

GOVERNMENTAL AFFAIRS WEEKLY REPORT

Weekly Highlights At-A-Glance

FEDERAL – Legislative

President-Elect Joe Biden (D) Begins Selecting Cabinet and Agency Leadership Nominees.

President-Elect Joe Biden (D) has begun selecting his nominees to head up agencies and Cabinet-level posts, and specifically those affecting the oil and gas industry and the landman profession. For the U.S. Department of Interior – which oversees the Bureau of Land Management, Bureau of Indian Affairs, Bureau of Ocean Energy Management, and the U.S. Fish and Wildlife Service – Biden will nominate Rep. Deb Haaland (D-NM) to lead the agency. If confirmed by the Senate, Haaland will be the first Native American Cabinet head in U.S. history. ([Read more.](#)) For the U.S. Environmental Protection Agency (EPA), Biden plans to name Michael Regan (D) as EPA Administrator. Regan is currently Secretary of the North Carolina Department of Environmental Quality and has previously served at the EPA under both the Clinton and Bush administrations. ([Read more.](#)) Biden has also selected former Obama EPA Administrator, Gina McCarthy (D), to coordinate his administration's domestic climate agenda as the nation's first ever "national climate adviser" – a senior administration Czar-like post not requiring Senate confirmation. McCarthy is currently President of the Natural Resources Defense Council. ([Read more.](#)) For the U.S. Department of Energy, Biden has chosen former Michigan Gov. Jennifer Granholm (D) for "the agency that would play a key role in helping develop the technologies needed to fulfill [Biden's] pledge to move the country off fossil fuels." ([Read more.](#)) Biden also nominated former union head and current Boston mayor Marty Walsh (D) as Secretary of the U.S. Department of Labor ([Read more](#)) and Rhode Island Gov. Gina Raimondo (D) for Secretary of the U.S. Department of Commerce. ([Read more](#)) The nominees are expected

to have easy Senate confirmations since Democrats regained control of the U.S. Senate after Rep. Raphael Warnock (D) and Jon Ossoff (D) defeated incumbent Republicans in the recent Georgia runoff elections to take back the majority. This will be the first time since 2011 that Democrats have controlled both the U.S. Congress and the White House.

[Read more.](#)

Coronavirus Stimulus Legislation. On December 27, 2020, President Trump signed into law a \$900 billion coronavirus stimulus package, known as CARES Act II. Among the many provisions, the nearly 6,000-page consolidated bill ([H.R. 133](#)) includes \$600 direct payment checks for those earning up to \$75,000 annually with payment phase-outs for higher earners; rental assistance and eviction moratoriums; extension of the Paycheck Protection Program loan program to cover employee wages and which now applies to 501(c)6 non-profit organizations such as AAPL; certain tax deductibility benefits; funding for COVID-19 vaccinations; and extension of unemployment assistance not only for employees but also for independent contractors and other self-employed individuals for 11 weeks by extending CARES Act unemployment provisions until March 14, 2021 through the [pandemic unemployment assistance \(PUA\) program](#). (Access a section-by-section [bill summary fact sheet here.](#)) Extension of the PUA program has been of particular interest to many independent contractor AAPL members. According to law firm, Locke Lord, "the original CARES Act provided PUA benefits for up to \$600 a week for as many as 39 weeks, retroactive to January 27, 2020. The new stimulus bill, CARES Act II, halves that amount and limits PUA to \$300/week. Those eligible for PUA also will receive an additional \$300/week through the end of the extension period, whereas CARES Act I had added \$600/week in

federal stimulus payments. Finally, the new stimulus bill provides independent contractors with paid sick and paid family leave benefits through March 14, 2021." [Read more.](#)

FEDERAL – Regulatory

BLM National Petroleum Reserve – Alaska. On January 4, the Bureau of Land Management (BLM) published its [Record of Decision](#) which “finalized plans to open more than 80 percent of Alaska’s National Petroleum Reserve (NPR-A) to oil drilling, pushing ahead over objections from environmentalists who have already challenged the plans in court. The decision from the Bureau of Land Management (BLM) opens more than 18 million acres to oil and gas drilling, including scaling back protected areas designed to be off-limits to development.” This completes the [BLM Integrated Activity Plan decision process](#) which began with a Notice of Intent on November 21, 2018, “to begin the development of a new Integrated Activity Plan (IAP) and associated Environmental Impact Statement (EIS) for the National Petroleum Reserve in Alaska (NPR-A). The new IAP/EIS will include consideration of a range of leasing alternatives that open new areas to leasing, examination of current special area boundaries, and consideration of new or revised lease stipulations and best management practices.” [Read more.](#)

BLM Converse County Oil and Gas Project – Wyoming. On December 23, 2020, the BLM “issued a decision that could generate billions of dollars for the American public and will strengthen domestic energy production and independence. The [Record of Decision for the Converse County Oil and Gas Project](#) allows the development of up to 5,000 new oil and natural gas wells within a 1.5 million-acre project area in Converse County, Wyoming, over the life of the project.” The development approval has been lauded by federal, state, and local leaders. “This Record of Decision (ROD) is the culmination of years of work between the Bureau of Land Management, the State of Wyoming and the oil and gas industry. This decision establishes what has been my goal from the

beginning– to provide actual year-round drilling opportunities,” said Wyoming Gov. Mark Gordon (R). “It sets the framework for hundreds of jobs for Wyoming and ensures proper safeguards for the protection of our wildlife in the project area. I look forward to seeing this project and year-round drilling come to fruition in Wyoming.” [Read more.](#)

BLM Information Collection. On December 21, the BLM published a notice proposing to renew an information collection, *Agency Information Collection Activities; Oil and Gas, or Geothermal Resources: Transfers and Assignments* ([85 Fed. Reg. 83102](#)), which seeks public comment regarding the collection of information that “enables the BLM to process assignments of record title interest and transfers of operating rights in a lease for oil and gas or geothermal resources.” The public comment period is open through February 19, 2021. [Read more.](#)

BLM Eastern States New Filing Address. On December 15, 2020, the BLM published a final rule which “amends the regulations pertaining to execution and filing of forms in order to reflect the new address of the BLM-Eastern States Office.” According to this final rule, *Application Procedures, Execution and Filing of Forms: Correction of State Office Address for Filings and Recordings, Including Proper Offices for Recording of Mining Claims; Eastern States* ([85 Fed. Reg. 81141](#)), “[a]ll filings and other documents relating to public lands in the 31 States east of and bordering the Mississippi River must be filed at the new address of the BLM-Eastern States Office beginning on January 14, 2021.” [Read more.](#)

EPA Science Transparency Rule. On January 6, the Trump administration’s Environmental Protection Agency (EPA) published a final rule, *Strengthening Transparency in Pivotal Science Underlying Significant Regulatory Actions and Influential Scientific Information* ([86 Fed. Reg. 469](#)), which will require science researchers to disclose the raw data involved in their public health studies before the EPA can rely upon their conclusions. The rule will apply a new set of standards for “dose-response studies”

which evaluate how much a person's exposure to a substance increases the risk of harm. The rule has been lauded by manufacturing industries and energy producers who claimed environmental activists push "junk science" to set the regulatory agenda. [According to EPA Administrator Andrew Wheeler](#), "the work of the Environmental Protection Agency—to protect human health and the environment—shouldn't be exempt from public scrutiny. This is why we are promulgating a rule to make the agency's scientific processes more transparent. Too often Congress shirks its responsibility and defers important decisions to regulatory agencies. These regulators then invoke science to justify their actions, often without letting the public study the underlying data. Part of transparency is making sure the public knows what the agency bases its decisions on. When agencies defer to experts in private without review from citizens, distinctions get flattened and the testing and deliberation of science is precluded." [Read more](#). The rule focuses on "dose-response studies" that "show how increasing levels of exposure to pollution, chemicals and other substances impact human health and the environment rather than all studies. It would allow the administrator to make an exception for any study they deem important." [Read more](#).

EPA Cost/Benefit Rule. On December 23, 2020, the Trump administration finalized an Environmental Protection Agency (EPA) rule "to improve the rulemaking process under the Clean Air Act by establishing requirements to ensure that high-quality analyses of benefits and costs are developed for all significant Clean Air Act rules, and considered to the extent allowed by law. This rule will help ensure that Clean Air Act rules are analyzed consistently, transparently, and appropriately. It also outlines best-practice procedures for assessing benefits and costs when developing regulatory actions." ([Read more](#).) The final rule, *Increasing Consistency and Transparency in Considering Benefits and Costs in the Clean Air Act Rulemaking Process* ([85 Fed. Reg. 84130](#)), changes how the federal government justifies its own air pollution regulations, which will limit how the EPA "weighs carbon pollution that

impacts climate change as well as the benefits of tackling multiple air pollutants at once." In short, the "rule dictates how the agency must compile its cost-benefit analysis for future air rules — a lengthy, technical pro-con list defending a rule that is most often scrutinized by staffers and those who plan to sue over their regulations." Moreover, this rule applies to any new regulation proposed under the Clean Air Act and will bind the incoming Biden administration unless the EPA, under new leadership, is able to overturn it. [Read more](#).

Independent Contractors; U.S. Department of Labor – Washington, DC. (*Update to 10/5/20 Weekly Report*) On January 7, the Trump administration's U.S. Department of Labor (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 is expected to clarify how independent contractor status is determined and may 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 outgoing Labor Secretary Eugene Scalia. The rule is effective on March 8, 2021. [Read more](#).

Taking of Migratory Birds; U.S. Fish and Wildlife Service. (*Update to 12/14/20 Weekly Report*) On January 7, the U.S. Fish and Wildlife Service published its final rule, *Regulations Governing Take of Migratory Birds* ([86 Fed. Reg. 1134](#)), which

specifies that the prohibitions on harm to migratory birds under the Migratory Bird Treaty Act will only apply to deliberate, rather than incidental, harm. The push for this rule by the Trump administration has been lauded by industry groups and long-awaited. According to the *Oil and Gas Journal*, "The rule will at least temporarily reduce the risk of litigation for oil companies whose oil waste pits can kill birds." The final rule is intended to clarify that the U.S. Fish and Wildlife Service "will not prosecute landowners, industry and other individuals for accidentally killing a migratory bird. This opinion has been adopted by several courts, including the US Court of Appeals for the Fifth Circuit," said Interior Secretary David Bernhardt in an announcement of the rule. [Read more](#). For background, on November 27, 2020, the U.S. Fish and Wildlife Service published its [Notice of Availability of its Final Environmental Impact Statement regarding Migratory Birds](#) as a result of legal challenges and which "provides responses to substantive comments." (See also [85 Fed. Reg. 76077](#).) This came after the U.S. District Court for the Southern District of New York struck down a 2017 Interior Department legal opinion that the Trump administration relied upon for an easing of regulations under the Migratory Bird Treaty Act in an August 11, 2020 ruling. That ruling would have held companies – such as those in the oil and gas industry – liable for the killing of migratory birds only if the acts were "intentional" rather than "incidental." In consolidated cases, [Natural Resources Defense Council v. U.S. Dept. of the Interior](#) (Case No. 1:18-cv-04596-VEC), the Court held that the Migratory Bird Treaty Act makes it unlawful to kill birds "by any means whatever or in any manner" and thus the administration's interpretation and relaxing of the meaning could not be squared with the plain language of the statute. The Interior Department criticized the court's ruling, saying it "undermines a commonsense interpretation of the law and runs contrary to recent efforts, shared across the political spectrum, to de-criminalize unintentional conduct." [Read more](#). The final rule published last week is an outgrowth of that court opinion and a victory for the outgoing Trump administration. [Read more](#).

U.S. Fish and Wildlife Service Habitat Protection.

On December 17, 2020, the U.S. Fish and Wildlife Service, as well as other related agencies, published a final rule, *Endangered and Threatened Wildlife and Plants; Regulations for Listing Endangered and Threatened Species and Designating Critical Habitat* ([85 Fed. Reg. 81411](#)), which will narrow habitat protections for endangered species by only allowing habitat that "currently or periodically" house a species. The agency said the new rule would "bring greater clarity and consistency to how the Service designates critical habitat." The rule change had garnered wide support from the oil and gas industry, ranchers, and farmers who argued that the Endangered Species Act had been too restrictive and applied too broadly which inhibited land use. The final rule is effective January 15, 2021. [Read more](#).

BLM Lease Settlement – Colorado. (*Update to 4/30/18 Weekly Report*) On January 6, the BLM agreed to halt development on 53 oil and gas leases covering more than 45,000 acres of public lands in western Colorado as part of a [settlement agreement](#) reached with environmentalist litigants stemming from a 2018 lawsuit. For background, on April 26, 2018, multiple environmental groups sued the BLM charging that federal approvals of the 53 lease sales in western Colorado violated the law by failing to include site-specific environmental analyses. In [Wilderness Workshop et al. v. U.S. Bureau of Land Management et al.](#) (Case No. 1:18-cv-00987), the plaintiffs claimed the lease auctions held during both the Obama and Trump administrations violated the National Environmental Policy Act and that analyses of environmental and human health impacts should have been considered. The January 6 settlement requires the BLM to complete a supplementary environmental impact statement for the Colorado River Valley and Grand Junction Field Office resource-management plans before the leases can be reconsidered. [Read more](#).

BLM Northern New Mexico Resource Advisory Council Meeting. On December 15, 2020, the BLM announced that the Northern New Mexico Resource Advisory Council (RAC) will hold a virtual meeting on

January 19, 2021. According to the BLM, “The 12-member Northern New Mexico RAC advises the Secretary of the Interior, through the BLM, on a variety of planning and management issues associated with public land management in the RAC’s area of jurisdiction.” The virtual RAC meeting will be open to the public and written comments will be accepted in advance of the meeting. [Read more.](#)

FEDERAL – Judicial

ANWR Leasing – Alaska. On January 5, a federal judge gave the green light to the Trump administration’s leasing of oil and gas rights in the Arctic National Wildlife Refuge (ANWR) when the court rejected a request by environmentalists to block the auction. In the consolidated cases, [*Gwich’in Steering Committee v. Bernhardt* \(Case No. 3:20-cv-00204\)](#) and [*National Audubon Society v. Bernhardt* \(Case No. 3:20-cv-00205\)](#), Judge Sharon Gleason – an Obama appointee – denied the motion for preliminary injunction to stop the lease sale and rejected arguments by environmental groups and Native Alaskans claiming the auction would cause “irreparable damage.” In her opinion, Judge Gleason stated, “The Court concludes that Plaintiffs have not established a likelihood of immediate and near-term irreparable harm absent a preliminary injunction before the Court renders a decision on the merits. Because showing the likelihood of an irreparable injury is mandatory, the Court does not consider the remaining elements for a preliminary injunction. Thus, Plaintiffs’ motions will be denied. Plaintiffs may be correct that, over time, they may be significantly injured as a result of the planned lease sales on the Coastal Plain. But these future and cumulative potential effects do not demonstrate the irreparable harm necessary for preliminary injunctive relief at this time. However, should BLM approve ground-disturbing activities at the Coastal Plain before the Court determines the merits of Plaintiffs’ challenges, Plaintiffs may seek preliminary injunctive relief related to those activities.” [Read more.](#)

UPDATE: The January 6 sale resulted in lackluster results netting less revenue and fewer bids than anticipated. According to local reports, the “sale was

a bad start to the revenues the federal government had hoped to gain from the refuge. It had estimated the lease sales would bring in \$1.8 billion over a decade, to be split between the Alaska and federal governments. The money raised on Wednesday fell far short. The government sold only 11 tracts of 22 it was offering in the refuge’s coastal plain, or about 550,000 acres out of about 1 million offered. Most of the tracts totaled about 50,000 acres, and went for a bit over \$1 million. None of Alaska’s three top oil producers — ConocoPhillips, ExxonMobil and Hilcorp, the owners of the large Prudhoe Bay oil field west of the refuge — submitted bids.” [Read more.](#)

STATE – Legislative

Orphan, Idle, and Abandoned Wells – California. On December 15, Sen. Melissa Hurtado (D) introduced SB 84 for the 2021 legislative session. The bill would amend existing law regarding orphan, idle, and abandoned wells to require the State Oil and Gas Supervisor “to make reasonable efforts to cover the cost of plugging and abandoning the well or decommissioning deserted production facilities from the current operator before seeking to cover the cost of plugging and abandoning the well or decommissioning deserted production facilities from a previous operator.” Regarding state agency reporting of idle wells, the bill would also “require that each report identify idle wells by the American Petroleum Institute identification number that are registered to an operator and that have met the definition of an idle well for 3 years where neither the required annual fee has been paid or the well is part of a valid idle well management plan on file with the supervisor.” Finally, as to hazardous wells, idle-deserted wells, deserted facilities, and hazardous facilities remaining, the estimated costs of abandoning or decommissioning those wells and facilities, and a timeline for future abandonment and decommissioning of those wells and facilities with a specific schedule of goals, the bill “would require the report and the update to identify the location of the applicable wells and facilities, including the county where they are located.” [Read more.](#)

Employee Misclassification – Indiana. On January 7, Rep. Pat Boy (D) introduced HB 1132. The bill “requires the department of state revenue, the state department of labor, the worker’s compensation board of Indiana, and the department of workforce development to report before September 1 in 2021 through 2024 to the interim study committee on employment and labor for the immediately preceding state fiscal year: (1) the number of employers that each department or the board determined during the immediately preceding state fiscal year improperly classified at least one worker as an independent contractor; (2) the total number of improperly classified workers employed by those employers; (3) the department’s or board’s calculation of the revenue not collected or the additional costs to the state that the department or board attributes to the improperly classified workers; and (4) the amount of the penalties and interest assessed against those employers by each department or the board, and the amount of the penalties and interest assessed that has been collected. Excludes residential contractors from the term ‘employer’ for purposes of the reporting requirements.” [Read more.](#)

Abandoned Wells; Plugging – Kansas. On December 31, 2020, Rep. Troy Waymaster (R) pre-filed HB 2022 for the session commencing January 11, 2021. The bill updates “the state corporation commission’s authority to regulate and determine responsibility for abandoned oil and gas wells and abolishing the well plugging assurance fund and transferring all assets and liabilities to the abandoned oil and gas well fund.” [Read more.](#)

Electronic Notarization – Kentucky. On January 7, Rep. Joe Fischer (R) introduced HB 197. The bill updates existing law regarding electronic notarizations including definitions and remote notarization processes. [Read more.](#)

Notaries Public – Michigan. (*Update to 12/14/20 Weekly Report*) On December 29, 2020, SB 1187 was signed into law by Gov. Gretchen Whitmer (D) and takes immediate effect. ([See full bill summary](#)) The legislation, sponsored by Sen. Peter MacGregor (R),

amends the Michigan Law on Notarial Acts to allow for remote procedures (such as signing, witnessing, notarizing, or recording) for certain records through June 30, 2021. Specifically, the Act allows “notaries public to use two-way real-time audiovisual technology to perform notarial acts electronically rather than in person under certain circumstances; allow signing in counterparts.” [Read more.](#)

Electronic Execution of Documents – Michigan. (*Update to 12/14/20 Weekly Report*) On December 29, 2020, SB 1189 was signed into law by Gov. Gretchen Whitmer (D) and takes immediate effect. ([See full bill summary](#)) The legislation, sponsored by Sen. Peter MacGregor (R), would amend the Estates and Protected Individuals Code (EPIC) to “allow certain documents (including a will, a disclaimer under section 2903 of EPIC, a funeral representative designation, a parental appointment of a guardian of a minor, an appointment of a guardian of a legally incapacitated individual, a durable power of attorney, or a patient advocate designation) to be signed or witnessed using two-way real-time audiovisual technology; and allow certain visits required under EPIC (such as between a guardian and a legally incapacitated ward) to be conducted using that technology. amends existing notarial laws to allow for remote procedures (such as signing, witnessing, notarizing, or recording) for certain records through June 30, 2021.” [Read more.](#)

Independent Contractors – Missouri. On January 6, Rep. Justin Hill (R) introduced HB 214. The bill would establish the criteria of a worker to be considered as an independent contractor. According to the official legislation notes, “The bill states that independent contractors shall have a written contract that states the person is an independent contractor, not an employee, and that the person is responsible for all costs, fees, and taxes as an independent contractor. In addition, the person must have the right to control the manner and means by which the work is accomplished, and satisfies at least five out of nine listed requirements of an independent contractor. This bill also changes the definition of ‘employee’ by removing the reference to the factors in [IRS Rev.](#)

[Rule 87-41, 1987-1 C.B.296](#) and stating that an individual who meets the requirements for an independent contractor as specified in this bill is not an employee.” [Read more.](#)

Independent Contractors – Missouri. On January 6, Sen. Bob Onder (R) introduced SB 148. The bill “provides that any person who performs work for an employer and satisfies all of the following criteria shall be considered an independent contractor” and provides the criteria for consideration. [Read more.](#)

Federal Land Mineral Royalties – Missouri. On January 6, Rep. Chris Dinkins (R) introduced HB 564. The bill “specifies that all moneys paid to the state by the U.S. Secretary of the Treasury from mining royalties on federal land in the state must be deposited in the newly created ‘Federal Mineral Royalties Distribution Fund’ and within three months following the calendar quarters ending in March, June, September, and December, the Director of the Department of Revenue must certify to the State Treasurer the amount of moneys received for royalties. The State Treasurer must allocate the total money received among the counties in which the minerals were produced based on the proportion each county’s mineral royalty revenue bears to the total received by the state. Of the money received, 50% must be allocated and paid to the counties for planning, construction, and maintenance of county roads, public facilities, and public services. The remaining moneys received are to be allocated and paid to the school districts of the state in proportion to the area of federal mining lands in the district.” [Read more.](#)

Notaries Public – Missouri. On January 6, Rep. Ian Mackey (D) introduced HB 133. The bill would modify provisions relating to the content contained in a notary public’s journal. [Read more.](#)

Oil and Gas Production Tax; Nonoperating School Districts – Montana. On January 4, Sen. Daniel Salomon (R) introduced SB 24. The bill would allow a nonoperating school district to retain oil and gas revenue, specifically, “For a district

in nonoperating status under 20-9-505, the maximum amount of oil and natural gas production taxes that a school district may retain is 130% of the school district’s maximum budget in the district’s most recent operating year.” [Read more.](#)

Online Notarization – Nebraska. On January 7, the Government, Military and Veterans Affairs Committee introduced LB 94. The bill updates the Online Notary Public Act to update validity dates for online notarial acts. [Read more.](#)

Abandoned Wells; Bond Requirements – North Dakota. On January 4, the House Committee on Energy and Natural Resources (R) introduced HB 1054. The bill amends existing law regarding abandoned wells under [Section 38-08-04 of the North Dakota Century Code](#) by changing the following language from discretionary to mandatory: “The placing of wells in abandoned-well status which have not produced oil or natural gas in paying quantities for one year. A well in abandoned-well status must be promptly returned to production in paying quantities, approved by the commission for temporarily abandoned status, or plugged and reclaimed within six months. If none of the three preceding conditions are met, the industrial commission ~~may~~ [NEW: shall] require the well to be placed immediately on a single-well bond in an amount equal to the cost of plugging the well and reclaiming the well site. In setting the bond amount, the commission shall use information from recent plugging and reclamation operations.” [Read more.](#)

Royalty Payments – North Dakota. On January 4, Rep. Jason Dockter (R) introduced HB 1080. The bill would “amend and reenact North Dakota Century Code Sections [15-05-10](#) and [47-16-39.1](#) [by] amending language to reduce the maximum rate owed to the Board of University and School Lands by royalty payors for late oil and gas royalty payments.” [Read more.](#)

Unclaimed Property – North Dakota. On January 5, the Senate Committee on Industry, Business and Labor (R) introduced SB 2048. The bill amends

existing law regarding unclaimed and abandoned property relating to the Revised Uniform Unclaimed Property Act and provides new provisions for when a mineral interest is deemed to be used, among other related provisions. [Read more.](#)

Tax Deduction for High-Cost Gas – Texas. On December 18, Rep. Gina Hinojosa (D) pre-filed HB 878/HB 879 for the legislative session commencing January 12, 2021. The [bills](#) relate to the phasing out of the tax reduction for high-cost gas by amending existing law by adding a September 1, 2021 deadline for applications and related processes. [Read more.](#)

Drill Cuttings – Texas. On January 5, Rep. Drew Darby (R) pre-filed HB 964 for the legislative session commencing January 12, 2021. The bill amends existing law and relates to the “treatment, recycling for beneficial use, or disposal of drill cuttings.” The bill amends definitions regarding drill cuttings and adds disposal language regarding permit holders and responsibility in tort. [Read more.](#)

Mineral Definitions – Utah. On January 6, Rep. Walt Brooks (R) pre-filed HB 79 for the session commencing on January 19. The bill would modify definitions related to mineral deposits and rocks. [Read more.](#)

Migratory Birds – Utah. On January 6, Rep. Joel Ferry (R) pre-filed HB 83 for the session commencing on January 19. The bill would extend 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. [Read more.](#)

Employee Misclassification – Virginia. (*Update to 4/27/20 Weekly Report*) To follow up our 2020 reporting, HB 1407 took effect on January 1, 2021.

