S. Supreme Court. The outcome of these cases will affect how EPA administers the RFS program more widely and increase RFS compliance costs for refineries, thus adversely impacting Utah consumers through potentially increased gasoline and diesel prices. In March, President Trump announced his intent to appeal the decision, which marked a reversal in his previous position noting that he would accept the decision and apply it nationwide.

Upstream Updates

We started 2020 with U.S. crude production hitting an all-time record high, resulting in the U.S. taking more than 5 market share percentage points from OPEC. On the heels came COVID-19 and the geopolitical opportunism from other oil rich nations. The resulting shock waves have driven oil prices down to lows not seen since 2006. Just a few weeks ago we were reporting significant investment plans from several of our major basin producers. Today, as many of you are all too familiar with, we are retooling for slashed capital budgets, laying down rigs, and pausing the progress made toward growing new out of state markets that would drive future production growth. Previous hedging strategies and the forward plan is of course different for each producer, but the general focus is on pausing new growth, cutting nonessential expenditures and looking toward keeping production flat to ride out the storm. UPA is aligned with other state, regional and national trades working to coordinate information sharing and help shape any future stimulus packages to ensure oil and gas inclusion.

Layered on these extreme market conditions are numerous state rulemakings. Forced pooling, which was started in April 2017 and has a whopping 63 items listed in the docket, was approved to move to formal rulemaking in February. Operatorship, currently in informal rulemaking, is moving right behind it with a draft document ready to be voted to formal rulemaking at the next Board meeting (hopefully with a much shorter and smoother road to completion). The COVID-19 response has delayed getting the final forced pooling rule published in the Bulletin and the March Board of Oil Gas and Mining (BOGM) meeting, where a vote on Operatorship was anticipated, has been canceled, but despite these speedbumps both rulemakings are well on their way to completion. The board has also issued a scheduling order on horizontal rulemaking which is currently in informal rulemaking and UPA has already started working with the division to provide feedback on their draft. Slated ahead are also bonding reviews, as presented at the February Board informal briefing session, and a rulemaking to set a fee schedule per the newly adopted SB 278. We anticipate another busy year on the policy and rulemaking front.

“We started 2020 with U.S. crude production hitting an all-time record high, resulting in the U.S. taking more than 5 market share percentage points from OPEC. On the heels came COVID-19 and the geopolitical opportunism from other oil rich nations. The resulting shock waves have driven oil prices down to lows not seen since 2006. Just a few weeks ago we were reporting significant investment plans from several of our major basin producers.”

Legislative Recap

Critical Infrastructure and COVID-19

In these rapidly changing circumstances, the classification of our oil and gas infrastructure as "critical infrastructure" is of paramount importance. The US Government (Cybersecurity & Infrastructure Security Agency – CISA) already recognizes oil refineries as part of the critical US infrastructure and our refining industry is tightly tied to Uintah Basin production. Our entire supply chain - drilling and completions, pipeline, shipping (trucking), refining, terminals – is a critical component to delivering essential energy reliably. Our industry's continued operation is necessary to ensure the security, safety and health of the U.S. citizens - not to mention stability of our economy. As we are writing this edition, the state has 8 counties who have issued various forms of stay at home orders, some of which reference the CISA critical infrastructure guidance and some that do not. UPA will continue advocating for a standard framework that refers to the CISA guidance and correctly acknowledges and protects all segments of the oil and gas industry as critical infrastructure. We will also continue pursuing regulatory clarity with EPA, DEQ, DOGM, SITLA, BLM and others given the operational changes necessary to prioritize the safety of our employees, partners and community. Utah's oil and gas industry is committed to doing our part to ensure the energy backbone of our economy is safe and stable while navigating this challenge.

As the legislature gears up for an April special session we will continue efforts to ensure the oil and gas industry is properly recognized as critical infrastructure and policies are in place to support ongoing stable operations during these unprecedented times.

Legislative Session

This year's session saw a modest 510 bills passed, about 60 bills less than last year's record breaking number. UPA's bill tracking list included 89 bills and 2 appropriation requests, both of which were successfully funded. The UPA Legislative Committee took active positions on 47 of those bills. We took a high profile position on 7 – meaning we publicly engaged in testimony and discussions, and were successful on all but one. We took a low profile position on 24 – meaning we otherwise educated lawmakers on our position, and won more than we lost – given the politics at play on some of those bills, we're considering a passing grade a win!

One of our 7 high profile support bills, Senator Okerlund's SB 148 "Oil and Gas Modifications" was passed in direct response to the November 2020 legislative audit. This bill gives the Division and the Board the ability to administratively levy and collect fines, as is the standard in many of our neighboring states, addressing the most significant issue identified in the audit. It also provides balance to ensure that collecting fines doesn't turn into a revenue source for the Division. It requires notice of the violation, and a list of actions and timelines necessary to cure the violation before a fine is issued and sets out that one violation should only trigger one fine, multiple fines should not be "stacked" on a single violation. It caps the fines that can be levied by the Division at $200k, which is in line with the New Mexico example raised in the audit. It also creates the Oil and Gas Administrative Penalties Account to accrue the administrative penalties collected by the board or division. Subject to an appropriation by the legislature, the funds in that account can be used to offset risks to the public health, safety, or welfare caused by oil and gas operations for impacts and activities covered by bonding, or ii)for other direct impacts to the general public from oil and gas development as identified by the board and the executive director of the Department of Natural Resources at a public hearing.

It requires rulemaking by the Board of Oil, Gas and Mining to establish a detailed fee schedule to be developed for violations, which should limit the amount of discretion/subjectivity, and sets out that the Board shall review bonding rules to determine if the rules provide adequate fiscal security.

UPA supports the Division and the Board having the tools necessary to hold bad actors accountable. A regulator that has the resources and enforcement tools necessary to carry out its mission is in our long term best interest and we are aligned in making these improvements in the Division's operations.

As this edition goes to press we are preparing for the governor to call a special session for our lawmakers to address COVID-19 related issues, including tax and budget adjustements. A date is expected in mid to late April and we will keep our members up to speed as details emerge.

A few general interest highlights:

- Due to economic downturn generated by the COVID-19 virus, state revenue projections used for budgetary planning are likely to change. This could result in a special session in the second half of this year to make changes in the budget.
- Education had a big win, with an increase to the Weighted Pupil Unit (WPU) by 6%, one of the largest increases in recent years. At the very end of the session a modest education funding reform proposal was approved to extend income taxes which otherwise support the education fund, to be used for the disabled and children – however this will require voter approval in November.
- A compromise with Better Boundaries was found that allows the state to keep its citizen adopted independent redistricting commission, but with fewer controls on the Legislature's constitutional redistricting authority.
- It is no longer a felony penalty for plural marriage among consenting adults, making it an infraction instead. The change was made to encourage reporting of other crimes (domestic abuse, child abuse, etc) that are believed to be underreported in these communities for fear of plural marriage charges. Polygamy would still be treated as a felony if it were charged in conjunction with other crimes.
- Much to the dismay of some, the state did not give any tax cuts, even though we saw $921 million in ongoing and one-time tax surpluses. Rainy day funds were instead topped off, which hindsight is quickly showing to have been the prudent decision
- The charged issues of gun control and abortion were addressed, resulting in several gun control efforts failing, including a requirement that all gun sales at a gun show must have a buyer-background check. An anti-abortion law passed, resulting in a near ban which won't go into effect unless the U.S. Supreme Court reverses the 1973 Roe v Wade ruling.

Lunch and Learn -
The Self-Audit Provision of the Clean Air Act

"EPA's plan achieves three important goals: improved air quality, continued resource development and a consistent set of requirements for operators across Indian country and state lands. Our proposal will address a persistent air quality challenge in the Uinta Basin by reducing ozone-forming emissions. EPA's proposed requirements closely reflect current Utah Division of Air Quality requirements for new and existing oil and natural gas sources on lands managed by the state in the Uinta Basin and will apply to owners and operators of new and existing sources located on Indian country lands within the Uintah and Ouray Indian Reservation.

