

GOVERNMENTAL AFFAIRS WEEKLY REPORT

Weekly Highlights At-A-Glance

FEDERAL – Legislative

H.R. 1799 – Paycheck Protection Program

Extension. On March 30, President Biden signed [H.R. 1799](#), known as the *PPP Extension Act of 2021*, into law. The Act extends the deadline for the Paycheck Protection Program (PPP) to May 31 as it was set to expire on March 31. The legislation received overwhelming bipartisan support in the House and Senate and at the bill signing Biden declared the law a "bipartisan accomplishment." As reported previously, the PPP, created under the Trump administration, offers forgivable loans to businesses, sole proprietorships, independent contractors, and nonprofit organizations affected by the COVID-19 pandemic. The program is administered by the Small Business Administration ([see program information here](#)) which will now continue processing applications through the end of June for those applications submitted by June 1, 2021. [Read more.](#)

S.J. Res. 14 – Oil and Natural Gas Sector: Emission

Standards. On March 25, Sen. Martin Heinrich (D-NM) introduced Senate Joint Resolution, [S.J. Res. 14](#), which seeks to rollback Trump-era regulations under the Congressional Review Act (CRA) to reinstate Obama-era regulations of methane emissions from the oil and gas industry. The [CRA allows new regulations to be overturned through a joint resolution of disapproval](#). Republicans at the start of the 115th Congress (2017) used their unified control of Congress and the White House to overturn 16 rules, all of which were issued under the Obama administration or by Obama appointees. The Democrat's measure states that "Congress disapproves the rule submitted by the Administrator of the Environmental Protection Agency relating to 'Oil and Natural Gas Sector: Emission Standards for

New, Reconstructed, and Modified Sources Review' ([85 Fed. Reg. 57018](#) (September 14, 2020)), and such rule shall have no force or effect." The Trump administration's regulations eased certain emissions standards put in place by his predecessor. [Read more.](#) The House version of the resolution, [H.J. Res. 34](#), was introduced by Rep. Diana DeGette (D-CO) on March 26. [Read more.](#)

S. 985 – Save America's Clean Energy Jobs Act.

On March 25, Sen. Tom Carper (D-DE) introduced [S. 985](#), known as the *Save America's Clean Energy Jobs Act*, which would allow for temporary refundability of certain "investment and production tax credits, which incentivize private development of renewable energy projects such as solar, wind, fuel cells, and carbon capture and sequestration. This will enable clean energy companies to bypass frozen tax equity markets and access these tax credits directly, which in turn will help get stalled projects off the ground and people back to work." According to Sen. Carper, "By allowing for temporary refundability of these clean energy tax credits, the Save America's Clean Energy Jobs Act will help revive the clean energy industry, create jobs throughout the country, and drive the kind of innovation we need to boldly cut emissions from our power sector." [Read more.](#)

S. 986 – Carbon Capture Utilization and Storage

Tax Credit Amendments Act. On March 25, Sen. Tina Smith (D-MN) introduced [S. 986](#), known as the *Carbon Capture Utilization and Storage Tax Credit Amendments Act*, in an effort to reduce greenhouse gas emissions by making tax credits that encourage carbon capture projects more available and easier to use. The bill has bipartisan support from oil and gas producing states cosponsors, including Sen. Kevin Cramer (R-ND), Sen. John Hoeven (R-ND), Sen. Joe Manchin (D-WV), Sen. Shelley Moore Capito

(R-WV), and Sen. John Barrasso (R-WY). “The United States has an opportunity to be a leader when it comes to carbon capture technologies, and this legislation will help us achieve that goal,” said Sen. Capito. “Not only will it help us protect our coal and natural gas industries, which are so critical to states like West Virginia, but this legislation promotes domestic energy production and reducing our power and manufacturing sector emissions. I’m proud to reintroduce this bipartisan legislation that will make a big difference in putting American innovation to work growing our economy and combating climate change in a responsible way, regardless of the current economic circumstances.” [Read more.](#)

S. 498 – State Water Rights Protection Act. On March 1, Sen. Mike Lee (R-UT) introduced [S. 498](#), known as the *State Water Rights Protection Act*. The bill “would amend current law to prevent a president from creating a reserved water right when designating a national monument, though it would not prevent a president from creating a national monument itself. Additionally, it would allow for water rights to be acquired for a national monument through the state system in which the water rights reside.” In describing the need for the legislation, Sen. Mike Lee noted that “As the size and scope of national monuments have significantly grown over time, often without the approval of a state and its inhabitants, these designations can impact, and in some cases terminate, privately held water rights.” [Read more.](#)

S. 420 – Protecting the Right to Organize Act of 2021. On March 24, official bill text was made available for [S. 420](#), known as the *Protecting the Right to Organize Act of 2021*. Sponsored by Sen. Patty Murray (D-WA), the bill primarily provides for enabling workers with the right to organize and join labor unions, but it also aims to close “loopholes that allow employers to misclassify their employees as supervisors and independent contractors and increasing transparency in labor-management relations.” The bill identifies criteria in which a worker may be classified as an independent contractor but favors the presumption that a worker is an employee.

The legislation has not moved since its February 24 referral to the Senate Committee on Health, Education, Labor, and Pensions. [Read more.](#)

FEDERAL – Regulatory

Federal Mineral Interests. On April 1, the Bureau of Land Management (BLM) published a notice of information collection and request for comment regarding conveyance of federally-owned mineral interests to non-Federal owners of the surface estate. According to the notice, *Agency Information Collection Activities; Conveyance of Federally-Owned Mineral Interests (86 Fed. Reg. 17188)*, “The respondents in this information collection are non-Federal owners of surface estates who apply for underlying Federally-owned mineral interests. This information collection enables the BLM to determine if the applicants are eligible to receive title to the Federally-owned mineral interests beneath their lands.” The public comment period is open through June 1, 2021. [Read more.](#)

Federal Reserve Climate Risk Committee. On March 23, the Federal Reserve announced it will create “a committee dedicated to understanding the ways climate change could upend the global financial system.” The new Financial Stability Climate Committee (FSCC) “will focus on the potential threats climate change can pose to the broader financial world.” Dr. Lael Brainard, a governor of the Federal Reserve Board, [told attendees at a Boston financial stability conference](#), “Climate change is already imposing substantial economic costs and is projected to have a profound effect on the economy at home and abroad. Future financial and economic effects will depend on the severity of the physical effects of climate change and the nature and speed of the transition to a sustainable economy. Financial market participants that do not put in place frameworks to assess and address climate-related risks could face significant losses on climate-sensitive assets caused by environmental shifts, by a disorderly transition, or both.” Brainard said the “FSCC will approach this work from a macroprudential perspective—that is, one that

considers the potential for complex interactions across the financial system.” [Read more.](#)

Public Lands Congressional Hearing. On March 23, the House Committee on Natural Resources, Subcommittee on National Parks, Forests, and Public Lands, [held a public hearing](#) titled, “Building Back Better: Examining the Future of America’s Public Lands.” The hearing included testimony from Idaho Gov. Brad Little (R), conservationists, academics, and other stakeholders. The entire [hearing can be viewed here](#). The full witness testimony and hearing record is also available for review. [Read more.](#)

Bears Ears National Monument; Grand Staircase-Escalante National Monument. On March 29, Rep. Bruce Westerman (R-AR), ranking member of the House Natural Resources Committee, [wrote a letter](#) to Interior Secretary Debra Haaland regarding her department’s review of the boundaries and protections of national monuments, which includes the boundaries of two Utah sites, Bears Ears National Monument and Grand Staircase-Escalante National Monument, which the Trump administration reduced. According to The Hill, “the Arkansas Republican also requested further information on the evaluation criteria for the national monuments and the department’s plans, if any, for a formal public comment period.” [Read more.](#)

Senators’ Letter to the Interior Secretary. On March 22, a group of eight Republican U.S. senators [wrote a letter](#) to Interior Secretary Debra Haaland expressing their ongoing opposition to President Biden’s pause on federal oil and gas leasing and requesting information regarding the agency’s March 25 Virtual Forum. The letter requests “a detailed explanation of the legal and procedural effect the forum and subsequent ‘interim report’ will have on the federal decision making process.” The senators also corrected many inaccuracies they found in Interior Department communications related to the oil and gas leasing pause. [Read more.](#)

Interior Department Forum on Federal Oil and

Gas Program. *(Update to 3/22/21 Weekly Report)* On March 25, the Interior Department held a virtual public forum as “part of its comprehensive review of the federal oil and gas program.” ([Watch a recording of the forum here](#)) “The forum featured several panels to highlight perspectives from labor and environmental justice organizations, natural resource advocates, industry representatives, Indigenous organizations, and other experts.” The public comment period will remain open through April 15, and the public may submit comments directly to the Interior Department at energyreview@ios.doi.gov. For background, on March 9, the [U.S. Department of the Interior announced](#) it would 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 comes 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 held the virtual forum on the future of leasing and to hear from those industry representatives, environmental justice groups, and natural resource advocates. [Read more.](#)

Labor Secretary Confirmed. *(Update to 1/25/21 Weekly Report)* On March 22, the U.S. Senate confirmed President Biden’s pick for Secretary of the U.S. Department of Labor – the agency which enforces the Fair Labor Standards Act and other laws governing independent contractors and workplace policy. Boston Mayor Marty Walsh (D) was confirmed by a 68-29 bipartisan vote, attracting significant Republican support in the Senate. Walsh, a former labor union leader, is expected to increase enforcement efforts against companies in wage and hour, overtime, and employee status cases. [Read more.](#)

Tribal Mineral Rights – North Dakota. On March 19, the Department of the Interior, Office of the Solicitor, withdrew a Trump-era decision that determined a portion of the Missouri River on the Fort Berthold

Indian Reservation belonged to the state of North Dakota. The withdrawal by President Biden's agency states that "the Office of the Solicitor's governing legal interpretation with respect to ownership and trust status of minerals beneath the flooded uplands remains the same. The flooded uplands are held in trust for the benefit of the Mandan, Hidatsa, and Arikara Nation." The affected tribal nations applauded the decision. "The MHA Nation's rights to the Missouri River riverbed minerals have been reaffirmed through a history of longstanding, well-settled, and still applicable legal precedents, and there should be no question as to the validity of the Nation's claims," said National Congress of American Indians President Fawn Sharp.

[Read more.](#)

FEDERAL – Judicial

Federal Oil and Gas Leasing – Louisiana. On March 24, Louisiana led 12 other states in suing the Biden administration "to end a suspension of new oil and gas leases on federal land and water and to reschedule canceled sales of leases in the Gulf of Mexico, Alaska waters and western states." In [Louisiana v. Biden](#) (Case No. 2:21-cv-00778), the litigants claim the Biden administration's "stated policy of banning new drilling permits contravenes congressional commands" and is a violation of various federal statutes. "By executive fiat, Joe Biden and his administration have single-handedly driven the price of energy up — costing the American people where it hurts most, in their pocketbooks," said Louisiana Attorney General Jeff Landry (R). [Louisiana and 12 other states followed up this lawsuit with another filing on March 31](#) demanding that the U.S. District Court for the Western District of Louisiana order the Biden administration to immediately lift the federal oil and gas leasing pause by way of preliminary injunction. [Read more.](#)

Nuclear Waste Site – New Mexico. On March 29, New Mexico sued the U.S. Nuclear Regulatory Commission (NRC) and the U.S. government "seeking to stop them from indefinitely storing the nation's supply of high level radioactive waste

in South Eastern New Mexico." In the suit, [New Mexico v. U.S. Nuclear Regulatory Commission](#) (Case No. 1:21-cv-00284), the complaint "alleges that the NRC is acting beyond the scope of its authority in licensing the proposed interim storage facility to be located in Lea and Eddy County and that the interim storage facility will jeopardize the State's water resources and agricultural interests and shift to the state and local governments the enormously expensive job of training and equipping first responders for up to 120 years to deal with any mishap that occurs as a result of the NRC's untested and unauthorized plan, among other things." In describing the lawsuit filing, New Mexico Attorney General Hector Balderas (D) said, "I am taking legal action because I want to mitigate dangers to our environment and to other energy sectors."

[Read more.](#)

Federal Oil and Gas Leasing – Wyoming. On March 24, Wyoming sued the Biden administration in the U.S. District Court for the District of Wyoming over its decision to temporarily pause new leasing of federal lands for oil and gas development. In [Wyoming v. U.S. Department of Interior](#) (Case No. 0:21-cv-00056), the state "alleges Biden's order violated federal laws, including the National Environmental Policy Act, the Administrative Procedure Act, the Mineral Leasing Act and the Federal Land Policy Management Act." The suit asks the court to review the "de facto moratorium on all federal oil and gas lease sales in Wyoming and across the nation" and stop the Interior Secretary from implementing any halt on federal oil and gas leasing. "Wyoming is fighting back against President Biden's war on American energy workers," said Sen. John Barrasso (R-WY), commenting on the lawsuit. Wyoming's governor "is taking action to combat the Biden administration's illegal ban on oil and gas lease sales on federal land." [Read more.](#)

Kern County Drilling Ordinance – California. (Update to 3/22/21 Weekly Report) On March 22, environmental groups sued the Bureau of Land Management (BLM) for its "hasty decision to sell the first oil and gas leases on public land in California in

nearly a decade without taking the legally required hard look at the harmful impacts the leases will have on air quality, climate, imperiled species, the health of local communities, and precious groundwater resources in the area, as the law requires.” In the complaint, [Center for Biological Diversity v. Bureau of Land Management](#) (Case No. 1:21-at-00316), filed in the U.S. District Court for the Eastern District of California, the litigants challenge BLM plans to open oil and gas development in nearly 1 million acres encompassing Kern County. While lawsuits over the environmental review of this plan were pending, the BLM moved forward with its first sale which includes approximately 4,133 acres of public land. The BLM has yet to answer the complaint. [Read more.](#)

STATE – Legislative

Electronic Database for Oil and Gas – Arkansas. (Update to 2/22/21 Weekly Report) On March 24, Gov. Asa Hutchinson (R) signed HB 1442 into law. The Act, sponsored by Rep. Mary Bentley (R), amended existing law to provide for electronic acceptance of documents and related database infrastructure for oil and gas extraction processes and procedures. The Act has multiple effective dates, all in 2022. [Read more.](#)

Notarial Acts – Maryland. On March 19, SB 735 passed the Senate and has been transmitted to the House. The bill (1) authorizes remote notarial acts with respect to wills and trust instruments; (2) clarifies the application of specified requirements for credential analysis and identity proofing as they pertain to remote notarial acts; (3) establishes requirements and procedures for remote notarial acts involving a tangible record; (4) specifies procedures by which a notary public may administer an oath to a remotely located individual; (5) authorizes the Secretary of State to adopt regulations prescribing the methods for reasonable confirmation of a tangible record; and (6) makes clarifying changes to communication technology requirements applicable to remote notarizations. Finally, the bill specifies that the notarization of any document in conformance with specified executive

orders authorizing remote notarization must be deemed valid if the notarization occurred during the time that the orders were in effect. [Read more.](#)

Notaries Public – Michigan. On March 18, HB 4542 was introduced by Rep. Mark Tisdell (R). The bill would amend existing law by adding certain requirements for notaries public, specifically eligibility requirements for notary public appointments and record keeping. [Read more.](#)

Orphaned Wells – Mississippi. (Update to 1/25/21 Weekly Report) On March 29, SB 2725 died in conference committee. The bill, introduced by Sen. Briggs Hopson (R), would have removed the authority to use capital expense funds for the emergency plugging of orphaned wells. [Read more.](#)

Online Notarization – Nebraska. (Update to 1/11/21 Weekly Report) On March 31, Gov. Pete Ricketts (R) signed LB 94 into law. The Act, sponsored by the Government, Military and Veterans Affairs Committee, amends the Online Notary Public Act to update validity dates for online notarial acts. [Read more.](#)

Unitization – Ohio. On March 24, a committee hearing was held following the introduction of HB 152 by Rep. Brian Stewart (R) and Rep. Tim Ginter (R). The bill would amend existing law to provide for certain hearing requirements, notice, and unit order inclusions by the Chief of the Division of Oil and Gas Resources Management. ([Read a full bill summary fact sheet here](#)). The bill also prohibits the Chief from amending a unit order under certain circumstances, and prohibits the Chief from establishing any new guidelines to administer and implement the law governing unit operation other than by adopting administrative rules. [Read more.](#)

