

# GOVERNMENTAL AFFAIRS WEEKLY REPORT

## Weekly Highlights At-A-Glance

### FEDERAL – Legislative

#### **H.R. 1319 – American Rescue Plan Act of 2021.**

On March 11, President Biden signed the \$1.9 trillion COVID stimulus bill, [H.R. 1319](#), into law. Known as the *American Rescue Plan Act of 2021*, the Act includes another round of stimulus checks for Americans meeting certain income thresholds; additional unemployment benefits for millions of Americans still out of work; and \$350 billion in aid to states, local governments, tribal governments, and U.S. territories. ([See a fact sheet here](#)) Specifically, the Act extends a \$300 per week jobless aid supplement for unemployment insurance until September 6, 2021. This benefit, called pandemic unemployment assistance (PUA), is available to self-employed individuals, including independent contractors. There is no longer an additional, supplemental \$300 per week enhancement to PUA benefits which ended March 14, 2021. The Act also makes an individual's first \$10,200 in jobless benefits tax-free. The Act provides \$1,400 direct payments to Americans and the "checks start to phase out at \$75,000 in income for individuals and are capped at people who make \$80,000. The thresholds for joint filers are double those limits. The government will base eligibility on Americans' most recent filed tax return." The Act also provides emergency rental assistance, continued funding to small businesses through the Targeted Economic Injury Disaster Loan grant program, and expansions to the Earned Income Tax Credit program. For many associations and nonprofit organizations, the Act includes another \$7.25 billion in funding for the Paycheck Protection Program (PPP) and expands PPP eligibility to include most 501(c) nonprofit organizations, not just 501(c)(3)s and 501(c)(6) entities, and also makes PPP funding available to sole proprietors and independent contractors, as it had previously. [Read more.](#)

**H. Res. 125.** On March 9, official bill text was made available for [H. Res. 125](#), which was filed in response to President Biden's recent executive orders declaring a climate emergency and forthcoming policies directly affecting the oil and gas industry and the economy. The measure, introduced by Rep. August Pfluger (R-TX), "(1) opposes use of the National Emergencies Act to declare a so-called 'climate emergency'; (2) recognizes that any policy-making action taken to address global climate conditions should be undertaken by the legislative branch, not through unilateral executive action; (3) recognizes that addressing global climate conditions through the National Emergencies Act would violate the purpose of the Act as well as separation of powers; and (4) opposes executive actions that would increase the United States dependence on foreign oil, deprive Americans of jobs, increase consumer costs, or disadvantage the United States relative to adversarial nations such as Russia and China." While House resolutions are not binding law, though they can express the collective sentiment of the House on a particular issue, person, or event. "Our Nation does not need more dictator-style executive orders from President Biden. Already, he has unilaterally killed thousands of jobs with his plethora of executive actions," said Rep. Pfluger, who represents the Permian Basin region. "Our district is one of the main reasons a climate emergency is not needed. Thanks to American ingenuity and clean burning natural gas, the United States of America has already reduced CO2 emissions to a 20-year low." [Read more.](#)

### FEDERAL – Regulatory

#### **BLM Pause on Federal Oil and Gas Leasing.**

(*Update to 1/25/21 Weekly Report*) On March 15, the Biden Administration announced that "Bureau of

Land Management (BLM) office staff would resume processing oil and gas drilling permits later this week following a two-month period when those approvals were limited to senior officials in Washington.”

The Interior Department followed up by saying BLM officials would process applications for permits “and related sundry activities on valid, existing leases in a timely manner.” The move only applies to existing leases. The BLM also said it would begin “providing monthly updates on pending and approved drilling permits on federal lands in an effort to improve transparency for the industry and the public.” The announcements come as Biden’s inauguration day executive order pausing federal oil and gas leasing for a 60-day review period comes to an end.

[Read more.](#)

#### **Interior Secretary Confirmation – Washington, DC.**

(Update to 3/8/21 Weekly Report) Rep. Debra Haaland (D-NM) has been confirmed as Secretary of the U.S. Department of the Interior. The March 15 vote ended a contentious hearing period where Haaland’s full Senate vote had been delayed. Republican Senators Lindsey Graham (SC), Dan Sullivan (AK), Lisa Murkowski (AK), and Susan Collins (ME) joined Democrats in voting in favor of Haaland, who will be the first Native American to hold a Cabinet-level position. [Read more.](#)