Gregory Sopkin, EPA Regional Administrator."

This past February, UPA met with the Environmental Protection Agency (EPA) for another Lunch and Learn Series. Our speakers, Region 8 Administrator Gregory Sopkin and his Chief of Staff Jagadeeson Sethuraman, answered audience questions. Mr. Sopkin's comments focused on the EPA's achievements in their efforts. The overall message was that the EPA wants to work with the petroleum industry and not against it; they are looking for cooperation and collaboration. Mr. Sopkin covered many of the agency's current initiates, but spent a great deal of time on the recently extended self-audit program, which is part of the EPA's National Compliance Initiative – Creating Cleaner Air for Communities by Reducing Excess Emissions of Harmful Pollutants.

continued on page 10

Thank You to Our Sponsor Ovintiv

> Upstream oil and natural gas facilities sometimes can have numerous emission violations. By temporarily expanding our self-audit program to existing owners, we expect more facilities to return to environmental compliance. This incentive to identify, correct and self-disclose violations will provide additional public health and environmental protection in the surrounding communities.
>
> Susan Bodine, EPA Assistant Administrator for Enforcement and Compliance Assurance

continued from page 9

When it comes to fixing problems, voluntary compliance is generally the least expensive and the most effective way to go. That is why the EPA created the self-audit provision of the clean air act: it wanted to collaborate with the industries it oversees. In that way, the EPA can help the U.S. move toward cleaner air as fast as possible.

The EPA originally designed the self-audit program for new owners of exploration and production facilities in the oil and natural gas industry. The program, and its matter-of-fact, solutions-oriented approach, was so successful at gaining industry cooperation, reducing transaction costs and improving efficiencies that the EPA decided to expand it to include existing owners.

When the EPA was designing the new program, representatives talked about the program with stakeholders that included the following:

- Environmental NGOs
- States
- The regulated community
- Tribes

In December 2019, the EPA announced a yearlong sign-up period for an expanded audit program that could now be used by existing owners of oil and natural gas exploration and production facilities. The audit program was designed to accelerate compliance with the Clean Air Act and other rules that are intended to protect public health and the environment. It allows companies to find, disclose and correct their violations.

For businesses within the oil and natural gas industry, one of the most significant barriers to compliance is uncertainty about audit terms, up-front expectations for corrective actions, and concerns about penalties. The program streamlines the problem-solving process so companies can reach agreements faster and mitigate the penalties. More specifically, the EPA won't impose civil penalties for violations on existing owners that make and follow an agreement with the EPA.

The program is specifically designed to address concerns about excess emissions from control systems for tanks and vapor at exploration and production facilities for oil and natural gas. The emissions can be caused by operation and maintenance, or they might be caused by design issues.

To implement the program, owners start by filling out the Final Agreement Template for Existing Owners. This template was modeled on the template for new owners, but the EPA has updated both templates. In Appendix B of the templates, companies now have a choice. They can choose either of the following options:

- Ensure that emissions from storage vessel tanks are properly controlled
- Operate a Closed Loop Vapor Control System that has been correctly designed, installed and verified.

If you represent an existing owner and have questions about or are interested in participating in the self-audit program, please contact the following EPA representatives:

- Gregory Fried, Chief, Stationary Source Enforcement Branch, Air Enforcement Division, EPA: fried.gregory@epa.gov or (202-564-7016)
- Tim Sullivan, attorney at EPA: sullivan.tim@epa.gov or (303-312-6916)

Bill Gates Said What?!

The best two minutes you can spend on social media

If you haven't seen the YouTube excerpt from Bill Gates' interview with Arun Majumdar on Feb. 18, 2019, it is well worth the time. To find it online, search for "Bill Gates – stop jerking around with wind and batteries." The interview was part of the 2018 Global Energy Forum at Stanford University. During the excerpt, Gates talks about the overly optimistic thinking of many of those concerned about greenhouse emissions.

Gates is not known for promoting the oil and gas industry. He regularly discusses the importance of "clean energy" and the innovation required to achieve it. In his May 14, 2019, GatesNotes blog, he wrote, "you back up renewable sources with fossil fuels like natural gas that can quickly and reliably provide power when it's needed. To reach zero carbon emissions, however, we need to find a way to use more clean energy sources as a backstop.

He said, "While I wish there could be a single, magic bullet solution to this problem, there isn't one right now. What will be required in the years ahead is a diverse and flexible mix of energy solutions — a Swiss army knife of energy tools — to support a future of renewable energy generation to meet our needs. Some of these solutions already exist. Others will require more innovation.

"Electricity is just 25 percent of greenhouse gas emissions," said Gates. "There is no substitute for how the industrial economy runs today."

When financial analysts proposed rating companies on their CO2 output to drive down emissions, Gates was surprised they felt the solution was that easy. He poses the question in the video, "Do you guys on Wall Street have something in your desks that makes steel? Where is fertilizer, cement, plastic going to come from? Do planes fly through the sky because of some number you put in a spreadsheet? The idea that we have the current tools and it's just because these utility people are evil people and if we could just beat on them and put (solar panels) on our rooftop — that is more of a block than climate denial." He then said, "The 'climate is easy to solve' group is our biggest problem."

Bill Gates' "Grand Challenges" breaks greenhouse gas emissions down into five categories that account for 90% of emissions:

- Electricity (25%)
- Agriculture (24%)
- Manufacturing (21%)
- Transportation (14%)
- Buildings (6%)

The last 10% is a miscellaneous category.

In his "GatesNotes" blog from just a month before the 2018 Global Energy Forum, Gates talks about this issue in a post called Climate Change and the 75% Problem.

"Gates is not known for promoting the oil and gas industry. He regularly discusses the importance of "clean energy" and the innovation required to achieve it."

"Low-emission cars are great, but cars account for a little less than half of transportation-related emissions today — and that share will shrink in the future. More emissions come from airplanes, cargo ships, and trucks. Right now, we don't have practical zero-carbon options for any of these. Buildings, do you live or work in a place with air conditioning? The refrigerant inside your AC unit is a greenhouse gas. In addition, it takes a lot of energy to run air conditioners, heaters, lights, and other appliances. Things like more-efficient windows and insulation would help. This area will be more important over the next few decades as the global population moves to cities. The world's building stock will double in area by 2060. That's like adding another New York City every month for 40 years."

When it comes to manufacturing, another large piece of the puzzle, Gates says, "Look at the plastic, steel, and cement around you. All of it contributed to climate change. Making cement and steel requires lots of energy from fossil fuels, and it involves chemical reactions that release carbon as a byproduct. So even if we could make all the stuff we need with zero-carbon energy, we'd still need to deal with the byproducts."

Gates concludes by saying, "I think these grand challenges are a helpful way to think about climate change. They show how energy isn't just what runs your house and your car. It's core to nearly every part of your life: the food you eat, the clothes you wear, the home you live in, the products you use. To stop the planet from getting substantially warmer, we need breakthroughs in how we make things, grow food, and move people and goods — not just how we power our homes and cars."

This is a video with Bill Gates:
https://youtu.be/VjgDvG13Hgs

2020 Annual Meeting - Sundance Resort

This past January, UPA held its annual meeting at the beautiful Sundance Resort, in Provo, Utah. Those that attended enjoyed two days of educational meetings and an opportunity to catch-up with colleagues within our industry.

The agenda was packed with break-out sessions and keynote speakers that spoke to the task at hand that we are all faced with: speaking with one voice about the importance of what we do and how critical our mission is. Topics for discussion included energy poverty – what it is – and the consequences to the world, and to our own communities when people do not have access to reliable, low cost energy. We had speakers focus the current and future energy policies and budgets, as well as best practices for us all to follow as we work to further our industry.