Income Tax Deductions – Pennsylvania. On March 24, HB 423, sponsored by Rep. David Rowe (R), was considered in committee. The bill repeals the Individual Net Income Tax Act and provides that in computing net income there shall be allowed certain deductions which include “In

the case of mines, oil and gas wells, other natural deposits and timber, a reasonable allowance for depletion and for depreciation or improvement, according to the peculiar conditions in each case, such reasonable allowance in all cases to be made under rules and regulations to be made by the department.” [Read more.](#)

Notarial Acts – South Dakota. (*Update to 2/8/21 Weekly Report*) On March 18, Gov. Kristi Noem (R) signed SB 193 into law. The Act, sponsored by Sen. David Wheeler (R), provides for notarial acts performed by video communications technology. The Act is effective July 1, 2021. [Read more.](#)

Eminent Domain – Texas. On March 30, HB 3385 was left pending in committee following its introduction. The bill, sponsored by Rep. Glenn Rogers (R), would amend existing law regarding a landowner's bill of rights statement in connection with the acquisition of real property through eminent domain. [Read more.](#)

Oil and Gas Well Financial Security – Texas. On April 1, SB 2108 was referred to committee following its introduction. The bill, sponsored by Sen. Charles Schwertner (R), amends existing law regarding the financial security requirements for operators of oil and gas wells. [Read more.](#)

Oil and Gas Regulation and Cleanup Fund – Texas. On March 29, HB 3973 was referred to committee following its introduction. The bill, sponsored by Rep. Armando Walle (D), amends existing law regarding the composition and use of money in the oil and gas regulation and cleanup fund. [Read more.](#)

Railroad Commission; Wastewater – Texas. On March 29, HB 4066 was referred to committee following its introduction. The bill, sponsored by Rep. Eddie Lucio (D), amends existing law regarding the adoption by the Railroad Commission of Texas of a permit by rule for the beneficial reuse of domestic wastewater and mobile drinking water treatment system wastewater produced at certain oil and gas drilling facilities. [Read more.](#)

Eminent Domain; Pipelines – Texas. On March 29, HB 4107 was referred to committee following its introduction. The bill, sponsored by Rep. Dustin Burrows (R), amends existing law regarding the exercise of the power of eminent domain by a common carrier pipeline. [Read more.](#)

Leasing; Overriding Royalties; Washouts – Texas. On March 29, HB 4218 was referred to committee following its introduction. The bill, sponsored by Rep. Tom Craddick (R), amends existing law regarding a cause of action for the bad faith washout of an overriding royalty interest in an oil and gas lease. [Read more.](#)

Railroad Commission – Texas. On March 29, HB 4222 was referred to committee following its introduction. The bill, sponsored by Rep. Richard Raymond (D), amends existing law regarding the establishment of the oil and gas infrastructure security division within the Railroad Commission of Texas. [Read more.](#)

Oil and Gas Infrastructure – Texas. On March 29, HB 4223 was referred to committee following its introduction. The bill, sponsored by Rep. Richard Raymond (D), amends existing law regarding the adoption of a comprehensive plan to protect oil and gas infrastructure in the state. [Read more.](#)

Cold Weather Preparedness of Gas Wells – Texas. On March 29, HB 4268 was referred to committee following its introduction. The bill, sponsored by Rep. Penny Morales Shaw (D), amends existing law regarding cold weather preparedness of gas wells. [Read more.](#)

Orphaned Wells – Texas. On March 29, HB 4367 was referred to committee following its introduction. The bill, sponsored by Rep. Ryan Guillen (D), amends existing law regarding the reduction and plugging of orphaned oil and gas wells and provides for the imposition of a fee and an exemption from certain taxes and fees. [Read more.](#)

Oil and Gas Waste; Taxation – Texas. On March 29, HB 4442 was referred to committee following its introduction. The bill, sponsored by Rep. Richard Raymond (D), amends existing law regarding the regulation of oil and gas waste, creates a tax exemption and imposes a fee. [Read more.](#)

Produced Water – Texas. On March 29, HB 4524 was referred to committee following its introduction. The bill, sponsored by Rep. Erin Zwiener (D), amends existing law regarding the adoption of rules by the Texas Commission on Environmental Quality regarding the discharge into water of produced water resulting from certain oil and gas activities. [Read more.](#)

Land Title Review Study – Texas. On March 29, HB 4551 was referred to committee following its introduction. The bill, sponsored by Rep. Ryan Guillen (D), would create the Land Title Review Commission to study and provide recommendations on providing alternative remedies to disputed land title claims before litigation is pursued. [Read more.](#)

Drainage; Offset Wells – Texas. On March 22, HB 3409 was referred to committee following its filing by Rep. Craig Goldman (R). The bill amends existing law relating to the duty of a lessee or other agent in control of certain state land to drill an offset well, pay compensatory royalty, or otherwise protect the land from drainage of oil or gas by a horizontal drainhole well located on certain land. [Read more.](#)

Oil and Gas Liens – Texas. On March 22, HB 3794 was referred to committee following its filing by Rep. Charlie Geren (R). The bill amends existing law regarding provisions related to oil and gas liens. [Read more.](#)

Oil and Gas Liens – Texas. On March 10, Sen. Juan Hinojosa (D) introduced SB 1468. The bill would amend existing law regarding oil and gas liens. [Read more.](#)

Severance Taxes – Utah. (Update to 2/8/21 Weekly Report) On March 22, Gov. Spencer Cox (R) signed

SB 133 into law. The Act, sponsored by Sen. David Hinkins (R), 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. The Act is effective 60 days following session adjournment (March 5, 2021). [Read more.](#)

Supporting Natural Resources and Energy Industries – Utah. (Update to 3/8/21 Weekly Report) On March 22, Gov. Spencer Cox (R) signed SCR 8. The Concurrent Resolution, which expresses the legislature's position, 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.](#)

Notarial Acts – West Virginia. (Update to 3/8/21 Weekly Report) On March 30, Gov. Jim Justice (R) signed SB 469 into law. The Act, sponsored by Sen. Mark Maynard (R), provides that for the purpose of notarial acts, the Act permits personal appearance by video technology. The Act is effective June 17, 2021. [Read more.](#)

Permitting – West Virginia. (Update to 3/8/21 Weekly Report) On March 27, Gov. Jim Justice (R) signed SB 404 into law. The Act, sponsored by Sen. Randy Smith (R), creates a statutory fee for the modifications to permits issued by the Department of Environmental Protection's Office of Oil and Gas.

The Act is effective June 16, 2021. [Read more.](#)

Independent Contractors – West Virginia.

(*Update to 3/8/21 Weekly Report*) On March 19, Gov. Jim Justice (R) signed SB 272 into law, The Act, sponsored by Sen. Craig Blair (R), simplifies criteria used to define independent contractors and to impose objective standards on the differentiation of independent contractors from employees. The Act is effective June 9, 2021. [Read more.](#)

Severance Taxes – Wyoming. (*Update to 3/22/21 Weekly Report*) On March 22, SF 149 failed in the legislative session. The bill, introduced by Sen. Brian Boner (R), would have provided for certain severance tax reductions. [Read more.](#)

STATE – Regulatory

Venting and Flaring; Methane Emissions –

New Mexico. On March 25, New Mexico oil and gas regulators voted unanimously in favor of [adopting new methane emissions rules](#) submitted by application of the New Mexico Oil Conservation Division “to adopt proposed rules to regulate the venting and flaring of natural gas from oil and natural gas production and gathering facilities.” (See also [Case 21528: Natural Gas Waste Proposal to Oil Conservation Commission for complete background and final rules.](#)) The new rules brought “to a close a two-year process that involved testimony from environmental advocates and technical experts from the oil and gas industry.” The first phase of rule implementation “will include data collection and reporting to identify natural gas losses at every stage of the process. Once this information is in hand, regulators will then require operators — from those that manage pipelines to stripper wells and other infrastructure — to capture more gas each year. The target will be capturing 98% of all natural gas waste by the end of 2026.” [Read more.](#)

Governor’s Solar Energy Investment Plan –

Pennsylvania. On March 22, Pennsylvania Gov. Tom Wolf (D) [announced the state will undergo the largest solar commitment by any government in the](#)

[U.S. with its investment in solar energy](#), “a major clean energy initiative that will produce nearly 50 percent of state government’s electricity through seven new solar energy arrays totaling 191-megawatts to be built around the state,” according to the announcement. “Part of the governor’s GreenGov initiative, Pennsylvania PULSE (Project to Utilize Light and Solar Energy) will go into operation on January 1, 2023.” [Read more.](#)

Permian Basin Flaring Report – Texas. On March 23, Texans for Natural Gas (TNG) in conjunction with the Texas Independent Producers and Royalty Owners Association (TIPRO) as part of the Texas Methane & Flaring Coalition released a report, [Flaring Progress in the Permian: Leading the World](#), which shows that methane emissions intensity fell 77 percent in the Permian Basin while oil production has increased by over 300 percent. According to TIPRO, the report “underscores the progress being made in the Permian Basin to reduce flaring and methane emissions.” The TIPRO statement on the report notes that this “analysis showcases the commitment of efforts like the Texas Methane and Flaring Coalition to identify and promote operational and environmental recommended practices to minimize flaring and methane emissions, such as ending routine flaring by 2030, and the Coalition appreciates its members for highlighting this important data.” [Read more.](#)

STATE – Judicial

Leasing – Pennsylvania. On March 24, the Pennsylvania Supreme Court, in *Pennsylvania v. Chesapeake Energy Corp.* (Case No. No. 81 MAP 2019), concluded that the state attorney general may not bring claims under the state’s Unfair Trade Practices and Consumer Protection Law (UTPCPL) on behalf of private landowners against a lessee for alleged unfair and deceptive practices in acquiring natural gas leases from the landowners. According to Steptoe & Johnson, “In the leasing transaction at issue, the lessees were in the position of a buyer not a seller, purchasing rights to the landowners’ mineral estates in return for bonuses, royalties and other

payments. Therefore, the lessees were not subject to regulation or claims under the UTPCPL.” Thus, the Court held that the UTPCPL regulates the conduct of sellers and does not provide a remedy for sellers (i.e., landowners) against buyers (i.e., lessees). [Read more.](#)

INDUSTRY NEWS FLASH

► **Energy analyst sees two years of growth in drilling activity.** On March 23, Rystad Energy analysts forecasted that “After a challenging 2020, oil and gas demand recovery—supported by COVID-19 vaccination efforts and OPEC+ supply cuts—is proving good for drilling activity. Rystad Energy expects around 54,000 wells to be drilled worldwide in 2021, a 12% increase from 2020 levels. In 2022 drilling is set to increase even more, by another 19% year-on-year to about 64,500 wells, though activity will still fall short of the 73,000 wells drilled in 2019.” [Read more.](#)

► **Oil and gas companies agree to collaborate with Biden administration on climate change.** On March 22, leaders of some of the largest exploration and production companies met privately with White House National Climate Adviser Gina McCarthy and promised to collaborate with the Biden administration in its campaign against climate change. “The meeting, which included executives from three industry trade groups and 10 oil companies -- including Exxon Mobil Corp., BP Plc, ConocoPhillips, Royal Dutch Shell Plc, Chevron Corp. and Devon Energy Corp. -- was the first of its kind since Biden’s inauguration in January.” The group “pledged support for federal regulations explicitly limiting emissions of methane from wells and other oilfield equipment.” [Read more.](#)

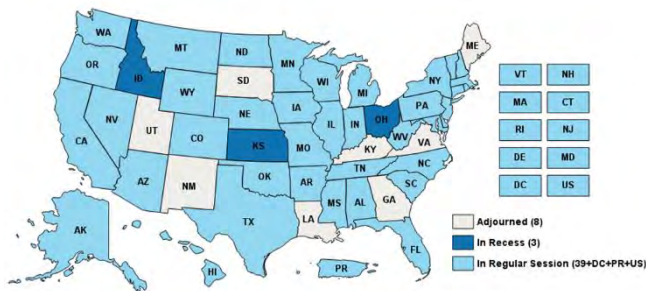
► **API backs carbon tax in lieu of other regulations.** On March 25, in an unexpected move, the American Petroleum Institute (API) board endorsed “putting a tax or other price on carbon dioxide emissions, a shift for the oil industry that could influence the

Biden administration’s plans for a government-wide assault on global warming. The largest U.S. oil industry lobbying group cast its support for a so-called carbon price as part of a broader plan for combating climate change, including efforts to standardize reporting of sustainability efforts and propel emissions-reducing technologies.” Historically, API has been a “staunch opponent” of a carbon tax. API’s support for “the carbon price hinges on the policy being applied economy-wide and replacing existing regulations on greenhouse gases -- a trade-off seen as key to luring support from Republicans on Capitol Hill.” [Read more.](#)

► **Texas nonprofit proposes well plugging and abandoning mission.** According to *Rigzone*, a new nonprofit, the [Texas Well Protected Energy Foundation](#) (TWPEF), is “proposing a shift in responsibility for plugging and abandoning orphan wells to the nonprofit sector rather than government agencies.” TWPEF “will operate as a nonprofit focused on plugging and abandoning orphaned oil, gas, and water wells and promoting energy education.” Tom Slocum, vice president of oil and gas consulting firm Trifecta Solutions LLC and TWPEF founder and board member, pointed out [the organization’s two-fold mission](#) is to eliminate all orphaned wells and educate Americans about oil and gas. “The public as well as oil and gas companies both need nonprofit organizations to step in and lend a hand where government has abdicated its responsibilities regarding the proper plugging and abandoning of orphaned wells,” said Slocum. “Energy education is essential in order for Americans to have a complete knowledge of where their energy comes from and what American energy independence means.” [Read more.](#)

LEGISLATIVE SESSION OVERVIEW

States in Session



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

The following states are in recess until the dates provided: Idaho and Kansas (April 6), Ohio House (April 14) and Ohio Senate (April 20).

New Mexico adjourned their special session late on March 31 after passing [HB 2](#), which will legalize the recreational use of marijuana in the state, reports the [Taos News](#).

The following states adjourned their 2021 legislative sessions on the dates provided: South Dakota (March 29), Kentucky and Maine (March 30), Georgia (March 31), Wyoming (April 2), and Mississippi (April 4). The following state is scheduled to adjourn their 2021 legislative session on the date provided: West Virginia (April 10).

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

Signing Deadlines (by date): Utah Republican Gov. Spencer Cox had until March 25 to sign or veto

legislation; all legislation not acted upon by the governor became law without his signature. Virginia Democratic Gov. Ralph Northam had until March 31 to sign or veto legislation; all legislation not acted upon by the governor became law without his signature. New Mexico Democratic Gov. Michelle Lujan Grisham has until April 9 to sign or veto legislation, or it will be pocket vetoed. South Dakota Republican Gov. Kristi Noem has until April 19 to sign or veto legislation, or it becomes law without signature. Georgia Republican Gov. Brian Kemp has until May 10 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. Kentucky Democratic Gov. Andy Beshear has 10 days from presentment to sign or veto legislation or it becomes law without signature. Maine Democratic Gov. Janet Mills must act on legislation presented within 10 days of adjournment or it becomes law unless returned within three days after the next meeting of the same legislature. 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.