The Act, sponsored by Del. Jeion Ward (D), and which Gov. Ralph Northam (D) signed into law last April, provides that if an individual performs services for an employer for remuneration, that individual shall be considered an employee of the party that pays that remuneration unless such individual or his employer demonstrates that such individual is an independent contractor. The bill allows for misclassification civil penalties against employers. [Read more.](#)

Employee Misclassification – Virginia. (*Update to 4/27/20 Weekly Report*) To follow up our 2020 reporting, SB 744 took effect on January 1, 2021. The Act, sponsored by Sen. Jeremy McPike (D), and which Gov. Ralph Northam (D) signed into law last April, provides “that, if an individual performs services for an employer for remuneration, that individual shall be considered an employee of the party that pays that remuneration unless such individual or his employer demonstrates to the satisfaction of the Department of Taxation (‘the Department’) that such individual is an independent contractor.” [Read more.](#)

STATE – Regulatory

CalGEM Public Health Rulemaking – California. As reported by the California Independent Petroleum Association, the Department of Conservation’s California Geologic Energy Management Division (CalGEM) announced that “the public health rulemaking impacting oil and gas operations will be delayed until Spring 2021.” According to the December 31, 2020 CalGEM release, “Consistent with [Executive Order N-79-20](#), CalGEM planned to release its draft regulations this month, but this timeline has been extended to enable input from an independent panel of public health experts, which took longer to assemble than anticipated. CalGEM will receive guidance from the public health expert panel to inform the draft regulation that CalGEM will post online -- for a minimum of 60 days of public review -- in Spring 2021.” The Executive Order states that CalGEM, “Propose a significantly strengthened, stringent, science-based health and safety draft rule

that protects communities and workers from the impacts of oil extraction activities." We will keep AAPL members updated once the proposed rules are released for review and public comment. [Read more.](#)

CIPA Petition to Protect Oil and Gas – California.

The California Independent Petroleum Association (CIPA) has urged those in the oil and gas industry to submit an online petition to CIPA and Gov. Gavin Newsom (D) regarding his "recent announcements to hasten the end of in-state production of oil and gas [that] will hurt California's environmental leadership, kill thousands of quality careers, eliminate tax revenue for vital services, and take away affordable and reliable energy choices during our state's economic recovery. For a state as large as California, we need all-of-the-above energy solutions, not one size fits all." To [submit a petition click here](#). According to CIPA, "The 2021 legislative session will pit extremists and coastal legislators against industry and Central Valley legislators for the survival of production in California. Taking their cue from the Governor, some legislators who were just elected over the fall are vowing to support halting hydraulic fracturing (HF) and other forms of extraction, although they have little to no background on this highly-regulated industry." You may also [contact CIPA](#) for more information about their upcoming January 13, 2021 press conference if you would like to be involved further. [Read more.](#)

New Mexico State Land Office Fresh Water Policy.

On December 15, 2020, the New Mexico Commissioner of Public Lands, Stephanie Garcia Richard, [issued a letter](#) which, "announced plans to halt the practice of commercial sale of fresh water from state trust lands for oil and gas development. This shift in policy will better ensure the long-term stewardship of state trust lands and natural resources." ([Read the full press release here](#)) According to the release, "The Commissioner sent the letter to companies that hold easements that grant access to state trust land to pump fresh water for sale to the oil and gas industry. The letter articulates that "No new easements will be issued for the sale of water for use in oil and gas, and existing

easements will be not be renewed once they expire." You may also see the Commissioner's policy guide effectuating this change, ENCOURAGING REUSE/RECYCLING OF WATER FOR OIL AND GAS DEVELOPMENT, [here](#), which was also made public on December 15, 2020. [Read more.](#)

Sale and Operation of Oil and Gas Leases

Proposed Rulemaking – Oklahoma.

The Oklahoma Commissioners of the Land Office have released a [notice of proposed rulemaking](#) affecting "CHAPTER 15. Sale and Operation of Oil and Gas Leases." According to the announcement summary, "The proposed rule amendments revise and modernize rules related to sale and operation of oil and gas leases in compliance with [Executive Order 2020-03](#)." The proposed changes affect Oklahoma Administrative Code sections [385:15-1-1 through 385:15-1-34](#) pertaining to oil and gas leasing from the state regarding mineral interests on school lands and other public lands managed by the Land Office. ([Access the proposed rule changes here](#).) Public comments will be accepted through January 15, 2021. A public hearing will also be held in person and virtually on January 19, 2021. For further information on submitting comments, attending the public hearing, or for further agency contact information, [Read More.](#)

New Railroad Commissioner – Texas. On January 4, Jim Wright was sworn in as Commissioner of the Railroad Commission of Texas (RRC). "The lifelong South Texan joins a three-member Commission in leading an agency that is more than a century old. The RRC plays a major role in oversight and regulation of the oil and gas industry – an industry that has been the backbone of the state economy and plays a vital role in keeping energy costs low for Texans while also helping pave the way for the nation's energy independence." According to Wright, "Oil and natural gas will make up the majority of our nation's energy for decades to come and it is best for our state, our nation and the world if that energy is produced right here in Texas. As commissioner, I will work to streamline enforcement and increase transparency at the Commission, with

the ultimate goal of creating a sustainable and dependable lifestyle for all Texans supported by our state's abundant natural resources."

[Read more.](#)

Railroad Commission – Texas. On December 14, 2020, the Texas Railroad Commission (RRC) announced it has made non-substantive updates to multiple oil and gas forms. The approval to update the following forms was granted by the RRC commissioners in an open meeting on December 8, 2020. The review and update to these forms is part of the Texas Oilfield Relief Initiative. The forms were identified for updates during a review of all RRC forms required for permit applications and reporting purposes. According to the RRC, "The changes to the forms were needed to ensure consistency with recently amended rules and updates to online systems. Updating the forms will reduce reporting errors and administrative burdens on the oil and gas industry and RRC staff." To access the RRC forms, [click here](#). For more information on the RRC Texas Oilfield Relief Initiative, [Read more](#).

STATE – Judicial

Saltwater Injection Well Permitting – Ohio. On December 9, in [State ex rel. Omni Energy Group, L.L.C. v. Ohio Dept. of Natural Resources, Div. of Oil & Gas Resources Mgt.](#) (Case No. 2020-Ohio-5581), the Ohio Supreme Court addressed a case where Omni sought a writ of mandamus (ordering a government official to act in a manner as directed by a court) against the Ohio Department of Natural Resources, Division of Oil and Gas Resources Management; department director Mary Mertz; and division chief Eric Vendel, to compel Vendel to render decisions on two saltwater injection well permit applications. According to law firm, Vorys, Sater, Seymour and Pease LLP, "the Court discussed whether (1) the Division of Oil & Gas Resources Management had the right to call a public meeting concerning Omni's permit application, (2) Omni had a right to compel the Division to rule on the validity of objections received to its permit application, and (3) the Division could schedule a hearing on those

objections after a certain statutory deadline expired." The Court granted the writ of mandamus, "but instead of ordering Vendel to immediately render a decision on the applications, we order him to rule upon the validity of the objections that have been submitted concerning Omni's applications. That ruling will determine whether Vendel must issue the permits or hold a hearing on the applications."

[Read more.](#)

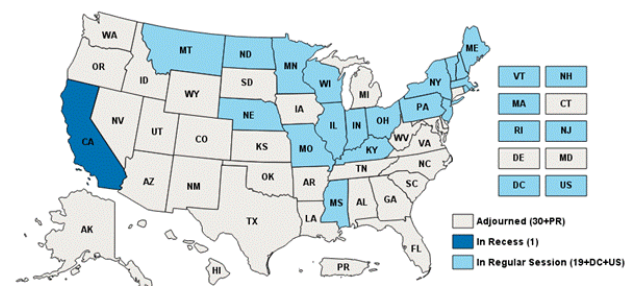
INDUSTRY NEWS FLASH

► **Big banks oppose proposed banking rule requiring financing of oil and gas industry.** On January 4, the federal Office of the Comptroller of the Currency closed its comment period on a proposed rule requiring that the oil and gas industry be provided "fair access" to financing. The Trump administration and congressional Republicans pushed for the rulemaking after several large banks announced they will no longer finance oil and gas sector projects as a result of recent public opposition. [Read more.](#)

► **OPEC+ nations keep oil production flat; Saudi Arabia announces production cuts.** On January 5, OPEC+ nations agreed to keep oil production flat, while Saudi Arabia announced planned production cuts. The announcements pushed West Texas Intermediate crude futures above \$50/bbl for the first time since February 2020. [Read more.](#)

LEGISLATIVE SESSION OVERVIEW

States in Session



Session Notes (by date): Illinois House, Indiana, Kentucky, Maine, Massachusetts, Minnesota, Mississippi, Missouri, Montana, Nebraska, New Hampshire, New Jersey, New York, North Dakota, Ohio, Pennsylvania, Rhode Island, Vermont, and Wisconsin are in regular session. The District of Columbia Council and the U.S. Congress are also in session.

The following will convene their 2021 legislative sessions on the dates provided: Arizona, Arkansas, Georgia, Idaho, Iowa, Kansas, and Puerto Rico (January 11); Delaware, Michigan, New Jersey, South Carolina, South Dakota, Tennessee, Texas, and Wyoming (January 12); Colorado, Illinois, Maryland, North Carolina, and Virginia (January 13).

California convened its 2021 legislative session on December 7 and recessed following an organizational session. The legislature delayed its reconvene date to January 11 in wake of uncontrolled COVID-19 cases, reports [The Sacramento Bee](#).

The Illinois House convened January 8 for a lame duck session that is expected to last until the 2021 legislature convenes on January 13, reports [The State Journal Register](#).

Colorado will convene its 2021 legislature on January 13 but is expected to recess soon after until February 16 due to the prevalence of COVID-19 in the state, reports [The Colorado Sun](#).

Signing Deadlines (by date): Ohio Republican Gov. Mike DeWine had until January 10 to sign or veto legislation or it becomes law without signature. Rhode Island Democratic Gov. Gina Raimondo has until January 14 to sign or veto legislation or it becomes law without signature. New York Democratic Gov. Andrew Cuomo has until February 5 to act on legislation or it is pocket vetoed. District of Columbia Democratic Mayor Muriel Bowser has 10 days from presentment, not including weekends or holidays, to sign or veto legislation or it becomes law without signature. Massachusetts Republican Gov. Charlie Baker has 10 days from presentment to sign or veto legislation or it becomes law without

signature. Michigan Democratic Gov. Gretchen Whitmer has 14 days from presentment to sign or veto legislation or it is pocket vetoed. South Carolina Republican Gov. Henry McMaster has until two days after the next meeting of the legislature to act on legislation or it becomes law. Pennsylvania Democratic Gov. Tom Wolf had a signing deadline of December 30, 2020, for the most recent session.

Interim Committee Hearings: The following states are currently holding 2020 interim committee hearings: [Alabama](#), [Alaska](#), [Arkansas](#), [Colorado](#), [Connecticut](#), [Delaware](#), Georgia [House](#) and [Senate](#), [Hawaii](#), [Idaho](#), [Illinois](#), [Iowa](#), [Kansas](#), [Louisiana](#), [Maryland](#), [Nevada](#), [New Mexico](#), [North Carolina](#), [Oklahoma](#) [House](#) and [Senate](#), [Oregon](#), South Carolina [House](#) and [Senate](#), [South Dakota](#), [Tennessee](#), Texas [Senate](#), [Utah](#), [Virginia](#), [Washington](#), [West Virginia](#) and [Wyoming](#).

Bill Pre-Files: [Alabama](#), [Arizona](#), [Arkansas](#), [Delaware](#), [Florida](#), [Georgia](#), [Iowa](#), [Kansas](#) [House](#), [Nevada](#), [Oklahoma](#), [South Carolina](#), [Tennessee](#), [Texas](#), [Utah](#), [Virginia](#) and [Wyoming](#) are currently posting 2021 bill drafts, pre-files and interim studies. ■

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GOVERNMENTAL AFFAIRS WEEKLY REPORT

Weekly Highlights At-A-Glance

FEDERAL – Regulatory

President Biden Executive Orders. Since taking office, President Joe Biden (D) has issued a raft of executive orders to overturn policies of the prior Trump administration. One in particular specifically affects the oil and gas industry, and by extension, the landman profession. In particular, Biden's [Executive Order on Protecting Public Health and the Environment and Restoring Science to Tackle the Climate Crisis](#) (January 20, 2021), addresses multiple administrative and regulatory policies detailed as follows. The Order first requires the "Immediate Review of Agency Actions Taken Between January 20, 2017, and January 20, 2021." This will invariably include many oil and gas related agency actions to be reviewed and once the agency reviews are completed they may result in the "suspending, revising, or rescinding the agency actions." The Order also details specific actions, as follows:

1. Review of the Environmental Protection Agency (EPA) "Inspection Rule" (*Oil and Natural Gas Sector: Emission Standards for New, Reconstructed, and Modified Sources Reconsideration*) ([85 Fed. Reg. 57398](#); September 15, 2020) by September 2021. That rule amended the Obama-era New Source Performance Standards unfavorable to the oil and gas industry, relaxing requirements for oil and gas operators to monitor emissions leaks.
2. Review of the EPA science rule just published on January 6 by the outgoing administration. That final rule, *Strengthening Transparency in Pivotal Science Underlying Significant Regulatory Actions and Influential Scientific*

Information ([86 Fed. Reg. 469](#)), requires science researchers to disclose the raw data involved in their public health studies before the EPA can rely upon their conclusions to allow for scrutiny over scientific conclusions that could negatively impact rulemaking affecting industries such as oil and gas. No timetable has been provided by the Biden administration for this review.

3. Announces a Federal Implementation Plan in accordance with the EPA's *Findings of Failure To Submit State Implementation Plan Revisions in Response to the 2016 Oil and Natural Gas Industry Control Techniques Guidelines for the 2008 Ozone National Ambient Air Quality Standards (NAAQS) and for States in the Ozone Transport Region* ([85 Fed. Reg. 72963](#); November 16, 2020), for California, Connecticut, New York, Pennsylvania, and Texas by January 2022. This EPA Final Action related to Clean Air Act emissions reductions, controls and attainment requirements from the oil and gas industry.
4. The Order specifies a 60-day review of Trump's proclamations related to national monument "boundaries and conditions" and could affect oil and gas development in those areas. This affects *Modifying the Bears Ears National Monument* ([82 Fed. Reg. 58081](#); December 8, 2017) and *Modifying the Grand Staircase-Escalante National Monument* ([82 Fed. Reg. 58089](#); December 8, 2017).
5. The Order places "a temporary moratorium on all activities of the Federal Government relating to the implementation of the Coastal

Plain Oil and Gas Leasing Program, as established by the Record of Decision signed August 17, 2020, in the Arctic National Wildlife Refuge." The Order also restores "the original withdrawal of certain offshore areas in Arctic waters and the Bering Sea from oil and gas drilling" as implemented by the Obama administration and then rescinded by the Trump administration under Executive Order, *Implementing an America-First Offshore Energy Strategy*; May 3, 2017; [82 Fed. Reg. 20815](#). Although existing leases are legally binding and cannot be canceled unilaterally through a presidential executive order, at least not without buying out lease holders, the Biden administration will still have discretion over issuing drilling permits and conducting environmental impact reviews, which could halt any future oil and gas drilling. [Read more.](#)

6. Revokes the permit for the Keystone XL pipeline granted by President Trump on March 29, 2019. The 1,700-mile pipeline would have carried roughly 800,000 barrels of oil a day from Alberta, Canada to the Texas Gulf Coast, passing through Montana, South Dakota, Nebraska, Kansas, and Oklahoma. [Read more.](#) "As a result of the expected revocation of the Presidential Permit, advancement of the project will be suspended," said the Keystone XL operator in a statement. [Read more.](#)
7. Revokes President Trump's Executive Order, *Expediting Environmental Reviews and Approvals For High Priority Infrastructure Projects*; January 30, 2017; [82 Fed. Reg. 8657](#), which affected oil and gas projects such as pipelines.
8. Revokes President Trump's Executive Order, *Promoting Energy Independence and Economic Growth*; March 31, 2017; [82 Fed. Reg. 16093](#), which promoted and supported American energy exploration and production.
9. Revokes President Trump's Executive Order, *Review of Designations Under the Antiquities Act*; May 1, 2017; [82 Fed. Reg. 20429](#), which provided for broadening oil and gas drilling near national monument areas.
10. Revokes President Trump's Executive Order, *Implementing an America-First Offshore Energy Strategy*; May 3, 2017; [82 Fed. Reg. 20815](#), which promoted offshore energy exploration and production.
11. Revokes President Trump's Executive Order, *Promoting Energy Infrastructure and Economic Growth*; April 15, 2019; [84 Fed. Reg. 15495](#), which promoted energy independence and the ability of the United States to become a net energy exporter.
12. Revokes President Trump's Executive Order, *Establishing Discipline and Accountability in the Environmental Review and Permitting Process for Infrastructure Projects*; August 24, 2017; [82 Fed. Reg. 40463](#), which sought to create efficiencies and predictability in infrastructure projects, including those related to oil and gas.
13. Revokes President Trump's Memorandum, *Promoting Domestic Manufacturing and Job Creation Policies and Procedures Relating to Implementation of Air Quality Standards*; April 6, 2018; [83 Fed. Reg. 16761](#), which called for a more predictable, streamlined and industry-friendly procedure for review and implementation of air quality standards and requirements.
14. Revokes President Trump's Memorandum, *Promoting the Reliable Supply and Delivery of Water in the West*; October 25, 2018; [83 Fed. Reg. 53961](#), to improve Western states water availability and resource management to benefit various industries, including those involved in oil and gas exploration and production.

15. Revokes President Trump's Memorandum, *Developing and Delivering More Water Supplies in California*; February 26, 2020; [85 Fed. Reg. 11273](#), which would have provided greater water availability in the Central Valley, including to oil and gas fields.
16. Orders the Council on Environmental Quality (CEQ) to rescind its draft guidance, *Draft National Environmental Policy Act Guidance on Consideration of Greenhouse Gas Emissions*, [84 Fed. Reg. 30097](#) (June 26, 2019), which related to the process of assisting Federal agencies in their consideration of greenhouse gas emissions when evaluating proposed major Federal actions in accordance with the National Environmental Policy Act and would have been considerably more relaxed under the Trump administration.
17. Orders the CEQ to review, revise, and update its final guidance entitled, *Final Guidance for Federal Departments and Agencies on Consideration of Greenhouse Gas Emissions and the Effects of Climate Change in National Environmental Policy Act Reviews*, [81 Fed. Reg. 51866](#) (August 5, 2016), which affects resource management related to greenhouse gas emissions or the consideration of mitigation measures that reduce climate change impacts that would have been more relaxed under the Trump administration.

Interior Department Temporarily Halts Federal Onshore and Offshore Oil and Gas Leasing and Drilling. In keeping with the above-noted executive actions, on January 20, Biden's Acting Secretary of the Interior Department, Scott de la Vega, issued [Order No. 3395, Temporary Suspension of Delegated Authority](#), which suspends the Bureau of Land Management (BLM) and other Interior Department bureaus from taking multiple specified actions, including "issue any onshore or offshore fossil fuel authorization, including but not limited to a lease, amendment to a lease, affirmative extension of a

lease, contract, or other agreement, or permit to drill. This does not limit existing operations under valid leases. It also does not apply to authorizations necessary to: (1) avoid conditions that might pose a threat to human health, welfare, or safety; or (2) to avoid adverse impacts to public land or mineral resources." According to Bloomberg Law, the order imposes a 60-day moratorium on issuing oil and gas leases, but is temporary and separate from Biden's moratorium on leasing activity in Alaska's Arctic National Wildlife Refuge. The 60-day review process may result in the rescission or amendment of many Trump administration actions. We will keep AAPL members updated on this process. [Read more.](#)

BLM Greater Sage-Grouse Management. On January 14, the Bureau of Land Management (BLM) announced it "concluded additional review of its land use plans for Greater Sage-Grouse habitat in seven states, issuing decisions which find that no further land use planning or environmental analysis is warranted. The decisions affirm the collaborative process begun under the leadership of Secretary of the Interior David Bernhardt to develop Sage-Grouse plans that reflect the needs of Western communities and sagebrush-steppe habitat." The BLM formally published their Records of Decision for those seven Western states on January 14 (See: *Notice of Availability of the Record of Decision for Greater Sage-Grouse Management, Colorado*, [86 Fed. Reg. 3179](#); *Notice of Availability of the Record of Decision for Greater Sage-Grouse Management, Nevada and Northeastern California*, [86 Fed. Reg. 3177](#); *Notice of Availability of the Record of Decision for Greater Sage-Grouse Management, Idaho*, [86 Fed. Reg. 3180](#); *Notice of Availability of the Record of Decision for Greater Sage-Grouse Management, Oregon*, [86 Fed. Reg. 3186](#); *Notice of Availability of the Record of Decision for Greater Sage-Grouse Management, Wyoming*, [86 Fed. Reg. 3184](#); *Notice of Availability of the Record of Decision for Greater Sage-Grouse Management, Utah*, [86 Fed. Reg. 3187](#).) According to the BLM, "The determinations are not new planning decisions. Instead, they are a determination not to amend existing land use plans and thus, are not subject to appeal or protest. They also represent the

agency's response to issues identified in an order issued in October 2019 by the U.S. District Court for the District of Idaho, which placed a preliminary injunction on the implementation of 2019 BLM Sage-Grouse plans in Idaho, Wyoming, Colorado, Utah, Nevada, northeastern California, and Oregon." [Read more.](#)

BLM Draft Desert Land Use Plan – California.

On January 14, the BLM published its *Notice of Availability of the Draft Desert Plan Amendment and Draft Environmental Impact Statement, California* ([86 Fed. Reg. 3181](#)), which releases its 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. The Draft "includes consideration of changes to the management or modification to the boundaries of 129 Areas of Critical Environmental Concern" and addresses such issues as renewable energy projects, land use, and impacts on cultural resources. The BLM must await the Environmental Protection Agency's formal posting in the Federal Register before the 90-day public comment period opens, which to date has not yet occurred. [Read more.](#)

BLM Resource Advisory Council – Idaho. On January 12, the BLM announced that the Idaho Resource Advisory Council (RAC) will hold public meetings related to land management issues on April 14 and August 11. ([86 Fed. Reg. 2451](#)) "The RAC serves in an advisory capacity to BLM and USDA Forest Service officials concerning planning and management of public land and national forest resources located, in whole or part, within the State of Idaho." The meetings are open to the public and comments may be submitted on any agenda topics. [Read more.](#)

BLM Oil and Gas Lease Sale – New Mexico.

On January 12, the BLM announced it is seeking "public input on two parcels (202.16 acres) of federal minerals proposed for the July 15, 2021, competitive oil and gas lease sale." The public scoping period will run through February 1, 2021. According to the BLM,

"This scoping process is intended to solicit public input on relevant issues, potential impacts, and alternatives that the BLM should address in an environmental assessment to be prepared in compliance with the National Environmental Policy Act. The BLM will consider all substantive comments received during the public scoping period to ensure that the potential environmental consequences are analyzed in a manner that allows the BLM to make an informed decision about the proposed competitive lease sale." [Read more.](#)

BLM Bears Ear National Monument Advisory Committee – Utah.