We want to thank all of our sponsors for supporting our event, and to those that took time out of their schedules to join us. We also want to thank our presenters and speakers who did an exceptional job. Many of the topics were particularly interesting, and we are pleased to publish a supporting editorial in this issue of our magazine.

For those of you that missed the annual meeting, we hope that you will join us next year.

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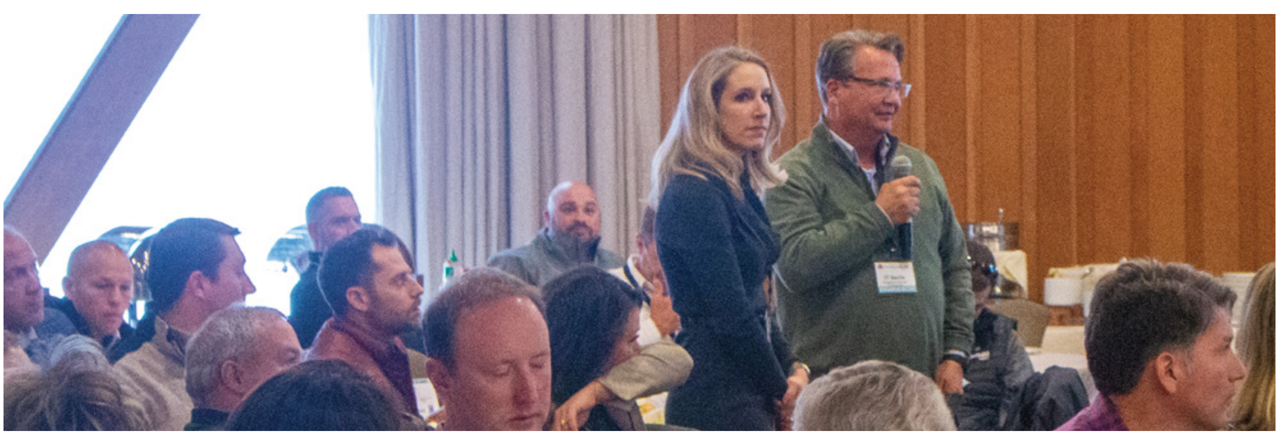



UPDATE


REHEARSAL HALL

Energy and Environmental Law and Policy Under the Trump Administration (and Beyond)

Fracking, the Clean Air Act (CAA), the Clean Water Act (CWA), the Endangered Species Act (ESA) and the National Environment Policy Act (NEPA) are all regulatory policies that affect the petroleum industry.

The last three years of the Trump administration and the possibility of an administration change beginning in 2021, signals the likelihood of significant changes for the oil and gas industries, among others impacted by Environmental Protection Agency (EPA) policies.

A Review of the Last Three Years

Fracking

Fracking has been allowed to continue full-bore at the federal level, but the industry has had to fight off impediments at the state and local levels. Fracking would continue under a second Trump term. That might not be true if a Democrat is elected. Of the remaining candidates, both Joe Biden and Bernie Sanders would oppose fracking to show their climate-change bona fides.

On Dec. 19, 2019, the U.S. Chamber published a study showing that a fracking ban would eliminate 19 million jobs. The study noted that oil and gas production employed approximately 470,000 people in 2018. The Labor Department estimates their wages at about $54 billion.

If the Republican Party continues to control the Senate, it is unlikely that a legislative ban could be passed. However, if a Democrat is elected, the administration would write new executive branch regulations, issue new executive orders, curtail leasing opportunities, and reduce the industry's tax advantages. These actions could make life difficult for the oil and gas industry.

The effect of a ban would ripple out from the Rocky Mountain States. Gasoline prices would increase, tax revenues would decrease, and utility bills for heat and electricity would go up.

The potential for severe consequences involving fracking make it the most significant priority nationwide for the oil and gas industry. As a result, how the party nominees position themselves about fracking matters.

Clean Water Act

During the 2009-2016 period, the Obama administration expanded the federal government's scope of the CWA through regulations and judicial enforcement. This expansion was possible because the statute does not define "navigable waters of the United States." That leaves this important phrase open to interpretation.

As you would expect:

- Progressives view the phrase expansively. If two raindrops kiss on the top of a mountain and eventually form a trickle that leads to a creek and then to a stream, a navigable river and a navigable gulf, lake or ocean, then the entire path comes under federal regulation. As a result, permits have to be obtained if a project could impact the Waters of the United States (WOTUS).
- Conservatives take a more limited view. The Congress that passed the CWA meant for the federal process to apply only when a water body was "navigable" in the sense of commerce. Under that perspective, federal

permitting is only required for water bodies that can support boat traffic. All other water bodies were to be under state jurisdiction.

WOTUS has been compared to an accordion:

- It has been stretched out by big-government proponents who want uniform, nationwide enforcement.
- It has been pushed in by those who support states' rights and limited government.

The Trump administration has repealed the 2015 WOTUS rule and has put a more limited view of the federal government's jurisdiction into a proposed rule which has been published in the Federal Register (FR) for public comment. But, as has happened increasingly often in this era of gridlocked government, the ultimate answer to this CWA issue will be decided by the Supreme Court of the United States (SCOTUS). Pay close attention to the decision expected this spring in a case called City of Maui v. Hawaii Wildlife Fund.

Clean Air Act

The authority of the federal government to require permitting via Clean Air Act regulations issued by the EPA provides another accordion situation. The drawn-out legal dispute over the Obama administration's clean power plan for controlling greenhouse gas emissions from existing power plants ended in 2019. The D.C. Circuit (which has exclusive jurisdiction over CAA litigation) dismissed the litigation and said the case was made moot now that the Trump EPA had repealed the regulation and replaced it with its own affordable clean energy rule.

Naturally, environmental groups and some states with Democrat A.G.s have filed suit in the D.C. Circuit challenging the new rule with oral argument expected to occur this spring. The future of the CAA will be significantly impacted by the November election and by the courts.

Endangered Species Act

The law was initially intended to protect threatened and endangered species. It has become (along with NEPA) the primary tool of energy project opponents to delay or overturn government approval of those projects.

The ESA equivalent of the CWA battle over the meaning of the word "navigable" centers on the meaning of the word "habitat."

The ESA requires protection of the habitat of listed plants and animals; each species requires habitat protection free of the threat of commercial development. The Obama administration expanded the scope of the range of habitat. The resulting spate of litigation included taking cases under the Fifth Amendment.

When I was the Department of the Interior (DOI) Solicitor (1990-1993), there were 326 listed species. Two-thirds of them were plants. Currently, there are over 1,400 listed species, yet less than two dozen have been delisted because they were deemed recovered.

The Trump administration's FWS and NOAA are jointly working on a new rule that would define "habitat" more narrowly than some judges have ruled in various court cases. The "habitat rule" is due out in May. Nongovernmental organizations are sure to file lawsuits that will challenge the administration's interpretation. The oil and gas industry should help defend the new rule.

National Environmental Policy Act

The Council on Environmental Quality's chairwoman Mary Neumayr, along with President Trump at a Jan. 9 White House ceremony, announced new NEPA guidelines to be followed by all federal government agencies.

The extensive new guidelines are long overdue. After 40 years of inaction by the executive branch and Congress, NEPA has become a court-legislated statute that expanded in scope far beyond the original intentions of its 1970 authors.

The costs of complying with NEPA are legendary. Even when the government issues a permit after completion of the lengthy NEPA Process, NGOs challenge alleged "inadequacies" of that particular process. While the government must defend the process, the project proponent usually has to intervene in the litigation to protect its interests at much time and expense.