#### **Independent Contractors; U.S. Department of Labor – Washington, DC.**

(Update to 3/8/21 Weekly Report) On March 12, the Biden administration published a formal notice of proposed rulemaking to officially withdraw the Trump administration’s Department of Labor (DOL) independent contractor rule which if it had gone into effect, would have created a shorter, simpler test for determining when a worker is an independent contractor who is not entitled to minimum wage and overtime protections that the Fair Labor Standards Act affords to employees. (See, [Independent Contractor Status Under the Fair Labor Standards Act: Withdrawal; 86 Fed. Reg. 14027.](#)) Public comments on the proposed rulemaking may be submitted through April 12, 2021. As recently reported, the Biden administration first delayed the effective date of the Trump-era rule until

May 7, 2021 (See [Independent Contractor Status under the Fair Labor Standards Act Delay of Effective Date; 86 Fed. Reg. 12535](#)), but the most recent action would withdraw the rule altogether. According to Bloomberg Government, “the [Trump] rule—which got strong backing from businesses and Republicans for embracing a shorter, simpler standard to determine when workers are exempt from minimum wage and overtime protections—originally was slated to take effect March 8 when it was released in Trump’s final days in office.” For background, on January 7, 2021 the Trump administration’s DOL issued its long-awaited employer and independent contractor-friendly final rule, *Independent Contractor Status Under the Fair Labor Standards Act* ([86 Fed. Reg. 1168](#)), which, according to Bloomberg Law, “makes it easier for businesses to classify workers as independent contractors” and “adopt[s] a simpler, shorter test for when a worker may be legally classified as an independent contractor rather than an employee.” ([Read a detailed analysis of the rule here](#)) According to the rule release, the DOL “is revising its interpretation of independent contractor status under the Fair Labor Standards Act (FLSA or the Act) to promote certainty for stakeholders, reduce litigation, and encourage innovation in the economy.” The rule was expected to clarify how independent contractor status is determined and allow employers greater protections in employee misclassification cases. “Once finalized, it will make it easier to identify employees covered by the Act, while respecting the decision other workers make to pursue the freedom and entrepreneurialism associated with being an independent contractor,” said then-Labor Secretary Eugene Scalia under President Trump. [Read more.](#)

**Joint Employer Rule; U.S. Department of Labor – Washington, DC.** On March 12, the Biden administration issued a notice of proposed rulemaking to rescind the Trump administration’s Department of Labor (DOL) joint employer rule. The notice, [Rescission of Joint Employer Status Under the Fair Labor Standards Act Rule; 86 Fed. Reg. 14038](#), seeks to rescind the rule, although the U.S. District

Court for the Southern District of New York vacated most of the rule in a September 8, 2020 decision. The Trump rule provided consideration under the Fair Labor Standards Act (FLSA) as to whether companies are classified as joint employers of workers and thereby can be held responsible for labor violations including requirements on minimum wage and overtime pay, and could affect franchising companies, contractors, and temporary staffing companies, and was much more favorable to businesses than the Obama-era DOL policies were. The Trump DOL rule provided a four-factor “balancing test” for determining FLSA joint employer status in situations where an employee performs work for one employer that simultaneously benefits another entity or individual. The public comment period for the new proposed rulemaking is open through April 12, 2021. [Read more.](#)

**BLM Land Use Planning – California.** On March 12, the Bureau of Land Management (BLM) announced the termination of the land use planning process described in the Draft Land Use Plan Amendment and Draft Environmental Impact Statement for an amendment to the California Desert Conservation Area Plan and the Bakersfield and Bishop Resource Management Plans. In its notice of termination, [Notice of Termination of Draft Desert Plan Amendment and Draft Environmental Impact Statement, California: 86 Fed. Reg. 14152](#), the BLM states that while it “does not intend to issue a Proposed Plan/Final EIS or a Record of Decision for this planning process, it will continue to work with cooperating agencies and stakeholders in the implementation of the existing land use plans, which may result in future planning efforts. The BLM will inform the public of any future planning efforts related to the three land use plans.” [Read more.](#)

**Interior Department Federal Oil and Gas Program.** On March 9, the [U.S. Department of the Interior announced](#) it will be conducting a “comprehensive study of whether -- and how -- the U.S. government sells drilling rights on federal land and waters, a review that could chart the future of U.S. energy development for decades to come.” The study is

reportedly in response to appeals from both oil and gas industry leaders and environmentalists who have pressed the Biden administration for clarity on the leasing review. As a first step in the process, the Interior Department will hold a virtual forum on March 25 ([click here for information on attending](#)) on the future of leasing and to hear from industry representatives, environmental justice groups, and natural resource advocates. [Read more.](#)

**BLM Oil Shale Management Information Collection.** On March 9, the Bureau of Land Management (BLM) published a notice of information collection, *Agency Information Collection Activities; Submission to the Office of Management and Budget for Review and Approval; Oil Shale Management (86 Fed. Reg. 13584)*, which “applies to the exploration, development, and utilization of oil shale resources on the BLM-managed public lands.” The BLM is seeking public input on certain information collection activities managed by the agency. The public comment period is open through April 8, 2021. [Read more.](#)