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

S. 563 – Fair Access to Banking Act. On April 6, official bill text was made available for [S. 563](#), known as the *Fair Access to Banking Act*. The bill, introduced by Sen. Kevin Cramer (R-ND), would require banks of a certain size to lend to the fossil fuel industry if the same criteria were met as other industries. The bill comes on the heels of major banks announcing in recent months that they would no longer provide funding for the oil and gas industry. “There is no place in our society for discrimination, and big banks are no exception,” said Sen. Cramer regarding a planned rule that was never finalized and which like this bill would have prohibited such discrimination in lending. “Financial service providers do not have the right to circumvent the Constitution or the law to create de-facto bans on legally-compliant businesses like energy producers or firearms manufacturers when they believe it is politically convenient,” said Cramer. Specifically, the bill “would prevent banks of a certain size from refusing to do business with any person who follows the law and prohibit credit card companies from refusing service for political or reputational reasons.” [Read more.](#)

S. 607 – End Speculative Oil and Gas Leasing Act of 2021. On April 7, official bill text was made available for [S. 607](#), known as the *End Speculative Oil and Gas Leasing Act of 2021*. The bill, sponsored by Sen. Catherine Cortez Masto (D-NV), is “designed to protect public lands from speculative oil and gas leasing.” The measure specifically seeks to ban leasing where there is little to no prospect of energy development. “Nevadans depend on the public lands in our beautiful state for grazing, mining, recreation, and our outdoor and travel economy,” said Sen. Cortez Masto in a statement. “This legislation would protect these landscapes from oil and gas

companies’ speculative oil and gas leasing, including a full ban on any oil and gas leasing in the Ruby Mountains.” [Read more.](#)

S. 609 – Ruby Mountains Protection Act. On April 13, official bill text was made available for [S. 609](#), known as the *Ruby Mountains Protection Act*. The bill, sponsored by Sen. Catherine Cortez Masto (D-NV), would “withdraw the National Forest System land in the Ruby Mountains subdistrict of the Humboldt-Toiyabe National Forest and the National Wildlife Refuge System land in Ruby Lake National Wildlife Refuge, Elko and White Pine Counties, Nevada, from operation under the mineral leasing laws.” Specifically, the bill would withdraw approximately 450,000 acres of National Forest System district land from any eligibility for oil and gas leasing. The bill would also expand protection to the 39,926-acre Ruby Lake National Wildlife Refuge and prevents any future land or interest in land acquired by the United States for inclusion in the areas from being used for oil and gas leasing. [Read more.](#)

S. 624 – Fair Returns for Public Lands Act 2021. On April 7, official bill text was made available for the bipartisan federal onshore oil and gas royalties bill, [S. 624](#), known as the *Fair Returns for Public Lands Act of 2021*. The measure, sponsored by Sen. Jacky Rosen (D-NV) and Sen. Chuck Grassley (R-IA), would set a uniform federal royalty at 18.75 percent, applied to new oil and gas leases. ([Read more background here](#)) Specifically, the bill would increase the royalty rate for oil and gas leases, from 12.5 percent to 18.75 percent; increase the rental rate for oil and gas leases, from \$1.50 per acre for the first five years and \$2.00 per acre for the remainder of the lease, to \$3.00 per acre for the first five years and \$5.00 per acre for the remainder. It would also

increase the national minimum bid for oil and gas leases, from \$2.00 per acre to \$10.00 per acre, with discretion for the Secretary of the Interior to set a higher minimum bid for individual lease sales or lease parcels as needed; increase the rental and royalty rates for reinstated for oil and gas leases, by establishing a rental rate of \$20 per acre and a royalty rate of 25 percent that applies uniformly to all reinstated leases; establish a fee for expressions of interest, by requiring parties who wish to nominate public lands for oil and gas leasing to pay a fee sufficient to reimburse administrative costs of at least \$15 per acre; require regular adjustments, by directing the Secretary of the Interior to adjust these rates for inflation at least every four years, or earlier if necessary to enhance financial returns or promote more efficient management of oil and gas resources; and require a study, which must be completed in 3 to 5 years and will evaluate the efficacy of the Interior Department's implementation of the bill. [Read more.](#)

S. 641 – Landowner Fairness Act. On April 8, official bill text was made available for [S. 641](#), known as the *Landowner Fairness Act*. The bill, sponsored by Sen. Ron Wyden (D-OR), would end the legal presumption that gas exports are by definition in the public interest, standardize gas developers' communications to landowners while also setting time limits on Federal Energy Regulatory Commission actions, sets stricter standards on eminent domain claims, and provides a more robust appeals process for landowners. According to the bill sponsor, the bill "would strengthen the rights of landowners facing eminent domain claims from private companies exploiting public interest provisions to confiscate property in Oregon and nationwide for natural gas pipeline development." [Read more.](#)

S. 655 – Ending Natural Gas Companies' Seizure of Land for Export Profits Act. On April 8, official bill text was made available for [S. 655](#), known as the *Ending Natural Gas Companies' Seizure of Land for Export Profits Act*. Sponsored by Sen. Jeff Merkley (D-OR) and Sen. Ron Wyden (D-OR), the bill would "prohibit companies building export pipelines from

using eminent domain claims of private lands. In addition, the legislation would affirm that the federal government does not have the authority to allow companies to use eminent domain to seize state land for natural gas pipelines." [Read more.](#)

FEDERAL – Regulatory

BLM Leasing – Alaska. On April 16, the Bureau of Land Management (BLM) published an amended opening order, *Extension of the Opening Order in Public Land Order No. 7899 and Addressing Pending Public Land Orders in Alaska* ([86 Fed. Reg. 20193](#)), which delays former Interior Secretary David Bernhardt's January 2021 order that allowed mining and other mineral leasing on more than 9 million acres of federal land in Alaska. Bernhardt's order was never published in the Federal Register in the final days of the Trump administration, so it never took effect. The April 16 extension publication delays the effective date of the order until April 2023. According to Bloomberg Law, the BLM found "defects" in Bernhardt's order, "including insufficient environmental analysis required by the National Environmental Policy Act, reliance on outdated environmental information and failure to comply with the Endangered Species Act and National Historic Preservation Act." The BLM will "take the next two years to correct the defects and conduct a more thorough analysis," says Interior Department spokesman Tyler Cherry. [Read more.](#)

Interior Department; National Environmental Policy Act. On April 16, Interior Secretary Deb Haaland issued [Order No. 3399](#), "Department-Wide Approach to the Climate Crisis and Restoring Transparency and Integrity to the Decision-Making Process," which is aimed at bolstering the National Environmental Policy Act (NEPA) to undue much of the more relaxed regulatory regime under President Trump. "This Order prioritizes action on climate change and establishes a Departmental Climate Task Force. This Order also provides instruction on how science may be used in the decision-making process and clarifies Departmental policy to improve transparency to the public on the Department's

decision-making process.” The Order directs that Interior bureaus and offices should not apply 2020 changes to NEPA “in a manner that would change the application or level of NEPA that would have been applied to a proposed action before the 2020 Rule went into effect.” The Order further directs that in instances where the department’s regulations “irreconcilably conflict” with the Trump-era changes, the issue should be brought to both the relevant assistant secretary within the department and to the White House’s Council on Environmental Quality. [Read more.](#)

Interior Department Nomination. On April 14, President Biden announced he will nominate Tommy Beaudreau to be Deputy Secretary of the Interior Department. Most recently an environmental attorney, Beaudreau previously served in the Obama administration as Interior Department chief of staff and as the first director of the Bureau of Ocean Energy Management, as well as the acting Assistant Secretary for Land and Minerals Management in the Interior Department. Beaudreau also played a key role in the aftermath of the Deepwater Horizon spill in his oversight of offshore oil development. [Read more.](#)

U.S. Department of Labor; FLSA Actions. On April 9, the U.S. Department of Labor (DOL) issued a Field Assistance Bulletin (FAB) to Wage and Hour Division (WHD) field staff which rescinds Trump-era guidance regarding the practice of seeking liquidated damages in settlements in lieu of litigation in Fair Labor Standards Act (FLSA) cases. According to Bloomberg Law, the FAB action will increase the DOL’s use of liquidated damages—or double the amount of back pay an employer owes—when enforcing wage law violations. This latest move is part of the Biden administration’s policies to enforce FLSA actions more strongly than his predecessor. Former WHD administrator Cheryl Stanton, who was appointed by President Trump, had directed DOL enforcers to not assess liquidated damages when there was not clear evidence of bad faith and willfulness on the business’s part, or if the employer had no prior history of violations. [Read more.](#)

Office of Natural Resources Revenue. On April 16, the Office of Natural Resources Revenue (ONRR) published a delay of a final rule, *ONRR 2020 Valuation Reform and Civil Penalty Rule: Delay of Effective Date* ([86 Fed. Reg. 20032](#)), which pushes back the effective date from April 16, 2021 to November 1, 2021 of the final rule entitled “ONRR 2020 Valuation Reform and Civil Penalty Rule” (“2020 Rule”). According to the ONRR, “The purpose of this second delay is to avoid placing undue regulatory burdens on lessees caused by allowing the 2020 Rule to go into effect while ONRR considers whether it will revise or withdraw some or all of that rule due to apparent defects in that rule.” The rule, put in place by the Trump administration, changed the way that royalties are calculated for drilling on federal land and was expected to decrease that amount by \$28.9 million each year in favor of the oil and gas industry. [Read more.](#)

Office of Natural Resources Revenue. On April 16, the ONRR published a notice of information collection, *Agency Information Collection Activities: 30 CFR Parts 1227, 1228, and 1229, Delegated and Cooperative Activities With States and Indian Tribes* (86 Fed. Reg. 20194), which is collected “to review and approve delegation proposals from a State that is seeking to perform royalty management functions and to prepare a cooperative agreement with a State or Indian tribe seeking to perform royalty audits and investigations.” According to the ONRR, this information collection is used to “Review and approve delegation proposals from states seeking to perform royalty management functions, and (2) prepare a cooperative agreement with a State or Indian tribe seeking to perform royalty audits.” The public comment period is open through June 15, 2021. [Read more.](#)

Office of Natural Resources Revenue. On April 7, the ONRR published a notice, *Major Portion Prices and Due Date for Additional Royalty Payments on Gas Produced From Indian Lands in Designated Areas That Are Not Associated With an Index Zone* ([86 Fed. Reg. 18072](#)), regarding “major portion prices applicable to calendar year 2019 and the date by

which a lessee must report and pay any additional royalties due under major portion pricing.” According to the ONRR notice, the due date to pay additional royalties based on the major portion prices is May 31, 2021. The notice is applicable only to Indian lands. [Read more.](#)

Resource Advisory Council Meeting – Colorado.

On April 9, the Bureau of Land Management (BLM) published *Notice of Joint and Individual Colorado Resource Advisory Council Meetings* ([86 Fed. Reg. 18554](#)), announcing upcoming Resource Advisory Council (RAC) meetings for Colorado over multiple days in May. “The Colorado RACs advise the Secretary of the Interior, through the BLM, on a variety of public-land issues in Colorado” and will consider multiple topics for discussion. The meetings are open to the public and will be held via the Zoom Webinar Platform. Written comments may be submitted in advance of the RAC meetings. [Read more.](#)

Resource Advisory Councils. On April 5, the BLM published a notice of information collection and request for public comment regarding the Resource Advisory Council (RAC) application. In its notice, *Agency Information Collection Activities; Bureau of Land Management Resource Advisory Council Application* ([86 Fed. Reg. 17635](#)), the BLM is seeking feedback on the RAC application and process used “to determine education, training, and experience related to possible service on advisory committees.” The public comment period is open through June 4, 2021. [Read more.](#)

FEDERAL – Judicial

Offshore Drilling – Ninth Circuit (Alaska). On April 13, the U.S. Court of Appeals for the Ninth Circuit, on appeal from the U.S. District Court for the District of Alaska, ruled in favor of the Biden administration in consolidated cases, [League of Conservation Voters v. Biden](#) (Case No. 19-35460), upholding Obama-era orders for Arctic and Atlantic Ocean protections which were rescinded by then-President Trump which unwound the Obama administration’s permanent ban on offshore oil and gas drilling in the

oceans. The Court held that since President Biden had revoked President Trump’s executive order the case was now moot, concluding that “[b]ecause the terms of the challenged Executive Order are no longer in effect, the relevant areas of the OCS [outer continental shelf] in the Chukchi Sea, Beaufort Sea, and Atlantic Ocean will be withdrawn from exploration and development activities regardless of the outcome of these appeals.” [Read more.](#)

Dakota Access Pipeline – Washington, DC.

(Update to 2/8/21 Weekly Report) On April 9, the Biden administration angered environmental and tribal groups when it told the court during a case status conference that it will not ask the court to order the Dakota Access Pipeline (DAPL) to shut down pending an environmental review by the government. Ben Schiffman, an attorney representing the U.S. Army Corps of Engineers, said the federal government is requiring the pipeline to abide by conditions that were set in a now-vacated permit that allowed for its construction but “has not taken any additional action.” [Read more.](#) For background, on January 26, the U.S. Court of Appeals for the District of Columbia upheld a lower court’s decision regarding the 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. That prior order, while vacating easements granted for the pipeline construction to cross federally owned land, did not immediately shut down the pipeline. [Read more.](#) 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 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). [Read more.](#)

Royalties; Leasing – Arkansas. On March 31, in *Pennington v. BHP Billiton Petroleum (Fayetteville), LLC* (Case No. 4:20-cv-00178-LPR), the U.S. District Court for the Eastern District of Arkansas, addressed a motion to dismiss regarding royalty payment obligations under numerous leases. The lessor-defendants argued that the claims were time-barred and should be dismissed. The Court found it would be bound by decisions of the Arkansas Supreme Court as to the meaning of Arkansas law. As such, the Court remanded the case to the Arkansas Supreme Court to determine how the statute of limitations would be applied to the royalties at issue, specifically whether each monthly royalty underpayment would serve as a separate breach of contract with its own five-year limitations period. [Read more.](#)

Climate Change Lawsuit – New York. On April 1, in *City of New York v. Chevron Corp.* (Case No. 18-21880, the U.S. Court of Appeals for the Second Circuit (New York) ruled against New York City in its ongoing lawsuit against five multinational oil companies under New York tort law seeking to recover damages for the harms caused by global warming. The district court had dismissed the city's complaint, and here, the Second Circuit court affirmed the dismissal. The Court held that "global warming is a uniquely international concern that touches upon issues of federalism and foreign policy. As a result, it calls for the application of federal common law, not state law. Second, the Clean Air Act grants the Environmental Protection Agency – not federal courts – the authority to regulate domestic greenhouse gas emissions. Federal common law actions concerning such emissions are therefore displaced. Lastly, while the Clean Air Act has nothing to say about regulating *foreign* emissions, judicial caution and foreign policy concerns counsel against permitting such claims to proceed under federal common law absent congressional direction." And insomuch as "no such permission exists, each of the City's claims is barred and its complaint must be dismissed." [Read more.](#)

EPA Greenhouse Gas Emissions Rule. On April 5, a

three-judge panel of the U.S. Court of Appeals for the District of Columbia Circuit vacated a Trump-era rule that limited Environmental Protection Agency (EPA) authority over greenhouse gas emissions, and which only allowed future greenhouse gas limits on power plants, "sidestepping oversight over the oil and gas industry, iron and steel manufacturers and other polluting industries." (See *Pollutant-Specific Significant Contribution Finding for Greenhouse Gas Emissions From New, Modified, and Reconstructed Stationary Sources: Electric Utility Generating Units, and Process for Determining Significance of Other New Source Performance Standards Source Categories*; [86 Fed. Reg. 2542](#); January 13, 2021.) Since EPA calculations showed that the oil and gas sector contributed between only 2.5 percent and 3 percent of U.S. greenhouse gas emissions, it was exempt from tougher regulations under the Trump rule. However, the Court's latest decision in [California v. Environmental Protection Agency](#) (Case No. 21-1035) overturns that rule and was supported by the Biden administration. In response to the decision, an EPA spokesperson said that the agency "will follow the science and law in accordance with the Biden-Harris Administration's executive orders and other directives in reviewing all of the agency's actions issued under the previous Administration to ensure that they protect public health and the environment." [Read more.](#)

STATE – Legislative

Mineral Rights; Tax Assessments – Arkansas.