The landmark rewrite of the NEPA rules includes the following changes:

- Analysis of a project's cumulative effects on climate change is not required;
- NEPA review of projects with minimal federal funding or participation would not be required;
- NEPA EIS must be completed within two years (compared to the current 4-1/2 years), and an environmental assessment has to be completed within one year;
- Authorization decisions involving multiple agencies will be streamlined and synchronized by placing just one agency in charge;
- The new rules will improve the use of previous E.A.s and EISs when subsequent related reviews are conducted that involve the same or nearby geographic areas;
- There will be increased project-proponent involvement in preparing E.A.s and EISs;
- The new rules will specify presumptive page limits for the E.A.s and EISs to be produced by the agencies;
- The new rules will also limit the range of alternatives that must be considered in NEPA reviews;

> The "habitat rule" is due out in May. Nongovernmental organizations are sure to file lawsuits that will challenge the administration's interpretation. The oil and gas industry should help defend the new rule.

The proposal was published in the F.R. and was open for public comment until March 10, 2020.

Who Makes the Key Decisions?

In the Department of the Interior, key decisions are made by:

- Secretary David Bernhardt.
- Acting Deputy Secretary Katherine "Kate" MacGregor.
- Associate Deputy Secretary James Cason.
- Acting Assistant Secretary for Land and Minerals Management (LMM) Casey Hammond.
- Agency directors of BLM/FWS/ONRR responsible for carrying out day-to-day policies.

In the DOI Office of the Solicitor, the current Solicitor Daniel Jorjani manages 350 attorneys. He has the final say about what the law is within the department. Of the attorneys who report to him:

- Six are deputy solicitors, who are political appointees. The remainder of the solicitor's office employees are career attorneys.
- There are also eight career regional solicitors and another eight field solicitors.

The power of the Interior Board of Land Appeals (IBLA) in decision-making is equivalent to that of the Secretary. An entity opposed to a decision must exhaust the required administrative remedies by appealing a DOI adverse Agency decision to the IBLA before taking its case to a Federal District Court.

The Department of Justice's Environment and Natural Resources Division handles all trial court and appellate court litigation for eight cabinet departments, including DOI, EPA, Energy, Commerce, Agriculture and Transportation. It also handles environmental cases that involve the State

continued on page 18

continued from page 17

and Defense departments. The Assistant Attorney General is Jeff Clark. Also, there are:

- Five deputy assistant attorneys general
- Nine career section chiefs
- Ninety-Four U.S. attorneys (AUSAs)

The DOJ has the final say on settlements and controls the judgment fund. The Solicitor General has the final say on all Circuit Court appeals and all appearances before the Supreme Court of the United States (SCOTUS).

President Trump has had an impact on judicial nominees at the SCOTUS, circuit and district courts; 187 of his nominees have been confirmed.

- Circuit courts hear more than 10,000 appeals each year.
- The SCOTUS usually hears less than 100 cases each year.

Who Will Make the Decisions From 2021-2025?

If President Trump wins a second term, he will keep most of the current office holders since many of them just took office in the past 18 months. The team is likely to continue to include Kate MacGregor, Daniel Jorjani, Jeff Clark and Robert Wallace. Despite mistakes and early turnover that took place during the beginning of President Trump's first term, most of these personnel errors have been corrected. The latest nominees have had more experience in government than the initial nominees.

More deregulation and industry-friendly policies have characterized President Trump's term. These policies include the continued leasing of public lands and wind farms in the Atlantic Ocean.

The remainder of President Trump's term will provide valuable opportunities to gain experience and to prepare for future leadership. UPA members should identify talented employees in their late twenties and thirties, contact senators and members of Congress, and do their best to have these young people placed in government staff positions.

Joe Biden appears to be the likely Democratic nominee. But who would he turn to if he had the opportunity to form an administration?

- Many former President Obama supporters are now in their 30s and 40s. They have already served as assistant and deputy assistant secretaries.
- Campaign staffers are likely to be asked to join the White House team and will be given commissions and positions to staff cabinet officers.
- Biden would certainly call on previous members of his staff during the time he served as Vice President and in the Senate. They would receive key spots at State, Treasury and Defense.
- There are 400 presidential appointments and 1,600 Schedule C appointments made by the 16 Cabinet Secretaries. The Democratic National Committee (DNC) would want many of its employees to be chosen for these positions.

What would a Biden presidency look like? Expect him to reinstitute Obama-era policies and reinvigorate the environmental movement nationally and internationally. Expect a concentration of effort on climate change, including renewed involvement in the Paris Treaty Accords that Trump rejected.

At this point, it seems increasingly unlikely that Bernie Sanders will win the Democratic party's nomination, and the remainder of the field has dropped away rapidly. The only real question right now is the selection of a Democratic running mate. According to some of President Trump's strategists, the most formidable ticket today would be Biden-Klobuchar. That ticket would solidify the African American community, bring strength to the ticket from the upper Midwest, attract those who will vote for anybody but Trump, and would also be attractive to the suburban women's vote.

Which states should you watch during the general election?

- The important states for Republicans are Arizona, Michigan, Wisconsin, Pennsylvania, Ohio and Florida. Republicans need to win five of these six states.
- The important states for Democrats are Colorado, North Carolina, New Hampshire, Minnesota, Virginia and New Mexico. Democrats need to win five of these states, plus two from the Republican list.

Democrat control of the Senate (currently 53R-47D) requires that they pick up four additional seats.

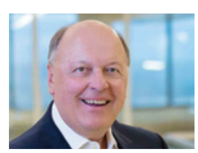
For Republicans, their best shot to pick up seats are as follows:

- In Alabama, Doug Jones (D) could potentially be defeated by former Attorney General Jeff Sessions or former Auburn University football coach Tommy Tuberville (endorsed by President Trump), the two Republican survivors of the primary race.
- In Michigan, the incumbent, Gary Peters (D) faces John James (R).

For Democrats, their best shots are as follows:

- In Colorado, Cory Gardner (R) is in a contest against the former governor of Colorado, John Hickenlooper (D).
- In Maine, Susan Collins (R) is facing a challenge from Sara Gideon (D), who currently serves as the speaker of the Maine House of Representatives.
- In Arizona, Martha McSally (R) is being challenged by Mark Kelly (D), the husband of former U.S. Representative Gabby Giffords, and an engineer who has served in the Navy and as an astronaut.
- In North Carolina, Thom Tillis (R) is running against ex-State Senator Cal Cunningham (D).
- In Montana, Steve Daines (R) is running against the current governor, Steve Bullock (D).

The politics of 2020 will undoubtedly impact many things, but the oil and gas industry, in particular, could see significant changes.



Tom Sansonetti joined Holland & Hart in 1993 and built a nationally recognized practice in natural resources and environmental law. Considered an expert in natural resources and environmental matters, Tom served as an Assistant Attorney General for the Environment and Natural Resources Division in the Department of Justice and also as the Solicitor at the Department of the Interior. He has argued before the U.S. Supreme Court and in six Federal Circuit Courts of Appeal, and served as a federal prosecutor in environmental crimes cases. Tom practices law in the firm's Cheyenne, Denver and Washington D.C. offices.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Energy Poverty

When you think about terms like "energy poverty," you probably think about places in under-developed countries, possibly like Kirinyaga, Kenya. The main industry is agriculture and, in places processing food such as tea. Most of the people who live there don't have access to electricity because they are too far away from the national grid. Extending the grid would cost more money than anyone has been willing to pay yet, so people burn other biomass instead, such as fuelwood or even dung. Biomass isn't free; in developing countries such as Kenya, most families spend more than 20% of their income on it. As a result, these individuals have a poor standard of living, don't get enough food, have limited educational opportunities, and ultimately live shorter lives.