**Office of Natural Resources Revenue.** On March 8, the Department of Interior’s Office of Natural Resources Revenue (ONRR) published a notice of information collection, *Agency Information Collection Activities; Collection of Monies Due to the Federal Government; and Processing Refund Requests Related to Overpayments Made to ONRR (86 Fed. Reg. 13398)*, in which “ONRR seeks authority to collect information related to the paperwork requirements covering cross-lease netting in the calculation of late-payment interest; a lessee’s designation of designee for payment obligations; tribal permission for recoupment on Indian oil and gas leases; and refund requests for overpayments made to ONRR.” Public comments may be submitted through April 7, 2021. [Read more.](#)

**U.S. Securities and Exchange Commission Climate Change Disclosures.** On March 15, Acting Chair of the U.S. Securities and Exchange Commission (SEC) Allison Herren Lee issued a [statement](#) requesting public input from investors, registrants, and other

market participants on climate change disclosure “[i]n light of demand for climate change information and questions about whether current disclosures adequately inform investors.” In her announcement, Lee said, “I am asking the staff to evaluate our disclosure rules with an eye toward facilitating the disclosure of consistent, comparable, and reliable information on climate change.” SEC staff will evaluate the current rules “with an eye toward facilitating the disclosure of consistent, comparable, and reliable information on climate change.” The SEC announcement also provides a comprehensive list of questions under consideration. The [public comment period](#) is open for 90 days from March 15, 2021. The public may also submit comments to the SEC email address: [rule-comments@sec.gov](mailto:rule-comments@sec.gov). [Read more.](#)

**EPA Administrator Confirmed.** (*Update to 1/11/21 Weekly Report*) President Biden’s pick for Administrator of the U.S. Environmental Protection Agency (EPA) has been confirmed by a 66-34 vote in the Senate, attracting support from a number of Republican lawmakers. Prior to his appointment, Michael Regan was serving as Secretary of the North Carolina Department of Environmental Quality and has previously served at the EPA under both the Clinton and Bush administrations. During his February confirmation hearing, Regan said his “priorities at the EPA would include restoring science and transparency, supporting career officials and acting with ‘urgency’ on climate change.” [Read more.](#)

## **FEDERAL – Judicial**

**Federal Oil and Gas Leasing Moratorium – Wyoming.** (*Update to 2/8/21 Weekly Report*) On March 17, the Petroleum Association of Wyoming [announced it has joined the Western Energy Alliance lawsuit against the Biden administration](#) for its pause on federal oil and gas leasing. For background, the Western Energy Alliance (WEA) filed a federal lawsuit on January 27 in *Western Energy Alliance v. Biden* (Case No. 0:21-cv-00013) in the U.S. District Court for the District of Wyoming challenging the

government action from the Acting Secretary of the Interior, acting at the President’s direction, to suspend “indefinitely the federal oil and gas leasing program. The suspension is an unsupported and unnecessary action that is inconsistent with the Secretary’s statutory obligations.” According to Western Energy Alliance President Kathleen Sgamma, “Presidents don’t have authority to ban leasing on public lands. Drying up new leasing puts future development as well as existing projects at risk,” adding that the move will cost tens of thousands and perhaps millions of jobs. According to Bloomberg Law, the administration’s moratorium “buys time for a broad review of whether fossil fuels should be extracted from lands under the U.S. government’s control. Environmentalists want President Joe Biden to make the suspension of leasing permanent. But even if he doesn’t, future leasing could encompass far less terrain and come with higher costs and environmental limits.” To support the WEA effort and make our voices heard, AAPL recently contributed \$5,000 to the Western Energy Alliance’s Legal Defense Fund in support of this case and others that threaten the oil and gas industry and a landman’s right to work. We will continue to keep members updated as the case progresses. [Read more.](#)

**Keystone XL Pipeline – Texas.** On March 17, attorneys general from 21 states, led by Texas and Montana, sued the Biden administration over its cancellation of the Keystone XL pipeline permit. The complaint argues that revoking the permit is a “regulation of interstate and international commerce” that should be left to Congress and that Biden’s unilateral move through executive order was an overreach and “arbitrary and capricious.” In *Texas v. Biden* (Case No. 3:21-cv-00065), the states are asking the court to rule that Biden lacked the legal authority to prohibit TC Energy from constructing and operating the Keystone XL cross-border facilities other than through the lawful exercise of statutory authority and stop the administration from taking any action to enforce, implement, or otherwise put into effect the decision revoking TC Energy’s permit to construct and

operate Keystone XL cross-border facilities, among other relief sought. Unlike the current administration, President Trump “championed the pipeline, issuing a permit allowing it to cross the border during the first months of his presidency.” [Read more.](#)