On January 15, the BLM announced a meeting of the Bears Ear National Monument Advisory Committee to be held virtually on March 31. ([86 Fed. Reg. 4113](#)) The Committee meeting is open to the public and agenda items will "include discussing and receiving input on Bears Ears National Monument management planning efforts" among other topics. [Read more.](#)

BLM Resource Advisory Council – Utah. On January 15, the BLM announced a meeting of the Utah Resource Advisory Council (RAC) to be held virtually on March 2. ([86 Fed. Reg. 4114](#)) The RAC will discuss various resource management planning issues and is open to the public. [Read more.](#)

Office of Natural Resources Revenue. On January 15, the U.S. Interior Department's Office of Natural Resources Revenue (ONRR) published a final rule, *ONRR 2020 Valuation Reform and Civil Penalty Rule* ([86 Fed. Reg. 4612](#)), which amends certain regulations on how ONRR "values oil and gas produced from Federal leases for royalty purposes, values coal produced from Federal and Indian leases for royalty purposes, and assesses civil penalties for violations of certain statutes, regulations, leases, and orders associated with mineral leases." Considered a victory for the former Trump administration, the rule "will lessen the amount of money oil and gas companies that drill on public lands and in public waters pay to the federal government. The rule will make changes to the way that these royalties are calculated and, according to the administration, is

expected to result in an annual decrease of \$28.9 million in royalty collections.” According to The Hill, “The industry has argued that a previous rule on how the royalties are calculated was burdensome and created uncertainties.” The rule is effective February 16, 2021. [Read more.](#)

Rights-of-Way; U.S. Fish and Wildlife Service.

On January 19, the Interior Department’s U.S. Fish and Wildlife Service (FWS) published a proposed rule, *Streamlining U.S. Fish and Wildlife Service Permitting of Rights-of-Way* (86 Fed. Reg. 5120), which proposes “to revise and streamline FWS regulations for permitting of rights-of-way by aligning FWS processes more closely with those of other Department of the Interior bureaus, consistent with applicable law and to the extent practicable. The proposed rule would require a pre-application meeting and use of a standard application, the SF-299, Application for Transportation and Utility Systems and Facilities on Federal Lands; allow electronic submission of applications; and provide FWS with additional flexibility, as appropriate, to determine the fair market value or fair market rental value of rights-of-way across FWS-managed lands. This proposed rule would reduce the time and cost necessary to determine a right-of-way’s fair market value or fair market rental value, and also reduce an applicant’s time and cost to obtain a right-of-way permit. The proposed rule would also simplify the procedures that applicants must follow to reimburse the United States for costs that FWS incurs while processing right-of-way applications and monitoring permitted rights-of-way.” The public comment period is open through March 22, 2021. [Read more.](#)

U.S. Rejoins Paris Climate Accord Under Biden.

On the day of his inauguration, President Biden (D) overturned his predecessor’s actions by informing the United Nations that the U.S. will be rejoining the Paris climate accord, which follows through on the new president’s campaign pledge to recommit to the Obama-era agreement on his first day in office. “A cry of survival comes from the planet itself, a cry that can’t be any more desperate or any more clear,” said

Biden in his inaugural address, listing “a climate in crisis” as one of the many challenges facing the country. Biden has called for putting the U.S. on a path to net-zero emissions by 2050. Known formally as the [Paris Agreement on Climate Change](#), the global initiative seeks to lower emissions, reign in fossil fuels, and promote sustainable and renewable energy projects which each country is expected to do under its own regulatory and legislative regimes. The move came alongside Biden’s commitment to [revoke the permit for the Keystone XL oil pipeline and impose a moratorium on oil and gas leasing](#) activities in the Alaska National Wildlife Refuge, as noted above. [Read more.](#)

FEDERAL – Judicial

Hydraulic Fracturing Ban; Delaware River Basin – Pennsylvania. On January 12, two Republican Pennsylvania state senators, along with the Pennsylvania Senate Republican Caucus and Damascus Township sued the Delaware River Basin Commission (DRBC) in [Yaw v. Delaware River Basin Commission](#) (Case No. 2:21-cv-00119), seeking to overturn the DRBC ban on gas drilling and hydraulic fracturing in the Delaware River basin, “claiming it has usurped the state’s legislative power by declaring a de facto moratorium on the construction and operation of wells for natural gas production in the parts of the Marcellus Shale formation encompassed by the basin.” The litigants contend that the ban “has deprived private landowners of the right to drilling royalties, and has prevented Pennsylvania from leasing public lands to the gas industry and collecting fees from gas development. The suit further argues the ban’s “deleterious effects” have “been magnified by the COVID-19 pandemic and resulting economic downturn, with the state and local governments facing significant budget shortfalls.” According to the Associated Press, the senators want the federal court to invalidate the ban, “potentially opening a sliver of northeastern Pennsylvania to what their suit describes as \$40 billion worth of natural gas.” [Read more.](#)

STATE – Legislative

Notarial Acts – Arizona. On January 20, Sen. Michelle-Ugenti Rita (R) introduced SB 1115. The bill would amend existing law to provide for electronic notarial acts provisions. [Read more.](#)

Notarial Acts – Arkansas. On January 11, Sen. Dan Sullivan (R) introduced SB 14 which would allow for certain notarial acts to be conducted remotely in case of a declared emergency in the state. [Read more.](#)

Prohibition on Oil and Gas – Florida. On January 19, Rep. Anna Eskamani (D) pre-filed HB 283 for the session commencing on March 2, 2021. The bill would prohibit oil and gas exploration and production in the state. [Read more.](#)

Hydraulic Fracturing – Florida. On January 21, Sen. Gary Farmer (D) pre-filed SB 546 for the session commencing on March 2, 2021. The bill would prohibit hydraulic fracturing in the state. [Read more.](#)

Prohibition on Oil and Gas – Florida. On January 21, Sen. Lori Berman (D) pre-filed SB 720 for the session commencing on March 2, 2021. The bill would prohibit permitting, exploration and production of oil and gas in the state. [Read more.](#)

Prohibition on Oil and Gas – Florida. On January 19, Rep. Vance Aloupis (R) pre-filed HB 333 for the session commencing on March 2, 2021. The bill prohibits granting permits for drilling of wells for oil or gas and structures intended for drilling for, or production of, oil, gas, or other petroleum products within the Everglades. [Read more.](#) Companion Senate bill SB 722 was introduced by Sen. Ana Rodriguez (R) on January 21. [Read more.](#)

Notarial Acts – Florida. On January 15, Sen. Jennifer Bradley (R) pre-filed SB 228 for the session commencing on March 2, 2021. The bill would amend existing law regarding remote and electronic notarial acts. [Read more.](#) Related House bill, HB 121, was introduced by Rep. Sam Garrison (R). [Read more.](#)

Wills; Powers of Attorney; Trust Instruments; Electronic Recording; Notarial Acts – Indiana.

On January 14, Rep. John Young (R) introduced HB 1255. The bill ([Read full bill analysis here](#)) makes numerous changes to probate law, including wills, powers of attorney, trust instruments, electronic recording, and notarial acts. [Read more.](#)

Revised Unclaimed Property Act – Indiana.

On January 5, Sen. Eric Koch (R) introduced SB 188. The bill would repeal the Unclaimed Property Act and replaces it with the Revised Unclaimed Property Act and includes sections regarding minerals and mineral proceeds. [Read more.](#)

Hydraulic Fracturing – Massachusetts. On January 6, Sen. Diana Dizoglio (D) introduced SD 21. The bill would prohibit hydraulic fracturing in the state. [Read more.](#)

Mineral Estates – Mississippi. On January 18, Rep. Randy Boyd (R) introduced HB 555. The bill provides that mineral estates separated from the surface estate would revert to the surface owner after 20 years of nonproduction. [Read more.](#)

Oil and Gas Taxes – Mississippi. On January 18, Rep. Randy Boyd (R) introduced HB 664. The bill provides that oil and gas taxes are to be paid by the interest owner and provides ad valorem tax exemptions, among other provisions. [Read more.](#)

Independent Contractors – Mississippi. On January 18, Rep. Charles Beckett (R) introduced HB 767. The bill would exempt services performed by a petroleum landman on a contractual basis from the definition of employment. The bill would define a petroleum landman as an individual performing services on a contractual basis that includes but is not limited to the following: Negotiating for the acquisition or divestiture of mineral rights; Negotiating business agreements that provide exploration for or development of minerals; Determining ownership in minerals through the research of public and private records; Reviewing the status of title, curing title defects, providing title

due diligence and otherwise reducing title risk associated with ownership in minerals or the acquisition and divestiture of mineral properties; Managing rights or obligations derived from ownership or interests in minerals; Unitizing or pooling of interests in minerals. [Read more.](#)

Mineral Estates – Mississippi. On January 18, Rep. Bob Evans (D) introduced HB 906. The bill provides that mineral estates separated from the surface estate revert to the surface owner after 10 years of nonproduction. [Read more.](#)

Regulatory Oversight – Mississippi. On January 18, Sen. Joel Carter (R) introduced SB 2648. The bill provides that the state Oil and Gas Board would have jurisdiction over carbon dioxide sequestration and permitting for certain injection wells. [Read more.](#)

Orphaned Wells – Mississippi. On January 18, Sen. Briggs Hopson (R) introduced SB 2725. The bill would remove the authority to use capital expense funds for the emergency plugging of orphaned wells. [Read more.](#)

Orphaned Wells – Mississippi. On January 15, Sen. Joel Carter (R) introduced SB 2372. The bill would extend the repeal date on the use of disbursements from the Oil and Gas Conservation Fund for the plugging of orphaned wells. [Read more.](#)

Orphaned Wells – Mississippi. On January 8, Rep. Jerry Turner (R) introduced HB 194. The bill would “extend the date of the repealer on the authority of the state oil and gas board to obtain funds from the capital expense fund for the emergency plugging of orphaned wells.” [Read more.](#)

Recording Fees – Mississippi. On January 8, Rep. Charles Beckett (R) introduced HB 145. The bill would “reduce the Chancery clerk fee for recording each oil and gas assignment per assignee per each book and page listed.” [Read more.](#)

Oil and Gas Subdivision Parcels – New Mexico. On January 19, Rep. Greg Nibert (R) introduced HB 136.

The bill would create an exception to the New Mexico Subdivision Act for parcels divided for oil or gas operations. [Read more.](#)

Fresh Water; Regulatory – New Mexico. On January 19, Sen. Antoinette Sedillo Lopez (D) introduced SB 86. The bill would prohibit the use of fresh water in oil and gas production; creates spills, leaks, and other releases penalties; and provides for the promotion of public health, among other provisions. [Read more.](#)

Water Rights – New Mexico. Rep. Christine Chandler (D) pre-filed HB 30 for the legislative session that commenced January 19. The bill would amend existing law to provide that a lease of water under a water right and subsequent use of that water shall not take effect until after the application has been approved in accordance with law. [Read more.](#)

Oil and Gas Private Right of Action – New Mexico. Rep. Georgene Louis (D) pre-filed HB 50 for the legislative session that commenced January 19. The bill provides for a private right of action related to oil and gas injury and imminent harm, economic and otherwise, under existing statutes. [Read more.](#)

Environmental Database Act – New Mexico. Rep. Gail Chasey (D) pre-filed HB 51 for the legislative session that commenced January 19. The bill would create an environmental database, accessible to the public and state agencies, which contains data from various state agencies, including locations of active oil and gas wells, locations of active state trust land leases, the locations of oil and gas pipelines, air pollution data, and other data sets. [Read more.](#)

Permit Violations – New Mexico. Rep. Christine Chandler (D) pre-filed HB 76 for the legislative session that commenced January 19. The bill would allow the denial of a permit application or revoke any permit issued pursuant to the Air Quality Control Act if the applicant or permittee has committed any of the provided list of infractions. [Read more.](#)

Royalties – North Dakota. On January 15, Sen. Brad Bekkedahl (R) introduced SB 2217. The bill would

add a new section of law regarding royalty penalties which prohibits certain postproduction costs, sets forth arms-length transaction provisions for royalties, and includes penalties. [Read more.](#)

Limited Liability Company Act – Ohio. (*Update to 7/27/20 Weekly Report*) On January 8, Gov. Mike DeWine (R) signed SB 276 into law. The Act, sponsored by Sen. Kristina Roegner (R), revises the Ohio Limited Liability Company Act (OLLCA) and replaces it with the Ohio Revised Limited Liability Company Act (ORLLCA). The Act sets forth all the new provisions for limited liability companies under Ohio law. Read the [final Ohio Legislative Service Commission detailed bill analysis here](#). The Act takes effect January 1, 2022. [Read more.](#)

Gross Production Tax – Oklahoma. Sen. Mark Allen (R) pre-filed SB 389 for the legislative session commencing February 1. The bill would reduce the gross production tax as specified. [Read more.](#)

Gross Production Tax – Oklahoma. Rep. Mark McBride (R) pre-filed HB 1831 for the legislative session commencing February 1. The bill removes a provision related to the reduction of the gross production tax. [Read more.](#)

Nuisance – Oklahoma. Rep. Mark McBride (R) pre-filed HB 1833 for the legislative session commencing February 1. The bill creates a new nuisance law and states that no action for nuisance shall be brought against oil and gas activities which has lawfully been in operation for two years or more prior to the date of bringing the action, and provides supporting provisions. [Read more.](#)

Division Orders – Oklahoma. Rep. Terry O'Donnell (R) pre-filed HB 2029 for the legislative session commencing February 1. The bill amends existing law to provide that the name, address, and tax identification number of each interest owner with a provision requiring notice of change of ownership must be included in a division order. [Read more.](#)

Income Tax; Licenses – Oklahoma. House Speaker

Charles McCall (R) pre-filed HB 2080 for the legislative session commencing February 1. The bill provides for the garnishment of delinquent income taxes owed by those licensed in the state but does not apply to a licensee who was not previously required to pay income tax or has moved to the state within the past year. The bill applies to those holding a license to “engage in a profession, occupation or business in this state.” [Read more.](#)

Royalties – Oklahoma. Rep. Anthony Moore (R) pre-filed HB 2230 for the legislative session commencing February 1. The bill creates the Royalty Standardization Act, which provides that for purposes of determining the respective rights of the owners to the proceeds due pursuant to the Production Revenue Standards Act and derived from or attributable to the production from an oil or gas well located in this state, the working interest owners shall be responsible for the costs of production; and the proceeds due owners of a royalty interest shall not be decreased, either directly or indirectly, by any costs of production. Further, the “Royalty Standardization Act shall apply to all owners and shall apply to all production occurring on or after the effective date of this act, from all producing wells in the State of Oklahoma, regardless of the date pooled, drilled or of the date of the underlying leases.” The bill states that its purpose is to “promote uniformity, standardization and simplification of royalty payments in this state, to encourage a more cooperative relationship between Oklahoma's producers and royalty owners, and to decrease the volume of litigation over royalty disputes, the provisions of the Royalty Standardization Act shall be considered a supplement to the Production Revenue Standards Act and the Energy Litigation Reform Act.” [Read more.](#)

Proceeds Payments – Oklahoma. Sen. Zack Taylor (R) pre-filed SB 1003 for the legislative session commencing February 1. The bill amends existing law to extend the required proceeds payment date for oil and gas production. [Read more.](#)

Energy Committee – Oklahoma. Sen. Zack Taylor (R) pre-filed SB 1034 for the legislative session commencing February 1. The bill removes the Oklahoma Energy Resources Board from directing the Committee for Sustaining Oklahoma's Energy Resources. [Read more.](#)

Transfer of Wells – Oklahoma. Sen. Zack Taylor (R) pre-filed SB 476 for the legislative session commencing February 1. Regarding the transfer of wells, the bill provides a new section to existing law that reads: "If it can be demonstrated that the transfer of a well or wells has been done for improper or fraudulent purpose, the Commission shall have the authority to rescind the transfer and the transferor shall remain liable for plugging costs and any additional liabilities applicable under this section." [Read more.](#)

Oil and Gas Liens – Oklahoma. Sen. Zack Taylor (R) pre-filed SB 632 for the legislative session commencing February 1. Regarding oil and gas liens, the bill adds new definitions of oil and gas rights to also include proceeds owed for oil and gas drilling and development; proceeds from the acquisition of oil and gas rights including but not limited to a lease bonus or pooling bonus; or proceeds from an unfulfilled contract or agreement for the purchase of mineral rights. [Read more.](#)

Railroad Commission Political Contributions – Texas. On January 11, Rep. Rafael Anchia (D) introduced HB 1041, which imposes certain restrictions regarding political contributions by a member of the Railroad Commission of Texas and of political contributions made in connection with the office of a commissioner. [Read more.](#)

Railroad Commission Name Change – Texas. On January 11, Rep. Rafael Anchia (D) introduced HB 1042, which would change the name of the Railroad Commission of Texas to the Texas Energy Resources Commission and also makes changes to commissioner elected terms. [Read more.](#)

Administrative Penalties – Texas. On January 11,

Rep. Rafael Anchia (D) introduced HB 1043, which amends existing law regarding penalties related to the Railroad Commission of Texas, specifically increasing penalties related to those "which pertain to safety or the prevention or control of pollution or the provisions of a rule, order, license, permit, or certificate which pertain to safety or the prevention or control of pollution and are issued under this title, the person may be assessed a civil penalty by the commission." The bill also increases penalties related to certain natural gas activities and the state water code. [Read more.](#)

Permit Applications – Texas. On January 15, Sen. Borris Miles (D) introduced SB 367, which would amend existing law regarding an application for a permit for a well adjacent to a well blowout site in certain counties. Specifically, the bill would require that an applicant for a permit to drill an oil or gas well in a county with a population of more than 750,000 disclose to the commission in the application that the applicant was the operator of an oil or gas well: (1) located at a site adjacent to the site of the proposed well; (2) drilled through or into the same formations as the proposed well is to be drilled; and (3) from which an uncontrolled release of a subterranean fluid containing oil, gas, or condensate or of a well fluid that is caused by a loss of well control occurred while the applicant operated the oil or gas well. [Read more.](#)

Tax Deduction for High-Cost Gas – Texas. *(Update to 1/11/21 Weekly Report)* On January 11, Sen. Sarah Eckhardt (D) introduced [SB 310](#) which relates "to the repeal of the temporary tax reduction for certain high-cost gas." We previously reported on House versions HB 878/HB 879, pre-filed on December 18, 2020, by Rep. Gina Hinojosa (D). Those [bills](#) relate to the phasing out of the tax reduction for high-cost gas to amend existing law by adding a September 1, 2021 deadline for applications and related processes. [Read more.](#)

Eminent Domain – Texas. On December 22, 2020, Rep. DeWayne Burns (R) introduced HB 901. The bill would amend existing property law regarding eminent domain to provide conditions for a private

entity with eminent domain authority to acquire real property for a public use and the terms for instruments of conveyance of certain easements, and their implementing procedures. [Read more.](#)

Eminent Domain; Landowner's Bill of Rights; Right-of-Way Agents – Texas. On December 22, 2020, Rep. DeWayne Burns (R) introduced HB 902. The bill updates the Landowner's Bill of Rights as it pertains to eminent domain, creates an ombudsman for landowners, and creates qualifying and continuing education requirements for Texas right-of-way agents as well as added grounds for suspension or revocation of a certificate as well as the creation of a probationary certificate. [Read more.](#)

Worker Misclassification – Virginia. On January 18, Del. Amanda Batten (R) introduced HB 2134. The bill provides that “a hiring party providing an individual with personal protective equipment in response to a disaster caused by a communicable disease of public health threat for which a state of emergency has been declared [...] shall not be considered in any determination regarding whether such individual is an employee or independent contractor.” [Read more.](#)

Electronic Notarial Acts – Virginia. On January 12, Del. Marcus Simon (D) introduced HB 2064. The bill would amend existing notary law regarding online and remote notarial acts. [Read more.](#)

Natural Resources – Virginia. On January 19, HB 1836 passed the House and has been transmitted to the Senate. Introduced by Del. Kenneth Plum (D) on January 6, the bill would change the title of the Secretary of Natural Resources to the Secretary of Natural and Cultural Resources. [Read more.](#)

Mineral and Tax Liens – Wyoming. On January 12, the Joint Minerals, Business & Economic Development Interim Committee introduced SF 41, which amends certain provisions of existing law regarding tax liens and mineral liens. [Read more.](#)

Ad Valorem Taxes – Wyoming. On January 12, the Joint Revenue Interim Committee introduced SF 45, which “changes the recipient of ad valorem taxes on mineral production from the counties to the Department of Revenue, beginning with the ad valorem tax on mineral production from calendar year 2020. Under this bill, payments to the Department of Revenue would begin on September 10, 2021.” [Read more.](#)

Probate Proceedings – Wyoming. On January 12, Sen. Cale Case (R) introduced SF 48, which makes changes to probate law by increasing certain limits on property, including mineral interests. [Read more.](#)

Ad Valorem Taxes – Wyoming. On January 12, the Joint Revenue Interim Committee introduced SF 60, which adds a new section to the Ad Valorem Taxation law regarding the “Monthly payment of ad valorem tax on gross product of mineral production.” [Read more.](#)

Severance Tax Exemption – Wyoming. On January 12, the Joint Minerals, Business & Economic Development Interim Committee introduced HB 11, which would “provide an exemption on taxes for the production of crude oil and natural gas” as specified. [Read more.](#)

Electronic Filing of Court Documents – Wyoming. On January 12, the Joint Judiciary Interim Committee introduced SF 22, which would require “acceptance of electronic filings in courts without an electronic filing system.” [Read more.](#)

Notarial Acts – Wyoming. On January 12, the Joint Corporations, Elections & Political Subdivisions Interim Committee introduced SF 29, which would enact the Wyoming Revised Uniform Law on Notarial Acts and includes provisions related to electronic notarial acts, the performance of and requirements of notarial acts, certificates of notarial acts, notary qualifications and related fees. [Read more.](#)

STATE – Regulatory

State Land Office COVID Lease Extensions – New Mexico. On December 17, 2020, the New Mexico State Land Office (SLO) announced it is extending their temporary COVID extension program for an additional three months, into March 2021, recognizing that ongoing disruptions in oil and gas development logistics still exist due to the pandemic. According to the SLO, three-month COVID lease extensions are available to lessees and SLO “may grant the extension after a review of whether the lease is in good standing. The SLO will verify whether a bond is on file, whether royalties are up to date, and whether the lease is currently active. The SLO will verify whether open spills or compliance actions exist. One three-month extension is available. The Commissioner may grant an additional extension, in her sole discretion, upon a showing of good cause.” [Read more.](#)

EPA Approves Hydraulic Fracturing Wastewater Plan – Texas. On January 15, the U.S. Environmental Protection Agency (EPA) announced that it has approved Texas’ request to administer the National Pollutant Discharge Elimination System program for discharges from produced water, hydrostatic test water, and gas plant effluent or oil and gas discharges within the state. The Texas Commission on Environmental Quality (TCEQ) will take over responsibility of permitting authority for the discharges of oil and gas activities, pipelines and natural gas processing plants that formerly were under the jurisdiction of the Railroad Commission of Texas. The EPA approval came over the objections of environmental groups and delegates authority to the TCEQ, which allows the agency assume oversight of the discharges of wastewater from oil and gas drilling from the Texas Railroad Commission. “After a rigorous review process, we are pleased to announce that the state of Texas will take responsibility of this Clean Water Act program,” said EPA Region 6 Administrator Ken McQueen. “This action will help Texas administer a process for the regulated community without unnecessary and duplicative permitting processes and ensure the

best environmental and economic outcomes.” [Read more.](#)

STATE – Judicial

Rule of Capture; Trespass – Pennsylvania. (*Update to 1/27/20 Weekly Report*) As an update to our 2020 reporting on the pivotal state rule of capture/trespass case, [Briggs v. Southwestern Energy Production Co.](#) (Case No. 63 MAP 2018), on December 8, 2020, the Pennsylvania Superior Court addressed the remaining issue on remand from the Pennsylvania Supreme Court regarding whether there had been physical intrusion “because the pleadings in the trial court did not clearly allege there had been a physical intrusion,” so the Supreme Court remanded the case back to the Superior Court for additional proceedings on that issue. According to law firm Gordon Rees Scully Mansukhani, LLP, “[f]ollowing remand, the Superior Court granted each party permission to file a supplemental brief in support of their respective positions. On December 8, 2020, following careful review, the Superior Court [affirmed the trial court’s Order](#) granting summary judgment in favor of Southwestern.” ([Read a detailed analysis of Briggs and the Superior Court’s order](#)) For background, on January 22, 2020, the Pennsylvania Supreme Court delivered a victory for producers with the Court overturning a lower court ruling that could have opened a floodgate of trespass claims about hydraulic fracturing in the state’s gas-rich Marcellus Shale. In *Briggs*, the Pennsylvania Supreme Court held that the “rule of capture” applies to hydraulic fracturing in the state, meaning oil and gas companies cannot be held liable for underground trespass when their production technique drains hydrocarbons from adjacent land. In this case, a Pennsylvania family claimed a producer trespassed on their property by extracting gas from an 11-acre parcel of family-owned land by drilling and hydraulically fracturing a well sited on a neighboring property. The issue before the Supreme Court was whether the rule of capture applied to oil and gas produced from wells that were completed using hydraulic fracturing and preclude trespass liability for allegedly draining oil or gas from under

nearby property, where the well is drilled solely on and beneath the driller's own property and the hydraulic fracturing fluids are injected solely on or beneath the driller's own property. At trial, the Superior Court drew a distinction between hydraulic fracturing and conventional drilling, holding the rule did not apply to prohibit a trespass claim by an adjoining unleased landowner against a producer when that producer utilizes hydraulic fracturing for a horizontal well. The appellate Superior Court overturned that ruling, and the Pennsylvania Supreme Court affirmed in favor of the producer. The state Supreme Court held "that the rule of capture remains extant in Pennsylvania, and developers who use hydraulic fracturing may rely on pressure differentials to drain oil and gas from under another's property, at least in the absence of a physical invasion." Further, the Court concluded that "insofar as the panel's decision may be construed to suggest that a natural-versus-artificially-induced-flow litmus should be employed to determine whether the rule of capture applies in a given situation, that standard rests on a false distinction and is disapproved." [Read more.](#)

INDUSTRY NEWS FLASH

► Texas oil and gas industry pays out billions.