Why are lives shortened? Part of the reason has to do with inadequate cookstoves and fuel sources that produce indoor pollution. The World Health Organization estimated that unventilated indoor pollution in low-income countries was responsible for the deaths of 1.3 million people as recently as 2015 because of the respiratory illnesses it causes. That's better than the deaths caused by indoor pollution as recently as two years earlier. According to National Geographic, the death toll in May 2013 was 3.5 million, which was more deaths than were attributed to HIV or AIDS (1.5 million) or malaria (1.2 million). Most of those who died were women and children, those responsible for cooking and other household tasks.

It's no surprise that one of the main global goals of the 21st century is to make sure that everyone has access to cheap and affordable electricity, even in rural areas, by 2030 (see the Introduction section of endnote 1). Reaching that goal will help the 1.2 billion people who have no access to electricity and will also benefit the 2.8 billion people who currently depend primarily on biomass to cook their food and heat their homes. It turns out that the most important thing you can give someone who is trying to get out of poverty is access to energy. Not only does that access improve an individual's standard of living, it also provides economic growth and opportunities (see section 2, Assessing Energy Poverty and Its Implication, in endnote 1). In contrast, energy poverty is a destabilizing catalyst that can cause civil unrest and instability, especially in urban areas with a large percentage of unemployed young people.

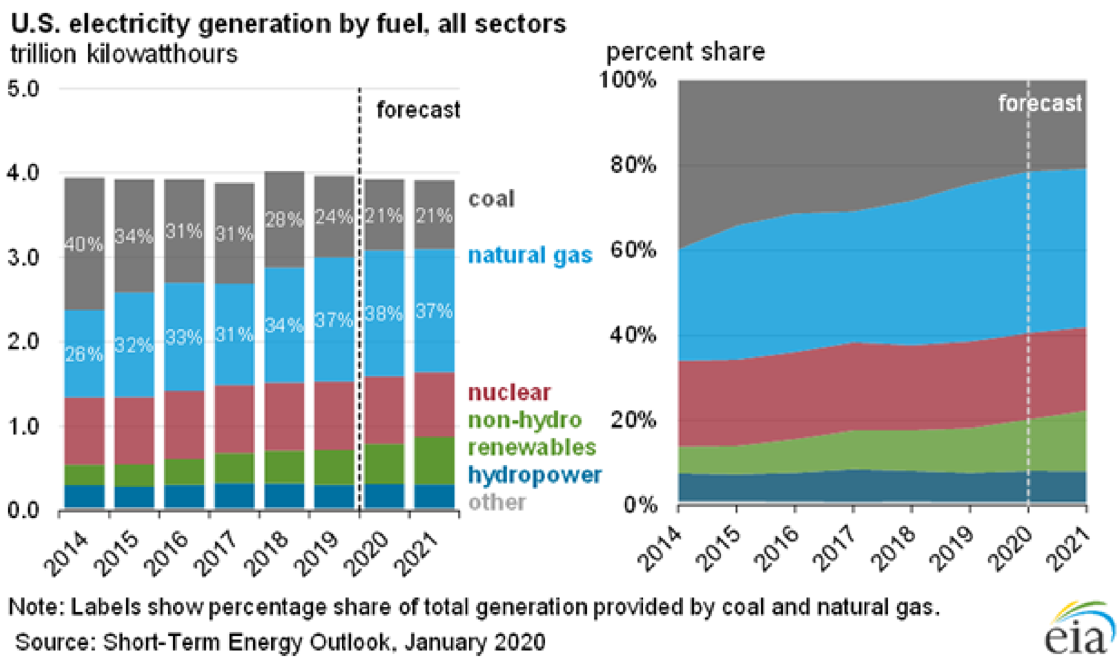
Energy poverty is not a small problem. Half the global population is affected by it (see endnote 4). But what about energy poverty in the U.S.?

For anyone whose income is four times more than the poverty line, energy generally isn't as significant a concern because people in that category generally only spend 1-2% of their income on home energy needs. Inevitably, though, people spend a higher percentage of their income when they are below the poverty line. There are people in this category throughout the entire U.S., of course, but the states with the highest energy poverty levels are in the northeast, the southeast, and the Midwestern parts of the country. In Michigan, for example, 22% of a low-income household's financial resources are spent on energy bills. (See paragraphs 4 and 5, endnote 5). Anyone who is spending that much or more of their disposable income on utility bills does not have enough money to pay for the other necessities of life.

It is reasonable to expect to spend 6% of a household income on utilities. People need enough energy to be able to power appliances, heat or cool their homes, and turn on lights when needed. According to the Union of Concerned Scientists, spending more than 10% of financial resources on energy is considered by many to be the point at which energy poverty begins (see endnote 1). That's when people start doing without heat, hot water and light after sundown. They also buy less food and medicine and turn to unsafe, improvised energy alternatives. Burning charcoal and biomass isn't safe, is bad for the environment and shortens life expectancy. Even something that seems like it would be safe, such as burning pressure-treated lumber scrap, can be dangerous if it releases arsenic smoke (see endnote 6. Fortunately, however, not all pressure-treated lumber contains arsenic.)

The federal government has a program called LIHEAP that is intended to help people with utility bills they can't afford to pay. The government does not and cannot provide enough money to meet the current need. As of 2016, the biggest gaps (more than $2,400) are in states like Vermont and Maine. But even in Utah, where the gap is considerably less than that, there was still a $330 gap (see the table in the Affordability Gap section for endnote 3). For those who don't have the resources to close the gap, any shortfall is potentially devastating.

Being energy poor is a direct precursor to being homeless; the No. 1 reason for homelessness is domestic violence, but the next most common reason in households with children is not having enough money to pay the utilities (see the Section Chance section for endnote 3).



Source: U.S. Energy Information Administration (EIA)/.

How can the U.S. most effectively fight energy poverty? First, you have to look at where we currently stand. The U.S. Energy Information Administration released an online report dated Jan. 14, 2020. It is worth looking at and can be found at www.eia.gov/outooksw/steo/report/electricity.php.

The report has a graph showing electricity generation by fuel for all sectors, measured in trillion kilowatt-hours.

- Coal, at 24% by the end of 2019, is continuing to decrease and is expected to be at 21% by the end of 2021.
- Natural gas is increasing: it provided 37% at the end of 2019 and is expected to provide 38% in 2020 and drop back to 37% in 2021.
- The other fuel sources for energy generation are nuclear power, non-hydro renewables (including geothermal, solar panels and wind farms), hydropower, and others that the report says are biofuels production losses and co-products. Nuclear power has held steady in its contribution since about 2014, but based on current political winds looks unlikely to grow in the near term. Non-hydro renewables have increased, but not by much; in 2019, the increase was 17% and in 2020 it is expected to be 19%, thanks to increased electrical generation from wind and sun.

What do these numbers tell you? If you look at the amount of energy generated by fuel, renewable energy is not currently able to meet the total U.S. need for energy and is not projected to do so in the near-term, despite recent growth from these sources. That means we need to find other ways to get the energy we need.

For a comprehensive, 85-page report about the international energy outlook, available online, refer to the report issued Sept. 24, 2019, by the U.S. Energy Information Administration. For more information about energy rankings on a state-by-state basis, with links for additional state rankings on consumption, expenditures, prices, production, the environment and more, visit eia.gov/state/rankings.

What can the U.S., and also its energy industries, do to protect U.S. interests and to make sure its citizens have the energy they need?

The answer is twofold:

- Affordable, Clean, Reliable Fuel: The U.S. needs to continue to produce energy that is as clean and affordable as possible. That means we need a healthy oil and gas industry that can continue increasing efficiency and generating more and more of the low-cost reliable energy needed by the U.S. Renewable energy is already playing a growing role in our energy mix, and natural gas is the stabilizing backbone that will allow the continued growth of renewables.
- Energy Savings: The U.S. needs to do what it can to reduce the amount of energy its people consume. There are many opportunities to shift our current system and norms to provide for significant savings. One is upgrading energy infrastructure, both at the utility level and on the consumer side. This includes continuing to reward people for improving the energy efficiency of their homes. Another is shifting to more multifamily housing, and rewarding commercial property owners for making the same improvements private homeowners are already getting.