On April 12, HB 1755 was signed into law by Gov. Asa Hutchinson (R). The Act, sponsored by Rep. Lane Jean (R), amends existing law regarding the assessment of mineral rights for property tax purposes by amending assessment standards for the valuation of oil wells and production equipment for property tax assessments by mandating that production equipment, defined as "piping and other equipment of an oil well from the bottom of the casing to and including the sales valve at the tank battery" be assessed as real property; requiring the assessment of production equipment at a value of one dollar (\$1.00) per foot; prohibiting taxation of oil

well casings that have been rendered inoperable as a result of a cement or mechanical plug; requiring uniform expense deductions per barrel of oil, regardless of the average daily production, when calculating the working interest value of an oil well; and limiting production increases for oil wells being valued as newly discovered property to production from a newly producing geographic zone or horizon. The Act is effective January 1, 2022. [Read more.](#)

Hydraulic Fracturing Ban – California. (*Update to 2/22/21 Weekly Report*) In a victory for the oil and gas industry, on April 13, [SB 467](#), the hydraulic fracturing ban and well setback bill, failed in the Senate Natural Resources and Water Committee by a 4-3 vote. This is a major failure for embattled Gov. Gavin Newsom (D) who had called on state lawmakers as recently as September to ban hydraulic fracturing and also voiced support for buffer zones around wells. [Read more.](#) According to reports from Bloomberg Government, the bill's primary sponsor, Sen. Scott Weiner (D) had initially said the bill would "jump-start the conversation of how and when California will phase out oil and gas extraction in the state." But now, "the bill's defeat means the conversation could be on hold." The bill would have revised the definition of 'well stimulation treatment' to include steam flooding and water flooding and prohibited 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 have then prohibited all hydraulic fracturing, acid well stimulation treatments, steam flooding, water flooding, cyclic steaming, or other well stimulation treatments beginning January 1, 2027. The bill also would have made certain hydraulic fracturing activities a crime. Regarding setbacks, the bill also would have prohibited "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.](#)

Abandoned Wells; Plugging – Kansas. (*Update to 1/11/21 Weekly Report*) On April 9, Gov. Laura Kelly (D) signed HB 2022 into law. The Act, sponsored by Rep. Troy Waymaster, 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." The Act is effective July 1, 2021. [Read more.](#)

Risk Charges; Nonparticipating Mineral Owners – Louisiana. On April 12, Sen. Bob Hensgens (R) introduced SB 59. The bill provides for the risk charge against nonparticipating mineral owners in drilling units, and among other amendatory provisions, sets forth the obligations owed by the lessee and drilling owner with respect to the payment of any lessor royalty and overriding royalty due. [Read more.](#)

Severance Taxes – Louisiana. On April 12, Sen. R. L. Bret Allain, II (R) introduced SB 171. The bill provides for severance tax exemptions and site-specific trust funds for certain orphan wells. [Read more.](#)

Severance Taxes – Louisiana. On April 12, Rep. Danny McCormick (R) introduced HB 26. The bill would change the value required for crude oil produced from stripper wells to be exempt from severance tax. [Read more.](#)

Severance Taxes – Louisiana. On April 12, Rep. Phillip DeVillier (R) introduced HB 30. The bill reduces the severance tax rate for oil over a certain period of time and fixes the severance tax rate for oil produced from certain wells at the current rate. [Read more.](#)

Severance Taxes – Louisiana. On April 12, Rep. Jean-Paul Coussan (R) introduced HB 57. The bill exempts oil produced from orphaned wells, newly

drilled wells, or newly completed wells that are undergoing or have undergone well enhancements including but not limited to re-entries, workovers, or plugbacks from certain severance taxes under certain circumstances. [Read more.](#)

Fossil Fuels Sanctuary State – Louisiana. On April 12, Rep. Danny McCormick (R) introduced HB 617. The bill establishes Louisiana as a fossil fuels sanctuary state and would prohibit any agency, political subdivision, or employee of an agency or political subdivision from knowingly and willingly participating in the enforcement of any federal act, law, order, rule, or regulation which negatively impacts fossil fuel energy in the state. [Read more.](#)

Notaries Public – Maryland. On April 13, SB 212, sponsored by the Senate Judicial Proceedings Committee (D), was signed into law by Gov. Larry Hogan (R). The Act “clarifies the information that must be included in the official stamp of a notary public.” The Act “repeals a requirement that the official stamp of a notary public include the notary public’s ‘jurisdiction’ and specifies that for a notary public who resides in the State, the official stamp must include the county in which the notary public resides. For a notary public who resides outside the State, the official stamp must include the county in which the notary public was qualified.” The Act is effective July 1, 2021. [Read more.](#)

State Personal Income Tax – Mississippi. The state’s attempt to repeal the personal income tax failed when it died in committee during the legislative session. [HB 1439](#) would have phased out “the state’s individual income tax by making the personal exemption more generous over time, funded by increases to sales and excise tax rates and the dedication of future revenue growth to the tax’s elimination.” According to Bloomberg Law, Gov. Tate Reeves (R) expressed concerns over the replacement of income taxes with hikes on sales and sin taxes. Policy studies found the poorest of Mississippians would feel the greatest impact of those tax hikes. Instead, in his budget Gov. Reeves called for belt-tightening and long-term cuts to

education and infrastructure, asserting, “It will not be necessary for us to increase other taxes in order to make up for lost revenue from the elimination of the income tax.” [Read more.](#)

Hard Rock Mining – Montana. (*Update to 2/8/21 Weekly Report*) On April 8, Gov. Greg Gianforte (R) signed SB 53 into law. The Act, sponsored by Sen. Jeff Welborn (R), provides the Department of Environmental Quality hard rock mining program with 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. The Act is effective October 1, 2021. [Read more.](#)

Stripper Oil Taxation – Montana. On April 7, HB 661 passed the House. The bill, sponsored by Rep. Joshua Kassmier (R), revises taxation of stripper oil and gas wells, and provides for definitions and lowers tax rates on stripper oil production. [Read more.](#)

Local Air Quality Regulations – New Mexico. (*Update to 2/22/21 Weekly Report*) On April 8, Gov. Michelle Lujan Grisham (D) signed SB 8 into law. The Act, sponsored by Sen. Peter Wirth (D), amends 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 Act removes 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.” The Act is effective July 1, 2021. [Read more.](#)

Environmental Database Act – New Mexico.

(Update to 1/25/21 Weekly Report) On April 7, HB 51 was signed into law by Gov. Michelle Lujan Grisham (D). The Act, sponsored by Rep. Gail Chasey (D), creates 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. Because no effective date was provided in the bill, under New Mexico law, the Act is effective 90 days after session adjournment (March 20, 2021). [Read more.](#)

Omnibus Tax Legislation – New Mexico. *(Update to 2/22/21 Weekly Report)* On April 7, HB 98 was signed into law by Gov. Michelle Lujan Grisham (R). This broad Omnibus Tax bill includes provisions related to the energy industry such as extending the Renewable Energy Production Tax Credit; and amends 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 by defining “volume” regarding oil and natural gas. The Act has multiple effective dates. [Read more.](#)

Notarial Acts – New Mexico. *(Update to 2/22/21 Weekly Report)* On April 7, SB 12 was signed into law by Gov. Michelle Lujan Grisham (R). The Act, sponsored by Sen. Daniel Ivey-Soto (D), enacts the Revised Uniform Law on Notarial Acts, which among provisions allows for remote notarization, electronic

signatures, sets fees, and provides for certain administrative processes. The Act is effective January 1, 2022. [Read more.](#)

Permit Violations – New Mexico. *(Update to 1/25/21 Weekly Report)* On April 6, HB 76 was signed into law by Gov. Michelle Lujan Grisham (R). The Act, sponsored by Rep. Christine Chandler (D), allows the denial of a permit application or to 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. Because no effective date was provided in the bill, under New Mexico law, the Act is effective 90 days after session adjournment (March 20, 2021). [Read more.](#)

Oil Extraction Tax Credit – North Dakota. *(Update to 2/8/21 Weekly Report)* On April 12, Gov. Doug Burgum (R) signed SB 2328 into law. The Act, sponsored by Sen. Corey Mock (D), relates to a tax credit for oil produced from a well site using an onsite flare mitigation system and provides provisions for the credit. The Act applies to flare mitigation from a qualifying well on which a flare mitigation system is installed between June 30, 2021 and July 1, 2023 and is effective through June 30, 2023. [Read more.](#)

State Regulations – Oklahoma. On April 12, Gov. Kevin Stitt (R) signed [SB 913](#) into law. The Act, sponsored by Sen. Julie Daniels (R), will “improve democratic oversight of the state’s regulatory agencies by creating a legislative joint committee to review proposed agencies rules and an expeditious process to repeal old ones,” according to the governor’s office. Specifically, “the measure allows the Legislature to repeal an agency rule by joint resolution and removes the Governor’s authority to repeal agency rules by declaration. Additionally, the measure requires agencies to respond to small businesses requesting a review of their rules no later than 90 business days and to the Legislature or Governor within 30 days instead of the 90 days currently provided for in law.” The Act will limit the ability of state agencies to promulgate rules that are at odds with the will of the people and elected

lawmakers. “The Legislature is the voice of the people and has the constitutional responsibility to make law and policy for the State of Oklahoma,” wrote the Pacific Legal Foundation, which defends against government overreach and supported the bill. “Senate Bill 913 gives the Legislature the tools necessary to prevent overly burdensome regulations from being enacted, and also the ability to quickly cut bad or unnecessary rules.” The Act will be effective September 1, 2021. [Read more.](#)

Railroad Commission – Texas. On April 13, HB 3039 passed the House Energy Resources Committee. Sponsored by Rep. Jake Ellzey (R), the bill would allow the Railroad Commission to electronically send certain notices related to delinquent inactive well contracts, certificate of compliance cancellations, surface mine bonding, and quarry safety certificate applications. [Read more.](#)

Permit Applications – Texas. (*Update to 1/25/21 Weekly Report*) On April 12, SB 367 passed the Senate and has been transmitted to the House. The bill, sponsored by Sen. Borris Miles (D), 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.](#)

Natural Resources – Virginia. (*Update to 1/25/21 Weekly Report*) On March 30, Gov. Ralph Northam (D) signed HB 1836 into law. The Act, sponsored by Del. Kenneth Plum (D), changes the title of the Secretary of Natural Resources to the Secretary of Natural and Cultural Resources. The Act is effective

July 1, 2021. [Read more.](#)

Worker Classification – Virginia. (*Update to 1/25/21 Weekly Report*) On March 30, Gov. Ralph Northam (D) signed HB 2134 into law. The Act, sponsored by Del. Amanda Batten (R), 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.” The Act is effective July 1, 2021. [Read more.](#)

State Personal Income Taxes – West Virginia. On April 9, the West Virginia legislature’s attempt to eliminate the state personal income tax failed with the session ending April 10. According to Bloomberg Law, regarding the Republican-backed bill, HB 3330, “lawmakers couldn’t reconcile differences between competing plans to either phase out or immediately reduce and eventually remove the individual income tax during the last day of the state’s legislative session. They couldn’t agree on a way to substitute revenue and passed the budget without any major tax changes, leaving it unclear whether they will revisit the topic in a special session later this summer.” [Read more.](#)

Independent Contractors – West Virginia. (*Update to 4/5/21 Weekly Report*) This entry provides an update with further details for members regarding the beneficial independent contractor bill signed into law on March 19 by Gov. Jim Justice (R). [SB 272](#), sponsored by Sen. Craig Blair (R), simplifies the criteria used to define independent contractors and imposes objective standards on the differentiation of independent contractors from employees. [Read more.](#) According to the law firm, Spilman Thomas & Battle, PLLC, “For years, West Virginia businesses have had to consider varying standards for determining whether a worker is considered an employee or an independent contractor by state agencies. The West Virginia Legislature has attempted to fix that problem by

enacting the West Virginia Employment Law Worker Classification Act ('the Act'). The purpose of the Act is to create a single test for distinguishing employees from independent contractors under West Virginia workers' compensation law, unemployment compensation, the Human Rights Act, and the Wage Payment and Collection Act. According to the Act, the intent was to have 'clear, objective, and certain standards for determining who is an employee and who is an independent contractor' under those state laws. While the Act will not govern federal agencies, such as the Department of Labor or the Internal Revenue Service, the criteria used by the Act are based on the concepts used by those federal agencies. Under the Act, for a person to qualify as an independent contractor, that person must both 'actually and directly control the manner and means by which the work is to be accomplished' and satisfy three or more of a list of nine stated criteria. The designated criteria are ones that have historically been used to identify an independent contractor relationship such as having control of the amount time spent providing services, not being required to work exclusively for one business, the freedom to hire employees or contract with assistance, and being responsible for bearing the costs of any licenses, certifications, insurance, or permits that the worker needs to perform their services. If a worker meets those tests, then the Act establishes a type of safe harbor where the independent contractor signs a written agreement acknowledging the independent contractor status and obligation to pay federal and state income taxes." The Act is effective June 9, 2021. [Read more.](#)

State Land Leases – Wyoming. (*Update to 3/8/21 Weekly Report*) On April 9, Gov. Mark Gordon (R) vetoed SF 114. The bill, sponsored by Sen. Brian Boner (R), related to state lands, and would have amended existing law to require auctions under certain circumstances and provide for preferred rights in rental offers. [Read more.](#)

Federal Oil and Gas Suspension – Wyoming. (*Update to 3/8/21 Weekly Report*) On April 6, Gov. Mark Gordon (R) signed SJ 3. The Joint Resolution requests "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.](#)

Mine Product Taxes; Natural Gas – Wyoming.

On April 14, Gov. Mark Gordon (R) signed HB 189 into law. The Act, sponsored by Rep. Hans Hunt (R), amends existing law regarding the mine product tax, clarifying the imposition of severance taxes on natural gas that is consumed on-site. The Act is effective January 1, 2022. [Read more.](#)

STATE – Regulatory

Hydraulic Fracturing Ban – Multiple States. On April 13, [nearly 400 state and local elected officials sent a letter to President Biden and Congressional leadership](#) calling on national leaders to halt permitting for new hydraulic fracturing and fossil fuel infrastructure projects and to revoke existing permits for oil and gas extraction within 2,500 feet of homes and schools. The letter writers also seek an end to subsidies for the fossil fuel industry and support a just transition to clean energy for workers and communities impacted by fossil fuels as well as a nationwide hydraulic fracturing ban by 2025. [Read more.](#)

STATE – Judicial

State Leases; Overriding Royalty Interests – Alaska. On April 9, in *PLC, LLC and MH2, LLC v. Alaska* (Case No. S-17500), the Alaska Supreme Court addressed a case regarding an overriding royalty interest (ORRI) in a state oil and gas lease and the expansion of a unit. The plaintiffs held the ORRI and the unit operator applied to expand a subset of that unit which the Department of Natural Resources (DNR) ultimately approved. The plaintiffs' ORRI was included in the original application by the unit operator, but it was left out of the approved application. The plaintiffs appealed the decision to the DNR Commissioner who dismissed the appeal on the grounds that the plaintiffs lacked standing. The plaintiffs then appealed to the superior

court, which affirmed the Commissioner's decision. Here, the Supreme Court held that because the plaintiffs have a financial stake in DNR's decision whether to approve the unit operator's proposal for unit expansion to include the plaintiffs' associated lease, the plaintiffs have standing, and thus the case was remanded back to DNR for further consideration. [Read more.](#)

Marketable Title Act – Ohio. On March 31, the Ohio Court of Appeals, Seventh Appellate District, addressed a dispute involving the Marketable Title Act (MTA) in [O'Kelley, Jr. v. Rothenbuhler](#) (Case No. 2021-Ohio-1167). The case centered on the interpretation of a 1969 deed reference, for which the court determined that "the language was not sufficiently specific to save a severed mineral interest from extinguishment under Ohio's Marketable Title Act." At issue was the question of whether the language in the deed that was the root of title which stated "and also excepting the oil and gas minerals..." was sufficiently specific to stop extinguishment under the MTA. The trial court granted summary judgment in favor of the defendants-appellees, holding that it was not specific and, thus, was extinguished by the MTA. Here, the Seventh District appellate court agreed. [Read more.](#)

Purchase and Sale Agreement; Assignments; Arbitration – Texas. On April 9, in *Sundown Energy LP v. HJSA No. 3 LP* (Case No. 19-1054), the Texas Supreme Court decided a case involving a contract dispute over the interpretation of a mineral lease's "continuous drilling program" provision. The lessor contended that the provision operates as a special limitation that terminated the lease as to non-producing tracts when the lessee failed to timely "spud-in" new wells. The Supreme Court, however, ruled against the lessor and held that under the lease's special definition of "drilling operations," activities other than spudding-in a well "are sufficient to maintain the lease as to non-producing tracts." Because the lessee timely conducted "drilling operations," as that term is defined in the lease, the Supreme Court held that the Court of Appeals erred in ruling against the lessee on the contract

construction issue. [Read more.](#)

Purchase and Sale Agreement; Assignments; Arbitration – Texas. On April 9, in *Wagner v. Apache Corp.* (Case No. 19-0243), regarding a Purchase and Sale Agreement and oil assignment, the Texas Supreme Court decided whether indemnity claims fall within an exception to an arbitration clause. Also, at issue was whether non-signatory assignees are bound by the agreement to arbitrate. The trial court held that the claims fell within the exception and should not be arbitrated. The Court of Appeals reversed, holding that the claims did not fall within the exception and also held that the non-signatory assignees were bound by the agreement under a theory of assumption. Here, the Supreme Court agreed with the Court of Appeals and affirmed the decision and remanded the case back to the lower court for arbitration proceedings. [Read more.](#)

Climate Change Litigation – Texas. On April 5, ExxonMobil filed its [Reply in Support of Petition for Review](#) in the Texas Supreme Court in the ongoing climate change lawsuit brought against oil and gas companies by out-of-state municipalities regarding the alleged impacts of climate change. In *ExxonMobil Corp. v. City of San Francisco* (Case No. 20-0558), litigants "allege that the companies are engaging in activities that have caused or are causing an imminent rise in sea levels, and seek billions of dollars in damages from the companies, allegedly to address this risk." In their petition, ExxonMobil writes that the out-of-state municipalities "have targeted the state by filing lawsuits against 18 Texas-based oil and gas companies to suppress free speech in Texas and coerce the adoption of so-called progressive views on climate change in Texas. Their attempt to wrest an important policy debate from Texas citizens is an assault on Texas itself." AAPL will continue to monitor the case as it progresses. [Read more.](#)

INDUSTRY NEWS FLASH

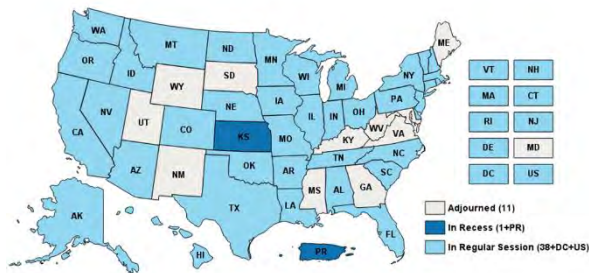
► **EQT supports tighter caps on methane leaks from natural gas wells.** On April 15, EQT announced its support for Congressional resolutions which

would rescind the Trump-era rollback of Obama-era limits on emissions from new oil and gas wells. EQT also announced its plans to obtain third-party certification for its produced gas. [Read more.](#)

► **Occidental rejects carbon tax.** During the April 6, Texas Independent Producers & Royalty Owners Association 75th Annual Convention, Occidental CEO Vicki Hollub told attendees that unlike some of the other large oil and gas companies and most recently, the American Petroleum Institute, her company prefers the existing system of tax credits designed to encourage oil companies to store carbon dioxide and reduce emissions, rather than a carbon tax. [Read more.](#)

LEGISLATIVE SESSION OVERVIEW

States in Session



Session Notes (by date): Alabama, Alaska, Arizona, Arkansas, California, Colorado, Connecticut, Delaware, Florida, Hawaii, Idaho, Illinois, Indiana, Iowa, Louisiana, Massachusetts, Michigan, Minnesota, Missouri, Montana, Nebraska, Nevada, New Hampshire, New Jersey, New York, North Carolina, North Dakota, Ohio House, Oklahoma, Oregon, Pennsylvania, Rhode Island, South Carolina, Tennessee, Texas, Vermont, Washington, and Wisconsin are in regular session. The U.S. Congress is also in session. The following states are in recess until the dates provided: **Ohio** Senate (April 20) and **Kansas** (May 3).