**Wage and Hour; Day Rates; FLSA Claims – 5th Circuit (Texas).** On March 9, the U.S. Court of Appeals for the Fifth Circuit, on appeal from the U.S. District Court for the Southern District of Texas, agreed to hold a full court rehearing of the three-judge panel opinion in [Hewitt v. Helix Energy Solutions, Inc.](#) (Case No. 19-20023), with oral argument tentatively scheduled for the week of May 24, 2021. In the case, a worker engaged in offshore oil rig work sued for alleged unpaid overtime under the Fair Labor Standards Act (FLSA) against an oil and gas services company. According to Hewitt, he was paid a day rate which he claimed violated the FLSA. The Court addressed the question of whether a daily rate employee could ever be regarded as being paid on a salary basis and therefore exempt from overtime pay under the FLSA. The Court held that it could under certain conditions. The Court, however, decided Helix’s pay practice did not meet these conditions, which prompted Helix to file for a rehearing on the issue. We will keep AAPL members updated as the case progresses. [Read more.](#)

**Federal Oil and Gas Leasing; Permitting – North Dakota.** (Update to 3/8/11 Weekly Report) [Continental Resources has withdrawn its lawsuit](#) over the Biden’s administration’s failure to act on permits to drill after the administration approved them. For background, on February 23, Continental Resources sued the Biden Administration in federal court arguing the administration was taking too long to act on multiple applications for permit to drill. The suit claimed the delays were improper and interfere with the company’s construction schedule and that pursuant to the Mineral Leasing Act the permits would have already been approved in the normal course of business. The suit, [Continental Resources, Inc. v. de la Vega \(Case No. 1:21-cv-00034\)](#), filed in the U.S. District Court for the District of North Dakota, came on the heels of the Biden

administration’s temporary pause on federal oil and gas leasing ordered during his first week in office. Continental was asking the court to require the administration issue the permits in question. [Read more.](#)

**Greenhouse Gases; Climate Change – Missouri.** On March 8, twelve states, led by Missouri Attorney General Eric Schmidt (R), sued the Biden Administration challenging the revamping of how the federal government calculates the cost of greenhouse gases. The complaint, [Missouri v. Biden](#), (Case No. 4:21-cv-00287), filed in the U.S. District Court for the Eastern District of Missouri, claims the administration is exceeding the executive branch’s authority in restoring a value used in the Obama-era regarding the “social cost of greenhouse gases.” The federal government uses the metric to assess the harm caused by emissions of carbon dioxide, methane, and other gases. The Trump administration slashed the value by changing the calculation’s methodology. Missouri and the other state attorneys general say calculating the social cost of greenhouse gases is “an inherently speculative, policy-laden, and indeterminate task” that should be left to Congress. According to Bloomberg Law, “the lawsuit represents the first aggressive legal attack on the Biden administration’s commitment to prioritizing climate action.” The other states joined in the suit are Arizona, Arkansas, Indiana, Kansas, Montana, Nebraska, Ohio, Oklahoma, South Carolina, Tennessee, and Utah. [Read more.](#)

## **STATE – Legislative**

**Notarial Acts – Arizona.** (Update to 1/25/21 Weekly Report) On March 18, SB 1115 was signed into law by Gov. Doug Ducey (R). The Act, sponsored by Sen. Michelle-Ugenti Rita (R), amends existing law to provide for electronic notarial acts provisions. The Act is effective “from and after June 30, 2022.” [Read more.](#)

**Oil and Gas Liens – Arkansas.** (Update to 2/8/21 Weekly Report) On March 8, Gov. Asa Hutchinson (R) signed HB 1273 into law. The Act, sponsored by Rep.

Stu Smith (R), establishes the Oil and Gas Owners' Lien Act of 2021 which states that an interest owner "is granted an oil and gas lien to the extent of the interest owner's interest in an oil and gas right that exists as part of an incident to the ownership of an oil and gas right" and provides provisions for the perfection of an oil and gas security interest, commingling of liens, rights of purchasers, lien priorities, effect on legal title, and lien expiration and enforcement, and rights of operators. The Act is effective 90 days following session adjournment on April 30, 2021. [Read more.](#)

**Idle and Deserted Wells – California.** AB 896, introduced by Asm. Steve Bennett (D), will be subject to a hearing on March 24. The bill provides for collection of unpaid idle well fees from an operator; establishes timelines and criteria for determining if a well has been deserted; and for locating or collecting any costs from the operator or responsible party for a well that has been deserted or ordered to undergo well integrity testing or to be plugged and abandoned by the state regulator. [Read more.](#)