Many things change over time. The best solution now will probably not be the best solution for tomorrow. But we do know that energy poverty is a real and substantial problem. The global goal has to be eradicating it. The best tool to eliminate energy poverty now and into the future is to encourage continued development of the most affordable, reliable, cleanest, safest energy sources we can. Natural gas is already able to provide the energy we need. The oil and gas industry is a viable and real part of the solution to the world's most pressing problems, particularly energy poverty.

For the EIA Annual Energy Outlook2020 Report

https://www.eia.gov/outlooks/aeo/pdf/AEO2020%20Full%20Report.pdf

Energy Takeaways from the Trump 2021 Budget

The Overall Key Priorities from the Budget Message

- Better Trade Deals
- Preserving Peace Through Strength
- Overcoming the Opioid Crisis
- Regulation Relief
- American Energy Independence

The Fiscal 2021 budget proposal was released February 11. President Trump proposed a record $4.8 trillion budget that is taking a firm position on wasteful government spending. While Congress decides what to fund, the budget request is a nice reveal for the key priorities and, shifts inside the Department of Energy and energy related agencies. The following is taken from the DOE chapter of the actual budget document.

Funding Highlights:

- The 2021 Budget makes strategic investments to maintain global leadership in scientific and technological innovation, including basic research in support of the Administration's efforts to foster industries of the future. The Budget also supports aggressively modernizing the nuclear security enterprise that underpins the safety and security of Americans both at home and abroad.
- The Budget proposes to sell federally-owned and operated electricity assets, which would save an estimated $4.1 billion over 10 years. Selling these assets would encourage a more efficient allocation of economic resources and mitigate unnecessary risks to tax-payers.
- The 2021 Budget requests $35.4 billion for DOE, an 8.1-percent decrease from the 2020 enacted level of $38.5 billion.

The Budget for DOE reflects the critical role DOE has in promoting energy dominance and economic growth and in protecting the safety and security of the American people. The Budget enables advancement of American leadership in science and technology, a cornerstone to achieving these goals. American ingenuity combined with free-market capitalism can drive tremendous technological breakthroughs, leading to improvements in America's economy and environment.

The Budget focuses resources on early-stage research and development (R&D) of energy technologies, where the Federal role is strongest, while addressing the need to support later-stage R&D in targeted areas where there are unique challenges. Emphasizing the appropriate role of the Federal Government ensures that taxpayer dollars are being effectively used while implementing fiscal discipline.

The Budget recognizes the emergence of the United States as a top producer of energy in the world, becoming the world's 's largest oil producer in 2018, transitioning to a net petroleum exporter in late 2019, and projected to become a net petroleum exporter for the 2020 calendar year. As a result, the commercial sector ably produces the energy needed to guard against supply disruptions in the world market. The Budget proposes a slight reduction in Government ownership of petroleum products to fund higher priorities across the energy landscape, including AI and quantum science. The Administration continues to seek strategic opportunities to utilize America's resources and innovative technology to strengthen America's position as a world leader. The Budget also makes strategic investments to accelerate the development of the next generation of American energy technologies and solutions. This includes $2.8 billion across the Applied Energy Office portfolio to support early-stage R&D and targeted later-stage R&D. This investment helps enable the private sector to develop and deploy the next generation of solutions to usher in a more secure, resilient, affordable, and integrated energy system.

[This budget] addresses unnecessarily burdensome energy efficiency regulations. Through research and reasonable regulatory actions, DOE will seek opportunities for further improvements in energy efficiency, with an emphasis on solutions that promote consumer choice, the comfort of building occupants, and the performance of labor-saving products, devices, and equipment. Building on the recent light bulb rule success, DOE will pursue improvements to other household appliances through its standards program to improve product efficiency and meet the everyday needs of American households. In addition, DOE will demonstrate the benefits of the revamped Process Rule saving time and money for stakeholders and tax-payers alike through more effective implementation of energy efficiency standards program.

The Environmental Protection Agency is facing cuts consistent with what has been requested in past years. A 26% reduction in funding and elimination of 50 programs that have been deemed wasteful or duplicative and/or outside the EPA's core mission. The 2021 budget has proposed $6.7 billion in total EPA spending. The administration aims to prioritize core functions.

Specifically:

- The DOE's Office of Energy Efficiency and Renewable Energy (EERE) reduces by 75%
- While the DOE has not identified specific goals for the Energy Storage Grand Challenge program, $97 million has been dedicated to supporting it, with $40 million also going to "Grid Storage Launchpad" inside the Office of Electricity
- The Bureau of Ocean Energy Management's total budget proposal would be reduced to $188.8 million for fiscal 2021 from $191.6 million enacted in fiscal 2020. The agency would nix funding to develop a new offshore oil and gas plan, confirming that the Trump administration's push to dramatically revise the current five-year plan is "on hold."
- The budget request for the Pipeline and Hazardous Materials Safety Administration would fall 1.8%, from $281 million in fiscal 2020 to $276 million in fiscal 2021. Spending on the agency's pipeline safety division would be cut 2.8%, from $145 million to $141 million during the same time period.

Article published with permission from the Domestic Energy Producers Alliance (DEPA) and **Jerry R. Simmons**, Executive Director of DEPA.

Check Out the Utah Petroleum Association's Health Plans!

The new UPA health and wellness plans can help your company avoid the ACA community rating and join a large group pool of petroleum companies to help control cost. Any UPA member that is directly involved in or supports the petroleum industry can participate in the program.

Member Benefits:

- Groups with 2-200 benefit eligible employees can participate in the UPA plans
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Avoiding Sanctions on Worker Misclassification

Every business owner or manager at some point will have to determine whether one or more of their workers are employees or independent contractors. For a number of federal and state purposes, this is a critical distinction and raises vexing questions of fact and law. Many employers become aggressive in classifying their workers as independent contractors to avoid payroll taxes and fringe benefits, unemployment insurance, workers' compensation expenses, minimum wage requirements and labor union issues, to name a few perceived benefits. Employment taxes constitute about 72% of the taxes the IRS collects, so it is no wonder that the IRS and other governmental agencies closely monitor and enforce worker misclassification through penalties and sanctions.

Employers must withhold income and Social Security taxes from employee paychecks. Conversely, independent contractors are responsible for reporting and paying their own income and Social Security taxes. As a result, because it is more likely that employers will accurately and consistently withhold and pay taxes, the IRS is constantly on the watch for those who improperly claim independent contractor status.

Employers who intentionally misclassify workers can be responsible for all unreported income and Social Security taxes of their employees for all relevant years, in addition to penalties for missed deposits and withholdings and in egregious cases, criminal exposure. In cases where employers unintentionally misclassify workers, the employer's withholding liability is limited to 1.5% of wages paid and Social Security liability to 20% of the amount otherwise due, which still could be substantial depending on the amount of wages and number of workers involved. Misclassification also results in workers' loss of benefits (e.g., Social Security, unemployment compensation, etc.) that would have been available had the worker been classified as an employee.

Worker Classification. It is a common misconception that someone working part time or earning less than $600 per year should be classified as an independent contractor. In fact, part time status and the number of hours worked are generally not factors in determining whether a worker is an employee or independent contractor.

“— Control is Key. An individual generally is an employee if the person for whom services are performed has the right to direct and control the individual performing services (not necessarily actual control). If an individual is subject to the control or direction of another person only as to the result to be accomplished and not as to means and methods of accomplishment, the individual is not an employee. —”

Control is Key. An individual generally is an employee if the person for whom services are performed has the right to direct and control the individual performing services (not necessarily actual control). If an individual is subject to the control or direction of another person only as to the result to be accomplished and not as to means and methods of accomplishment, the individual is not an employee. Each government agency uses its own factors to determine employee status, and although most are similar, a ruling by one agency does not bind other agencies.