The following states adjourned their 2021 legislative sessions on the dates provided: **West Virginia** (April 10) and **Maryland** (April 12).

The following states are scheduled to adjourn their 2021 legislative sessions on the dates provided: **Arizona** (April 24), **Washington** (April 26), **Montana** and **North Dakota** (April 28), **Indiana** (April 29) and **Arkansas, Florida, Iowa, and Tennessee** (April 30).

Signing Deadlines (by date): **New Mexico** Democratic Gov. Michelle Lujan Grisham had until April 9 to sign or veto regular session legislation or it was pocket vetoed and has until April 20 to sign or veto special session legislation or it is pocket vetoed. **South Dakota** Republican Gov. Kristi Noem has until April 19 to sign or veto legislation or it becomes law without signature. **Wyoming** Republican Gov. Mark Gordon has until April 22 to sign or veto legislation or it becomes law without signature. **West Virginia** Republican Gov. Jim Justice has until April 28 to sign or veto legislation or it becomes law without signature. **Georgia** Republican Gov. Brian Kemp has until May 10 to sign or veto legislation or it becomes law without signature. **Maryland** Republican Gov. Larry Hogan has until June 1 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. **Kentucky** Democratic Gov. Andy Beshear has 10 days from presentment, except Sundays, to sign or veto legislation or it becomes law without signature. **Mississippi** Republican Gov. Tate Reeves has 15 days from presentment, except Sundays, to sign or veto legislation or it becomes law without signature. ■

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GOVERNMENTAL AFFAIRS WEEKLY REPORT

Weekly Highlights At-A-Glance

FEDERAL – Legislative

S.J. Res. 14 – Methane Emissions Regulations

Rollback. On April 29, the U.S. Senate rescinded Trump-era methane regulations in favor of more stringent rules put in place during the Obama administration. By a 52-42 vote on [S.J. Res. 14](#), which included three Republicans – Sen. Rob Portman (R-OH), Sen. Susan Collins (R-ME), and Sen. Lindsey Graham (R-SC) – the lawmakers were able to overturn the rulemaking by use of the 1996 [Congressional Review Act](#), which allows Congress to scrap federal rules if acted upon within 60 legislative days of the session and only requires a majority vote. Lead sponsor, Sen. Martin Heinrich (D-NM), told Bloomberg Government, “It’s interesting that something this common sense still only attracts a few very moderate Republicans.” The congressional disapproval of the 2020 Trump-era rule, *Oil and Natural Gas Sector: Emission Standards for New, Reconstructed, and Modified Sources Review* ([85 Fed. Reg. 57018](#)), relaxed methane emissions standards that then-President Trump said burdened the industry. President Biden publicly supported the congressional resolution, stating in an April 27 [Statement of Administration Policy](#) that this “action would ensure that this rule, which eliminated pollution standards for methane emissions from the oil and gas sector and eliminated all emission standards for the transmission and storage segments of that sector, will have no force or effect and reinstate the pollution reduction requirements established under the Clean Air Act in 2012 and 2016.” [Read more.](#)

EPA House Hearing. On April 29, the House Subcommittee on Environment and Climate Change of the Committee on Energy and Commerce [held a hearing](#) on the “Fiscal Year 2020 EPA Budget,” in

which Environmental Protection Agency (EPA) Administrator Michael Regan (D) told lawmakers that the EPA plans on issuing a proposed rule in September 2021 for reducing methane emissions. This comes on the heels of the congressional rescission of the Trump-era rulemaking (*noted above*) that relaxed methane emissions standards. According to Bloomberg Government, environmental groups have asked the Biden administration to set methane leak-detection-and-repair requirements for both new and existing oil and gas wells that will pare the sector’s emissions of the potent greenhouse gas 65 percent from 2012 levels. [Read more.](#)

S. 855 –Water Rights Protection Act of 2021.

On April 21, official bill text was made available for [S. 855](#), known as the *Water Rights Protection Act of 2021*. The bill, sponsored by Sen. John Barrasso (R-WY), ranking member of the Senate Committee on Energy and Natural Resources, would protect privately owned waters from being seized by the federal government. “The Water Rights Protection Act will stop Washington power grabs of water rights in Wyoming and the West,” said Sen. Barrasso. “Washington has routinely attempted to extort Americans’ water rights through implementing burdensome regulations and excessive red tape. Ranchers, farmers, tribal members, and other water users’ livelihoods are being threatened. This bill will put a stop to this abuse of power and will help ensure an abundant supply of clean water for future generations.” Specifically, the bill would forbid the Departments of the Interior and Agriculture from mandating water users transfer water rights to the United States or purchase water rights in the name of the United States as a condition of any permit, lease, or other use agreement; prevent unlawful seizures of groundwater; and recognize state water law and require coordination with states. [Read more.](#)

H.R. 1503 – Restoring Community Input and Public Protections in Oil and Gas Leasing Act of 2021.

On April 20, official bill text was made available for [H.R. 1503](#), known as the *Restoring Community Input and Public Protections in Oil and Gas Leasing Act of 2021*. The bill, sponsored by Rep. Mike Levin (D-CA), would “amend the Mineral Leasing Act to make certain adjustments in leasing on Federal lands for oil and gas drilling.” Specifically, the bill would “Protect taxpayers and end giveaways for oil and gas companies by eliminating noncompetitive oil and gas leasing, requiring companies to pay a fee to nominate lands for leasing, and raising the onshore oil and gas royalty rate, rental fee, and the minimum bid amount; Increase transparency by requiring companies that nominate lands for oil and gas leasing and bid on leases disclose their identities, and protects landowners by requiring the Secretary of the Interior to notify them and the broader public about oil and gas lease sales; Restore community input by eliminating actions taken by the Trump Administration that cut public participation in oil and gas leasing decisions and shortened public comment periods; Safeguard environmental resources by enhancing reviews under the National Environmental Policy Act, and reinstate the use of master leasing plans to better protect lands where drilling interests conflict with other uses; and Require the Bureau of Land Management to write rules on the impacts to water resources of hydraulic fracturing on federal lands, including baseline water testing and public disclosure, and full public disclosure of fracking chemicals.” [Read more.](#)

H.R. 1506 – Transparency in Energy Production Act of 2021. On April 20, official bill text was made available for [H.R. 1506](#), known as the *Transparency in Energy Production Act of 2021*. The bill, sponsored by Rep. Alan Lowenthal (D-CA), would “provide for the accurate reporting of fossil fuel extraction and emissions by entities with leases on public land.” According to the bill sponsor, the legislation “will allow the American people to have information about the impact of fossil fuels by having companies who hold, or are seeking, a lease to drill on federal lands, record and report the resulting emissions that come

from drilling on the land or in the water. The legislation requires industry-developed reporting standards established by the nationally recognized Sustainable Accounting Standards Board (SASB) to ensure quality reporting.” [Read more.](#)

H.R. 1517 – Ending Taxpayer Welfare for Oil and Gas Companies Act of 2021. On April 20, official bill text was made available for [H.R. 1517](#), known as the *Ending Taxpayer Welfare for Oil and Gas Companies Act*. The bill, sponsored by Rep. Katie Porter (D-CA), would “amend the Mineral Leasing Act to make certain adjustments to the fiscal terms for fossil fuel development and to make other reforms to improve returns to taxpayers for the development of Federal energy resources.” Specifically, the legislation would “raise royalties, rental rates, inspection fees, and penalties on oil and gas companies that extract resources from public lands,” according to the bill sponsor. [Read more.](#)

H.R. 1512 – Climate Leadership and Environmental Action for our Nation's Future Act. On April 19, official bill text was made available for [H.R. 1512](#), known as the *Climate Leadership and Environmental Action for our Nation's Future Act* or the *CLEAN Future Act*. The bill is a comprehensive package which seeks to dramatically cut greenhouse gas emissions as well as seeking “environmental justice” policies which include “repealing oil and gas production exemptions from landmark environmental laws.” According to the bill sponsor, “the CLEAN Future Act also features a suite of complementary policies, including proposals to remove barriers to clean energy and reduce super pollutants like methane. The legislation is the result of 27 hearings in the Energy and Commerce Committee on the climate crisis over the last two years.” [Read more.](#)

H.R. 1492 – Methane Waste Prevention Act of 2021. On April 20, official bill text was made available for [H.R. 1492](#), known as the *Methane Waste Prevention Act of 2021*. The bill, sponsored by Rep. Diana DeGette (D-CO), “would require the Environmental Protection Agency and Bureau of

Land Management to set strict new standards limiting the amount of methane that oil and gas producers can release into the atmosphere from their drilling sites. Under the terms of DeGette's bill, oil and gas producers would be required to take steps to cut their methane emissions by at least 65 percent by 2025; and by at least 90 percent below their 2012 emissions by 2030." [Read more.](#)

FEDERAL – Regulatory

BLM Oil and Gas Leasing Program Hearing. On April 27, the U.S. Senate Committee on Energy & Natural Resources held a full committee hearing on "The Department of the Interior's Onshore Oil and Gas Leasing Program." According to the hearing announcement, "The purpose of this hearing is to examine energy development on federal lands, focusing on the current status of the Department of the Interior's onshore oil and gas leasing program." Testifying witnesses included Nada Culver, Deputy Director of Policy and Programs for the Bureau of Land Management; Gov. Mark Gordon (R-WY); Vicki Hollub, Occidental Petroleum President and Chief Executive Officer; and Kathleen Sgamma, President of the Western Energy Alliance. In a stinging rebuke of President Biden's policies, Gov. Mark Gordon told the panel, "I do not believe the climate goals of this Administration will be reached by targeting the Federal oil and gas leasing program. Let me state what is obvious: this moratorium on leasing during the review discriminates against the people of Wyoming and every other Western state with Federal minerals [...] And all of this seems completely unnecessary. Any comprehensive, thoughtful, diligent and meaningful review could be done without stopping the entire leasing program." Senators also questioned the current permitting and leasing review process which requires senior Interior Department approvals, and which has invariably delayed customary processes; the timeline for the indefinite pause; and the loss of revenue to states and localities resulting from a de facto ban on new federal leasing. The BLM official's testimony also revealed that the agency will be cancelling all second quarter lease sales and Culver was evasive about

whether third quarter sales would move ahead. AAPL members may [watch an archived video](#) of the full hearing. [Read more.](#)

BLM Director Nomination. On April 22, the White House officially announced Tracy Stone-Manning as President Biden's pick for BLM Director. Stone-Manning "was most recently senior advisor for conservation policy at the National Wildlife Federation (NWF). Before joining the Federation, she served as Montana Governor Bullock's chief of staff, where she oversaw day-to-day operations of his cabinet and the state's 11,000 employees." Stone-Manning also formerly served as Montana's Director of the Department of Environmental Quality and as a regional director and senior advisor to Democratic Montana Senator Jon Tester. While at the NWF, Stone-Manning had been a vocal critic of Trump administration policies favoring oil and gas development on federal lands. [Read more.](#)

Office of Natural Resources Revenue. On April 21, the Office of Natural Resources Revenue (ONRR) published a Notice of Information Collection, *Agency Information Collection Activities; Accounts Receivable Confirmations Reporting* ([86 Fed. Reg. 20710](#)), "covering the collection of royalties and other mineral revenues due, which obligations are accounted for as accounts receivables." The public comment period is open through June 21, 2021 for this ONRR proposal to renew an information collection. [Read more.](#)

Office of Natural Resources Revenue. On April 21, the ONRR published a Notice of Information Collection, *Agency Information Collection Activities; Indian Oil and Gas Valuation, 30 CFR Parts 1202, 1206, and 1207* ([86 Fed. Reg. 20708](#)), which "pertains to the valuation of oil and gas produced from leases on Indian lands, Indian oil and gas royalties, and required recordkeeping for oil and gas valuation and royalties for Indian Tribes and allottees." The public comment period is open through June 21, 2021. [Read more.](#)

Resource Advisory Council – Alaska. On April 21, the Bureau of Land Management (BLM) published notice of its Alaska Resource Advisory Council (RAC) meeting. The 15-member Alaska RAC serves in an advisory capacity concerning BLM issues relating to land use planning and the management of the public land resources located within the State of Alaska. The virtual meeting will be held on May 25, 2021 and is open to the public. [Read more.](#)

Resource Advisory Council – Nevada. On April 14, the BLM published notice of its Sierra Front-Northern Great Basin Resource Advisory Council (RAC). The meeting, which is open to the public, will be held July 15 and July 16, 2021. The meeting will be held both virtually and in-person. Written comments are due by July 14, 2021. According to the BLM, “The 15-member RAC provides recommendations to the Secretary of the Interior, through the BLM Nevada State Director, on a variety of planning and management issues associated with public land management in the RAC’s area of jurisdiction.” [Read more.](#)

Resource Advisory Council Nominations – Nevada. On April 28, the BLM published notice of its *Call for Nominations to the Mojave-Southern Great Basin and Sierra Front-Northern Great Basin Resource Advisory Councils* ([86 Fed. Reg. 22449](#)). The Resource Advisory Councils are specifically seeking industry representatives in energy and mineral development, among other stakeholders and participants. All nominations must be received no later than June 14, 2021. [Read more.](#)

Resource Advisory Council Nominations – New Mexico. On April 28, the BLM published notice of its *Second Call for Nominations for the Bureau of Land Management New Mexico Resource Advisory Councils* ([86 Fed. Reg. 22704](#)). According to the BLM, “The purpose of this notice is to request public nominations to the Bureau of Land Management’s (BLM) Northern New Mexico Resource Advisory Council (RAC) and Southern New Mexico RAC that have vacant positions and/or members whose terms are scheduled to expire. These RACs provide advice

and recommendations to the BLM on land use planning and management of the National System of Public Lands within their geographic areas.” All nominations must be received no later than June 1, 2021. [Read more.](#)

Resource Advisory Council – Utah. On April 15, the BLM published notice of its Utah Resource Advisory Council (RAC) meeting, which will be held virtually on May 25, 2021 and is open to the public. According to the BLM announcement, “Agenda topics will include: BLM Utah priorities, renewable energy, Great American Outdoors Act update, recreation strategy, recreation dispersed camping, recreation High Desert trail (from Washington County to Tooele), recreation annual passes around the state, back country air strips in resource management plans, recreation management by the BLM and State of Utah in Red Cliffs Zone 6, Modified Cedar City Field Office Recreation Site Business Plan, and other issues as appropriate.” [Read more.](#)

FEDERAL – Judicial

Climate Change Policies – Louisiana. On April 22, Louisiana, joined by nine other states, sued the Biden administration in federal court challenging the administration’s approach to calculating the financial impacts of climate change. In [Louisiana v. Biden](#) (Case No. 2:21-cv-01074), the plaintiff states challenge President Biden’s decision to restore Obama-era values for an analytical tool called the “social cost of greenhouse gases.” According to Bloomberg Law, “Agencies use the metric to assess the harm caused by emissions of carbon dioxide, methane, and other gases. The Trump administration slashed the value, and the Biden administration reversed course in February.” The litigants claim that the underlying values for the social cost of greenhouse gases never followed proper public notice and comment procedures. “This ‘social cost’ overreach revives an Obama-era scheme that unnecessarily forces the monetary cost of a global issue on American governments, businesses, and families,” said Louisiana Attorney General Jeff Landry (R). Wyoming Gov. Mark Gordon

(R) also argued that Biden's decision applies a "highly biased feel-good rationale that has the potential to significantly harm industries critical to the nation's and my state's livelihood." [Read more.](#)

Leasing; Royalties; Post-Production Costs – Ohio.