**Severance Withholdings – Colorado.** On March 3, HB 1156 was introduced by Rep. Mike Lynch (R). The bill fixes defects related to a producer or purchaser who is required to withhold an amount from each disbursement made to an interest owner in any oil and gas produced in the state and pay this amount to the department of revenue by: For purposes of electronic payments, replacing a cross-reference to a repealed subsection with a reference to the current statutory requirement; Expanding the defined term 'producer' to be 'producer or purchaser' to eliminate a redundancy in the law; and Repealing extraneous references to 'oil shale' from the definition. The bill also repeals obsolete filing requirements that applied prior to July 1, 2007." [Read more.](#)

**Recordation – Illinois.** On March 9, HB 2870 was introduced by Rep. Robert Rita (D). The bill expands definitions regarding recorded instruments and provides fees related to non-standard documents. [Read more.](#)

**Regulatory Oversight – Mississippi.** (*Update to 1/25/21 Weekly Report*) On March 17, Gov. Tate Reeves (R) signed SB 2648 into law. The Act provides that the state Oil and Gas Board would have jurisdiction over carbon dioxide sequestration and permitting for certain injection wells. The Act is effective July 1, 2021. [Read more.](#)

**Certifications; Licensing – Ohio.** On March 16, HB 203 was referred to committee following its introduction by Rep. Jena Powell (R). The bill would require an occupational licensing authority to issue a license or government certification to an applicant who holds a license, government certification, or private certification or has satisfactory work experience in another state under certain circumstances. Senate companion bill, [SB 131](#), was introduced on March 16 by Sen. Kristina Roegner (R). [Read more.](#)

**Endangered Species – South Dakota.** (*Update to 2/8/21 Weekly Report*) SB 72 was signed into law by Gov. Kristi Noem (R) on March 8. The Act, sponsored by Sen. John Wiik (R), removes the notice requirement for listing and delisting species on the threatened and endangered species list. The Act is effective July 1, 2021. [Read more.](#)

**Energy Company Boycotts – Texas.** (*Update to 3/8/21 Weekly Report*) On March 15, [HB 2189](#) was referred to committee. The bill, introduced on February 25 by Rep. Phil King (R), would, regarding state contracts, prohibit investment in companies that boycott certain energy companies. Companion Senate bill, [SB 13](#), introduced by Sen. Brian Birdwell (R), was also referred to committee on March 11. The legislation would require the Texas Comptroller of Public Accounts "to prepare and maintain a list of all companies that refuse to deal with, or otherwise penalize another company because the company invests in or assists in the exploration, production, utilization, transportation, sale, or manufacturing of fossil fuel-based energy," said Sen. Birdwell's office. "This list is then provided to the state agencies that invest funds, who in turn send a letter to the listed companies informing them that they are subject to

divestment if they do not stop boycotting energy companies within 90 days." [Read more.](#)

**Inspection of Oil and Gas Facilities – Texas.** On March 5, Rep. Charlie Geren (R) introduced HB 2957. The bill provides for inspections and examinations by the Railroad Commission of Texas of certain sites, such as wells, and facilities to be conducted using unmanned aircraft, such as drones. Senate companion bill, [SB 1583](#), was introduced on March 11 by Sen. Bryan Hughes (R). [Read more.](#)

**Royalty Payment Cause of Action – Texas.** On March 9, SB 1259 was introduced by Sen. Brian Birdwell (R). Regarding causes of action for withholding payments of the proceeds from the sale of oil and gas production, the bill would preclude a cause of action against a payor for withholding payments, unless for a dispute concerning title, the contract requiring payment specifies otherwise. On the same day, House companion bill, [HB 3262](#), was introduced by Rep. Reggie Smith (R). [Read more.](#)

**Gas Well Weatherization – Texas.** On March 8, Rep. Jon Rosenthal (D) introduced HB 3183. The bill would require gas well operators to take certain cold weather preparedness actions and provides for reporting and fines. [Read more.](#)

**Ad Valorem Taxation – Texas.** On March 5, HB 1395 was introduced by Rep. Mayes Middleton (R). The bill makes changes to definitions and administrative officials and procedures regarding ad valorem taxation. [Read more.](#)

**Notaries Public – Utah.** (*Update to 2/8/21 Weekly Report*) On March 16, Gov. Spencer Cox (R) signed HB 276 into law. The Act, sponsored by Rep. Merrill Nelson (R), expands eligibility for individuals to qualify for a notarial commission to those employed in the state and amends resignation requirements to account for the eligibility expansion. Since no effective date was provided in the bill, under state law the Act becomes effective 60 days following adjournment of the legislative session (March 5, 2021). [Read more.](#)