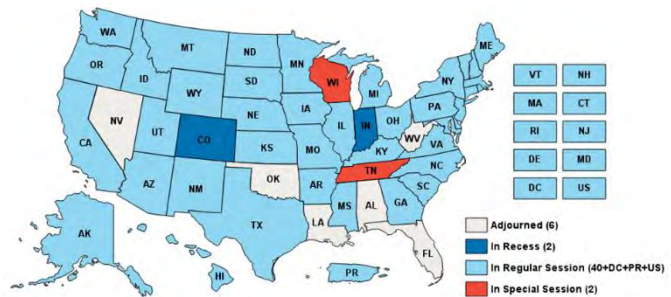
Even during a difficult year, the Texas oil and gas industry paid \$13.9 billion in taxes and state royalties in Fiscal Year 2020, according to the Texas Oil and Gas Association. This falls a few billion short, however, of the record-setting \$16.3 billion in taxes and royalties paid in 2019. [Read more.](#)

► First successful electric grid-powered hydraulic fracturing operation reported.

On January 14, Halliburton reported "it has deployed the industry's first successful electric grid-powered hydraulic fracturing operation." Halliburton has deployed the technology in the Permian Basin and "pointed out that it has completed nearly 340 stages across multiple wells, adding the utility-powered frac pumps have demonstrated 'consistent superior performance.'" [Read more.](#)

LEGISLATIVE SESSION OVERVIEW

States in Session



Session Notes (by date): Alaska, Arizona, Arkansas, California, Connecticut, Delaware, Georgia, Hawaii, Idaho, Illinois, Iowa, Kansas, Kentucky, Maine, Maryland, Massachusetts, Michigan, Minnesota, Mississippi, Missouri, Montana, Nebraska, New Hampshire, New Jersey, New Mexico, New York, North Carolina, North Dakota, Ohio, Oregon, Pennsylvania, Rhode Island, South Carolina, South Dakota, Texas, Utah, Vermont, Virginia, Washington, and Wyoming are in regular session. The District of Columbia Council, Puerto Rico and the U.S. Congress are also in session.

The following will convene their 2021 legislative sessions on the dates provided: **Nevada** and **Oklahoma** (February 1); **Alabama** (February 2); **West Virginia** (February 10) and **Florida** (March 2).

The **Colorado** legislature recessed on January 15 after passing state COVID-19 relief, reports [The Gazette](#). The legislature will return on February 16.

The **Indiana** legislature recessed on January 19 and reconvened on January 25 out of an abundance of caution as the nation braces for possible violent protests, reports [The Journal Gazette](#).

Tennessee convened for a special session on January 19 to focus on education and learning loss in the state, reports the [Tennessean](#). This special session was expected to end on January 22, reports [WSMV](#).

Wisconsin convened for a special session on January 19 to modernize the state unemployment system. This special session adjourned immediately and reconvened on January 21, reports the [Wisconsin State Journal](#).

Signing Deadlines (by date): **New York** Democratic Gov. Andrew Cuomo has until February 5 to act on legislation or it is pocket vetoed. **District of Columbia** Democratic Mayor Muriel Bowser has 10 days from presentment, not including weekends or holidays, 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. **Massachusetts** Republican Gov. Charlie Baker has 10 days from presentment to sign or veto legislation or it becomes law without signature. **Michigan** Democratic Gov. Gretchen Whitmer has 14 days from presentment to sign or veto legislation or it is pocket vetoed. **New Jersey** Democratic Gov. Phil Murphy has 45 days from presentment to act on legislation or it becomes law without signature.

Interim Committee Hearings: The following states are currently holding 2020 interim committee hearings: [Alabama](#), [Louisiana](#), [Nevada](#), [Oklahoma House](#) and [Senate](#) and [West Virginia](#).

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

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GOVERNMENTAL AFFAIRS WEEKLY REPORT

Weekly Highlights At-A-Glance

FEDERAL – Legislative

S. 58 – West Coast Protection Act of 2021. On January 27, Sen. Diane Feinstein (D-CA) introduced S. 58, known as the [West Coast Ocean Protection Act of 2021](#). The bill would “permanently ban oil and gas drilling in federal waters off the coast of California, Oregon and Washington.” Sen. Feinstein’s bill would make Biden’s temporary moratorium permanent and prevent future administrations from overturning it without an act of Congress. [Read more.](#)

FEDERAL – Regulatory

Tribal Lands Presidential Memorandum. On January 26, President Biden issued a [Memorandum on Tribal Consultation and Strengthening Nation-to-Nation Relationships](#) which calls for “Tribal Consultation and Strengthening Nation-to-Nation Relationships.” The Memorandum directs the heads of all Executive departments and agencies to report within 90-days detailed plans of action regarding “engaging in regular, meaningful, and robust consultation with Tribal officials in the development of Federal policies that have Tribal implications.” According to The Hill, “The order isn’t a large departure from current federal policy requiring consultation with tribes, but tribal leaders have complained for decades that they’ve been sidelined or silenced by federal agencies.” The results of the Memorandum directives may affect the Bears Ears and Grand Staircase-Escalante monument areas as well as drilling on Tribal lands. [Read more.](#)

Indefinite Federal Oil and Gas Moratorium. (Update to 1/25/21 Weekly Report) On January 27, President Biden signed an executive order, [Executive Order on Tackling the Climate Crisis at Home and Abroad](#), which mandates a “pause” on new onshore and

offshore oil and gas leasing on federal lands, “to the extent consistent with applicable law,” while a comprehensive review of oil and gas permitting and leasing is conducted. According to the Oil & Gas Journal, “There is no time limit on the review, which means the president’s moratorium on new leasing is indefinite. The order does not restrict energy activities on lands the government holds in trust for Native American tribes, the White House said. Existing leases, unaffected by the moratorium, can provide oil and gas for decades to come, but in diminishing amounts as fields are drained down. The length of the ‘pause’ may determine whether U.S. production is significantly reduced at some point in the future.” [Read more.](#) The order also details other actions such as setting a goal to conserve 30 percent of federal lands and oceans by 2030; creates a cabinet-level agency task force to develop and facilitate the deployment of a government-wide approach to address climate change; creates new executive positions, such as a National Climate Advisor, led by former Obama Environmental Protection Agency Administrator Gina McCarthy; addresses oil and gas well plugging; and creates an “environmental justice” program, among other provisions. ([Read the Presidential Fact Sheet here.](#)) This hastily issued order came on the heels of the Acting Secretary of Interior’s [Order No. 3395](#) issued on Biden’s first day in office, and as reported in the last AAPL Governmental Affairs Report, imposed a 60-day moratorium on federal oil and gas leasing and permitting, for which numerous lawmakers objected. For example, on January 25, newly-elected New Mexico congresswoman, Rep. Yvette Herrell (R-NM) [delivered a letter to New Mexico Gov. Michelle Lujan Grisham \(D\)](#) regarding the recent move and its catastrophic impact on state revenues and energy independence. “The oil and gas industry is the lifeblood of our state’s economy,”

wrote Herrell. "If banned today, New Mexico stands to lose more than 60,000 jobs by 2022. The loss of these good-paying, family supporting jobs would devastate entire communities and have grave long-term consequences for our state." Herrell noted that "Royalty payments and taxes on the oil and gas industry account for more than a third of the state's annual budget. The state's K-12 public education system alone received more than \$1 billion in funding from the oil and gas industry last year, which equates to \$60,062 per teacher and \$3,788 per student." [Read more.](#) Biden's broad-based January 27 order also addresses the "climate crisis" by stating, "We have a narrow moment to pursue action at home and abroad in order to avoid the most catastrophic impacts of that crisis and to seize the opportunity that tackling climate change presents. Domestic action must go hand in hand with United States international leadership, aimed at significantly enhancing global action." Apart from the leasing pause, the order would "identify steps through which the United States can promote ending international financing of carbon-intensive fossil fuel-based energy while simultaneously advancing sustainable development and a green recovery." The order also states "heads of agencies shall identify for the Director of the Office of Management and Budget and the National Climate Advisor any fossil fuel subsidies provided by their respective agencies, and then take steps to ensure that, to the extent consistent with applicable law, Federal funding is not directly subsidizing fossil fuels. The Director of the Office of Management and Budget shall seek, in coordination with the heads of agencies and the National Climate Advisor, to eliminate fossil fuel subsidies from the budget request for Fiscal Year 2022 and thereafter." However, any attempts to reign in supposed subsidies would have to be effectuated through an Act of Congress and Biden publicly stated that his administration will soon be sending legislation to Congress on this issue. In response to the above-noted drastic and misguided policy actions by the new administration, AAPL immediately delivered a letter to the Biden administration on behalf of our members clearly stating our opposition. ([Read the AAPL President's](#)

[letter here.](#)) Many other industry groups have also publicly expressed their opposition to the President's alarming actions. [Read more.](#)

Republican Lawmakers Demand Response from Interior Department on Executive Orders.

Related to the above item, on February 4, Republican lawmakers from the [House Natural Resources Committee delivered a letter to Interior Department Acting Secretary de la Vega](#) demanding a response by February 18 to provide information to the committee on the economic impacts of President Biden's moves to pause new oil and gas leasing on federal lands, as well as his cancellation of the Keystone XL Pipeline. "We are already seeing the harmful, long-term consequences of these abrupt orders," wrote the legislators. "With a high level of anticipated damages to the American worker, industry, and consumer, it is imperative that due diligence, not arbitrary and capricious decisions, prevail prior to implementing these policies." The letter contains a detailed list of documents and records that must be produced by the Interior Department by the deadline date. [Read more.](#)

Energy Department Confirmation Hearing. In light of Biden's sweeping executive actions, on January 27, Republican lawmakers grilled Energy Secretary nominee, former Gov. Jennifer Granholm (D-MI), on Biden's climate agenda. Sen. John Barrasso (R-WY) called out the new administration's moves, saying Obama "went on a regulatory rampage" to slow energy production and there were worries the Biden administration would do the same. [Read more.](#) In her testimony, Granholm took a more conciliatory tone regarding the oil and gas industry. "If we are going to get to net carbon zero emissions by 2050, we cannot do it without coal, oil, gas being part of the mix," said Granholm. The nominee also said she did not believe fossil fuels should be completely taken out of the country's energy portfolio. [Read more.](#)

Republican Senators Oppose Biden's Attack on Oil and Gas Industry. On January 28, 26 Republican Senators [sent a letter to President Biden](#) to "express

their opposition to his recent actions on fossil fuels, including revoking a permit for the Keystone XL pipeline and pausing the issuance of new oil and gas leases on public lands and waters.” The lawmakers also requested a meeting with the new president to discuss his recent executive orders targeting the oil and gas industry. [Read more.](#)

Lending Discrimination Against the Oil and Gas Industry. *(Update to 8/10/20 Weekly Report)*

In breaking news, the Office of the Comptroller of the Currency (OCC) announced on January 28 that it is “shelving a controversial rule meant to prevent banks from rejecting corporate customers based solely on their industry. The OCC announced that it would wait to publish its ‘Fair Access’ rule in the Federal Register until a full-time comptroller can review it, preventing it from taking effect until President Biden’s eventual nominee assumes office.” [Read more.](#) This sudden reversal of what had been a late-term victory for the Trump administration and was set to take effect on April 1, 2021 comes just days after the OCC finalized the rule in a January 14 release, [Fair Access to Financial Services](#), which was to provide fair access to lending capital for the oil and gas industry, as well as other industries. The rule, now pending, makes it illegal for any bank regulated by the OCC with more than \$100 billion in assets to reject a customer for reasons other than financial risk. “As Comptrollers and staff in previous administrations have made clear in speeches, guidance, and testimony, banks should not terminate services to entire categories of customers without conducting individual risk assessments,” said then outgoing Acting Comptroller Brian Brooks. The OCC first proposed its fair access rule on November 19, 2020, with praise from Republicans who criticized several major banks that dropped clients in the firearm industry or pledged to stop funding Arctic drilling projects. [Read more.](#) For background, the rule is an outgrowth of pushback from numerous lawmakers and industry claiming discrimination against lending to the fossil fuel industry. On July 24, [Brian P. Brooks, Acting Comptroller of the Currency for the U.S. Office of the Comptroller of the Currency \(OCC\) responded](#) to U.S. Senator Dan Sullivan (R-AK)

regarding the issue. Sullivan and others had been pushing Trump administration officials to punish banks for limiting fossil fuel lending. [On June 16, the Alaska delegation sent a letter](#) to then Federal Reserve Chairman Jerome Powell and Vice Chair Randy Quarles, Acting U.S. Comptroller of the Currency Brian P. Brooks, and Chairwoman Jelena McWilliams of the Federal Deposit Insurance Corporation, urging these officials to consider regulatory action and oversight of large American financial institutions that are “openly discriminating against some of the most economically disadvantaged regions of America” by refusing financing of domestic energy projects, particularly in Alaska and the Arctic. The Alaska delegation argued that the banks are harming a foundation of the U.S. economy at a time when businesses, workers, and families are already reeling from the economic fall-out of the COVID-19 pandemic. “It is clear that these policies are overtly political and actually meant to appease extreme activists’ calls for fossil fuel divestment and to discriminate against certain sectors of the energy industry and projects in specific geographical areas,” said the legislators. Since November 2019, Citigroup, Goldman Sachs, JP Morgan, Morgan Stanley, and Wells Fargo have announced policies to stop lending to new oil and gas projects in the Arctic, including the 1002 Area of the Arctic National Wildlife Refuge. The letter writers questioned whether these policies violate multiple federal laws. In his response, Brooks wrote, “Oil is the most actively traded commodity in the world. Given the industry’s importance and ubiquity in our daily lives, I am skeptical of claims that the sector poses a ‘reputational risk’ to the banks that serve it.” Brooks said the OCC would analyze whether certain decisions on oil and gas lending “violate any duty or obligation under federal laws.” He specifically cited the Dodd-Frank Act mandate that the OCC ensure “fair access to financial services,” adding that “the OCC will examine the possibility of issuing regulations defining fair access to provide clarity to banks and customers alike.” [Read more.](#)

Taking of Migratory Birds; U.S. Fish and Wildlife Service. *(Update to 1/11/21 Weekly Report)* On

February 3, the Biden administration halted the Trump administration's Migratory Bird rule from taking effect as scheduled for February 8. The rule has been flagged for regulatory review and under existing procedures may take as long as 45 days to complete and will include a public comment period. [Read more](#). For background, on January 7, the U.S. Fish and Wildlife Service published its final rule, *Regulations Governing Take of Migratory Birds* ([86 Fed. Reg. 1134](#)), which specifies that the prohibitions on harm to migratory birds under the Migratory Bird Treaty Act will only apply to deliberate, rather than incidental, harm. The push for this rule by the Trump administration had been lauded by industry groups and long-awaited. According to the Oil and Gas Journal, "The rule will at least temporarily reduce the risk of litigation for oil companies whose oil waste pits can kill birds." The final rule was intended to clarify that the U.S. Fish and Wildlife Service "will not prosecute landowners, industry and other individuals for accidentally killing a migratory bird. This opinion has been adopted by several courts, including the U.S. Court of Appeals for the Fifth Circuit," said then Interior Secretary David Bernhardt in an announcement of the rule. [Read more](#). On November 27, 2020, the U.S. Fish and Wildlife Service published its [Notice of Availability of its Final Environmental Impact Statement regarding Migratory Birds](#) as a result of legal challenges and which "provides responses to substantive comments." (See also [85 Fed. Reg. 76077](#).) This came after the U.S. District Court for the Southern District of New York struck down a 2017 Interior Department legal opinion that the Trump administration relied upon for an easing of regulations under the Migratory Bird Treaty Act in an August 11, 2020 ruling. That ruling would have held companies – such as those in the oil and gas industry – liable for the killing of migratory birds only if the acts were "intentional" rather than "incidental." In consolidated cases, [Natural Resources Defense Council v. U.S. Dept. of the Interior](#) (Case No. 1:18-cv-04596-VEC), the Court held that the Migratory Bird Treaty Act makes it unlawful to kill birds "by any means whatever or in any manner" and thus the administration's interpretation and relaxing of

the meaning could not be squared with the plain language of the statute. The Interior Department criticized the court's ruling, saying it "undermines a commonsense interpretation of the law and runs contrary to recent efforts, shared across the political spectrum, to de-criminalize unintentional conduct." [Read more](#). The final published rule was an outgrowth of that court opinion and a victory for the outgoing Trump administration. [Read more](#).

Office of Natural Resources Revenue Annual Penalty Increases. On February 2, the Interior Department's Office of Natural Resources Revenue (ONRR) published its final rule, *Inflation Adjustments to Civil Monetary Penalty Rates for Calendar Year 2021* ([86 Fed. Reg. 7808](#)), which sets the modest annual ONRR penalties adjustment for inflation. The rule is effective immediately. [Read more](#).

Independent Contractors; U.S. Department of Labor – Washington, DC. (*Update to 1/11/21 Weekly Report*) On February 5, the Biden administration published a notice, *Independent Contractor Status Under the Fair Labor Standards Act: Delay of Effective Date* ([86 Fed. Reg. 8326](#)), which delays the effective date of the Trump administration's independent contractor rule to at least May 7, 2021, while it reviews the rule and solicits public comments. The rule originally had an effective date of March 8, 2021, but the timeline is now in limbo. The new public comment period is open through February 24. [Read more](#). For background, on January 7, the Trump administration's U.S. Department of Labor (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 is expected to clarify how independent contractor status is determined and may 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 outgoing Labor Secretary Eugene Scalia. [Read more.](#)

Biden Ends Labor Department Wage and Hour Program. On January 28, President Biden ended a Trump-era initiative that encouraged businesses to self-report wage-and-hour violations to the U.S. Department of Labor (DOL) in return for protection against further legal liability. The Payroll Audit Independent Determination program allowed employers “to review their pay practices, report violations of the Fair Labor Standards Act (FLSA), and then work with DOL’s Wage and Hour Division (WHD) to correct mistakes and get workers properly paid.” Bloomberg Law reports Biden’s move as “an early signal of a stricter enforcement posture.” The DOL’s Wage and Hour Division launched the pilot program in 2018, “a move that some management-side lawyers welcomed as a method to make workers whole while safeguarding their clients from private litigation and additional back-wage penalties.” [Read more.](#)

FEDERAL – Judicial

Forced Pooling – Colorado. In a victory for the industry, on February 1, in *Wildgrass Oil and Gas Committee v. Colorado* (Case No. 20-1151), the U.S. Court of Appeals for the Tenth District, on appeal from the U.S. District Court for the District of Colorado, affirmed the lower court decision regarding a challenge to a Colorado Oil and Gas Conservation Commission (COGCC) proceeding granting Extraction Oil & Gas, Inc.’s application to pool mineral interests owned by Wildgrass members. The Broomfield group had claimed the hearing violated the group’s due process rights because the

COGCC hadn’t provided enough time to present its case, erroneously denied discovery requests, and didn’t say what information it would consider to determine if the leasing terms were reasonable. The appellate court found the lower court did not abuse its discretion in dismissing the claims when the litigants may have brought their challenge of state regulatory activity in state court rather than federal court. [Read more.](#)

EPA Science Transparency Rule – Montana. On February 1, the U.S. District Court for the District of Montana ruled in favor of environmentalists who challenged the Trump administration’s eleventh hour “Secret Science” rulemaking by granting the Biden administration’s request to vacate the rulemaking. According to the court in [Environmental Defense Fund v. U.S. Environmental Protection Agency](#) (Case No. 4:21-cv-00003-BMM), “Defendants explain that in light of the Court’s conclusion that the Final Rule constitutes a substantive rule, the Environmental Protection Agency [EPA] lacked authorization to promulgate the rule pursuant to its housekeeping authority, which is the only source of authority identified in the Final Rule.” Under federal regulations, a substantive rule that violates federal law in making the contentious rule may not take effect immediately upon its publication in the Federal Register, as occurred here, but rather must observe the 30-day waiting period before becoming effective. “Based on the Court’s conclusion that the Final Rule is a substantive rule, the sole source of authority for the rule’s promulgation cannot support the rulemaking,” according to an EPA statement. The court’s order sends the rule back to the EPA for review. For background, on January 6, the Trump administration’s EPA published a final rule, *Strengthening Transparency in Pivotal Science Underlying Significant Regulatory Actions and Influential Scientific Information* ([86 Fed. Reg. 469](#)), which will require science researchers to disclose the raw data involved in their public health studies before the EPA can rely upon their conclusions. The rule will apply a new set of standards for “dose-response studies” which evaluate how much a person’s exposure to a substance increases the risk of harm.

The rule has been lauded by manufacturing industries and energy producers who claimed environmental activists push “junk science” to set the regulatory agenda. [According to then-EPA Administrator, Andrew Wheeler](#), “the work of the Environmental Protection Agency—to protect human health and the environment—shouldn’t be exempt from public scrutiny. This is why we are promulgating a rule to make the agency’s scientific processes more transparent. Too often Congress shirks its responsibility and defers important decisions to regulatory agencies. These regulators then invoke science to justify their actions, often without letting the public study the underlying data. Part of transparency is making sure the public knows what the agency bases its decisions on. When agencies defer to experts in private without review from citizens, distinctions get flattened and the testing and deliberation of science is precluded.” [Read more](#). The rule focuses on “dose-response studies” that “show how increasing levels of exposure to pollution, chemicals and other substances impact human health and the environment rather than all studies. It would allow the administrator to make an exception for any study they deem important.” [Read more](#).

Biden’s Federal Oil and Gas Leasing Moratorium – Wyoming. In response to President Biden’s indefinite pause on federal oil and gas leasing (see [coverage above](#)), the Western Energy Alliance immediately filed a federal lawsuit to challenge the action. On January 27, in [Western Energy Alliance v. Biden](#) (Case No. 0:21-cv-00013), a petition for review was filed 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.” We will keep AAPL members updated as the case progresses. [Read more](#).