On March 8, in *Eaton v. Ascent Resources-Utica, LLC* (Case No. 2:19-cv-3412), the U.S. District Court for the Southern District of Ohio addressed a dispute involving lessors' claims that the deduction of post-production costs from their royalties, itemized as "compression, processing, treating, transportation, fuel marketing, gathering, and other costs," violated their lease agreements. At a prior stage in the litigation, the Court disagreed, holding that the "at-the-well" rule applied to the royalty because the provision referred to "the market value at the well," even if the gas was not actually sold at the wellhead and reiterating that the at-the-well rule requires that post-production costs be shared proportionately between a lessor and lessee. Here, the lessors argued that the at-the-well rule had been interpreted incorrectly, but that Court concluded that "Cunningham ignores the plain text and attempts to create ambiguities relying on extrinsic evidence in contravention of Ohio law." Further, the Court explained that the "plain text of the royalty provision unambiguously references the value of the gas at the wellhead—not the value of the gas at the wellhead only if the gas is sold there." In sum, the Court held there "is no plain-text support for Cunningham's assertion that the wellhead price refers only to oil and gas actually sold at the wellhead." On a fraud claim, the Court did not rule because as the Court stated, the case was still at a motion-to-dismiss stage due to an amended consolidated class action complaint filed and discovery was still ongoing but left the door open for the lessees to seek dismissal under a different procedural motion. [Read more.](#)

STATE – Legislative

Notarial Acts – Idaho. On April 23, Gov. Brad Little (R) signed HB 107 into law. The Act updates the Revised Uniform Law of Notarial Acts (RULONA) savings clause for minor deficiencies contained in

a notarial act to apply retroactively for documents acknowledged and recorded prior to the enactment of RULONA which provides that any document recorded prior to July 1, 2017 is conclusive evidence of the validity of that document's acknowledgement. The Act takes immediate effect. [Read more.](#)

Independent Contractors – Kansas. (*Update to 2/8/21 Weekly Report*) In a victory for landmen and the profession, on April 26, Gov. Laura Kelly (D) signed HB 2196 into law. The Act, sponsored by the House Committee on Commerce, Labor and Economic Development (R), amended existing employment law to specifically protect independent contractor landmen by providing that landmen providing services on a contractual basis are not considered employees. Specifically, "[t]he bill revises the Employment Security Law by excluding from the definition of 'employment' contractual services performed by a petroleum landman. Such services are defined to include mineral rights management and negotiations, development of minerals, research of public and private property records, and title work. For purposes of the bill, 'minerals' includes oil, natural gas, or petroleum. Such services are not to include services performed for 501(c)(3) organizations exempt from federal income taxation." The Act takes immediate effect. [Read more.](#)

Greater Sage-Grouse – Montana. (*Update to 2/22/21 Weekly Report*) On April 23, Gov. Greg Gianforte (R) signed SB 230 into law. The Act, sponsored by Sen. Mike Lang (R), 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." The Act is effective July 1, 2021. [Read more.](#)

Royalty Payments – North Dakota. (*Update to 1/11/21 Weekly Report*) On April 26, Gov. Doug Burgum (R) signed HB 1080 into law. The Act, sponsored by Rep. Jason Dockter (R), amends and reenacts North Dakota Century Code sections [15-05-10](#) and [47-16-39.1](#) regarding Board of

University and School Lands by “reducing the rate of interest and penalties owed by payers for late royalty payments and changes the statute of limitations and limits the ability to collect outstanding royalties owed to the funds managed by the Board.” The Act is effective August 1, 2021. [Read more.](#)

Postproduction Costs – North Dakota. *(Update to 1/25/21 Weekly Report)* On April 22, Gov. Doug Burgum (R) signed SB 2217 into law. The Act, sponsored by Sen. Brad Bekkedahl (R), provides for a legislative management study of postproduction cost deductions. The Act is effective August 1, 2021. [Read more.](#)

Unclaimed Property – North Dakota. *(Update to 1/11/21 Weekly Report)* On April 19, Gov. Doug Burgum (R) signed SB 2048 into law. The Act, sponsored by the Senate Committee on Industry, Business and Labor (R), 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. The Act is effective August 1, 2021. [Read more.](#)

Trust Lands – North Dakota. *(Update to 2/22/21 Weekly Report)* On April 19, Gov. Doug Burgum (R) signed SB 2065 into law. The Act, sponsored by the Senate Energy and Natural Resources Committee (R), 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.” The Act is effective August 1, 2021. [Read more.](#)

Unclaimed Property; Recovery Fees – Oklahoma. *(Update to 2/22/21 Weekly Report)* On April 28, Gov. Kevin Stitt (R) signed HB 2226 into law. The Act, sponsored by Rep. Anthony Moore (R), amends existing law regarding unclaimed property, which includes funds or property involved that are mineral proceeds, to provide that “In the event that the

claimant of such funds or property 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.” The Act is effective November 1, 2021. [Read more.](#)

Oil and Gas Liens – Oklahoma. *(Update to 1/25/21 Weekly Report)* On April 20, Gov. Kevin Stitt (R) signed SB 632 into law. The Act, sponsored by Sen. Zack Taylor (R), relates to oil and gas liens, and 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. The Act is effective November 1, 2021. [Read more.](#)

Registration of Instruments – Tennessee. *(Update to 2/22/21 Weekly Report)* On April 20, Gov. Bill Lee (R) signed HB 633 into law. The Act, sponsored by Rep. Dave Wright (R), requires 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. The Act is effective July 1, 2021. [Read more.](#)

Leasing; Overriding Royalties; Washouts – Texas. *(Update to 4/5/21 Weekly Report)* On April 21, HB 4218 passed the House. The bill, sponsored by Rep. Tom Craddick (R), amends existing law regarding a cause of action for the bad faith washout of an overriding royalty interest in an oil and gas lease. [Read more.](#)

Tax Valuation – West Virginia. *(Update to 3/8/21 Weekly Report)* On April 28, Gov. Jim Justice (R) signed [HB 2581](#) into law. The Act, sponsored by Del. Dianna Graves (R), provides, among other tax change provisions, revised methodology to value oil and natural gas properties by the Tax Commissioner. The Act takes immediate effect. [Read more.](#)

STATE – Regulatory

Hydraulic Fracturing Ban – California. On April 23, [Gov. Gavin Newsom \(D\) announced](#) that he has “directed the Department of Conservation’s Geologic Energy Management (CalGEM) Division to initiate regulatory action to end the issuance of new permits for hydraulic fracturing (‘fracking’) by January 2024.” The Governor also “requested that the California Air Resources Board (CARB) analyze pathways to phase out oil extraction across the state by no later than 2045.” In a statement, Governor Newsom said, “I’ve made it clear I don’t see a role for fracking in that future and, similarly, believe that California needs to move beyond oil.” Under the Governor’s directive, “CalGEM will immediately initiate the rulemaking to halt the issuance of new hydraulic fracturing permits by 2024.” Industry groups immediately condemned the announcement. “Once again, Gov. Newsom has chosen to ignore science, data and facts to govern by bans, mandates and personal fiat,” said Catherine Reheis-Boyd, President of the Western States Petroleum Association. “Banning nearly 20% of the energy production in our state will only hurt workers, families and communities in California and turn our energy independence over to foreign suppliers.” However, the announcement may not result in the regulatory changes sought by the embattled governor who is now facing a recall election as early as this summer after the [Secretary of State verified enough voter signatures](#) last week to move forward with the election. We will continue to keep AAPL members updated on any proposed rulemaking that arises from the Governor’s directive. [Read more.](#)

STATE – Judicial

Well Plugging – New Mexico. On April 22, Stephanie Garcia Richard, Commissioner of Public Lands of the State of New Mexico, filed suit against two oil and gas companies, seeking “damages against a former State Land Office oil and gas lessee, BC&D Operating, Inc., and a related company, Dominion Production Company, for their failure to clean up two massive abandoned leases on state land in McKinley

County.” In the case, [Richard v. BC & D Operating, Inc.](#) (Case No. not yet docketed), the State Land Office claims the companies had not “honored their obligations to the state land trust, which include plugging at least 29 oil wells abandoned by the defendants; full remediation and reclamation of over 500 acres of state trust land with 29 unplugged and 15 plugged well sites to include the full removal of infrastructure, trash, and debris, and the cleanup of any contamination associated with the site; and the payment of penalties for trespassing on state trust land since the leases expired in July 2018.” According to the Commissioner, this lawsuit is part of the state’s Accountability and Enforcement Program, launched in November 2020, which is an “agency-wide programmatic approach being undertaken to ensure oil and gas companies, and other lease holders, honor their contractual promise to operate and close out responsibly.” [Read more.](#)

Adverse Possession; Mineral Reservations – Ohio.

On April 2, in [Tomechko v. Garrett](#) (Case No. 2021-Ohio-1377), the Ohio Court of Appeals, Seventh District, addressed a case involving mineral reservations and co-tenancy and whether the appellants adversely possessed the appellees’ oil and gas when they entered into an oil and gas lease in 1989. Here, the Court held that the appellants adversely possessed the appellees’ oil and gas “because they leased and produced the appellees’ oil and gas and the lessee paid the appellants for such production.” Further, “although the two wells drilled on the appellants’ property were only producing from shallow formations, the Court held that the appellants also adversely possessed the deep formations” because “[a]dverse possession of the deep rights should follow the shallow rights due to the alteration of the surface and subsurface from drilling and removing the oil and gas.” In sum, the appellants adversely possessed the deep formations based on their “adverse possession of the shallow rights, the permeating nature of the drilling and production of oil and gas, and the lease with Trans Atlantic which provided for drilling to all strata.” [Read more.](#)

Leasing; Ratifications; Trespass – Texas. On April 16, the Texas Supreme Court decided a case which the Court deemed “principally a trespass-to-try-title suit between the lessees of adjacent mineral estates.” In *Concho Resources, Inc. v. Ellison* (Case No. 19-0233), the lessor alleged that the defendant lessees/operators drilled several wells either on the plaintiff’s leasehold or closer to the lease line than Railroad Commission rules allowed. The defendants, relying on a boundary stipulation between the fee owners of the two mineral estates and the plaintiff’s written acceptance of the stipulation, claimed that the lessor ratified the agreed boundary line, foreclosing the trespass claims. The trial court granted summary judgment for the defendants, but the appellate court reversed finding for the mineral owners, holding that the boundary stipulation is void and thus may not be ratified. Here, the Supreme Court disagreed with the appellate court, holding that the boundary stipulation was valid and that the defendants conclusively established their ratification defense. [Read more.](#)

INDUSTRY NEWS FLASH

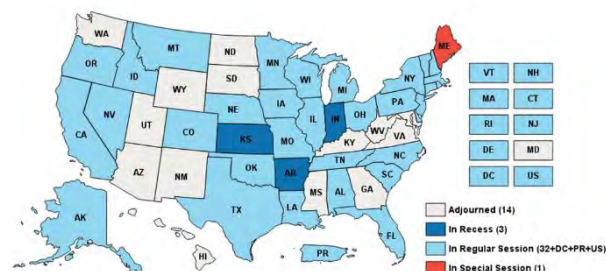
► **President Biden announces bold plan to cut greenhouse gas emissions.** As part of a two-day climate summit with world leaders, President Biden announced on April 22 that the U.S. will reduce its own greenhouse gas emissions 50-52 percent from 2005 levels by the end of the decade, “significantly boosting a commitment made under former President Barack Obama that was scrapped by former President Donald Trump.” ([See White House Fact Sheet here](#)) While President Biden’s “pledge would require changes that would touch the lives of nearly every American” the ambitious plan would most likely require a mix of regulatory and legislative acts, and “Republicans in Congress are unlikely to support legislation that would make major reductions in U.S. emissions, for example by penalizing fossil fuel use or mandating renewable power, and any regulations Biden’s administration

issues are sure to face challenges from industry.” [Read more.](#)

► **OPEC+ to keep current plan to gradually raise production.** On April 27, the Organization of the Petroleum Exporting Countries and its allies (OPEC+) met and decided to keep their current plan to gradually raise production. This will gradually lift oil production by 350,000 b/d in May, 350,000 b/d in June, and 441,000 b/d in July. [Read more.](#)

LEGISLATIVE SESSION OVERVIEW

States in Session



Session Notes (by date): Alabama, Alaska, California, Colorado, Connecticut, Delaware, Florida, Idaho, Illinois, Iowa, Louisiana, Massachusetts, Michigan, Minnesota, Missouri, Montana, Nebraska, Nevada, New Hampshire, New Jersey, New York, North Carolina, Ohio, Oklahoma, Oregon, Pennsylvania, Rhode Island, South Carolina, Tennessee, Texas, Vermont, and Wisconsin are in regular session. The U.S. Congress is also in session.

The following legislatures are in recess until the dates provided: **Kansas** (May 3), **Arkansas** and **Indiana** (TBD). The **Arkansas** legislature will return this fall where they will take up legislative and congressional redistricting, which has been delayed due to issues with the U.S. Census Bureau. After they approve redrawn district lines they will adjourn sometime in September and soon thereafter be called back for a special session by Republican Gov. Asa Hutchinson to discuss tax cuts and reform, reports [JA Little Rock Public Radio](#). The **Indiana** legislature will return later this year to draw and approve new districts for themselves and the state’s nine U.S.

House seats. House Speaker Todd Huston, R-Fishers, says he expects legislators to reconvene “September-ish,” as reported by [93.1FM WIBC](#). According to [HB 1372](#), the legislature must adjourn no later than November 15.

The following states adjourned their 2021 legislative sessions on the dates provided: **Arizona** (April 24), **Washington** (April 25), and **Hawaii** and **North Dakota** (April 29).

The following states are scheduled to adjourn their 2021 legislative sessions on the date provided: **Florida**, **Iowa**, and **Tennessee** (April 30).