**Mineral and Rock Definitions – Utah.** (*Update to 2/22/21 Weekly Report*) On March 11, Gov. Spencer Cox (R) signed HB 79 into law. The Act, sponsored by Rep. Walt Brooks (R), modifies definitions related to mineral deposits and rocks. Since no effective date was provided in the bill, under state law the Act becomes effective 60 days following adjournment of the legislative session (March 5, 2021). [Read more.](#)

**Migratory Birds – Utah.** (*Update to 1/11/21 Weekly Report*) On March 11, Gov. Spencer Cox (R) signed HB 83 into law. The Act, sponsored by Rep. Joel Ferry (R), extends the time for creating a migratory bird production area; provides a process to add property to a migratory bird production area; provides for inclusion of easements; addresses limitations on local ordinances; addresses use by a guest of a migratory bird production area under provisions related to limiting landowner liability under certain circumstances; and prohibits exercising eminent domain under certain circumstances. Since no effective date was provided in the bill, under state law the Act becomes effective 60 days following adjournment of the legislative session (March 5, 2021). [Read more.](#)

**Electronic Notarial Acts – Virginia.** (*Update to 1/25/21 Weekly Report*) HB 2064 was signed into law by Gov. Ralph Northam (D) on March 11. The Act, sponsored by Del. Marcus Simon (D), amends existing notary law regarding online and remote notarial acts. The Act takes immediate effect. [Read more.](#)

**Oil and Gas Instrument Standardization – West Virginia.** On March 10, Del. Phil Mallow (R) introduced HB 3051. "The purpose of this bill is to require the secretary of the Department of Environmental Protection to adopt rules relating to the standardization of leases, deeds or contracts relating to oil and gas, consistent in format with the purpose of making the terms of these documents less confusing to the landowners." [Read more.](#)

**Severance Taxes – Wyoming.** On March 19, Sen. Brian Boner (R) introduced SF 149. The bill provides for severance tax reductions as specified. [Read more.](#)

## **STATE – Regulatory**

**Kern County Approves Expanded Drilling Ordinance – California.** On March 8, the Kern County Board of Supervisors approved to fast-track drilling of thousands of new oil and gas wells over the next 15 years, despite objections from environmental groups and people who live near oil fields. The unanimous approval of a revised ordinance creates a blanket environmental impact report to approve as many as 2,700 new wells a year. Testifying at a public hearing, petroleum producers, oil company workers and industry and business groups spoke in favor of the measure, saying it would support high-paying jobs and produce oil under some of the most stringent environmental laws, instead of relying on dirtier imports. The approval does however create larger buffers between homes and wells, drilling noise mitigation, and puts a stricter limit on the number of new wells. Catherine Reheis-Boyd, president of Western States Petroleum Association, said the group supported the plan because it provided certainty by streamlining the process even though it had "introduced many new restrictive and costly requirements and mitigation measures." [Read more.](#)

**Federal Oil and Gas Leasing – New Mexico.** New Mexico Gov. Michelle Lujan Grisham (D) is seeking a waiver for her state from the Biden administration's pause on new oil and gas leasing on federal lands. Grisham [sent a letter to Biden on March 15](#) "warning of financial losses by New Mexico with even a modest reduction of oil and gas production in the state, including endangering her goal of universal access to early childhood education in a state plagued by low educational outcomes and high poverty rates. State financial officials said New Mexico could lose \$709 million from now to 2025 with a 10 percent reduction in oil and gas production." Speaking to the Greater Albuquerque

Chamber of Commerce on March 11, Grisham said she "was 'clearly concerned' about the policy and thought the state should receive an exemption because of its efforts to tackle climate change." This comes on the heels of the Western Governors' Association (WGA) bi-partisan [March 1 letter to the Biden administration](#) requesting they be consulted in decisions related to federal oil and gas leasing. "Western states have a rich base of experience to inform the consideration of policies affecting energy development and the environmental safeguards needed to ensure the vitality of our citizens and landscapes," wrote the governors. "We look forward to working collaboratively and constructively with you to address the challenges our nation and our states face." [Read more.](#)

**New Mexico Oil and Gas Association.** On March 16, the New Mexico Oil and Gas Association (NMOGA) announced President and CEO Ryan Flynn will step down following New Mexico's current legislative session, which formally adjourns on March 20. According to the NMOGA press release, "Flynn informed the board of directors of his intentions at a meeting earlier today. He will continue to serve as Senior Advisor to the organization to assist in the transition to new leadership. The board plans to begin a search for his successor immediately." [Read more.](#)