Dakota Access Pipeline – Washington, DC. (*Update to 8/10/20 Weekly Report*) On January 6, the U.S. Court of Appeals for the District of Columbia upheld a lower court’s decision regarding the Dakota Access Pipeline (DAPL) in that the U.S. Army Corps of Engineers violated federal environmental laws and will now require a full environmental impact statement (EIS) to study the risks the controversial oil infrastructure poses to the Standing Rock Sioux Tribe. ([Read the decision here](#).) The EIS will examine risks of an oil spill and evaluate alternative routes that do not impose risks on the Tribe. The latest order, while vacating easements granted for the pipeline construction to cross federally owned land, does not immediately shut down the pipeline. [Read more](#). For background, on August 5, 2020, the same court gave a reprieve to the court-ordered shutdown of the DAPL. Despite a lower district court calling for its immediate shutdown by August 5, 2020, the appellate court, however, ruled that the lower court did not have the “findings necessary” for such a move. [As reported by The Hill](#), “It’s now up to the Army Corps of Engineers to decide whether to shut down the pipeline and if it doesn’t do so, the matter will return to the lower court.” In the original case, [Standing Rock Sioux Tribe v. U.S. Army Corps of Engineers](#) (Case No. 16-1534), the U.S. District Court for the District of Columbia held that the U.S. Army Corps of Engineers violated the National Environmental Policy Act (NEPA) when it granted the easement to construct the pipeline under Lake Oahe (which is a large reservoir lying behind a dam on the Missouri River and stretching between North and South Dakota). The Court held that NEPA required the Army Corps of Engineers to produce an

Environmental Impact Statement (EIS) for the easement application, rather than only the Environmental Assessment that was completed. Judge James Boasberg ruled that the pipeline, which has been in operation since 2017, should be turned off until the Corps completes an EIS. This process is expected to take 13 months. In sum, the Court held that “given the seriousness of the Corps’ NEPA error, the impossibility of a simple fix, the fact that Dakota Access did assume much of its economic risk knowingly, and the potential harm each day the pipeline operates, the Court is forced to conclude that the flow of oil must cease. Not wishing to micromanage the shutdown, it will not prescribe the method by which DAPL must achieve this. The Court will nonetheless require the oil to stop flowing and the pipeline to be emptied within 30 days from the date of this Opinion and accompanying Order.” Industry players and analysts also weighed in on the July decision. “This court ruling will create major obstacles for producers in North Dakota, who’ve been struggling to rebound,” said Sandy Fielden, director of research for Morningstar, Inc. The buyers of Bakken crude, he said, will simply turn elsewhere for supplies once the pipeline dries up. Phillips 66, which owns a stake in the pipeline, said it was disappointed in the court ruling. “The negative impacts resulting from this court’s decision to markets, customers, and jobs up and down the energy value chain will inflict more damage on an already struggling economy and jeopardize our national security,” said spokesman Dennis Nuss. [Read more.](#)

STATE – Legislative

Leasing – Alaska. On January 29, the Senate Rules Committee (R) at the request of the governor introduced SB 2062. The bill “removes an artificial barrier to allowing the Division to offer leases for oil and gas exploration in a small portion of the Cook Inlet, adjacent to the current leasing program.” [Read more.](#)

Hydraulic Fracturing – Arizona. On January 25, Rep. Andres Cano (D) introduced HB 2199. The bill would

prohibit hydraulic fracturing in the state but has little to no chance of advancing in the Republican-controlled legislature. [Read more.](#)

Hydraulic Fracturing – Arizona. On January 28, Rep. Myron Tsosie (D) introduced HB 2520. On February 2, companion Senate bill [SB 1688](#) was introduced by Sen. Juan Mendez (D). The bills would prohibit hydraulic fracturing in the state but have little to no chance of advancing in the Republican-controlled legislature. [Read more.](#)

Notaries Public – Arkansas. On February 1, Rep. Clint Penzo (R) introduced HB 1367. The bill provides for remote, electronic notarial acts and retroactive effect in case of an emergency, such as a pandemic. [Read more.](#)

Oil and Gas Liens – Arkansas. On January 26, Rep. Stu Smith (R) introduced HB 1273. The bill would establish 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. [Read more.](#)

Notarial Acts – Illinois. On February 3, Sen. Linda Holmes (D) introduced SB 97. The bill would amend existing law to provide for remote, electronic notarial acts and related application and examination requirements. [Read more.](#)

Notarial Acts – Kansas. On January 28, the Senate Judiciary Committee (R) introduced SB 106. The bill would revise existing notarial law to adopt the Revised Uniform Law on Notarial Acts, and provides for remote, electronic notarial acts. [Read more.](#)

Independent Contractors – Kansas. On February 1, the House Committee on Commerce, Labor and Economic Development (R) introduced HB 2196.

The bill amends existing employment law to specifically protect independent contractor landmen by providing that landmen providing services on a contractual basis are not considered employees. [Read more.](#)

Hydraulic Fracturing – Maryland. In a favorable action, HB 196 was withdrawn by its sponsor after receiving a negative committee report by the House Environment and Transportation Committee on February 4, which kills the bill. The measure was just introduced on January 27 by Del. Julian Ivey (D) and would have prohibited hydraulic fracturing in the state, or the export of oil and natural gas produced by hydraulic fracturing. [Read more.](#)

State Oil and Gas Board – Mississippi. On January 27, Rep. Brent Powell (R) introduced HB 1037. The bill would replace the Mississippi Commission on Environmental Quality and the Mississippi Environmental Permit Board with the state Oil and Gas Board for jurisdiction and authority over sequestration of carbon dioxide. [Read more.](#)

Notarial Acts – Missouri. On February 2, Rep. Mary Elizabeth Coleman (R) introduced HB 1013. The bill provides for remote, electronic notarial acts and related procedures. [Read more.](#)

Subsurface Rights – Missouri. On January 27, Sen. Dan Hegeman (R) introduced SB 439. The bill provides that “an action to quiet title involving subsurface rights to real property, failure by any person claiming to hold the subsurface rights, other than the surface owner of the real property, to exercise the subsurface rights for a period in excess of 20 years shall create a rebuttable presumption that the subsurface rights have been abandoned by such person in favor of the surface owner.” [Read more.](#)

Hard Rock Mining – Montana. On January 21, SB 53, sponsored by Sen. Jeff Welborn (R), passed the Senate and has been transmitted to the House. The bill provides the Department of Environmental Quality hard rock mining program the authority to apply improved permitting and regulatory actions

to rock product mining facilities (dimensional stone quarries, rock pickers, and others) by streamlining the permitting process and improving the regulatory framework for such mining. [Read more.](#)

Dominant Estates – Nebraska. On January 20, Sen. Mike Flood introduced LB 650. The bill addresses carbon dioxide storage and sets provisions regarding reservoir estates and the priority of mineral estates and subsurface use. [Read more.](#)

Hydraulic Fracturing – New Mexico. On January 31, Sen. Antoinette Sedillo Lopez (D) introduced SB 149. The bill would prohibit the issuance of new hydraulic fracturing permits and sets certain reporting requirements. This is a reintroduction of a bill that failed in last year’s session. [Read more.](#)

Severance Tax – New Mexico. On January 25, Rep. Larry Scott (R) introduced HB 181. The bill provides “the tax on carbon dioxide shall be zero percent until December 31, 2030 for a qualified enhanced recovery project that involves the injection of captured carbon dioxide in the process of displacing oil and other liquid hydrocarbons that is demonstrated to sequester the carbon dioxide pursuant to rules promulgated by the department.” [Read more.](#)

Federal Oil and Gas Development – North Dakota. On January 28, Rep. Chuck Damschen (R) introduced HCR 3027. This House Concurrent Resolution urges President Biden “to continue oil development on federal land and on federal minerals.” [Read more.](#)

Tribal Lands; Taxation – North Dakota. On January 25, Sen. Jordan Kannianen (R) introduced SB 2319. Regarding tribal lands, the bill adds a new provision regarding taxation to include that “[w]ells located within the exterior boundaries of the reservation” includes wells with one or more horizontal laterals that penetrate the reservation. [Read more.](#)

Oil Extraction Tax Credit – North Dakota. On January 25, Sen. Corey Mock (D) introduced SB

2328 which relates to a tax credit for oil produced from a well site using an onsite flare mitigation system and provides provisions for the credit. [Read more.](#)

Well Bonds; Plugging – North Dakota. On January 25, Sen. Tim Mathern (D) introduced SB 2339. The bill amends existing law to require for wells covered by a blanket bond, the wells be placed on a single-well bond in an amount equal to the cost of plugging the well and reclaiming the well site. [Read more.](#)

Notarial Acts – Oklahoma. On February 1, Sen. Brent Howard (R) introduced SB 916. The bill amends existing law to provide for remote, electronic notarial acts. [Read more.](#)

Independent Contractors – Oklahoma. On February 1, Sen. Micheal Bergstrom (R) introduced SB 380. The bill would create The Uniform Worker Classification Act “to bring clarity, certainty and uniformity under the laws of this state to differentiate employees from independent contractors in employment and to impose objective and uniform standards for making that distinction” and which provides criteria for independent contractor determination. [Read more.](#)

Nuisance – Oklahoma. (*Update to 1/25/21 Weekly Report*) Sen. Julie Daniels (R) has introduced Senate companion bill, [SB 467](#) for the session commenced on February 1. Rep. Mark McBride (R) already pre-filed the House version, HB 1833, which creates a new nuisance law and states that no action for nuisance shall be brought against oil and gas activities which has lawfully been in operation for two years or more prior to the date of bringing the action, and provides supporting provisions. [Read more.](#)

Hydraulic Fracturing – Pennsylvania. On January 29, Rep. Mary Louise Isaacson (D) introduced HB 353. The bill would require that well operators add tracer substances directly to fracking fluids before the fluids are used in hydraulic fracturing operations. “The addition of tracer substances would allow for the identification of fluids used by natural gas well

operators which, in turn, would help regulators identify the party responsible for related water quality impairment.” [Read more.](#)

Notarial Acts – South Dakota. On February 3, Sen. David Wheeler (R) introduced SB 193. The bill provides for notarial acts performed by video communications technology. [Read more.](#)

Endangered Species – South Dakota. On January 27, SB 72 unanimously passed the Senate and has been transmitted to the House. The bill, sponsored by Sen. John Wiik (R), removes the notice requirement for listing and delisting species on the threatened and endangered species list. [Read more.](#)

University Lands; Flaring – Texas. On February 1, Rep. Gina Hinojosa (D) introduced HB 1521. The bill would require the Board of Regents of the University of Texas System to adopt a formal policy goal to eliminate routine methane flaring on university lands by 2025. (*See also SB 388 below.*) [Read more.](#)

Taxes; Flared or Vented Gas – Texas. On February 1, Rep. Vikki Goodwin (D) introduced HB 1494. The bill would impose a 25 percent gas production tax on gas flared or vented and provides for an exemption. [Read more.](#)

Eminent Domain – Texas. On February 1, Rep. Erin Zwiener (D) introduced HB 1506. Regarding eminent domain condemnation and possession, the bill sets timeline conditions for possession regarding litigation. [Read more.](#)

Conveyance Restrictions – Texas. On January 29, Rep. Jarvis Johnson (D) introduced HB 1483. Regarding real property conveyances, the bill provides that “if a grantee of an instrument conveying an interest in real property believes that a restriction in the instrument violates the constitution of this state or of the United States, the grantee may bring an action against the county in which the instrument is recorded to request the redaction of the restriction from the instrument.” [Read more.](#)

Remote Proceedings – Texas. On January 28, Rep. Ina Minjarez (D) introduced HB 1447. The bill allows for the use of remote technology in probate and guardianship proceedings. [Read more.](#)

Flaring – Texas. On January 28, Rep. Jon Rosenthal (D) introduced HB 1452. The bill directs the Texas Railroad Commission to establish a policy before December 31, 2025, for the elimination of routine flaring of gas from wells or other facilities regulated by the commission. [Read more.](#)

Severance Taxes – Texas. On January 25, Rep. Chris Paddie (R) introduced HB 1346. The bill would provide certain refunds for oil or gas severance taxpayers who do not hold a permit. [Read more.](#)

Gas Production Tax – Texas. On January 25, Rep. Jessica González (D) introduced HB 1377. The bill would amend existing law to remove gas “produced from oil wells with oil and lawfully vented or flared” from the list of gas that is not taxed. [Read more.](#)

Eminent Domain Notice – Texas. On January 26, Sen. Juan Hinojosa (D) introduced SB 423. The bill amends the service of notice requirements of a special commissioners' hearing in an eminent domain proceeding. [Read more.](#)

Restriction on Energy Sources – Texas. As a reaction to numerous municipalities and states around the country seeking to ban gas hookups to commercial and residential buildings as a way to discourage – or impose de-facto bans – on natural gas production, on January 22, Rep. Joe Deshotel (D) introduced HB 1282. The bill would prohibit any regulatory authority, planning authority or political subdivision from adopting any policy or enforcing any regulation that would have the effect of discriminating against or prohibiting connection of a utility service based on the type or source of energy to be delivered to the end-use customer. [Read more.](#)

Regulatory Enforcement – Texas. On January 22, Rep. Chris Paddie (R) introduced HB 1284. The bill relates to the jurisdiction of the Railroad Commission

of Texas (RRC) over the injection and geologic storage of carbon dioxide and amends existing law regarding enforcement, penalties, and operator applications for a certification from the RRC. Companion Senate bill, [SB 450](#), was introduced by Sen. Kelly Hancock (R) on January 26. [Read more.](#)

Methane Flaring Plan – Texas. On January 22, Sen. Sarah Eckhardt (D) introduced SB 388. The bill relates to the reduction of methane gas flaring on land dedicated to the permanent university fund and would create a Methane Flaring Reduction Plan which directs the board of regents of The University of Texas System to adopt a formal policy goal to eliminate routine methane flaring on university lands by 2025. [Read more.](#)

Notaries Public – Utah. On February 1, Rep. Merrill Nelson (R) introduced HB 276. The bill 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. [Read more.](#)

Severance Taxes – Utah. On January 27, Sen. David Hinkins (R) introduced SB 133, which creates the Division of Air Quality Oil, Gas, and Mining Restricted Account; Division of Water Quality Oil, Gas, and Mining Restricted Account; the Division of Oil, Gas, and Mining Restricted Account; and the Utah Geological Survey Oil, Gas, and Mining Restricted Account and establishes deposits of certain portions of severance tax revenues to the restricted accounts and makes appropriations. [Read more.](#)

Independent Contractors – Virginia. On January 12, Sen. Senator Siobhan S. Dunnavant (R) introduced SB 1323. The bill would support independent contractor status by providing that worker classification as an independent contractor would be based on the more permissible 20-factor test under [IRS Revenue Ruling 87-41](#) known as the common law right-of control test. [Read more.](#)

Mineral and Tax Liens – Wyoming. (*Update to 1/25/21 Weekly Report*) On February 3, SF 41

passed both chambers. The bill, introduced January 12 by the Joint Minerals, Business & Economic Development Interim Committee (R), amends certain provisions of existing law regarding tax liens and mineral liens. Under Wyoming law, once the bill is transmitted to the governor he has 3 days in which to sign or veto legislation or it becomes law without his signature. [Read more.](#)

Ad Valorem Taxes – Wyoming. On February 4, SF 60 passed both chambers. The bill, introduced January 12 by the Joint Revenue Interim Committee, updates existing law regarding the ad valorem tax on mineral production and its corresponding payment due dates. Under Wyoming law, once the bill is transmitted to the governor he has 3 days in which to sign or veto legislation or it becomes law without his signature. [Read more.](#)

STATE – Regulatory

Methane Controls – Colorado. On January 27, environmental groups announced they have entered into an agreement with industry groups “[on a joint proposal to the Colorado Air Quality Control Commission](#) for a first-in-the-nation rule to require pneumatic control devices at oil-and-gas facilities to be retrofit to lower methane emissions.” According to Earthjustice, which represented some of the parties, the “conservation groups have been calling for additional emission reductions from pneumatic devices for years and proposed retrofit requirements to the Commission in 2017 and 2020. The consensus proposal calls for non-emitting controllers at new installations, with very limited exceptions and also requires operators to begin replacing polluting pneumatic controllers at existing production facilities and compressor stations.” [Read more.](#)

Commission on Environmental Quality Permits – Texas. On February 2, the Texas Commission on Environmental Quality (TCEQ) released its final “Revisions to Oil and Gas General Operating Permits (GOPs) Numbers 511, 512, 513, and 514.” According to the TCEQ, “The revised GOPs were proposed on November 13, 2020, and

the public comment period closed on December 16, 2020. One positive comment was received. Please refer to the Statements of Basis for these permits for a detailed description of the revisions and the comment. Current permit holders are required to submit an application for a new authorization to operate (ATO), if any of the emission units, applicability determinations, or the basis for the applicability determinations are affected by the revisions in the GOPs. If the revisions in the GOPs do not affect your site, a new ATO is not required.” [Read more.](#)

Railroad Commission; Flaring Exceptions – Texas.

On January 26, Texas Railroad Commissioner Jim Wright (R) released a statement following that day’s Commissioners’ Conference regarding flaring exceptions. “I elected to pass on most of the requests for exceptions to [Statewide Rule 32](#) governing flaring permits,” wrote Commissioner Wright. “Most items that dealt with flaring did not appear to have a clear and concise plan on natural gas utilization, and I wanted more time to review these requests and discuss them with Commission staff. I want to be clear that I do not take these requests lightly as flaring natural gas is a waste of our precious resources.” [Read more.](#)

STATE – Judicial

Lease Interpretation; Drainage – Texas. On December 16, 2020, a [petition for review](#) was filed in the Texas Supreme Court in [Rosetta Resources Operating, L.P. v. Martin](#) (Case No. 20-0898) which involved the interpretation of an offset well clause in an oil and gas lease. According to the appellate court, “we are once again called on to interpret and apply ‘opaquely worded’ ‘cryptic language’ in an oil and gas lease.” The Texas Court of Appeals, 13th District, (Corpus Christi), examined the lease terms and found that Rosetta’s obligations to protect the undrilled acreage at issue from drainage and to spud an offset well or release the acreage were triggered. The appeal is currently pending before the Texas Supreme Court. [Read more.](#)

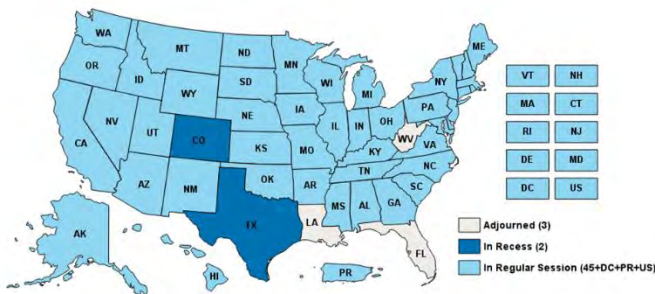
INDUSTRY NEWS FLASH

► **Texas governor threatens lawsuits over Biden's climate agenda.** "We're here for a singular purpose today. To make clear that Texas is going to protect the oil and gas industry from any type of hostile attack launched from Washington, DC," said Gov. Greg Abbott (R) to industry leaders during a January 28 roundtable meeting. [Read more.](#)

► **Biden administration federal lease review may raise royalty rates.** According to reporting from Rigzone, apart from the Biden administration's indefinite pause on new federal oil and gas leasing, federal royalty rates may also change after agency reviews are completed, especially in light of those rates not increasing for decades. [Read more.](#)

LEGISLATIVE SESSION OVERVIEW

States in Session



Session Notes (by date): Alabama, Alaska, Arizona, Arkansas, California, Connecticut, Delaware, 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, Utah, Vermont, Virginia, Washington, Wisconsin and Wyoming are in regular session. The U.S. Congress is in session.

The following will convene their 2021 legislative sessions on the dates provided: **West Virginia** (February 10), **Florida** (March 2) and **Louisiana** (April 12).

The **Colorado** legislature recessed on January 15 after passing state COVID-19 relief, reports [The Gazette](#). The legislature is scheduled to return on February 16. **Virginia** Democratic Gov. Ralph Northam signed a proclamation calling the legislature to convene for a special session on February 10. The purpose of the special session is to align the legislative calendar with the customary 46-day length for odd-numbered years, reports [WTKR 3](#).

Signing Deadlines: Illinois Democratic Gov. J.B. Pritzker has 60 days from presentment to sign or veto legislation or it becomes law without signature. **Massachusetts** Republican Gov. Charlie Baker has 10 days from presentment to sign or veto legislation or it becomes law without signature. **Michigan** Democratic Gov. Gretchen Whitmer has 14 days from presentment to sign or veto legislation or it is pocket vetoed. **New Jersey** Democratic Gov. Phil Murphy has 45 days from presentment to act on legislation or it becomes law without signature.

Interim Committee Hearings: The following states are currently holding 2020 interim committee hearings: **Florida** [House](#), **Louisiana** and **West Virginia**.

Bill Pre-Files: **Florida** and **Louisiana** are currently posting 2021 bill drafts, pre-files and interim studies. ■

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GOVERNMENTAL AFFAIRS WEEKLY REPORT

Weekly Highlights At-A-Glance

FEDERAL – Legislative

S. 76 – Protecting Our Wealth of Energy

Resources Act of 2021. On February 17, official bill text was made available for [S. 76](#), known as the *Protecting Our Wealth of Energy Resources Act of 2021* or *POWER Act of 2021*. Sponsored by Sen. Cynthia Lummis (R-WY), the bill would “prohibit the President from issuing moratoria on leasing and permitting energy and minerals on certain Federal land.” The bill introduction came on the heels of President Biden’s executive order pausing oil and gas leasing on federal lands for an indeterminate period of review. According to Sen. Lummis, the executive order was “just a nod to placate people who don’t live in those western states” and “we want to make sure that he cannot do that without an act of Congress.” [The bill is cosponsored by Sen. John Kennedy \(R-LA\), who added](#), “The Biden Ban on new oil and gas leasing will cost America tens of thousands of jobs, many of them in Louisiana. The energy industry is the lifeblood of our state, and we can’t afford to sacrifice jobs at a time when Louisianians are still recovering from the pandemic. Since the energy industry funds Louisiana’s conservation efforts, our storm-battered coasts can’t afford the Biden Ban either. We must protect both our jobs and our coasts from Washington’s overreach, and that’s just what the POWER Act will do.” House companion bill, [H.R. 543](#), has also been introduced by Rep. Yvette Herrell (R-NM). [Read more.](#) “More than half the oil and more than two-thirds of the natural gas produced in New Mexico is on federal lands,” said Herrell. “A moratorium on new leases will devastate our state’s economy, destroying more than 60,000 jobs by 2022, and decimate our state’s budget.” [Read more.](#)

S. 69 – Conservation Funding Protection Act.

On February 11, official bill text was made available for [S. 69](#), known as the *Conservation Funding Protection Act*. The bill, sponsored by Sen. John Kennedy (R-LA), would require annual lease sales in the Gulf of Mexico region of the outer Continental Shelf. [Read more.](#)

H.R. 519 – Safeguarding Oil and Gas Leasing and Permitting Act of 2021.