Signing Deadlines (by date): **West Virginia**

Republican Gov. Jim Justice had until April 28 to sign or veto legislation or it became law without signature. However, if the bill in question was a budget bill or supplementary appropriations bill, the governor only had until April 16 to act before it became law. **Arizona** Republican Gov. Doug Ducey has until May 6 to sign or veto legislation or it becomes law without signature. **Georgia** Republican Gov. Brian Kemp has until May 10 to sign or veto legislation or it becomes law without signature. **Washington** Democratic Gov. Jay Inslee has until May 18 to sign or veto legislation or it becomes law without signature. **Maryland** Republican Gov. Larry Hogan has until June 1 to sign or veto legislation or it becomes law without signature. **Hawaii** Democratic Gov. David Ige has until July 1 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. **Indiana** Republican Gov. Eric Holcomb has seven days from presentment to sign or veto legislation, or it becomes law without signature. **Kentucky** Democratic Gov. Andy Beshear has 10 days from presentment, except Sundays, to sign or veto legislation or it becomes law without signature. **Maine** Democratic Gov. Janet Mills must act on legislation presented within 10 days of adjournment or it becomes law unless returned within three days after the next meeting of the same legislature. **Mississippi** Republican Gov. Tate Reeves has 15 days from presentment, except Sundays, to sign or veto

legislation or it becomes law without signature. **North Dakota** Republican Gov. Doug Burgum has 15 days from presentment, Saturdays and Sundays excepted, to sign or veto legislation or it becomes law without signature. ■

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GOVERNMENTAL AFFAIRS WEEKLY REPORT

Weekly Highlights At-A-Glance

FEDERAL – Legislative

H.R. 1505 – Bonding Reform and Taxpayer Protection Act of 2021. On May 4, official bill text was made available for [H.R. 1505](#), known as the *Bonding Reform and Taxpayer Protection Act of 2021*. The bill, sponsored by Rep. Alan Lowenthal (D-CA), would “increase the amount of bond that oil and gas developers must post before being allowed to drill on public land leased from the federal government.” According to the bill sponsor, the bill “will increase the bond amounts for a single lease from \$10,000 to \$150,000 and sets the amount for a set of leases in a single state from \$25,000 to \$500,000. Additionally, the Bonding Reform and Taxpayer Protection Act, requires companies to develop and present a detailed reclamation plan to the Bureau of Land Management (BLM) before any development can occur on leased public land, requires higher bonds where necessary to ensure complete and timely reclamation of a lease, sets fees to cover the cost for inspection and enforcement, and gives U.S. Fish and Wildlife Service the same statutory authority as BLM, the National Park Service, and the U.S. Forest Service to retain bonds for oil and gas operators to address onsite damages.” [Read more.](#)

H.R. 1755 – Northern Rockies Ecosystem Protection Act. On May 12, official bill text was made available for [H.R. 1755](#) known as the *Northern Rockies Ecosystem Protection Act*. The bill, sponsored by Rep. Carolyn Maloney (D-NY), would designate certain National Forest System lands and certain public lands under the jurisdiction of the Secretary of the Interior in the States of Idaho, Montana, Oregon, Washington, and Wyoming as wilderness, wild and scenic rivers, wildland recovery areas, and biological connecting corridors, and

prohibit oil and gas resource development in those areas. [Read more.](#)

H.R. 1600 – Methane Emissions Reduction Act. On May 10, official bill text was made available for H.R. 1600, known as the *Methane Emissions Reduction Act*. The bill, sponsored by Rep. Fred Upton (R-MI), would enable the Department of Energy to help states in reducing methane emissions from oil and natural gas production. This bill is a reintroduction of legislation that Rep. Upton introduced in a prior session that never moved forward. [Read more.](#)

H.R. 1726 – America Needs Worthwhile Resources Act. On May 13, official bill text was made available for [H.R. 1726](#), known as the America Needs Worthwhile Resources Act or the ANWR Act. The bill, sponsored by Rep. Don Young (R-AK), provides “that an order or action by the President or the Secretary of the Interior imposing a moratorium on oil and gas leasing shall not take effect without the express approval of Congress.” According to Rep. Young, “It is not surprising, though no less disappointing, that President Biden is continuing Obama-era attacks against Alaska. By placing a moratorium on energy development in ANWR, President Biden has surrendered to his party’s environmental extremists. Very frankly, no president should have this unilateral power. Today, I am proud to introduce the ANWR Act, which reigns in executive overreach, and puts power back into the hands of the people through their elected representatives.” [Read more.](#)

H.R. 544 – Stop Arctic Ocean Drilling Act of 2021. On May 10, official bill text was made available for H.R. 544, known as the Stop Arctic Ocean Drilling Act of 2021. The bill, sponsored by Rep. Jared Huffman (D-CA), would prohibit oil and gas drilling in the Arctic

Ocean by providing that the federal government “shall not issue or renew a lease or any other authorization for the exploration, development, or production of oil, natural gas, or any other mineral in the Arctic Ocean, including the Beaufort Sea and Chukchi Sea Planning Areas.” [Read more.](#)

H. Res. 163 – Support of Domestic Energy

Production. On May 10, official bill text was made available for H. Res. 163. The resolution sponsored by Rep. Bob Latta (R-OH), and not a bill, “expresses the sense of the House of Representatives that the United States should support, and not limit access to, all domestic sources of energy development in an effort to achieve full energy security, including by expanding use of renewable and alternative energy sources, and increasing domestic oil production.” [Read more.](#)

S. 1038 – Regional Greenhouse Gas Reduction

Act of 2021. On May 4, official bill text was made available for [S. 1038](#), known as the *Regional Greenhouse Gas Reduction Act of 2021*. The bill, sponsored by Sen. Maggie Hassan (D-NH), would establish within the Environmental Protection Agency an Office of Regional Greenhouse Gas Reduction Programs. According to the bill sponsor, “This office would provide analysis and technical assistance to help establish new regional greenhouse gas reduction programs, expand existing programs such as [Regional Greenhouse Gas Initiative] RGGI and the Western Climate Initiative, and support states that are already members of such programs. The bill would also provide grants for state and local governments to take preliminary steps toward developing or participating in a regional greenhouse gas reduction program.” According to Sen. Hassan, “Climate change threatens our economy, our health, and our natural resources. Initiatives like the Regional Greenhouse Gas Initiative leverage market-based solutions to reduce emissions, lower energy use and bills, and create jobs.” The bill, if passed, “would support current RGGI programs and help expand this type of regional greenhouse gas initiative to other states and local governments.” [Read more.](#)

S. 1201 – United States Climate Leadership in International Mitigation, Adaptation, and Technology Enhancement Act of 2021.

On May 11, official bill text was made available for [S. 1201](#), known as the *United States Climate Leadership in International Mitigation, Adaptation, and Technology Enhancement Act of 2021*. Sponsored by Sen. Bob Menendez (D-NJ), the bill “lays out a bold vision to assure the United States appropriately leads the global effort to combat the climate crisis through a new suite of climate foreign policy, climate finance and foreign assistance, and climate diplomacy programs and initiatives. The legislation also directs U.S. bilateral and multilateral engagements and strategies on climate, and improves integration of climate policy into all aspects of U.S. foreign affairs.” Among the many climate change provisions and greenhouse gas emissions policies, the bill also “focuses energy specific assistance programs to support clean energy development.” [Read more.](#)

FEDERAL – Regulatory

BLM Instruction Memorandum Reinstates

Obama-era Policies. In yet another assault on federal onshore oil and gas leasing by the Biden administration, on April 30, the Bureau of Land Management (BLM) issued new federal oil and gas leasing policies which overturn those under the Trump administration and largely reinstate Obama-era policies. Under [Instruction Memorandum \(IM\) 2021-027](#), the BLM “sets out the policy of the Bureau of Land Management (BLM) to ensure that oil and gas lease sales are held in accordance with the Mineral Leasing Act (30 U.S.C. § 226) and other applicable laws, as well as Executive Order 13990, Protecting Public Health and the Environment and Restoring Science to Tackle the Climate Crisis.” According to the IM, “The following policy applies to the leasing of Federal minerals under BLM administered surface, state-owned surface, and private surface estates. The BLM does not manage leasing on Indian lands; therefore, this policy does not apply to Indian lands. This policy (1) addresses land use planning, lease parcel review, lease sales and lease issuance, and IM implementation; and (2)

directs the BLM to incorporate the revised policy, as appropriate, into affected BLM handbooks and manuals." The IM is set to be in effect until September 30, 2024. According to oil and gas law firm, Beatty & Wozniak, P.C., "This is significant to industry because the new policies will likely result in substantial delays in BLM offering nominated lease parcels for competitive sale, longer timeframes for NEPA reviews, and more deferrals of nominated parcels that are protested by interest groups." The IM also will "extend the review periods for parcels nominated for competitive sale, require more site-specific environmental review and analysis before parcels can be offered for sale, and encourage BLM to 'coordinate and/or consult on the parcel review and NEPA analysis with interested parties potentially affected by the BLM's leasing decisions.'" [Read more.](#)

BLM Information Collection. On May 5, the BLM published a notice of information collection, *Agency Information Collection Activities; Oil and Gas, or Geothermal Resources: Transfers and Assignments* ([86 Fed. Reg. 23980](#)). According to the BLM notice, "This collection of information 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 information also enables the BLM to ensure the assignee or transferee is in compliance with the bonding requirements, when necessary, before approval of the transfer or assignment." The deadline to submit comments is June 4, 2021. [Read more.](#)

Independent Contractors; U.S. Department of Labor – Washington, DC. (*Update to 2/8/21 Weekly Report*) The Biden administration has finally dealt a final blow to a Trump administration labor rule that favored independent contractors. On May 6, the U.S. Department of Labor (DOL) issued final rule, *Independent Contractor Status Under the Fair Labor Standards Act (FLSA): Withdrawal* ([86 Fed. Reg. 24303](#)), which completely withdraws the Trump-era rule finalized in the final days of the administration and which never took effect since it had been delayed by the Biden administration prior to its effective date.

([Read a detailed summary of the withdrawal here](#))

According to The Hill, "In deciding questions of employee status, the Biden administration will now rely on a longstanding multi-factor test established by judicial precedent. That often-complicated analysis would have been narrowed by the Trump administration's regulation." [Read more.](#) As noted in previous reports, 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 delayed the effective date of the Trump administration's independent contractor rule to at least May 7, 2021, while it reviewed the rule and solicited public comments. The rule originally had an effective date of March 8, 2021. On January 7, 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 that now-rescinded 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 may have allowed 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.](#)

Taking of Migratory Birds; U.S. Fish and Wildlife Service. (*Update to 2/8/21 Weekly Report*) On May 6, the U.S. Fish and Wildlife Service (FWS) published a proposed rule, *Regulations Governing Take of*

Migratory Birds; Proposed Rule ([86 Fed. Reg. 24573](#)), to revoke the January 7, 2021, final regulation that limited the scope of the Migratory Bird Treaty Act (MBTA) finalized under the Trump administration and which removed industry penalties for accidental or incidental bird deaths. The public comment period is open through June 7, 2021. [Read more](#). For background, on February 3, the Biden administration halted the Trump administration's MBTA rule from taking effect as scheduled for February 8. During the final days of the Trump administration the FWS published its final rule, *Regulations Governing Take of Migratory Birds* ([86 Fed. Reg. 1134](#)), which specified that the prohibitions on harm to migratory birds under the MBTA would only apply to deliberate, rather than incidental, harm. The push for this rule by the Trump administration had been lauded by industry groups. 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 FWS "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](#). The final published Trump-era rule was an outgrowth of that court opinion and a victory for the outgoing Trump administration. [Read more](#).

FEDERAL – Judicial

Federal Hydraulic Fracturing Development Plan – Colorado. On May 10 environmental groups sued the Interior Department and its specific agencies challenging the Bureau of Land Management (BLM) and U.S. Forest Service (FWS) approval of a plan in 2020 that allowed hydraulic fracturing "across 35,000 acres of Colorado's Western Slope. The North Fork Mancos Master Development Plan allows 35 new fracking wells in the North Fork Valley and Thompson Divide areas of the Grand Mesa, Uncompahgre, and Gunnison national forests." In [Citizens for a Healthy Community v. U.S. Dept. of Interior](#) (Case No. 1:21-cv-01268), the plaintiffs claim that decisions made

by the BLM and FWS to approve the North Fork Mancos Master Development Plan through an Environmental Assessment, Record of Decision and Finding of No Significant Impact under the Trump administration "violated the National Environmental Policy Act and other laws by failing to fully assess the potential for water pollution and harm to the climate, and by refusing to analyze alternatives that would minimize or eliminate harm to the environment. The plan would result in about 52 million tons of greenhouse gas pollution, equivalent to the annual pollution from a dozen coal-fired power plants." The environmental groups are asking the U.S. District Court for the District Court of Colorado to rescind the approvals and stop any oil and gas resource development on the lands. [Read more](#).

Climate Change Policies – Missouri. (*Update to 5/3/21 Weekly Report*) As we previously reported, on April 22, Louisiana, joined by nine other states, sued the Biden administration in federal court challenging the administration's approach to calculating the financial impacts of climate change. Now, on the heels of that lawsuit, 14 states have sued the Biden administration seeking a preliminary injunction to bar federal agencies from using the newly strengthened "social cost of greenhouse gases" as "binding values in any agency action." Federal agencies use the "social cost of greenhouse gases" to assess the cost of emitting carbon dioxide, methane, and other gases. The Trump administration lowered that value, but the Biden administration restored Obama-era methodology and adopted higher values. According to the suit filed on May 3 in *Missouri v. Biden* (Case No. 4:21-cv-00287-AGF), "In theory, these numbers would justify imposing hundreds of billions or trillions of dollars in regulatory costs on the U.S. economy in upcoming years to offset these supposed 'social costs,'" the states told the U.S. District Court for the Eastern District of Missouri. "In practice," they wrote, "these numbers will inevitably be used to justify increased regulation and expansion of federal regulatory authority in numerous areas." According to Bloomberg Government, "The case is part of an effort by Republican attorneys general to push back on the

Biden administration's ambitious environmental agenda. The states asked the court to rule by late August, before major rulemakings are likely to be complete." [Read more.](#)

STATE – Legislative

Independent Contractors – Alabama. On April 19, Gov. Kay Ivey (R) signed [HB 408](#) into law. The Act, sponsored by Rep. Wes Kitchens (R), sets forth a uniform test for independent contractor (IC) status in the state by using the 20-factor IRS common law test. According to Independent Contractor Compliance, "The IRS's traditional standard contains the most business-favorable test for IC status [and] the new law states specifically that the IRS test shall be used to determine whether a worker is an employee or independent contractor." According to the law firm, Bradley Arant Boult Cummings LLP, "By contrast, the United States Department of Labor (USDOL) has several tests it uses, depending on which federal statute it is enforcing, all of which tilt toward finding a worker to be an employee, even if only a part-time employee." The Act is effective July 1, 2021. [Read more.](#)

ANWR Leasing – Alaska. *(Update to 3/8/21 Weekly Report)* On May 12, Gov. Mike Dunleavy (R) approved HJR 12. The House Joint Resolution, sponsored by Rep. George Rauscher (R) 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." The measure serves as a legislative statement of sentiment and has no weight of law and cannot direct the federal government to take or abstain from any action. [Read more.](#)

Notarial Acts – Arkansas. On April 30, Gov. Asa Hutchinson (R) signed SB 340 into law. The Act, sponsored by Sen. Bob Ballinger (R), updates existing law regarding the witnessing of certain documents by a notary public and provides for remote, electronic notarial acts. The Act is effective immediately. [Read more.](#)

Severance Withholdings – Colorado. *(Update to 3/22/21 Weekly Report)* On May 7, Gov. Jared Polis (D) signed HB 1156 into law. The Act, sponsored by Rep. Mike Lynch (R), fixes defects related to severance withholding. Specifically, under existing law prior to HB 1156, a producer or purchaser was 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. According to the HB 1156 legislative summary, "The bill fixes defects related to this law 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." The Act is effective 90 days following final adjournment of the legislative session on June 12, 2021. [Read more.](#)

Greenhouse Gas Emissions – Colorado. On April 28, SB 200 advanced favorably to its second committee. The bill, sponsored by Sen. Fait Winter (D), supplements existing greenhouse gas (GHG) emissions reductions by requiring the state Air Quality Control Commission to consider the social cost of GHG emissions, finalize certain rules by 2022, requiring power generation and transmission entities to submit GHG reductions plans, and requiring retail, wholesale, and municipal electric utilities to reduce GHG emissions by specified dates. The bill also would label GHGs as a "regulated pollutant" as well as establish environmental justice programs, among other provisions. [Read more.](#)

Notaries Public – Idaho. On May 10, Gov. Brad Little

(R) signed SB 1065 into law. The Act, sponsored by Sen. Lee Heider (R), “eliminates authorization for use of the Governor’s facsimile signature in the appointment and commissioning of notaries public, since these appointments and commissionings are now performed by the Secretary of State.” The Act is effective July 1, 2021. [Read more.](#)

Revised Unclaimed Property Act – Indiana.

(Update to 1/25/21 Weekly Report) On April 29, Gov. Eric Holcomb (R) signed SB 188 into law. The Act, sponsored by Sen. Eric Koch (R), repeals the Unclaimed Property Act and replaces it with the Revised Unclaimed Property Act and includes sections regarding minerals and mineral proceeds. The Act is effective July 1, 2021. [Read more.](#)

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

(Update to 1/25/21 Weekly Report) On April 29, Gov. Eric Holcomb (R) signed HB 1255 into law ([Read full bill analysis here](#)). The Act, sponsored by Rep. John Young (R), makes numerous changes to probate law, including wills, powers of attorney, trust instruments, electronic recording, and notarial acts. The Act is effective immediately. [Read more.](#)

Notarial Acts – Kansas. *(Update to 2/8/21 Weekly Report)* On April 21, Gov. Laura Kelly (D) signed SB 106 into law. The Act, sponsored by the Senate Judiciary Committee (R), revises existing notarial law to adopt the Revised Uniform Law on Notarial Acts, and provides for remote, electronic notarial acts. The Act has multiple effective dates. [Read more.](#)

Independent Contractors – Louisiana. On May 13, HB 705 advanced to a floor vote following its introduction by Rep. Neil Riser (R) on May 10. The bill provides for the misclassification of employees and criteria for classifying employees. Specifically, the proposed law provides that if an individual or entity meets at least seven of twelve criteria listed in proposed law, there shall be a rebuttable presumption of an independent contractor relationship with the contracting party for whom

the independent contractor performs work. The proposed law also provides that obtainment of an independent contractor certification from the state is optional and is not required to establish independent contractor status. The proposed law further provides that any contracting party or independent contractor may rely on the provisions of proposed law to establish an employment or independent contractor relationship. [Read more.](#)

Risk Charges; Nonparticipating Mineral Owners – Louisiana.