For example, for purposes of determining entitlement to unemployment benefits in Utah, State law presumes that a paid or contracted worker is an employee unless the putative employer can demonstrate that the worker (i) is independently established in work of the same nature and (2) has been free from control or direction over the means of performing the work. On the other hand, the IRS relies upon the three general categories of behavioral control, financial control and the relationship of the parties to determine worker status. Like most tests, these IRS factors relate to how much control a business has over a worker.

Behavioral control addresses whether the business has a right to direct and control how workers perform the tasks for which they are hired. In general, anyone who performs services is an employee if the employer can control what will be done and how it will be done, even if the employee has freedom of action. Such details include:

- When and where to do the work
- What tools or equipment to use
- What workers to hire or to assist with the work
- Where to purchase supplies and services
- What work must be performed by a certain person
- What order or sequence to follow

Financial control looks at whether a worker has the ability to effect financial decisions. Does the worker have a significant investment in assets or tools? Are there unreimbursed expenses that the worker must bear? Are the worker's services available to the public? What is the method of payment? Does the worker get paid whether the work is done or not or get paid only if the job is finished? (Independent contractors and generally not employees can realize a profit or loss on a job). Can the worker make business decisions that affect his bottom line?

Relationship of the parties looks to whether or not there is a contract between the worker and business and how it is worded; whether the worker gets any type of benefits – vacation and sick pay, pension plan and health or life insurance; and the permanency of the relationship such as continuing indefinitely or only for a specific purpose or period. Also, does the worker have his own business which he markets to others?

Let the IRS Decide? Because the distinction between employee and independent contractor necessarily involves distinct facts and circumstances in each case, the employer or worker can request the IRS to make a binding determination whether a specific worker is an independent contractor or an employee by filing Form SS-8. It would be best that this step be pursued after obtaining advice of a professional. Although the IRS conclusion may have persuasive effect on other federal and state agencies, they are not required to follow the IRS determination.

What if You are Out of Compliance? A 1978 tax law known as "Section 530" provides relief from misclassification of a worker if an employer, among other requirements, has classified the worker as an independent contractor for all periods; did not treat any other similar workers as employees; filed all Forms 1099 required with respect to the worker; and has a "reasonable basis" for treating the worker as an independent contractor. Ask your tax advisor if Section 530 relief may help avoid a potential misclassification issue.

Also, the IRS has instituted the "Voluntary Classification Settlement Program" ("VCSP") to assist employers who have misclassified employees as independent contractors. This program allows employers who meet certain conditions and are not under IRS or Dept. of Labor investigation to voluntarily reclassify their workers as employees for future tax periods for employment tax purposes. Regarding previous misclassification, the

"Financial control looks at whether a worker has the ability to effect financial decisions."

employer pays the IRS a very small percentage of the compensation paid to reclassified workers. In addition, the employer will not be liable for interest or penalties on the payments under the VCSP, and will not be audited for employment tax purposes for prior years with respect to the classification of the workers. If you believe that the VCSP would be appropriate for your office or business, you may apply for its benefits using IRS Form 8952. The savings under this program can be substantial.

On the other hand, some employers are reluctant to enter the VCSP "amnesty" program for fear of liability under other state and federal laws that do not grant similar leniency, and with a concern that workers might make retroactive claims for previous lost benefits, subjecting the employer to greater liability.

The IRS offers a similar, though less generous, program called the Classification Settlement Program, or CSP, for taxpayers who, during pendency of an IRS audit, agree to properly classify misclassified workers.

Ensuring Compliance

The following are steps business owners and managers can take to ensure proper classification of workers:

1. If a worker is classified as an independent contractor, be sure to issue a Form 1099 to the worker and encourage payment of taxes. Moreover, whenever you withhold employment taxes from workers classified as employees, always pay the taxes timely to the IRS to avoid steep penalties.
2. Be aware that workers, alone or as a class, can file a whistleblower complaint against you if they believe they have been misclassified. They can also file Form 8919 to report to the IRS the failure to withhold Social Security taxes (and thus increase their retirement benefits). Also, be advised that an employer can be held civilly liable for a workplace injury to a worker improperly classified as an independent contractor instead of as an employee.
3. Use IRS Form SS-8 as an internal checklist to help determine worker status and, after weighing the benefits and drawbacks, consider filing Form SS-8 with the IRS for a binding determination in uncertain cases.
4. Consider the safe harbor "Section 530" defense, which offers potential relief from misclassification if certain criteria are satisfied.
5. As circumstances warrant, use VCSP or CSP vehicles to reduce potential liability for misclassification. Remember that other state and federal agencies may not agree with the IRS characterization and vice versa.
6. Seek professional assistance as classification questions arise and don't risk taking a position that lacks adequate support.

Bruce L. Olson is a shareholder of the law firm Ray Quinney & Nebeker P.C., and former chair of its Tax Section. Mr. Olson is a leader in Utah in organizing and advising nonprofit and tax-exempt organizations, including some of the largest private foundations, universities, health care institutions, and charities in the State, as well as small exempt organizations. He prepares organizational documents, helps secure tax exemption from the IRS and provides advice on charitable solicitation matters, Board member duties and State and Federal tax matters.

Regulatory Update: Jordan Cove LNG Project

On March 19, 2020, the Federal Energy Regulatory Commission (FERC) voted 2-1 to approve a Jordan Cove natural gas export terminal on the north spit of Coos Bay and a 230-mile Pacific Connector Gas Pipeline that would go from the bay to a gas hub near the California border. Both parts of the project would currently be built by a Canadian company called Pembina Pipeline Corporation. The pipeline would carry natural gas from basins in the Rocky Mountains to Oregon for export.

While the FERC approval is an important victory, it's one of many more that will be needed for the project to come to fruition.

Pembina will have to overcome the following barriers:

- The Department of Environmental Quality needs to issue a clean water permit to Pembina. The department has already denied a water quality certificate in 2019 for procedural reasons. It said Pembina could reapply, but the department wants to see more information about compliance with water quality standards and more certainty that some specific standards would not be violated.
- A dredging permit application will need to be submitted to the Department of State Lands. One such permit application has already been submitted and subsequently withdrawn due to the department's request for more information but rejection of Permbina's extension request.
- The Department of Land Conservation and Development, which has objected to the project on the grounds that it is inconsistent with the Coastal Zone Management Act, has been clear about its strong opposition, but its decision could be overturned on federal appeal by U.S. Secretary of Commerce Wilbur Ross. Pembina Pipeline Corp. has already told the department that it plans to file that federal appeal.

A statement released by Governor Kate Brown the same day as the approval makes it plain that she isn't happy about the decision (which she called "stunning" because of the ongoing COVID-19 pandemic). Governor Brown's statement was an overreaction. This project has already been decades in the making, and the FERC approval is conditional until the company works out its differences with the applicable state departments. Pembina acquired the project from Veresen Inc. in 2017 when the two companies merged. It should be noted that Pembina recently cut capital spending in response to the decreases in oil price, and if and when the license is granted, it could theoretically be sold, should Pembina wish to do so.

Although the COVID-19 virus may continue to threaten the U.S. for months to come, that's a stalling tactic. To say that all forward movement should stop on this project until the current health crisis is over ignores the crucial role that natural gas plays in our critical infrastructure and supply chain and its fundamental role in our ability to respond to this crisis.

Governor Brown says clearly in her statement that she will do everything she can to hinder anything from happening until state and local agencies have given this work the permits it needs. She has pledged herself to protect her state and her people, and she has also consulted with the state's legal counsel.

Aside from Governor Brown's concerns, the project has a number of other hurdles to overcome. If and when Pembina is able to get all necessary permits and licenses, the project needs to be economically viable. With the LNG price drops in Asia, export market fundamentals will also have to improve for the project to proceed.