**State Trust Land Leasing – Utah.** The Utah School and Institutional Trust Lands Administration (SITLA) has pulled back leases in the Bears Ears monument, refunding fees to the two oil and gas companies involved in the deal. SITLA had come under fire from environmentalists last year for leasing land in the original boundaries of Bears Ears National Monument. "We're grateful that school trust lands decided to walk back these leases," said Steve Bloch, legal director for the Southern Utah Wilderness Alliance. "We think it was inappropriate for them to offer the leases in the first instance and appreciate that they're setting things straight by refunding the monies." [Read more.](#)



## **STATE – Judicial**

### **Kern County Drilling Ordinance – California.**

On March 10, environmental groups sued the Kern County Board of Supervisors over their recent approval of a revised ordinance that could lead to approval of more than 40,000 new oil and gas wells over roughly 15 years (See *State-Regulatory above*). The litigants in [Committee for a Better Arvin v. Kern County](#) (Case No. not yet docketed), are asking the state court to order county leaders to set aside the ordinance and bar them from approving any drilling permits and allege that the ordinance does not provide for adequate environmental review and mitigation. In approving their revised ordinance, the county supervisors argued that the fossil fuel industry provides good jobs and that production under local requirements would be more environmentally sound than bringing foreign oil into the nation's most populated state by truck, ship, or pipeline. According to reporting, the new rules would allow Kern County to use a blanket environmental impact report when considering as many as 2,700 new wells a year.

[Read more.](#)

### **Air Permits; Oil and Gas Drilling – Colorado.**

On March 16, environmental groups sued the Colorado Air Pollution Control Division for issuing “illegally lax air pollution permitting to oil and gas companies in areas of the state that suffer from air quality issues.” In the suit, [Center for Biological Diversity v. Colorado Department of Public Health and Environment](#) (Case No. not yet docketed), the litigants claim “the permit fails to consider whether air pollution from oil and fracked gas wells will create unsafe levels of pollution in the state’s communities.” The permits “claim to set emission limits on oil and methane gas industry emissions of ozone precursors and other pollutants,” the complaint said. “However, the permits do not require any testing to see if the oil and methane gas facilities emissions actually comply with those emission limits.” [Read more.](#)

**Climate Change Lawsuit – Hawaii.** On March 13, a federal appeals court denied a request by oil and

gas company defendants to move a state climate change lawsuit to federal court. The Ninth Circuit Court of Appeals ruled that it was not convinced that the companies would suffer irreparable harm if the case moved forward in state court. In the case, [Honolulu v. Sunoco LP](#) (Case No. 1-CCV-20-0000380), Honolulu seeks to hold fossil fuel companies accountable for climate change and is seeking monetary damages to help pay for costs associated with climate impacts like sea level rise and flooding. “For decades and decades the fossil fuel companies knew that the products they were selling would have tremendous damaging economic impacts for local governments, cities, and counties that our taxpayers are going to be forced to bear,” said Honolulu’s chief resilience officer Josh Stanbro during the March 9 complaint filing. The oil and gas company defendants have yet to file their answer to the complaint. [Read more.](#)

**Marketable Title Act – Ohio.** On March 16, the Ohio Supreme Court clarified the exception to the Marketable Title Act (MTA). In [Erickson v. Morrison](#) (Case No. 2021-Ohio-746), the Court specifically addressed “the question whether a reference to a reservation of mineral rights in a surface landowner’s root of title and in subsequently recorded title transactions is sufficiently specific to preserve the reservation of the mineral rights under Ohio’s Marketable Title Act, R.C. 5301.47 et seq., when the reference does not name the record owner of those rights.” Here, the surface owners argued that the severed interest was extinguished under the MTA because references to the interest in their root of title and subsequently filed deeds were not specific under the MTA. The successors to the interest however claimed that the references in the deeds, despite not identifying the owner of the severed interest, “were specific and thus prevented the extinguishment of the Severed Interest under the MTA.” The Court agreed with the successors, and held that the severed interest reference in the deeds was specific, and therefore the interest was not extinguished. [Read more.](#)

**Leasing; Royalties; Post-Production Costs – Texas.** On March 12, in [BlueStone Natural Resources II, LLC v. Randle](#) (Case No. 19-0459), the Texas Supreme Court decided a case regarding two contract-construction issues affecting the calculation of gas royalty payments: (1) whether the mineral lease permits deduction of post-production costs from sales proceeds before royalties are computed; and (2) whether the lease’s “free use” clause authorizes the lessee to consume leasehold gas in off-lease operations without compensating the lessors. The lower courts resolved all issues favorably to the lessors and awarded damages for underpayment of royalties. Here, the Court “affirmed that the royalty clause in a superseding addendum to an oil and gas lease requiring the lessee to ‘compute and pay royalties on the gross value received’ restricted the lessee from deducting post-production costs despite language in the body of the lease stating the royalty was based ‘on the market value at the well.’” Noted as a matter of first impression on the second issue, the Court found “that the lease’s specific ‘free use’ clause allowed gas to be used royalty-free on premises, but not otherwise. The decision turned on application of foundational contract law principles and highlights the importance of plain language found in oil and gas leases.” [Read more.](#)