On February 18, official bill text was made available for [H.R. 519](#), known as the *Safeguarding Oil and Gas Leasing and Permitting Act of 2021*. Sponsored by Rep. Liz Cheney (R-WY), the bill would prohibit President Biden or any of his agencies from imposing a moratorium on federal oil and gas leasing or permitting unless approved by a joint resolution of Congress. [Read more.](#)

H.R. 455 – California Clean Coast Act of 2021. On February 17, official bill text was made available for [H.R. 455](#), known as the *California Clean Coast Act of 2021*. The bill, introduced by Rep. Salud Carbajal (D-CA) and 23 other Democratic cosponsors, would permanently ban oil and gas leasing in the Outer Continental Shelf off the coast of California. [Read more.](#)

H.R. 479 – California Central Coast Conservation Act. On February 17, official bill text was made available for [H.R. 479](#), known as the *California Central Coast Conservation Act*. The bill “establishes a moratorium on all new oil and gas leasing on federal public land on the central coast of California.” According to the bill sponsor, Rep. Jimmy Panetta (D-CA), the legislation “prohibits the Bureau of Land Management (BLM) from implementing the decision until it completes and publishes a supplemental environmental impact statement assessing the impacts of oil and gas drilling on the Central

Coast. Specifically, the [BLM] review must consider potential impacts on air quality, greenhouse gas emissions, climate change, groundwater, surface water, seismicity, wildlife and plant species, low-income communities, communities of color, and indigenous communities. If the assessment identifies adverse environmental impacts, the Administration's decision cannot proceed." [Read more.](#)

H.R. 488 – Saving America's Mines Act. On February 17, official bill text was made available for [H.R. 488](#), known as the *Saving America's Mines Act*. The bill, sponsored by Rep. Pete Stauber (R-MN), would "prohibit a moratorium on mineral development on Bureau of Land Management and National Forest System land." According to the bill sponsor, the legislation "will specifically require an Act of Congress to withdraw any public land from mining, ensuring an Administration cannot make this decision alone." [Read more.](#)

H.R. 218 – Saving America's Energy Future Act. On February 9, official bill text was made available for [H.R. 218](#), known as the *Saving America's Energy Future Act*. The bill, sponsored by first-term Rep. August Pfluger (R-TX) representing Midland and the Permian Basin, would prohibit the Interior Department or Department of Agriculture (regarding National Forests System lands), from exercising any moratorium on issuing new oil and gas leases and drill permits, nor renewals of such permits, on federal lands under their jurisdiction. [Read more.](#)

FEDERAL – Regulatory

Keystone XL Pipeline. Joining the many lawmakers who have recently criticized President Biden's decision to shut down the Keystone XL pipeline, on February 9, Sen. Joe Manchin (D-WV) [delivered a letter to the President](#) asking him to reconsider his decision "to revoke the cross-border permit for the Keystone XL and take into account the potential impacts of any further action to safety, jobs, and energy security." Sen. Manchin is a key Democrat since he now chairs the Senate's Energy and Natural Resources Committee and could be a powerful ally

to centrists and Republicans seeking to blunt Biden's war on fossil fuel resources. [Read more.](#) On that same day, [14 state attorneys general also delivered a letter](#) to President Biden noting they write with "alarm regarding your unilateral and rushed decision to revoke the 2019 Presidential Permit for the Keystone XL pipeline. Your decision will result in devastating damage to many of our states and local communities. Even those states outside the path of the Keystone XL pipeline—indeed all Americans—will suffer serious, detrimental consequences." The letter was spearheaded by Montana Attorney General Austin Knudsen (R) who led the coalition of attorneys general in sending Biden the letter, which includes Louisiana, Mississippi, Texas, and South Dakota, among others. [Read more.](#) And on February 10, Texas Land Commissioner George P. Bush (R) said that President Biden's immediate moves against the oil and gas industry produced a "chilling effect" against energy workers around the country. "With this flurry of executive order activity, it sends a chilling effect, not only to the industry, but hard-working individuals throughout our country that rely on these jobs to put food on the table, and it's a meaningful issue for them and is sometimes lost by coastal elites," said Bush. This comes as "Republicans have blasted Biden for what they view as pandering to the left on environmental causes and reducing U.S. energy independence." [Read more.](#)

Offshore Oil and Gas Lease Sale Cancellation.

On February 18, the Biden administration cancelled the scheduled March 17, 2021 oil and gas lease sale of more than 78 million acres in the Gulf of Mexico. ([86 Fed. Reg. 10132](#)) According to the prior administration's [Bureau of Ocean Energy Management's announcement](#) in November 2020, Lease Sale 257 was scheduled to "be the eighth offshore sale under the 2017-2022 Outer Continental Shelf Oil and Gas Leasing Program" and included "approximately 14,594 unleased blocks – all of the available unleased areas in federal waters of the Gulf of Mexico." The Biden administration has provided no information regarding whether or when further offshore lease sales may resume. [Read more.](#)

U.S. Rejoins Paris Climate Accord. (*Update to 1/25/21 Weekly Report*) Last week, the United States [officially rejoined the Paris Agreement on climate change](#). As we reported previously, on his first day in office President Biden signed an executive order that put our country on track to rejoin the agreement, but the action required 30 days to finalize. For background, the President overturned his predecessor's actions by informing the United Nations in January that the U.S. would be rejoining the climate accord, which follows through on Biden's campaign pledge to recommit to the Obama-era agreement on his first day in office. "A cry of survival comes from the planet itself, a cry that can't be any more desperate or any more clear," said Biden in his inaugural address, listing "a climate in crisis" as one of the many challenges facing the country. Biden has called for putting the U.S. on a path to net-zero emissions by 2050. [The global initiative](#) seeks to lower emissions, reign in fossil fuels, and promote sustainable and renewable energy projects which each country is expected to do under its own regulatory and legislative regimes. [Read more](#).

Federal Royalty Rule Delay. (*Update to 1/25/21 Weekly Report*) On February 12, the Interior Department delayed the effective date of a Trump-era regulation governing the calculation of royalty payments to the U.S. government for oil, gas and coal extracted from federal lands. The action, *2020 Valuation Reform and Civil Penalty Rule: Delay of Effective Date* ([86 Fed. Reg. 9286](#)), delays the effective date for 60 days – until April 16, 2021 – pursuant to President Biden's recent executive orders reviewing Trump-era rulemaking. The final rule, *ONRR 2020 Valuation Reform and Civil Penalty Rule* ([86 Fed. Reg. 4612](#)), was set to be effective on February 16, 2021. The rule, finalized in President Trump's last week in office, amends certain regulations on how ONRR "values oil and gas produced from Federal leases for royalty purposes, values coal produced from Federal and Indian leases for royalty purposes, and assesses civil penalties for violations of certain statutes, regulations, leases, and orders associated with mineral leases." Considered a victory for the Trump administration, the rule

lessens "the amount of money oil and gas companies that drill on public lands and in public waters pay to the federal government. The rule will make changes to the way that these royalties are calculated and, according to the administration, is expected to result in an annual decrease of \$28.9 million in royalty collections." According to The Hill, "The industry has argued that a previous rule on how the royalties are calculated was burdensome and created uncertainties." [Read more](#).

Converse County Oil and Gas Project Public Meeting – Wyoming. On February 12, the Bureau of Land Management (BLM) announced it will hold a public virtual meeting "to begin development of the adaptive management plan for non-eagle raptor timing limitation stipulation (TLS) relief within the Converse County Oil and Gas Project area. The virtual meeting will be held with the BLM, U.S. Fish and Wildlife Service, and the Wyoming Game and Fish Department from 6-8 p.m. on March 25, 2021." According to the BLM, "[t]raditionally, oil and gas TLS are conditions of approval to avoid surface disturbance or occupancy within a half-mile buffer of non-eagle raptor nests between Feb. 1-July 31. During development of the Converse County final environmental impact statement, 98 incidents of TLS relief were approved for possible use over the 10-year construction phase of the project [and] prohibits surface use during specified time periods to protect identified resource values." To register for the meeting and for more information: [Read more](#).

[FEDERAL – Judicial](#)

Greater Sage-Grouse; Mining – Idaho. On February 11, the U.S. District Court for the District of Idaho struck down a Trump administration decision to allow hard rock mining on 10 million acres of western public land that includes Greater Sage-Grouse habitat. In [Western Watersheds Project v. Bernhardt](#) (Case No. 1:16-cv-00083-BLW), the Court held the 2017 decision was arbitrary and has ordered the U.S. Interior Department's Bureau of Land Management to reconsider whether mining should be allowed in the area. According to reporting, lifting the ban under

the Trump administration “allowed the potential for mining and other development, primarily in Idaho and Nevada but also in parts of Montana, Oregon, Utah and Wyoming. Officials at the time said an analysis showed mining or grazing would not pose a significant threat to the ground-dwelling birds.”

[Read more.](#)

Greater Sage-Grouse; Federal Leasing – Utah. On February 5, the U.S. District Court for the District of Utah dealt a blow to environmentalists when it dismissed their challenge to the federal approval of an oil and gas leasing and production plan. In *WildEarth Guardians v. U.S. Forest Service* (Case No. 2:14-cv-00349-DN), the court held the agency action was “not arbitrary, capricious, or contrary to law” and the Forest Service took a hard look at the impacts to air quality, water quality, and Greater Sage-Grouse habitats when it approved an oil and gas development plan on the lands. The federal approvals also complied with the National Environmental Policy Act and the National Forest Management Act, according to the court. The case involved a plan by Berry Petroleum to build up to 400 oil and gas wells within the Ashley National Forest in Duchesne County. The Bureau of Land Management had approved 79 permit-to-drill applications as of May 2014. This case was dismissed with prejudice, which means it cannot be resubmitted to this court by the environmentalist litigants. [Read more.](#)

STATE – Legislative

Online Notarial Acts – Arizona. On February 10, Rep. Jennifer Pawlik (D) introduced HB 2828. The bill provides that a fee of not more than \$25 may be charged for each remote online notarial act. [Read more.](#)

Electronic Database for Oil and Gas – Arkansas. On February 8, Rep. Mary Bentley (R) introduced HB 1442. The bill amends existing law to provide for electronic acceptance of documents and related database infrastructure for oil and gas extraction processes and procedures. [Read more.](#)

Well Plugging – Arkansas. On February 8, HB 1076 passed both chambers of the legislature and has been transmitted to the governor. The bill, sponsored by the Joint Budget Committee, sets state Oil & Gas Commission appropriations, and allows the Commission to request the Chief Fiscal Officer “transfer \$10,000,000 in a one time, emergency transfer on his or her books and the books of the State Treasurer and the Auditor of the State from the Oil and Gas Commission Fund to the Abandoned and Orphaned Well Plugging Fund.” Once transmitted to the governor, he must sign or veto legislation within 5 days of transmittal (excluding Sunday), or it becomes law without his signature. [Read more.](#)

Hydraulic Fracturing Ban – California. On February 16, Sen. Scott Weiner (D) and Sen. Monique Limón (D) introduced [SB 467](#). “This bill would revise the definition of ‘well stimulation treatment’ to include steam flooding and water flooding. The bill would prohibit the issuance or renewal of a permit to conduct hydraulic fracturing, acid well stimulation treatment, steam flooding, water flooding, or cyclic steaming for the extraction of oil and gas beginning January 1, 2022, and would prohibit new or repeated hydraulic fracturing, acid well stimulation treatments, steam flooding, water flooding, or cyclic steaming, except as conducted pursuant to a permit lawfully issued before that date. The bill would prohibit all hydraulic fracturing, acid well stimulation treatments, steam flooding, water flooding, cyclic steaming, or other well stimulation treatments beginning January 1, 2027. Because a violation of the prohibition on conducting hydraulic fracturing, acid well stimulation treatments, steam flooding, water flooding, cyclic steaming, or other well stimulation treatments, except pursuant to a permit issued before January 1, 2022, would be a crime, the bill would impose a state-mandated local program by creating a new crime. This bill would, until January 1, 2027, authorize a local government to prohibit well stimulation treatments within its jurisdiction. This bill would require the division to develop and administer a program to identify workers in downstream, midstream, and upstream oil and gas

operations who have lost their jobs and to provide incentives to oil and gas well remediation companies to hire those identified workers.” The bill also would “prohibit the issuance of new or renewed permits for oil and gas extraction more generally within 2,500 feet of homes, schools, healthcare facilities, prisons and dormitories by the start of 2022.” [Read more.](#)

Critical Wells – California. On February 12, Sen. Henry Stern (D) introduced SB 406. “Existing law requires the operator of a well to file a written notice of intention to commence drilling with, and prohibits any drilling until approval is given by, the State Oil and Gas Supervisor or district deputy. Existing law requires the notice to contain the pertinent data the supervisor requires on printed forms supplied by the division or on other forms acceptable to the supervisor. This bill would require the form for the notice to clearly identify whether the well is a critical well, as defined.” [Read more.](#)

Oil and Gas Strategic Plan – California. On February 12, Sen. Henry Stern (D) introduced SB 419. The bill provides that the Geologic Energy Management Division in the Department of Conservation develop a strategic plan through a public process to incorporate the purposes of protecting public health and safety and environmental quality, including reduction and mitigation of greenhouse gas emissions associated with the development of hydrocarbon and geothermal resources in a manner that meets the energy needs of the state. [Read more.](#)

Remote Notarial Acts – Georgia. On February 9, Rep. Joseph Gullett (R) introduced HB 334. The bill provides for remote online notaries public and remote online notarizations, and related procedures. [Read more.](#)

Site Value Tax – Illinois. On February 3, Sen. Win Stoller (R) introduced SB 83, which creates the Site Value Tax Law. The bill provides that each taxing district may, by ordinance, levy a site value tax upon the assessed value of land within the taxing district and shall be levied uniformly by valuation within the taxing district. Assessed value means 33 1/3% of

the fair cash value of the land, without regard to buildings, structures, improvements, or other permanent fixtures on the land, except for the value of oil, gas, coal, and other minerals in the land and the right to remove such oil, gas, coal, and other minerals from the land. [Read more.](#)

Independent Contractors – Kansas. On February 9, the Senate Committee on Commerce (R) introduced SB 177. The bill would remove landmen performing work on a contractual basis from the definition of employee and provides a definition of services performed. This bill is a reintroduction of HB 2705 which failed in the 2020 legislative session. [Read more.](#)

Permitting; Public Hearings – Michigan. On February 9, HB 4169 was introduced by Rep. Bill Sowerby (D). The bill would amend existing law to require certain public hearings regarding hydraulically fractured wells prior to permitting. [Read more.](#)

Recording Fees – Mississippi. (*Update to 1/25/21 Weekly Report*) HB 145 has died in committee. The bill, introduced on January 8 by Rep. Charles Beckett (R), would have reduced “the Chancery clerk fee for recording each oil and gas assignment per assignee per each book and page listed.” [Read more.](#)

Orphaned Wells – Mississippi. (*Update to 1/25/21 Weekly Report*) HB 194 has died in committee. The bill, introduced on January 8 by Rep. Jerry Turner (R) would have extended “the date of the repealer on the authority of the state oil and gas board to obtain funds from the capital expense fund for the emergency plugging of orphaned wells.” [Read more.](#)

Mineral Estates – Mississippi. (*Update to 1/25/21 Weekly Report*) HB 555 has died in committee. The bill, introduced on January 18 by Rep. Randy Boyd (R), provided that mineral estates separated from the surface estate would revert to the surface owner after 20 years of nonproduction. [Read more.](#)

Oil and Gas Taxes – Mississippi. (*Update to 1/25/21 Weekly Report*) HB 664 has died in committee. The

bill, introduced on January 18 by Rep. Randy Boyd (R), provided that oil and gas taxes are to be paid by the interest owner and provides ad valorem tax exemptions, among other provisions. [Read more.](#)

Independent Contractors – Mississippi. (*Update to 1/25/21 Weekly Report*) HB 767 has died in committee. The bill, introduced on January 18 by Rep. Charles Beckett (R), would have exempted services performed by a “petroleum landman” on a contractual basis from the definition of employment. [Read more.](#)

Mineral Estates – Mississippi. (*Update to 1/25/21 Weekly Report*) HB 906 has died in committee. The bill, introduced on January 18 by Rep. Bob Evans (D), provided that mineral estates separated from the surface estate revert to the surface owner after 10 years of nonproduction. [Read more.](#)

Property Tax Exemptions – Montana. On February 10, Rep. Brandon Ler (R) introduced HB 372. The bill would amend current law “to exempt from personal property taxation oil and gas production machinery, fixtures, equipment, flow lines and gathering lines, pumping units, oil field storage tanks, water storage tanks, water disposal injection pumps, gas compressor and dehydrator units, communication towers, gas metering shacks, treaters, gas separators, water flood units, and gas boosters, together with equipment that is skidable, portable, or movable.” [Read more.](#)

Greater Sage-Grouse – Montana. On February 15, Sen. Mike Lang (R) introduced SB 249. The bill sets forth the agreement for payment of costs for implementation of the Montana Greater Sage-Grouse Stewardship Act to maintain, enhance, restore, expand, or benefit habitat and populations for the heritage of Montana and its people. Related Greater Sage-Grouse funding bill, [SB 230](#), was also introduced by Sen. Lang on February 11. [Read more.](#)

Mineral Taxation – Nevada. On February 1, the Senate Committee on Judiciary (D) introduced SJR 1. “This joint resolution proposes to amend

the Nevada Constitution to eliminate: (1) the requirement for the Legislature to impose a tax upon the net proceeds of minerals extracted at a rate not to exceed 5 percent of the net proceeds; and (2) the appropriation of a portion of those proceeds to each county in this State. Instead, this resolution would amend the Nevada Constitution to impose a tax on the gross proceeds of all minerals extracted in this State during a calendar year at a rate of 117.75 percent of the gross proceeds and authorize the Legislature to provide by law for the taxation of mines and mining claims and the proceeds of all minerals extracted in this State. Under this resolution, the tax on the gross proceeds of minerals extracted in this State would be imposed on minerals extracted during each calendar year beginning on or after January 1, 2023.”

[Read more.](#)

Land Conservation – New Mexico. On February 9, Rep. Kristina Ortiz (D) introduced HB 265. The bill would amend the Natural Lands Protection Act and the Natural Heritage Conservation Act to allow the state to acquire and protect land for conservation purposes without a private partner; makes related agency appointments; provides that the Energy, Minerals and Natural Resources Department (EMNRD) collaborate with the Natural Lands Protection Committee and tasks the committee with creating a grant process and prioritizing funding for conservation projects; and allows the existing natural lands and heritage conservation fund to also be used by EMNRD to acquire unique and ecologically significant lands pursuant to the Natural Lands Protection Act, alongside conservation projects pursuant to the Natural Heritage Conservation Act. [Read more.](#)

Federal Leasing Moratorium – New Mexico. On February 9, Rep. Rod Montoya (R) introduced HJM 3. The House Joint Memorial measure would request that “a waiver be requested of President Joe Biden’s administration to the recent sixty-day suspension of new oil and gas leasing and drilling permits for federal lands in New Mexico.” Senate companion measure, [SJM 3](#), was introduced by Sen. Gregory

Baca (R) on February 10. [Read more.](#)

Hydraulic Fracturing – New Mexico. (*Update to 2/8/21 Weekly Report*) On February 13, SB 149 passed the Senate Conservation Committee and was sent to the Senate Judiciary Committee for further consideration. The bill, introduced on January 31 by Sen. Antoinette Sedillo Lopez (D), would prohibit the issuance of new hydraulic fracturing permits and sets certain reporting requirements. This bill is a reintroduction of failed legislation from both the 2019 and 2020 sessions. [Read more.](#)

Unemployment Employer Contribution Rates – New Mexico. On January 25, Rep. Chris Chandler (D) introduced HB 148. The bill would increase the employer unemployment contribution rate by two-tenths percent starting January 1, 2022. [Read more.](#)

Climate Solutions Act – New Mexico. On January 28, HB 9 was introduced by Rep. Melanie A. Stansbury (D). The bill would enact the Climate Solutions Act, which establishes a climate leadership council, deadlines for the state to achieve specific reductions in greenhouse gas emissions (GHGE), requirements for state agencies to achieve GHGE reductions, and a number of definitions related to climate, economic development, and socioeconomic equity. [Read more.](#)

Water Rights – New Mexico. On January 14, Rep. Andrea Romero (D) introduced HB 95. The bill would amend certain Water Code sections to impose new requirements on the Office of the State Engineer (OSE) when processing water rights permit applications. In particular, the bill requires OSE to publish the factual and legal rationale underpinning the decision to accept or reject a permit application. The bill stipulates that finalized application decisions, along with the published rationale supporting these decisions, should serve as “precedent” for subsequent permit determinations, unless the factual or legal basis for approval or denial of the subsequent application is “clearly distinguished.” In addition, for each permit application, HB 95 requires

OSE to provide analyses on the climate-change-related impacts on the water source, as well as the economic viability of the proposed water use, over a 40-year period. The bill also relaxes the requirement establishing standing for members of the public to object to a water rights permit application. [Read more.](#)

Public Health Emergency Rulemaking – New Mexico. On January 25, Rep. Randall T. Pettigrew (R) introduced HB 159. The bill would amend “provisions governing rulemaking under the Public Health Emergency Response Act (PHERA) to prohibit agencies from promulgating rules that add to or alter the New Mexico Administrative Code (NMAC) when a public health order is in effect, unless the proposed rule changes are authorized by the governor. The bill requires the governor, when authorizing additions or alterations to NMAC, to issue an executive order explaining the impact of proposed rule changes on the retail prices of goods and services; cost of business operations in industries affected by the changes; and overall regulatory climate for businesses seeking to grow or establish in or relocate to the state; and whether the changes are the least restrictive means to achieve their intended public health and safety objectives.” [Read more.](#)

Local Air Quality Regulations – New Mexico. On January 19, Sen. Peter Wirth (D) introduced SB 8. The bill would amend three sections of law to allow the state and local governments to adopt certain environmental regulations that are more stringent than federal regulations. First, the bill would remove provisions that currently prohibit the Environmental Improvement Board (EIB) and the local board, i.e. the Albuquerque/Bernalillo County Air Quality Control Board, from adopting certain types of state air quality regulations and standards that are more stringent than federal regulations and standards under the Clean Air Act. SB 8 also amends part of the Hazardous Waste Act to remove language that prohibits regulations for hazardous waste from being more stringent than regulations under the federal Resource Conservation and Recovery Act unless the EIB confirms that existing federal regulations are

insufficient to protect public health and the environment. SB 8 also repeals existing provisions regarding EIB duties and powers and local board for attainment and maintenance of national ambient air standards for ozone and replaces it “with new language requiring the EIB and local board to address ozone pollution when national ambient air quality standards are elevated, as the existing statute does, but with fewer items for the board to consider during rulemaking than in current law and with no restrictions to the types of sources from which the board or local board may seek emission reductions.” [Read more.](#)

Notarial Acts – New Mexico. On February 1, Sen. Daniel Ivey-Soto (D) introduced SB 12. The bill would enact the Revised Uniform Law on Notarial Acts, which among provisions allows for remote notarization, electronic signatures, sets fees, and provides for certain administrative processes. [Read more.](#)

Clean Energy Requirements – New Mexico. On January 19, Sen. William P. Soules (D) introduced SB 67. The bill would enact a new section of the Public Utility Act to require that new and replacement energy generation capacity constructed on or after July 1, 2021 only generate clean energy. [Read more.](#)

Sustainable Economy Task Force – New Mexico. On January 19, Sen. Mimi Stewart (D) introduced SB 112. The bill would appropriate funds “from the general fund to the Department of Finance and Administration (DFA) to create the sustainable economy task force, administratively attached to DFA, for the purpose of developing an annually updated strategic plan to transition the state economy away from reliance on natural resource extraction.” [Read more.](#)

Pocket Vetoes – New Mexico. On January 19, Sen. Jacob R. Candelaria (D) introduced Senate Joint Resolution (SJR) 2. The measure “proposes an amendment to the state constitution to eliminate the governor’s pocket veto. Under the current provision, the governor must approve bills presented during

the last three days of a session within 20 days after the legislature adjourns. If the governor does not approve a bill within the required 20 days, the bill does not become a law. SJR 2 amends the provision to require bills presented to the governor during the last three days of the session to be approved or vetoed within 20 days after adjournment. Unless vetoed within the required 20 days, the bill becomes a law. SJR 2 also requires the governor to provide an explanation for every veto. Currently, the constitution only requires the governor to explain her objections to bills that are vetoed while the legislature is in session.” [Read more.](#)

Environmental Rights – New Mexico. On January 19, Sen. Antoinette Sedillo Lopez (D) introduced Senate Joint Resolution (SJR) 3. The measure would amend the state constitution to include a right of the people of the state to “...a clean and healthy environment, including pure water, clean air, healthy ecosystems and a stable climate, and to the preservation of the natural, cultural, scenic and healthful qualities of the environment.” It also makes the state as a whole a trustee of the natural resources of the state, among them its waters, air, flora, fauna, climate, and public lands, and requires state entities to conserve, protect and maintain these resources, including for future generations. It also provides that these rights are inalienable, on par with other inalienable rights, and take effect immediately. SJR 3 also amends the constitution by repealing a section concerning the Legislature’s “duty to control pollution and despoilment of natural resources, consistent with the use and development of these resources for the maximum benefit of the people. If passed, SJR 3 will be submitted to the voters of New Mexico for their approval or rejection at the next general election or at any special election that may be called for this purpose.” [Read more.](#)