The project, despite strong opposition, also has strong support. Western States and Tribal Nations (WSTN) supports it, as well as many political supporters throughout the western states.

How would the project benefit Oregon?

- The $10 billion price tag makes it the state's largest single construction project. There would be thousands of construction jobs. Once built, the pipeline would also need maintenance.
- Jordan Cove would be the first west-coast LNG terminal. The terminal would create approximately 200 permanent jobs.
- The state would get tens of millions of dollars from project fees and property taxes.
- It would allow Oregon to participate in the global export market for oil and gas during the next few decades.

How would the project benefit Asia? Using natural gas instead of higher-emission fuels is a proven way to decrease global emissions.

Member Update:

HOLLYFRONTIER®

HollyFrontier Corporation Investing to Produce Tier 3 Fuels at its Woods Cross Refinery

HollyFrontier Woods Cross Refinery Selects Tier 3 Fuels Project

WEST BOUNTIFUL, Utah, March 30, 2020

HollyFrontier Corporation (NYSE: HFC) is excited to announce today that we will be producing Tier 3 fuels for use along the Wasatch Front and have selected a project at the HollyFrontier Woods Cross refinery to achieve that goal.

While HollyFrontier's fleet of refineries are compliant with the federal, nationwide Tier 3 standards, this development will allow the gasoline produced at our Woods Cross refinery for use in Utah along the Wasatch Front to meet the low-sulfur Tier 3 standard.

"HollyFrontier Woods Cross cares about the environment and the air quality in the community, which is also home to many of our employees and their families," said Scott White, Vice President and Refinery Manager, HollyFrontier Woods Cross Refinery. "By moving to Tier 3 fuels, we are advancing our commitment to deliver high-quality fuel products in an environmentally responsible way. We support Governor Gary R. Herbert, Utah Senate President Stuart Adams, and Utah Speaker of the House Brad Wilson for their diligent efforts and accomplishments to improve air quality in Utah and along the Wasatch Front, in particular."

By producing cleaner, lower emitting fuel, this effort will support Utah's overall efforts to improve the state's air quality and reduce emissions.

"The largest contributor to our air quality problem is mobile sources - vehicles," Governor Gary R. Herbert said. "When coupled with a Tier 3 car, the fuels that will be produced at HollyFrontier's Woods Cross refinery will reduce these mobile emissions by up to 80%; that's like taking four out of five cars off the road. We're grateful to HollyFrontier for investing in Utah's air quality."

"In our efforts to clear the air, there are no perfect answers, but there are practical solutions," Thom Carter, Executive Director of the Utah Clean Air Partnership (UCAIR), said. "HollyFrontier's move to produce Tier 3 fuel here in Utah will mean a significant reduction of emissions in our airshed. We are grateful for their ongoing commitment to our community."

HollyFrontier understands it is a privilege to conduct business in Utah and is proud the Woods Cross refinery has been part of the West Bountiful and Davis County communities for more than 80 years.

About HollyFrontier Corporation

HollyFrontier Corporation, headquartered in Dallas, Texas, is an independent petroleum refiner and marketer that produces high value light products such as gasoline, diesel fuel, jet fuel and other specialty products. HollyFrontier owns and operates refineries located in Kansas, Oklahoma, New Mexico, Wyoming and Utah and markets its refined products principally in the Southwest U.S., the Rocky Mountains extending into the Pacific Northwest and in other neighboring Plains states. In addition, HollyFrontier produces base oils and other specialized lubricants in the U.S., Canada and the Netherlands, and exports products to more than 80 countries. HollyFrontier also owns a 57% limited partner interest and a non-economic general partner interest in Holly Energy Partners, L.P., a master limited partnership that provides petroleum product and crude oil transportation, terminalling, storage and throughput services to the petroleum industry, including HollyFrontier.

Thank You

Chairman's Circle Members

Big West Oil is committed to be a top-tier refiner, marketer, and employer in the Rocky Mountain Region, focused on building lasting value through operational excellence, continuous improvement, and pursuit of internal and external growth opportunities.

We will accomplish this by embracing the following value statements: Integrity and Responsibility, People and Community, Relationships with Partners, Performance and Continuous Improvement.

CH4 Energy-Finley explores and produces oil and gas. The Company offers natural gas, crude oil, and other related products. CH4 Energy-Finley serves customers throughout the United States.

Chevron's success is driven by our people and their commitment to getting the results the right way — by operating responsibly, executing with excellence, applying innovative technologies and capturing new opportunities for profitable growth.

Our company's foundation is built on our values, which distinguish us and guide our actions to deliver results. We conduct our business in a socially responsible and ethical manner, protect people and the environment, support universal human rights, and benefit the communities where we work.

ConocoPhillips is the world's largest independent E&P company based on proved reserves and production of liquids and natural gas.

We explore for, develop and produce crude oil and natural gas globally with a relentless focus on safety and environmental stewardship.

To learn more, visit conocophillips.com.

Ovintiv is a leading North American resource play company focused on oil and natural gas production, growing its strong multi-basin portfolio and increasing shareholder value and profitability. By partnering with employees, community organizations and local businesses, Ovintiv contributes to the strength and sustainability of the communities where it operates. Our strategy is built on four Pillars — top tier assets; market fundamentals; capital allocation; and operational excellence — which are critical to our business success.

EOG Resources, Inc. is one of the largest crude oil and natural gas exploration and production companies in the United States with proved reserves in the United States, Trinidad and China. EOG's business strategy is to maximize the rate of return on investment of capital by controlling operating and capital costs and maximizing reserve recoveries. EOG strives to maintain the lowest possible operating cost structure that is consistent with prudent and safe operations.

HollyFrontier Corporation, headquartered in Dallas, TX, is an independent petroleum refiner and marketer that produces high value light products such as gasoline, diesel fuel, jet fuel and other specialty products.

HollyFrontier owns and operates refineries located in KS, OK, NM, WY and UT and markets its refined products principally in the southwest U.S., the Rocky Mountains extending into the pacific northwest and in neighboring plains states. HollyFrontier produces base oils and other specialized lubricants in the U.S., Canada and the Netherlands, and exports products to more than 80 countries.

Marathon Petroleum Company is in the business of creating value for our shareholders through the quality products and services we provide for our customers. We strongly believe how we conduct our business is just as integral to our performance. As a result, we strive to always act responsibly with those who work for us, with those business partners who work with us, and in every community where we operate.

Occidental Petroleum (NYSE: OXY) is an international oil and gas exploration and production company with operations in the United States, Middle East, Latin America and Africa. Headquartered in Houston, Occidental is one of the largest U.S. oil and gas companies, based on equity market capitalization. Occidental's midstream and marketing segment purchases, markets, gathers, processes, transports and stores hydrocarbons and other commodities. Occidental's wholly owned subsidiary, OxyChem, is a major North American chemical manufacturer.

Silver Eagle endeavors to be a good corporate neighbor, by assisting in positive ways with the Woods Cross and South Davis communities. Silver Eagle endeavors to work collaboratively with municipality governments, agencies, and private groups to improve the quality of life within the immediate surroundings of our Woods Cross Refinery.

At XTO Energy, whether it is in business or in the community, we have made exceptional performance a habit. It's driven by a proven strategy, a culture of excellence and a vision for the future. XTO is a subsidiary of Exxon Mobil Corporation.

Uinta Member

Finley Resources, established in 1997, owns, manages and develops over 3,000 oil and gas properties in eight states. Our primary focus is on acquisition and development with a growing commitment to drilling programs. Our organizational structure is lean and efficient, empowering decision-making throughout all levels of the company. We employ a talented and dedicated staff that brings innovative ideas to our environment daily and we support employee decisions to further enhance their decision-making ability.

Utah Petroleum Association

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