**Deeds; Mineral Reservations – Texas.** On March 10, in *Ross v. Flower* (Case No. No. 03-19-00516-CV), the Texas Court of Appeals, Third Circuit (Austin), decided whether ownership was retained in a mineral estate when a deed conveyed a tract to certain predecessors in interest. Litigants argued that the terms “subject to” any oil, gas and other minerals effectuated a reservation of the mineral estate in the warranty deed. The Court disagreed, noting that the language, which also included “any and all validly existing encumbrances,” indicates “an intent to avoid a breach of warranty and an over-conveyance problem, rather than a clear attempt to reserve a mineral interest.” The Court held that “[n]othing in the four corners of the 1999 Deed shows that the parties intended the ‘subject-to’ clause to operate differently or to serve a purpose other than informing

the grantees that other outstanding interests potentially burdened the property conveyed.” [Read more.](#)

## **INDUSTRY NEWS FLASH**

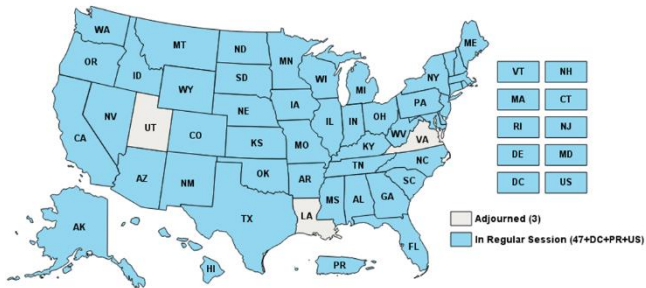
► **Biden pause on oil and gas leasing to be felt in 2022.** The U.S. Energy Information Administration (EIA) reports that the Biden administration’s temporary moratorium on oil and gas leasing on federal lands and waters is expected to have “no effects” until 2022. According to the EIA’s latest Short-Term Energy Outlook, “No effects will likely occur until 2022 because there is roughly a minimum eight-to-ten month delay from leasing to production in onshore areas.” [Read more.](#)

► **Biden administration report on federal oil and gas leasing pause due this summer.** The Biden administration announced on March 9 that it will deliver an interim report on its suspension of oil and gas sales from federal lands and waters by this summer but declined to state how long the temporary moratorium could remain in place. [Read more.](#)

► **Texas Oil and Gas Advocacy and Education.** The Texas Independent Producers & Royalty Owners Association (TIPRO) announced it will integrate Texans for Natural Gas into its education and advocacy programs, according to Permian Basin Oil and Gas Magazine. TIPRO said the combined organization will create “the most comprehensive statewide oil and natural gas campaign in Texas comprised of data, analysis, grassroots engagement and rapid response capabilities designed to provide accurate information about the industry and its unprecedented economic contributions.” [Read more.](#)

## LEGISLATIVE SESSION OVERVIEW

### States in Session



**Session Notes (by date):** Alabama, Alaska, Arizona, Arkansas, California, Colorado, Connecticut, Delaware, Florida, Georgia, Hawaii, Idaho, Illinois, Indiana, Iowa, Kansas, Kentucky, Maine, Maryland, Massachusetts, Michigan, Minnesota, Mississippi, Missouri, Montana, Nebraska, Nevada, New Hampshire, New Jersey, New Mexico, New York, North Carolina, North Dakota, Ohio, Oklahoma, Oregon, Pennsylvania, Rhode Island, South Carolina, South Dakota, Tennessee, Texas, Vermont, Washington, West Virginia, Wisconsin, and Wyoming are in regular session. The U.S. Congress is also in session.

Louisiana is scheduled to convene its 2021 legislative session on April 12.

The following states are scheduled to adjourn their 2021 legislative session on the dates provided: **New Mexico** (March 20), **Idaho** (March 26), **South Dakota** (March 29) and **Kentucky** (March 30).

**Signing Deadlines (by date):** Utah Republican Gov. Spencer Cox has until March 25 to sign or veto legislation or it becomes law without signature. Virginia Democratic Gov. Ralph Northam has until March 31 to sign or veto legislation or it becomes law without signature. Illinois Democratic Gov. J.B. Pritzker has 60 days from presentment to sign or veto legislation or it becomes law without signature. New Jersey Democratic Gov. Phil Murphy has 45 days from presentment to act on legislation or it becomes law without signature.

**Interim Committee Hearings:** [Louisiana](#) is currently holding 2021 interim committee hearings. [Louisiana](#) is also currently posting 2021 bill drafts, pre-files, and interim studies. ■

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