Taxation – New Mexico. On January 15, Rep. Javier Martinez (D) introduced the Omnibus Tax Bill, HB 98, which among many provisions amends existing law containing “the definitions for the oil and gas severance tax act, the Oil and Gas Conservation Tax Act, the Oil and Gas Emergency School Tax Act, and

the Oil and Gas Ad Valorem Production Tax Act. For each act, the bill defines 'volume' to ensure that oil producers report volumes in barrels, while natural gas tax remitters report volumes in a standard format of thousand cubic feet (MCF) for natural gas at a pressure base of 15.025 pounds per square inch." ([See complete bill summary here.](#))

[Read more.](#)

Trust Lands – North Dakota. On February 5, SB 2065, sponsored by the Senate Energy and Natural Resources Committee (R), passed committee review. The bill allows "for the board of university and school lands to lease lands under its control for the underground storage of hydrocarbons and the jurisdiction of the industrial commission to regulate the permitting and amalgamation of the underground storage of oil or gas." [Read more.](#)

Unclaimed Property; Recovery Fees – Oklahoma. On February 1, HB 2226 was introduced by Rep. Anthony Moore (R). The bill would amend existing law regarding unclaimed property to provide that "In the event that the claimant of such funds or property [including funds or property involving mineral proceeds] is deceased and did not personally agree to the fee in writing, a fee for recovery can only be collected from each identified heir, devisee or legatee that has affirmatively agreed to that fee in writing." [Read more.](#)

Review of Executive Orders – South Dakota. On February 1, Rep. Aaron Alyward (R) introduced HB 1194. The bill would provide for a review of Presidential executive orders to determine whether the state should seek an exemption from the application of the order or seek to have the order declared to be an unconstitutional exercise of legislative authority by the President. The bill specifically applies to natural resources and land related issues. [Read more.](#)

Keystone XL Pipeline – Tennessee. On February 13, HJR 90 was introduced by Rep. Dennis Powers (R). The measure "urges Congress to approve the Keystone XL pipeline." [Read more.](#)

Registration of Instruments – Tennessee. On February 10, Rep. Dave Wright (R) introduced HB 633. The bill would require either a licensed attorney or the custodian of the original version of an electronic document, instead of the custodian of the electronic version, to certify the electronic document for registration by a county register. Senate companion bill, [SB 1263](#), was introduced on February 11 by Sen. Shane Reeves (R). [Read more.](#)

Gas Capture Plan – Texas. On February 12, Rep. Gina Hinojosa (D) introduced HB 1913. The bill provides that the Railroad Commission "may not issue a permit to drill, deepen, plug back, or reenter an oil or gas well unless the applicant submits with the application a gas capture plan to minimize flaring from the well" and provides related procedures and requirements. [Read more.](#)

Eminent Domain – Texas. On February 11, Rep. Mike Schofield (R) introduced HJR 92 which proposes a constitutional amendment concerning the right to repurchase real property acquired by a governmental entity through eminent domain. [Read more.](#)

Eminent Domain – Texas. On February 11, Rep. Mike Schofield (R) introduced HJR 93 which proposes a constitutional amendment prohibiting the taking of property by eminent domain for the purpose of transferring the property to a private entity. [Read more.](#)

Mineral Liens – Texas. On February 11, Rep. Brooks Landgraf (R) introduced HB 1834. The bill amends existing law relating to a mineral contractor or subcontractor's lien to secure payment related to mineral activities to include "material, machinery, supplies." [Read more.](#)

Eminent Domain – Texas. On February 11, Rep. Mike Schofield (R) introduced HB 1879. The bill relates "to establishing actual progress for the purpose of determining the right to repurchase real property from a condemning entity." [Read more.](#)

Flaring Emissions – Texas. On February 8, Sen. Roland Gutierrez (D) introduced SB 622. The bill would add systems that reduce flaring emissions and other site emissions to the preference list for the new technology grant program. [Read more.](#)

Federal Preemption– Texas. On February 8, Rep. Brooks Landgraf (R) introduced HB 1683. The bill seeks to restrain federal law that inhibits oil and gas operations in the state and provides that an “agency of this state or a political subdivision of this state, and a law enforcement officer or other person employed by an agency of this state or a political subdivision of this state, may not contract with or in any other manner provide assistance to a federal agency or official with respect to the enforcement of a federal statute, order, rule, or regulation purporting to regulate oil and gas operations if the statute, order, rule, or regulation imposes a prohibition, restriction, or other regulation that does not exist under the laws of this state.” [Read more.](#)

Produced Water – Texas. On February 5, Sen. Charles Perry (R) introduced SB 601. The bill would create the Texas Produced Water Consortium “to bring together information resources to study the economics of and technology related to beneficial uses of produced water.” The consortium is comprised on various state agencies and also will solicit input from the oil and gas industry. [Read more.](#)

Mineral and Rock Definitions – Utah. *(Update to 1/11/21 Weekly Report)* On February 17, HB 79 passed both houses of the legislature. The bill, sponsored by Rep. Walt Brooks (R), modifies definitions related to mineral deposits and rocks. Under state law, the governor must sign or veto legislation within 20 days of session adjournment or it becomes law without his signature. The session adjourns on March 5, 2021. [Read more.](#)

Green New Deal Act – Virginia. On February 5, HB 1937 was referred to committee. The bill, sponsored by Del. Sam Rasoul (D), would create the Green New Deal Act which provides a moratorium on fossil fuel

infrastructure and industry usage in the state and promotes renewable energy. [Read more.](#)

Independent Contractors – Virginia. *(Update to 2/8/21 Weekly Report)* On February 5, HB 2296 was referred to committee. The bill, sponsored by Del. Roxann Robinson (R), is the companion bill to Senate bill, [SB 1323](#), introduced by Sen. Senator Siobhan Dunnivant (R) in January. The bill would support independent contractor status by providing that worker classification as an independent contractor would be based on the more permissible 20-factor test under [IRS Revenue Ruling 87-41](#) known as the common law right-of control test. [Read more.](#)

Independent Contractors – West Virginia. On February 10, Sen. Charles Trump (R) introduced SB 6. The “purpose of this bill is to simplify the criteria used to define independent contractors and to impose objective standards on the differentiation of independent contractors from employees.” [Read more.](#)

Independent Contractors – West Virginia. On February 15, House Speaker Robert Hanshaw (R) introduced HB 2020. The “purpose of this bill is to simplify criteria used to define independent contractors and to impose objective standards on the differentiation of independent contractors from employees.” Senate companion bill, [SB 272](#), was introduced on February 13 by Senate President Craig Blair (R). [Read more.](#)

Employee Classification – West Virginia. On February 15, Del. Geoff Foster (R) introduced HB 2530. The “purpose of this bill is to clarify the definition of an employee for the purposes of unemployment compensation and workers’ compensation to match conform with Internal Revenue Code provisions.” [Read more.](#)

Setbacks; Emissions – West Virginia. On February 10, Del. Terri Syplot (R) introduced HB 2074. The “purpose of this bill is to implement the recommendations arising out of the studies required by the Natural Gas Horizontal Well Control Act

passed by the Legislature December 14, 2011. The bill requires continuous monitoring of air, noise, dust and particulates. The bill requires the operator to undertake the best available control technology if standards for air, noise, dust or particulates are exceeded. The bill changes the set back from horizontal well work activity to a residence to 1,500 feet from the limit of well work disturbance.”

[Read more.](#)

Setbacks; Notice – West Virginia. On February 10, Del. Barbara Fleischauer (D) introduced HB 2132. The “purpose of this bill is to change an elective obligation to a mandatory one. The bill requires notice in certain instances to the occupants of residential property. The bill prohibits the disturbance of a well site be no closer than 1,500 feet of an occupied dwelling. The bill provides notices include certain information. The bill establishes standards relating to air, noise, light and dust. The bill permits landowners be compensated for any decrease in the values of the land for its highest and best use. The bill requires the notice of a claim be also provided to an occupant of residential structure on the property. The bill establishes a statute of limitations for claims being filed.” [Read more.](#)

Tax Valuation – West Virginia. On February 10, Sen. Eric Tarr (R) introduced SB 32. The purpose of this bill is “to clarify the types of operating expenses that must be used for purposes of valuing producing oil and natural gas wells, the methodology that shall be used by the Tax Commissioner in calculating operating expenses, the confidentiality of information submitted by natural resource producers to the Tax Commissioner, reports that must be submitted by the Tax Commissioner to the Joint Committee on Government and Finance, and to provide for alternate appeal of proposed valuation of natural resources property for ad valorem property tax purposes.” [Read more.](#)

Abandoned Mineral Interests – West Virginia. On February 10, Del. Pat McGeehan (R) introduced HB 2205. The “purpose of this bill is to create a procedure to streamline the process to claim

abandoned mineral interests.” [Read more.](#)

Surface Mine Blasting Distance – West Virginia. On February 10, Del. Barbara Fleischauer (D) introduced HB 2227. The “purpose of this bill is to extend the distance from occupied dwellings or certain other structures in which surface mine production blasting may not occur, from 300 feet to 625 feet, to be consistent with the distance a gas well drilling pad must be from an occupied dwelling.” [Read more.](#)

Production Tax – West Virginia. On February 10, Del. Mick Bates (D) introduced HB 2282. The “purpose of this bill is to provide for a new fee on each MFC of natural gas produced to fully fund [Public Employees Insurance Agency] benefits at current levels; allow a tax credit for value-added jobs in West Virginia for persons paying this fee; and creating a special reserve account to assume that sufficient moneys are collected to preserve the existing insurance program for a 5-year period, then allowing excess proceeds to be directed to general revenue.” [Read more.](#)

Royalty Payments – West Virginia. On February 10, Del. Lisa Zukoff (D) introduced HB 2081. The “purpose of this bill is to require lessees of West Virginia real estate who make natural resources royalty payments for in-state property to any nonresident lessor, to withhold West Virginia personal income tax on natural resources royalty payments. The bill provides exceptions, penalties, defines terms and grants rule-making authority.” [Read more.](#)

Tax Sales – West Virginia. On February 10, Sen. Patricia Rucker (R) introduced SB 72. The “purpose of this bill is to require the sheriff to send notices to the owners of record and to each resident or occupant of real property prior to selling the property for which property taxes have not been paid.” [Read more.](#)

Ad Valorem Taxes – Wyoming. *(Update to 1/25/21 Weekly Report)* On February 9, Gov. Mark Gordon (R) signed [SF 60](#) into law and the Act is effective

immediately. The Act, sponsored by the Joint Revenue Interim Committee, adds a new section to the Ad Valorem Taxation law regarding the “Monthly payment of ad valorem tax on gross product of mineral production.” According to law firm Welborn Sullivan Meck & Tooley, Wyoming attempted “to change its ad valorem tax payment and reporting system for produced minerals. The goal was to make ad valorem filings and payments simultaneous with severance tax filings and payments.” Attempts in 2020 to lessen the payment burden on the mineral industry by providing for a graduated change in the ad valorem tax payments to a monthly payment system were “complex and the overall implementation of the changeover resulted in confusion for everyone – the responsible governmental agencies, local officials and, of course, taxpayers.” SF 60 addresses these issues with “new provisions in an attempt to reduce both the complexity of the conversion as well as the potential financial impacts on counties and taxpayers.” To effectuate these changes, the law repeals portions of the Wyoming Code “including the complex graduated payment system, and includes relief packages for counties as well as funding for the system change.” Wellborn has also provided a table of payment due dates and related percentage requirements. [Read more.](#)

Notarial Acts – Wyoming. (*Update to 1/25/21 Weekly Report*) On February 9, Gov. Mark Gordon (R) signed SF 29 into law. The Act has multiple effective dates. The legislation is sponsored by the Joint Corporations, Elections & Political Subdivisions Interim Committee which enacts the Wyoming Revised Uniform Law on Notarial Acts and includes provisions related to electronic notarial acts, the performance of and requirements of notarial acts, certificates of notarial acts, notary qualifications, and related fees. [Read more.](#)

Mineral and Tax Liens – Wyoming. (*Update to 1/25/21 Weekly Report*) On February 9, Gov. Mark Gordon (R) signed SF 41 into law. The Act is effective on July 1, 2021 but has effect on liens prior to, on, and after January 1, 2021. The legislation is

sponsored by the Joint Minerals, Business & Economic Development Interim Committee and amends existing law regarding liens on mineral production, lien priority, and tax lien foreclosure. [Read more.](#)

STATE – Regulatory

Protection of the Oil and Gas Industry – Texas.

On January 28, Gov. Greg Abbott (R) issued an [Executive Order Relating To Protection Of Texas’s Energy Industry From Federal Overreach](#) in light of President Biden’s attack on the oil and gas industry since taking office. The Order “direct[s] every state agency to use all lawful powers and tools to challenge any federal action that threatens the continued strength, vitality, and independence of the energy industry. Each state agency should work to identify potential litigation, notice-and-comment opportunities, and any other means of preventing federal overreach within the law.” [Read more.](#)

STATE – Judicial

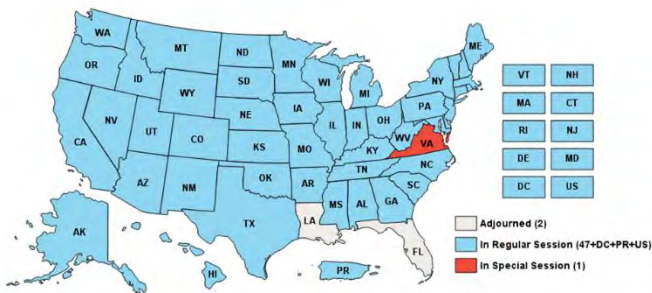
Leasing; Arbitration – Ohio. On December 22, 2020, the Ohio Court of Appeals, Seventh District, rejected a landowner’s attempt to circumvent mandatory arbitration in a lease dispute regarding whether leases had terminated for a lack of production. ([See the original appeal and case facts here.](#)) In the present appeal in *French v. Ascent Resources-Utica, L.L.C.* (Case No. 2020-Ohio-6828), the Court held that the exception to mandatory arbitration under state code ([R.C. 2711.01\(B\)\(1\)](#)) “did not apply to the oil and gas lease provisions and the matter was subject to arbitration.” The Court “determined that in this case even though oil and gas leases create an interest in real estate, they are not issues concerning title to or possession of real estate.” The lessors argued that “an oil and gas lease is more than a license because it creates a vested estate in the lands for the purposes named in the lease. They further argued that an oil and gas lease[s] creates an interest in real estate.” The Court rejected these arguments. [Read more.](#)

INDUSTRY NEWS FLASH

► **Texas oil and gas industry groups seeks to end routine flaring.** On February 10, the Texas Methane and Flaring Coalition, which includes more than 40 Texas operators, the Permian Basin Petroleum Association, the Texas Alliance of Energy Producers, the Texas Independent Producers and Royalty Owners Association, and the Texas Oil and Gas Association, among others, announced their intention to end routine natural gas flaring in the state by 2030. [Read more.](#)

LEGISLATIVE SESSION OVERVIEW

States in Session



Session Notes (by date): Alabama, Alaska, Arizona, Arkansas, California, Colorado, Connecticut, Delaware, 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, Utah, Vermont, Washington, West Virginia, Wisconsin and Wyoming are in regular session. The District of Columbia Council, Puerto Rico and the U.S. Congress are also in session.

The following will convene their 2021 legislative sessions on the dates provided: **Florida** (March 2) and **Louisiana** (April 12).

Virginia convened for a special session on February 10. The purpose of the special session is to align the legislative calendar with the customary 46-day length for odd-numbered years, reports [WTKR 3](#).

Signing Deadlines (by date): District of Columbia Democratic Mayor Muriel Bowser has 10 days from presentment, not including weekends or holidays, 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. **Massachusetts** Republican Gov. Charlie Baker has 10 days from presentment to sign or veto legislation or it becomes law without signature. **Michigan** Democratic Gov. Gretchen Whitmer has 14 days from presentment to sign or veto legislation or it is pocket vetoed. **New Jersey** Democratic Gov. Phil Murphy has 45 days from presentment to act on legislation or it becomes law without signature.

Interim Committee Hearings: The following states are currently holding 2021 interim committee hearings: [Florida House](#) and [Louisiana](#).

Bill Pre-Files: [Florida](#) and [Louisiana](#) are currently posting 2021 bill drafts, pre-files and interim studies. ■

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GOVERNMENTAL AFFAIRS WEEKLY REPORT

Weekly Highlights At-A-Glance

FEDERAL – Legislative

H.R. 684 – Keystone XL Pipeline Construction and Jobs Preservation Act. On February 25, official bill text was made available for [H.R. 684](#), known as the *Keystone XL Pipeline Construction and Jobs Preservation Act*. Sponsored by Rep. Kelly Armstrong (R-ND), the bill would authorize construction and operation of the Keystone XL pipeline by an Act of Congress and override any attempt by President Biden to stop it through executive action. “President Biden’s decision to revoke the Keystone XL Pipeline permit is an attack on the way of life for thousands of people who rely on energy production to feed their families,” said Rep. Armstrong. “The Keystone XL Pipeline would transport safe and reliable energy across our Nation, providing thousands of American jobs in the process and increasing our national security. We must do everything we can to see this terrible decision reversed and fight for energy policies that help move North Dakota and our Nation forward.” [Read more.](#)

H.R. 803 – Protecting America’s Wilderness and Public Lands Act. On February 26, [H.R. 803](#), originally known as the *Colorado Wilderness Act* but now referred to as the *Protecting America’s Wilderness and Public Lands Act* after the consolidation of a number of separate bills into one bill package, [passed the House](#). The bill, sponsored by Rep. Diana DeGette (D-CO), combined eight bills that had previously been introduced and aims to provide extra protection to about 1.5 million acres of public lands by designating them as wilderness. The measure would also prevent new oil, gas, and mineral extraction on more than 1.2 million acres of public land and preserve 1,000 river miles by adding them to the National Wild and Scenic Rivers System. Although the bill is backed by the White

House, it could face an uphill battle in the Senate, where it would need 60 votes to avoid a filibuster. [House Republicans opposed the comprehensive bill package](#) and argued that it would, among other things, “inhibit firefighting abilities in areas close to or surrounded by wilderness in California and Colorado, and create additional burdens for land managers.” Rep. Bruce Westerman (R-AR), the highest-ranking Republican member on the House Natural Resources Committee, said, “This bill won’t help the environment but will instead kill jobs and imperil our national security and American energy dependence.” [Read more.](#)

H.R. 757 – Protecting New Mexico’s Jobs and Public Education System Act. On March 1, official bill text was made available for [H.R. 757](#), known as the *Protecting New Mexico’s Jobs and Public Education System Act*. Sponsored by Rep. Yvette Herrell (R-NM), the bill would exclude executive orders by President Biden and Interior Department orders regarding a pause on oil and gas leasing, permitting, and related oil and gas activities from having effect in New Mexico. Stressing the importance of the legislation, Rep. Herrell says, “New Mexico stands to lose more than any other state under Biden’s ban. The loss of jobs and the loss of funding for public education would be absolutely devastating. Even optimistic estimates for land-lease payments and taxes on proposed wind and solar projects fail to fill the hole the loss of oil and gas revenue will leave in our state budget.” [Read more.](#)

H.R. 794 – National Climate Emergency Act. On March 1, official bill text was made available for [H.R. 794](#), known as the *National Climate Emergency Act*. Sponsored by Rep. Earl Blumenauer (D-OR), the bill would direct President Biden to declare a national climate emergency and mobilize every resource at

the country's disposal to halt, reverse, mitigate, and prepare for the consequences of this climate crisis. The bill also calls for environmental justice policies, which includes "upholding the fundamental rights of all Americans from the perils of climate change." [Read more.](#)

H.R. 815 – Arctic Refuge Protection Act. On March 4, official bill text was made available for [H.R. 815](#), known as the *Arctic Refuge Protection Act*. The bill, sponsored by Rep. Jared Huffman (D-CA), would end the Arctic National Wildlife Refuge oil and gas program authorized under the Trump administration. Senate companion bill, [S. 282](#), sponsored by Sen. Ed Markey (D-MA), was also made available on March 4. [Read more.](#)

H.R. 859 – Protecting American Energy Jobs Act. On March 1, official bill text was made available for [H.R. 859](#), known as the *Protecting American Energy Jobs Act*. Sponsored by Rep. Lauren Boebert (R-CO), the bill would prohibit President Biden "from issuing moratoria on leasing and permitting energy and minerals on certain Federal land." According to Rep. Boebert, "Blocking future oil and gas leases on 700 million acres is an unlawful attack on the livelihoods of the people in my district." [Read more.](#)

S. 180 – Buffalo Tract Protection Act. On February 25, official bill text was made available for [S. 180](#), known as the *Buffalo Tract Protection Act*. Sponsored by Sen. Martin Heinrich (D-NM), the bill would withdraw certain Bureau of Land Management lands from mineral development. Specifically, southern Sandoval County, including the Buffalo Tract and the Crest of Montezuma, would be withdrawn from any mineral development, including gravel mining. [Read more.](#)

[FEDERAL – Regulatory](#)

Independent Contractors; U.S. Department of Labor – Washington, DC. (*Update to 1/11/21 Weekly Report*) The Biden administration has delayed implementation of the Trump administration's late-term rule which would make it easier for companies

to classify workers as independent contractors (See [Independent Contractor Status under the Fair Labor Standards Act Delay of Effective Date: 86 Fed. Reg. 12535](#)). Adhering to President Biden's inauguration day directive freezing all pending Trump-era regulations, the U.S. Department of Labor (DOL) will stall the independent contractor rule's effective date by 60 days until May 7, 2021. The DOL's Wage and Hour Administration said the delay is necessary to consider the legality of the independent contractor test and the agency could re-open the rulemaking process with a different standard, according to reports. According to Bloomberg Government, "the 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 is expected to clarify how independent contractor status is determined and may 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 outgoing Labor Secretary Eugene Scalia. The rule had a March 8, 2021 effective date. [Read more.](#)

Interior Secretary Confirmation Hearing –

Washington, DC. On February 23-24, the [Senate Committee on Energy & Natural Resources held a confirmation hearing for President Biden's nominee to head the U.S. Department of the Interior](#). Rep. Debra Haaland (D-NM). In advance of her Senate testimony, Haaland said oil and natural gas will continue to play a major role in America for years to come, even as she pledged to be a “fierce advocate” for public lands and address climate change. the New Mexico congresswoman said she is committed to “strike the right balance” as the agency manages energy development and seeks to restore and conserve federal lands. [Read more](#). In anticipation of the hearing and issues to be addressed, on February 19, the Independent Petroleum Association of America’s *Energy In Depth* research, education and public outreach campaign put together six key questions for Rep. Haaland that will put a “spotlight on the Biden Administration’s bans on oil and natural gas leasing and permitting on federal lands.” [Read more](#). During a tense confirmation hearing, on the first day of testimony, Rep. Haaland told lawmakers, “There’s no question that fossil energy does and will continue to play a major role in America for years to come,” Haaland testified. “I know how important oil and gas revenues are to fund critical services.” However, the congresswoman was somewhat evasive when it came to questions from Republicans on the Keystone XL and Dakota Access pipelines, reiterating that as Interior Secretary it will not be her agenda, but President Biden’s agenda. Sen. John Hoeven (R-ND) pressed Haaland to recuse herself from any Interior Department decisions over the Dakota Access oil pipeline, given the nominee’s past support of Standing Rock Sioux protesters. Although failing to give any commitments, Haaland sought to reassure senators from oil and gas producing states that she believes the federal government should continue permitting oil wells, pipelines, and coal mines. “The earth is here to provide for us,” said Haaland. And Haaland agreed with lawmakers from oil and gas producing states that blocking domestic oil and gas production will not accomplish anything for the climate if it merely shifts the sources of oil to other countries. [Read more](#). However, Sen. John

Barrasso (R-WY), the energy committee’s top Republican, said he believed Haaland’s positions are “squarely at odds with the mission of the Department of Interior,” including “managing the nation’s oil, gas and coal resources in a responsible manner, not eliminating access to them. If Representative Haaland intends to use the Department of Interior to crush the economy of Wyoming and other western states, then I’m going to oppose the nomination,” Barrasso warned. Sen. Steve Daines (R-MT) said he still had “concerns” about confirming Haaland, after asking her to account for past statements about fracking, wildlife protection and energy jobs – with select quotes highlighted on posters propped up behind him. “The track record and the ideology in the past I think will perpetuate more divisiveness,” said Daines. As of this report, the committee advanced Haaland’s nomination to a full Senate vote. [Read more](#).

Energy Secretary Confirmed – Washington, DC.

On February 25, Jennifer Granholm was confirmed as the next Secretary of the U.S. Department of Energy, which according to Bloomberg Government, puts “the former Michigan governor at the head of the agency that will play a key role in implementing the Biden administration’s ambitious climate agenda.” The Senate voted 64-35, with 14 Republicans voting in favor of President Biden’s pick, to confirm Granholm to lead a department which has a yearly budget of \$35 billion and research laboratories spread across 17 states. It also has a wide-ranging mission, including building the nation’s nuclear arsenal and guarding oil supplies. However, some Republicans raised concerns on the impact of the Biden administration’s agenda on the fossil fuel industry and remained skeptical of Granholm’s appointment. “President Biden has declared war on American energy and American energy workers,” said Sen. John Barrasso (R-WY). “I cannot in good conscience vote to approve his nominee for Secretary of Energy.” [Read more](#).

Securities and Exchange Commission Disclosure Rules for Oil and Gas Companies – Washington, DC.

On March 16, the Securities and Exchange

Commission (SEC) final rule, *Disclosure of Payments by Resource Extraction Issuers* ([86 Fed. Reg. 4662](#)), takes effect. The rule requires “resource extraction issuers to include in an annual report information relating to payments made to a foreign government or the Federal Government for the purpose of the commercial development of oil, natural gas, or minerals.” The rule has delayed reporting dates, however, with [the SEC directing](#) that “Following a two-year transition period, an issuer will be required annually to submit Form SD no later than 270 days following the end of its most recently completed fiscal year. For example, if the rules were to become effective on March 1, 2021, the compliance date for an issuer with a December 31 fiscal year-end would be Monday, September 30, 2024 (i.e., 270 days after its fiscal year end of December 31, 2023).” [Read more.](#)

FEDERAL – Judicial

Federal Oil and Gas Leasing; Permitting – North Dakota. On February 23, Continental Resources sued the Biden Administration in federal court arguing the administration is taking too long to act on multiple applications for permit to drill. The suit claims the delays are improper and will 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, comes on the heels of the Biden administration’s temporary pause on federal oil and gas leasing ordered during his first week in office. Continental is asking the court to order that the administration issue all the permits at issue. We will continue to monitor and report on this case for members as it progresses. [Read more.](#)

STATE – Legislative

Royalties; Leasing – Alaska. On February 18, the House Rules Committee (R) at the request of the governor introduced HB 81. Regarding net profit

share leases, the bill allows the Commissioner of the Department of Natural Resources to adjust the Net Profit Share rate through royalty modification. “This will incentivize additional resource development which may otherwise be expected to be uneconomic, potentially generating revenues to the State in the form of royalties, taxes, or net profit share payments that would not otherwise occur.” This legislation is limited to existing leases that are Net Profit Share Leases. Any changes from this legislation are presumed to only impact payments on a forward basis only, not retroactively. [Read more.](#)

Leasing – Alaska. On February 18, the House Rules Committee (R) at the request of the governor introduced HB 82. The bill would open a small portion of land in the southern Kenai Peninsula to non-surface leasing. [Read more.](#)

Oil Discharges – Alaska. On February 18, Rep. Andy Josephson (D) introduced HB 33. The bill provides for penalties for discharges of oil and other pollutants. [Read more.](#)

ANWR Leasing – Alaska. On February 18, Rep. George Rauscher (R) introduced HJR 12, which urges “the United States Department of the Interior, Bureau of Land Management, to honor the recent lease sales and proceed with permitting in the Arctic National Wildlife Refuge; urging the President of the United States to defend the 2020 Record of Decision approving the Coastal Plain Oil and Gas Leasing Program in the Arctic National Wildlife Refuge; opposing designation of the Arctic National Wildlife Refuge as a National Monument; and urging the Alaska delegation in Congress to uphold sec. 20001 of the Tax Cuts and Jobs Act of 2017.” [Read more.](#)

Setbacks – Colorado. On February 22, Sen. Barbara Kirkmeyer (R) introduced SB 114. The bill “requires that proposed public school building sites be set back from existing oil and gas facilities a distance that is no less than: the setback distance required by the local government having land use jurisdiction over the site for locating new oil and gas facilities from public school properties; or if there are no local

government setback requirements, the setback distance required by the oil and gas conservation commission for siting new oil and gas facilities from existing public school properties." [Read more.](#)

Greater Sage-Grouse – Idaho. On February 24, HB 237 was introduced by the House Resources and Conservation Committee (R). The bill would establish the Sage Grouse Preservation Program with "the goal of demonstrating that sage grouse can successfully be raised in captivity and as a result, populations can be increased, the state of Idaho hereby creates the sage grouse preservation program pursuant to the provisions of this section. For purposes of the sage grouse preservation program, no person or entity shall purchase sage grouse or sage grouse eggs or possess, propagate, breed, raise, sell, gather eggs of, take, or release greater sage grouse unless certified in compliance with the requirements of this section." [Read more.](#)

Recorded Instruments – Kentucky. On February 22, SB 243 was referred to committee after its introduction by Sen. Steve West (R). The bill defines "recorded instrument" and "portal"; requires county clerks to be open for reviewing and obtaining copies of recorded instruments for 40 hours a week unless they maintain a portal that allows the public to search for electronic copies of recorded instruments; establishes deadlines for county clerks to maintain portals for the filing and searching of recorded instruments; and creates a task force on issues regarding the implementation of electronic recording, fees or functions of the county clerk in the recording of documents, and closure of county clerk offices due to an emergency. [Read more.](#)

Independent Contractors – Missouri. On March 4, SB 549 was introduced by Sen. Denny Hoskins (R). The bill provides that in determining worker classification that those decisions defer to the guidance issued by the Internal Revenue Service when determining whether an individual or entity is an employee or independent contractor. [Read more.](#)

Oil and Gas Production Tax Allocations – Montana. On February 24, HB 404 passed out of committee following its introduction. The bill, sponsored by Rep. Jimmy Patelis (R), increases the maximum of oil and natural gas production tax revenue that a school district may retain. [Read more.](#)

Instrument Acknowledgments – Tennessee. On February 10, SB 1139 was introduced by Sen. Dawn White (R). Regarding the acknowledgments of instruments affecting real property, the bill would amend existing law to authorize an attorney licensed in this state to acknowledge the execution of an instrument affecting real property in this state. Companion House bill, [HB 1162](#), was also introduced on February 10 by Rep. Kirk Haston (R). [Read more.](#)

Energy Company Boycotts – Texas. On February 25, Rep. Phil King (R) introduced HB 2189. Relating to state contracts, the bill would prohibit investment in companies that boycott certain energy companies. [Read more.](#)

Notaries Public – Texas. On February 19, Rep. Valoree Swanson (R) introduced HB 1959. The bill amends existing notary law by updating provisions related to identification and fee adjustments. [Read more.](#)

Flaring Information – Texas. On February 22, Rep. Barbara Gervin-Hawkins (D) introduced HB 1975. The bill provides for the publication of flaring information. [Read more.](#)

Flaring Study – Texas. On February 22, Rep. Barbara Gervin-Hawkins (D) introduced HB 1976. The bill directs the Texas Railroad Commission to conduct a study on natural gas flaring. [Read more.](#)

Notice – Texas. On February 22, Rep. Trent Ashby (R) introduced HB 2006. Regarding the notice requirements for permits for the commercial surface disposal of oil and gas wastes, the bill requires notice to a river authority or groundwater conservation district under the conditions set forth. On February

23, Senate companion bill, [SB 771](#), was introduced by Sen. Robert Nichols (R). [Read more](#).

Eminent Domain – Texas. On February 22, Rep. Ben Leman (R) introduced HB 2041. The bill sets certain disclosure requirements related to eminent domain regarding appraisal reports. Senate companion bill, [SB 721](#), was introduced on February 22 by Sen. Charles Schwertner (R). [Read more](#).

Eminent Domain – Texas. On February 22, Rep. Ben Leman (R) introduced HB 2042. The bill provides certain requirements in connection with the acquisition of real property for public use by an entity with eminent domain authority. Senate companion bill, [SB 723](#), was introduced on February 22 by Sen. Charles Schwertner (R). [Read more](#).

Eminent Domain – Texas. On February 22, Rep. Ben Leman (R) introduced HB 2044. The bill provides for establishing actual progress for the purposes of determining the right to repurchase real property from a condemning entity. Senate companion bill, [SB 726](#), was introduced on February 22 by Sen. Charles Schwertner (R). [Read more](#).

Recorded Instruments – Texas. On February 23, Rep. Jake Ellzey (R) introduced HB 2131. Regarding the retention of instruments recorded in the property records of a county, the bill provides retention requirements. [Read more](#).

Ad Valorem Taxes – Texas. On February 25, Rep. Brooks Landgraf (R) introduced HB 2292. The bill relates to the appraisal for ad valorem tax purposes of a real property interest in oil or gas in place. [Read more](#).

Active Wells; Application Fees – Texas. On March 1, Rep. Ron Reynolds (D) introduced HB 2482. The bill would increase certain application fees, provide for active well status procedures, bond requirements, and sets plugging goals. The bill is unlikely to advance to a floor vote in the Republican led chamber. [Read more](#).

Eminent Domain; Landowner's Bill of Rights

– **Texas.** (Update to 1/25/21 Weekly Report) On March 3, Rep. Joe Deshotel (D) introduced HB 2730. Regarding eminent domain, the bill provides for a landowner's bill of rights. A similar bill, [HB 902](#), was already introduced in January by Rep. DeWayne Burns (R). [Read more](#).

Permitting – Texas. On March 4, Rep. Chris Turner (D) introduced HB 2814. The bill provides for a requirement of a public hearing on certain applications for a permit to drill an oil or gas well. [Read more](#).

Wells – Texas. On March 4, Rep. Oscar Longoria (D) introduced HB 2868. The bill provides for financial security requirements for well operators and determinations of plugging costs. [Read more](#).

Nonparticipating Royalty Owners – Texas. On March 4, Rep. Ernest Bailes (R) introduced HB 2881. The bill provides for definitions and applicability related to nonparticipating royalty interest owners. Senate companion bill, [SB 1030](#), was also introduced on March 4 by Sen. Angela Paxton (R). [Read more](#).

Division Orders – Texas. On March 4, Rep. Ernest Bailes (R) introduced HB 2882. The bill relates to information provided to a payee by a payor of proceeds of production from an oil or gas well that traverses multiple tracts. Senate companion bill, [SB 1031](#), was also introduced on March 4 by Sen. Angela Paxton (R). [Read more](#).

Payee Information – Texas. On March 4, Rep. Ernest Bailes (R) introduced HB 2883. The bill relates to the information a payor of the proceeds of production from an oil and gas well is required to provide a payee. Senate companion bill, [SB 1032](#), was also introduced on March 4 by Sen. Angela Paxton (R). [Read more](#).

Suspension of Payments – Texas. On March 4, Rep. Ernest Bailes (R) introduced HB 2884. The bill provides for notification of suspension of payments. Senate companion bill, [SB 1033](#), was also introduced

on March 4 by Sen. Angela Paxton (R). [Read more.](#)

Railroad Commission Notices – Texas. On March 4, Sen. Juan Hinojosa (D) introduced SB 1006. The bill provides certain notice requirements for the Railroad Commission of Texas. [Read more.](#)

Eminent Domain; Right-of-Way Agent Education – Texas. (*Update to 1/25/21 Weekly Report*) On March 3, Sen. Lois Kolkhorst (R) introduced SB 986. Regarding eminent domain, the bill provides for an ombudsman, right-of-way agent education requirements, and required terms of conveyance for certain instruments, among other provisions. The House companion bill, [HB 902](#), was introduced in January by Rep. DeWayne Burns (R). [Read more.](#)

Eminent Domain – Texas. On February 22, Sen. Charles Schwertner (R) introduced SB 722. Regarding eminent domain appraisal reports, the bill provides that “an entity that fails to meet the requirements of this subsection is liable to the owner for reasonable attorney’s fees incurred by the owner in connection with the entity’s acquisition of the owner’s property.” [Read more.](#)

Eminent Domain – Texas. On February 22, Sen. Charles Schwertner (R) introduced SB 724. The bill provides for the award of attorney’s fees and other costs in an eminent domain proceeding. [Read more.](#)

Pit Locations – Texas. On February 23, Sen. Robert Nichols (R) introduced SB 772. Regarding the location of pits used in the production of oil and gas, the bill would require standards be established for their location. On February 24, House companion bill, [HB 2201](#), was introduced by Rep. Trent Ashby (R). [Read more.](#)

Severance Tax Refunds – Texas. On February 26, Sen. Donna Campbell (R) introduced SB 833. The bill provides sales tax refunds for tax overpayments by certain oil or gas severance taxpayers. [Read more.](#)

Quitclaim Deeds – Texas. On March 1, Sen. Bryan Hughes (R) introduced SB 885. The bill would amend

existing law regarding the effect of recording a quitclaim deed. [Read more.](#)

Tax Reductions – Texas. On March 3, Sen. Nathan Johnson (D) introduced SB 127. Relating to the tax reduction for certain high-cost gas, the bill amends existing law regarding application dates. [Read more.](#)

Supporting Natural Resources and Energy Industries – Utah. On March 2, SCR 8 passed the Senate and has been transmitted to the House. The Concurrent Resolution, sponsored by Sen. David Hinkins (R), “describes the benefits derived from the natural resources and energy resources in the state; reminds the federal government of the federal government’s legal obligation to hold lease sales; reminds the federal government of Bureau of Land Management requirement to manage public lands for multiple uses and values; implores the federal government to consult with state, tribal, and other stakeholders; implores the federal government for a fair and balanced consideration in future federal land management decisions impacting the state; and reminds the federal government that Utah is a sovereign state.” [Read more.](#)

Tax Valuation – West Virginia. On February 17, HB 2581 was introduced by Del. Dianna Graves (R). The bill provides, among other tax change provisions, revised methodology to value oil and natural gas properties by the Tax Commissioner. [Read more.](#)

Orphaned Wells – West Virginia. On February 17, HB 2589 was introduced by Del. Evan Hansen (D). “The purpose of this bill is to prevent oil and gas wells from being orphaned on surface owner’s land with no responsible driller or operator with the resources to plug the well.” [Read more.](#)

Severance Tax – West Virginia. On March 2, HB 2810 was introduced by Del. Bill Anderson (R). The purpose of this bill is to remove the severance tax on oil and gas produced from low producing wells. [Read more.](#)

Unitization – West Virginia. On March 2, HB 2853

was introduced by Del. Brandon Steele (R). The purpose of this bill is to provide for the unitization of interests in drilling units in connection with shallow horizontal oil or gas wells. The bill sets forth application requirements, establishes the standard of review, provides for unitization orders, requires notice and timeliness, provides for hearings, addresses oil and gas produced from shallow horizontal wells, and adds or modifies definitions. Senate companion bill, [SB 538](#), was introduced on March 3 by Sen. Eric Nelson. [Read more.](#)

Independent Contractors – West Virginia. On February 19, SB 272 passed the Senate and has been transmitted to the House. The measure is sponsored by Sen. Craig Blair (R). The “purpose of this bill is to simplify criteria used to define independent contractors and to impose objective standards on the differentiation of independent contractors from employees.” House companion bill, [HB 2590](#), was introduced on February 25 by Del. Ben Queen (R). [Read more.](#)

Orphaned Wells – West Virginia. On February 19, SB 362 was introduced by Sen. Randy Smith (R). “The purpose of this bill is to create the Orphan Oil and Gas Well Prevention Act; providing for a short title; providing for legislative findings and declarations; providing for restrictions to permit oil and natural gas wells, certain prohibitions, and requiring plugging assurance requirements; providing for limitations on the transfer of wells; providing for responsibility of previous operators to plug transferred wells; providing for different methods for operators to provide plugging assurance of wells including for wells not producing in paying quantities; providing administrative and management responsibilities for the chief of the Office of Oil and Gas and the State Treasurer regarding plugging assurance funds; providing clarifications regarding the duties of mineral and surface owners; providing for rule-making authority and severability.” [Read more.](#)

Well Compliance – West Virginia. On February 24, Del. Evan Hansen (D) introduced HB 2725. “The

purpose of this bill is to provide stable and adequate funding to the Office of Oil and Gas of the Department of Environmental Protection in order to oversee oil and gas wells’ compliance with the law for the life of the wells.” [Read more.](#)

Permitting – West Virginia. On February 23, Sen. Randy Smith (R) introduced SB 404. “The purpose of this bill is to create a statutory fee for the modifications to permits issued by the Department of Environmental Protection’s Office of Oil and Gas.” [Read more.](#)

Notarial Acts – West Virginia. On February 26, SB 469 was introduced by Sen. Mark Maynard (R). For the purpose of notarial acts, the bill would permit personal appearance by video technology. [Read more.](#)

State Land Leases – Wyoming. On March 1, SF 114 was introduced by Sen. Brian Boner (R). Relating to state lands, the bill amends existing law to require auctions under certain circumstances and provides for preferred rights in rental offers. [Read more.](#)

Federal Oil and Gas Suspension – Wyoming. On March 1, SJ 3 was introduced by Sen. Edward Cooper (R). The Joint Resolution would request “Congress and the federal government to reverse federal orders and actions that inhibit the safe development of oil and gas in Wyoming and that negatively and disproportionately impact Wyoming citizens and industries.” [Read more.](#)

Public Lands – Wyoming. On March 1, HB 141 was introduced by Rep. Robert Wharff (R). The bill relates to public lands and sets forth provisions requiring transfer of public lands; specifying distribution of proceeds from sale of public lands; and creating a joint select committee on the transfer of public lands, among other provisions. [Read more.](#)

Stripper Well Exemption – Wyoming. On March 1, HB 145 was introduced by Rep. Bill Fortner (R). The bill creates an exemption from ad valorem taxes for oil production from stripper wells. [Read more.](#)

STATE – Regulatory

Colorado Oil and Gas Conservation Commission – Colorado. On March 1, the Colorado Senate confirmed Gov. Jared Polis' (D) appointees to the Colorado Oil and Gas Conservation Commission (COGCC). According to Colorado Politics, "The Colorado General Assembly decided in 2019 to replace political appointees with experts on the state oil and gas regulatory board." Republican lawmakers voiced their opposition to the COGCC appointees, but were unable to stop their approval. *(Hat tip to DAPL for reporting this story.)* [Read more.](#)

DRBC Hydraulic Fracturing Ban – Pennsylvania, New Jersey, New York, and Delaware. On February 25, the Delaware River Basin Commission (DRBC) voted unanimously to enact a permanent ban on hydraulic fracturing of natural gas wells in the Delaware River Watershed. The commissioners said the ban would "control future pollution, protect the public health and preserve the waters" of the Delaware Basin. Environmentalists hailed the decision affecting the water supply for more than 13 million people in four states, while the oil and gas industry criticized it. The interstate agency approved the [final rule](#) (Resolution 2021-01) which affirms a de facto drilling moratorium that has been in place since 2010 and that affects residents of Pennsylvania, New Jersey, New York, and Delaware. The commission also voted unanimously in favor of a companion [resolution](#) starting a rule process to ban fracking wastewater imports and water exports for fracking. This vote comes about a month after a federal judge set an October trial date for a lawsuit filed against the moratorium by a landowner group in Pennsylvania. Environmental groups called the DRBC vote an "essential first step in stopping the devastating impacts of fracking in the Watershed." But Stephanie Catarino Wissman, American Petroleum Institute executive director in Pennsylvania, said the commission lacks the authority to ban fracking. The decision "ignores a robust regulatory system and strict industry standards that ensure the environment, public health and local communities are protected," she said. [Read more.](#)

STATE – Judicial

Oil and Gas Projects – California. On February 24, environmentalists filed suit against California for approving thousands of oil and gas drilling and hydraulic fracturing projects without the required environmental review, according to the complaint. In [Center for Biological Diversity v. California Geologic Energy Mgmt. Div.](#) (Case No. not yet docketed), the litigants claim the California Geologic Energy Management Division (CalGEM) "ignored its legal obligation to conduct analyses of environmental and health harms before issuing permits and approvals." The suit also claims state regulators have skipped public notice, comment, and hearing requirements that ordinarily apply. Among other claims, the litigants seek a permanent injunction enjoining CalGEM from continuing what they deem unlawful practices unless and until CalGEM complies with California Environmental Quality Act "environmental review procedures and adequately discloses, evaluates, and mitigates the direct, indirect, and cumulative impacts of each project." [Read more.](#)

Climate Change Lawsuit – Maryland. On February 22, the City of Annapolis, Maryland, sued 26 oil and gas companies for the costs and consequences of climate change. In [City of Annapolis vs. BP PLC](#) (Case No. C-02-CV-21-000250), the city argues that the companies violated the Maryland Consumer Protection Act and five other actions, including public and private nuisance, negligence, failure to warn and trespass. "The fossil fuel industry knew for the past 50 years that their industry was pushing the environment to a tipping point where combating climate change would become progressively difficult," said Annapolis Mayor Gavin Buckley (D) [during a news conference to discuss the lawsuit.](#) "The companies worked to deceive people of the danger, hiding their knowledge and engaging in an intentional campaign to mislead the public about the science, proving the growing danger posed by fossil fuels." The oil and gas company defendants have yet to respond to the complaint. [Read more.](#)

INDUSTRY NEWS FLASH

► **President Biden's Conservation of 30% of U.S. Lands and Waters by 2030.** To follow up on our ongoing reporting since President Biden was inaugurated, the Colorado- and Wyoming-based law firm Welborn Sullivan Meck & Tooley, P.C. has published a legal update on how the Biden administration's recent executive orders on climate change and conservation goals might be implemented. [Read more.](#)

► **COVID-19 stimulus expected to boost oil industry.** On March 1, Rystad Energy, an oil and gas industry research firm, reported that oil is finally pricing in the full boost from the long-awaited Covid-19 stimulus bill, rising on the prospect of extra spending and its related market benefits. "Oil prices are naturally moving as spending is expected to rise in industrial and social activity, naturally creating more demand for oil," said Rystad analyst Louise Dickson. [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, Utah, Vermont, Washington, West Virginia, Wisconsin and Wyoming are in regular session. The District of Columbia Council and the U.S. Congress are also in session.

Virginia adjourned its 2021 legislative session sine die on March 1. 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: Utah (March 5), Arkansas (March 11), Mississippi (March 15), New Mexico (March 20), South Dakota (March 29) and Kentucky (March 30).

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

Interim Committee Hearings: Louisiana is currently holding 2021 interim committee hearings.

Bill Pre-Files: Louisiana is currently posting 2021 bill drafts, pre-files and interim studies. ■

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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. [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

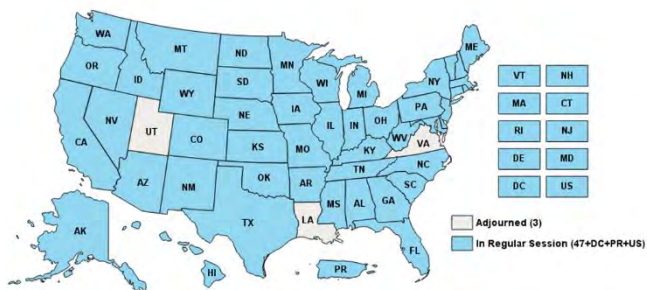
► **Biden pause on oil and gas leasing to be felt in 2022.** The U.S. Energy Information Administration (EIA) reports that the Biden administration's temporary moratorium on oil and gas leasing on federal lands and waters is expected to have "no effects" until 2022. According to the EIA's latest Short-Term 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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