(Update to 4/19/21 Weekly Report) On May 4, Sen. Bob Hensgens (R) introduced SCR 44 to create “the Risk Charge Commission to study current [R.S. 30:10](#), relative to risks and cost of drilling in a compulsory unit and to submit recommendations to the Senate Committee on Natural Resources and the House Committee on Natural Resources and Environment no later than February 4, 2022. The commission terminates upon the date of submission of such report or February 4, 2022, whichever occurs first.” SCR 44 has been introduced in place of [SB 59](#) which did not advance and would have provided for the risk charge against nonparticipating mineral owners in drilling units, and among other amendatory provisions, sets forth the obligations owed by the lessee and drilling owner with respect to the payment of any lessor royalty and overriding royalty due. [Read more.](#)

Independent Contractors – Louisiana. On May 3, SB 244 passed the Senate by unanimous bipartisan vote. The bill, first introduced on April 27 by Sen. Jay Luneau (D), amends and reenacts specific parts of the law pertaining to the misclassification of employees as independent contractors, and provides for certain administrative penalties for misclassification, although the bill supports independent contractor designations by providing clarity on the difference between employees and independent contractors. [Read more.](#)

Board of Oil and Gas Conservation – Montana.

On May 4, HB 498 was transmitted to Gov. Greg Gianforte (R). The bill, sponsored by Sen. Steve Gunderson (R), amends existing law to clarify the

jurisdiction of the Board of Oil and Gas Conservation regarding the primacy of mineral estates and limitations on planning district effects on the primacy of the mineral estate, to limit access to the mineral estate, or to limit development of the mineral estate. [Read more.](#)

Greater Sage-Grouse – Montana. *(Update to 2/22/21 Weekly Report)* On April 30, Gov. Greg Gianforte (R) signed SB 249 into law. The Act, sponsored by Sen. Mike Lang (R), amends existing laws related to funding of the Sage-Grouse Stewardship Act. The Act authorizes a cost-sharing agreement between the Department of Fish, Wildlife & Parks and the Department of Natural Resources and Conservation. The Act is effective July 1, 2021. [Read more.](#)

Oil and Gas Production Tax; Nonoperating School Districts – Montana. *(Update to 1/11/21 Weekly Report)* Gov. Greg Gianforte (R) has signed SB 24 into law and the Act is effective July 1, 2021. The legislation, sponsored by Sen. Daniel Salomon (R), allows 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.](#)

Sustainable Economy Task Force – New Mexico. *(Update to 2/22/21 Weekly Report)* On April 5, Gov. Michelle Lujan Grisham (D) signed SB 112 into law. The Act, sponsored by Sen. Mimi Stewart (D), appropriates 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.” The House Energy, Environment and Natural Resources Committee amendment to the final bill clarifies task force membership and creates “the sustainable economy advisory council” administratively attached to other

programs and “provides for its membership which includes representation from disproportionately impacted communities, business groups, tribal governments, and others.” The adopted amendment also asks the task force to include in its duties, a plan to implement recommendations from the “New Mexico Clean Energy Workforce Development Study,” published by the Workforce Solutions Department in 2020, “and expand access to jobs with family-sustaining wages and benefits, prioritizing disproportionately impacted communities.” The Act is effective July 1, 2021. [Read more.](#)

Tribal Lands; Taxation – North Dakota. *(Update to 2/8/21 Weekly Report)* On April 28, Gov. Doug Burgum (R) signed SB 2319 into law. The Act, sponsored by Sen. Jordan Kannianen (R), applies to tribal lands and amends existing law relating to distribution of revenue from wells located outside reservation boundaries. The Act applies to oil and gas tax revenue collections allocated by the state treasurer after September 1, 2021. [Read more.](#)

Recording Instruments – Ohio. On May 12, HB 237 was considered in a hearing following its introduction. The bill, sponsored by Rep. Brett Hillyer (R), would require counties to provide an electronic means of recording instruments and accessing them, and to allow county recorders to charge a document preservation surcharge and to increase recording fees for certain instruments. [Read more.](#)

Review of Executive Orders – South Dakota. *(Update to 2/22/21 Weekly Report)* HB 1194 died upon adjournment of the legislative session. The bill, sponsored by Rep. Aaron Alyward (R), would have provided 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 applied to natural resources and land related issues. [Read more.](#)

Tort of Public Nuisance – Texas. On May 3, HB 2144

was reported out of committee after a favorable vote on April 28. The bill, sponsored by Rep. Cody Harris (R), would reform the tort of public nuisance to remove the common law tort and replace it with a statute that specifically defines which actions may be actionable for public nuisance. According to the Texas Civil Justice League, “Traditionally, the common law doctrine of public nuisance has been used to enforce ‘established public rights,’ which means the common interest of all members of the public to the use of public land, air, and water. In terms of oil and gas operations, the common law can create litigation opportunities for plaintiffs who bring claims against resource development companies from upstream to downstream channels. As the [Texas Civil Justice League notes](#) in its support of the bill, “Public nuisance has also been used to launch national litigation against, for example, the Texas energy industry, threatening the economic well-being of our state and its citizens.” Most importantly, the bill establishes that a person may be held liable for a public nuisance “only if the person causes an unlawful condition and controls that unlawful condition at the time the condition violates an established public right. Conditions arising from the following conduct are not considered unlawful conditions for purposes of a public nuisance action: an activity expressly authorized or encouraged by a statute, ordinance, rule, or other similar measure adopted by the state, a political subdivision of the state, the United States, or a regulatory agency of the state or the United States; and the lawful manufacturing, distributing, selling, advertising, or promoting of a lawful product.” ([Read a complete bill summary and analysis here](#)) For example, if the Texas Railroad Commission has approved drilling operations and related practices, a private citizen cannot bring a lawsuit against an operator for conducting those activities. The bill also provides a higher burden which a citizen must meet in order to maintain a lawsuit. [Read more.](#)

Well Subcontractors – Texas. On May 6, HB 3416 advanced after passing favorably out of committee. The bill, sponsored by Rep. Drew Darby (R), relates to indemnity agreements between contractors and

subcontractors for services pertaining to certain wells or mines. Specifically, the bill “seeks to provide transparency in these triparty relationship agreements and protect subcontractors by requiring a contractor, before entering into or renewing such an agreement with a subcontractor or third party, to provide written notice to the subcontractor regarding the subcontractor’s indemnification obligations to the contractor and third party and written notice to the third party stating whether the subcontractor possesses liability insurance coverage or qualified self-insurance for the obligations and the dollar limits of the insurance.” Senate companion bill, [SB 1599](#), was introduced by Sen. Eddie Lucio (D) and left pending in committee. [Read more.](#)

SPECIAL LEGISLATIVE SECTION: SESSION ADJOURNMENTS

NEW MEXICO SESSION ADJOURNMENT

ROUNDUP. The New Mexico legislative session adjourned on March 30, 2021 and the deadline for action by Gov. Michelle Lujan Grisham (D) on any legislation has now passed, officially bringing the 2021 regular legislative session to a close. Following is the status of bills AAPL had been tracking for members this session that failed to advance and died upon adjournment.

HB 9 – Democrat bill; Creates 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.

HB 30 – Democrat 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.

HB 50 – Democrat bill; Provides for a private right of action related to oil and gas injury and imminent

harm, economic and otherwise, under existing statutes.

HB 95 – Democrat bill; Would amend certain Water Code sections to impose new requirements on the Office of the State Engineer when processing water rights permit applications.

HB 136 – Republican bill; Would create an exception to the New Mexico Subdivision Act for parcels divided for oil or gas operations.

HB 148 – Democrat bill; Would increase the employer unemployment contribution rate by two-tenths percent starting January 1, 2022.

HB 159 – Republican bill; Would amend provisions governing rulemaking under the Public Health Emergency Response Act to prohibit agencies from promulgating rules that add to or alter state statutes when a public health order is in effect, unless the proposed rule changes are authorized by the governor.

HB 181 – Republican bill; Regarding severance taxes, states that 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.

HB 265 – Democrat bill; Regarding land acquisition and conservation, the bill authorizes grants to political subdivisions for unique and significant land acquisitions; requires consent on the part of the state agency or corporation to assume certain land management responsibility; inserts a new section of the Natural Lands Protection Act to establish a competitive grant award process; and no longer requires Energy, Minerals and Natural Resources Department consult with an advisory committee for some administrative functions.

HJM 3/SJM 3 – Republican joint memorials; 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.”

SB 67 – Democrat 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.

SB 86 – Democrat 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.

SB 149 – Democrat bill; The bill would prohibit the issuance of new hydraulic fracturing permits for the purpose of extracting oil or natural gas through June 1, 2025 and imposed certain regulatory reporting requirements.

SB 296 – Democrat bill; Increases penalties for violations, noncompliance, and failure to correct noncompliance related to the New Mexico Mining Act, the Air Quality Control Act, the Hazardous Waste Act, the Water Quality Act, and the Solid Waste Act.

SJR 2 – Democrat joint resolution; Proposes an amendment to the state constitution to eliminate the governor's pocket veto.

SJR 3 – Democrat joint resolution; Would amend the state constitution to include a right of the people of the state to a clean and healthy environment and to protect natural resources on behalf of the people.

All bills and history may be accessed directly at the New Mexico Legislature website:

https://www.nmlegis.gov/Legislation/Bill_Finder.

As always, these and all other bills AAPL tracks for members can be found in the Bill Tracking Summary spreadsheet available only to members on the AAPL website at:

<https://www.landman.org/resources/advocacy-and-legal>.

WEST VIRGINIA SESSION ADJOURNMENT

ROUNDUP. The West Virginia legislative session adjourned on April 11, 2021 and the deadline for action by Gov. Jim Justice (R) on any legislation has now passed, officially bringing the 2021 regular legislative session to a close. Following is the status of bills AAPL had been tracking for members this session that failed to advance and died upon adjournment.

HB 2020 – Republican bill; 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.

HB 2074 – Republican bill; 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.

HB 2081 – Democrat bill; 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.

HB 2132 – Democrat bill; 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.

HB 2205 – Republican bill; Purpose of this bill is to create a procedure to streamline the process to claim abandoned mineral interests.

HB 2227 – Democrat bill; 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.

HB 2282 – Democrat bill; Purpose of this bill is to provide for a new fee on each MFC of natural gas produced to fully fund public employee benefits; 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.

HB 2530 – Republican bill; Purpose of this bill is to clarify the definition of an employee for the purposes of unemployment compensation and workers' compensation to match and conform with Internal Revenue Code provisions.

HB 2589 – Democrat bill; 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.

HB 2725 – Democrat bill; 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. The Office of Oil and Gas currently only receives, and unlike other offices is only funded by, one-time fees

generated by the applications for the permits for initial drilling of a well. It only has a reduced staff of 25 including only one inspector for every 5000 wells. The bill provides the funding by requiring an annual oversight fee of \$100 for each well that is to be used for the functions of the Office of Oil and Gas with any excess to be used to plug orphaned wells.

HB 2810 – Republican bill; Purpose of this bill is to remove the severance tax on oil and gas produced from low producing wells.

HB 2853/SB 538 – Republican bills; Purpose of these bills is to provide for the unitization of interests in drilling units in connection with shallow horizontal oil or gas wells. The bills set forth application requirements. The bills establish the standard of review. The bills provide for unitization orders. The bills require notice and timeliness. The bills provide for hearings. The bills address oil and gas produced from shallow horizontal wells. The bills add new definitions and modify existing definitions.

HB 2879 – Democrat bill; Purpose of this bill is to modify the term “employee” to include an individual who provides work for an employer under the terms of an independent contract with such employer.

HB 2889 – Democrat bill; 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.

HB 2975 – Democrat bill; Purpose of this bill is to provide that the limit of disturbance of a well site may not be closer to an occupied building than 2,500 feet.

HB 3051 – Republican bill; 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.

HB 3147 – Democrat bill; Purpose of this bill is to “double the tax on the privilege of severing natural gas and oil.”

HB 3214 – Republican bill; Purpose of this bill is to reallocate and dedicate three percent of oil and gas severance tax revenues up to \$20 million annually to the oil and gas producing counties of origin and their respective municipalities. The bill establishes state and local oil and gas county reallocated severance tax funds and provides for distribution of the moneys to the county commissions and governing bodies of the municipalities by the State Treasurer. The bill establishes a procedure for determining the amounts each oil and gas producing county and their respective municipalities are to receive and requires the creation of local funds into which moneys are to be deposited. The bill requires the funds to be used solely for economic development projects and infrastructure projects. The bill also provides restrictions on fund expenditures.

SB 6 – Republican bill; 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.

SB 32 – Republican bill; Purpose of this bill is to clarify, for purposes of this article, 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.

SB 72 – Republican bill; 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.

SB 362 – Republican bill; Purpose of this bill is to create the Orphan Oil and Gas Well Prevention Act; 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.

SB 538 – Republican bill; 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. The bill establishes the standard of review. The bill provides for unitization orders. The bill requires notice and timeliness. The bill provides for hearings. The bill addresses oil and gas produced from shallow horizontal wells. The bill adds new definitions and modifies existing definitions.

SB 681 – Republican bill; Purpose of this bill is to protect employees of the State of West Virginia and its political subdivisions from being commandeered by a federal agency or other agent to enforce federal regulations and other actions, related to extractive resources or related downstream industries, which do not exist in state law.

SB 712 – Republican bill; Purpose of the bill is to establish annual oversight fee for wells producing more than 10,000 cubic feet of gas per day; and providing that those fees, if not used for other purposes, may be moved to the Oil and Gas Reclamation Fund.

All bills and history may be accessed directly at the West Virginia Legislature Bill Status website: https://www.wvlegislature.gov/bill_status/bill_status.cfm.

As always, these and all other bills AAPL tracks for members can be found in the Bill Tracking Summary spreadsheet available only to members on the AAPL website at: <https://www.landman.org/resources/advocacy-and-legal>.

STATE – Regulatory

Environment Department Proposed Ozone Rule – New Mexico. On May 6, the New Mexico Environment Department (NMED) announced the [release of a proposed rule](#) “that will improve air quality for all New Mexicans by establishing innovative and actionable regulations to curb the formation of ground-level ozone in the state’s most affected regions. The rule will also result in reduced emissions of dangerous greenhouse gases.” ([See proposed rule fact sheet](#)) According to Gov. Michelle Lujan Grisham (D), “This rule will not only hold industry accountable, but will also spur innovation and greener practices in the oil and gas fields. The effect will be equivalent to taking eight million cars off the road every year.” The announcement states that “Once finalized, the new rule will reduce emissions of ozone precursor pollutants – volatile organic compounds and oxides of nitrogen - by nearly 260 million pounds annually and reduce methane emissions by over 851 million pounds annually. The rule will apply in New Mexico counties with high ozone levels. Currently, this includes Chaves, Doña Ana, Eddy, Lea, Rio Arriba, Sandoval, San Juan, and Valencia counties.” Regarding the proposed rule, NMED Cabinet Secretary James Kenney said, “We undertook a two-year planning process, engaging with thousands of New Mexicans across the state, scientists and researchers inside and outside of our agencies, oil and gas operators, and environmental organizations. We listened closely during the public comment process, we invested

significant staffing resources, and we delivered a nationally leading oil and gas rule as a result.” Public hearings on the rule will begin in September 2021.

[Read more.](#)

State Land Office Reports Monthly Royalty Earnings Record – New Mexico.

On May 4, Stephanie Garcia Richard, Commissioner of Public Lands, announced that the New Mexico State Land Office broke a record for its highest monthly royalty earnings with \$109.8 million earned in April 2021. “The money earned by the State Land Office in April was more than any month since statehood – over \$109 million – brought in through royalty payments on our oil and gas leases,” said Garcia Richard. “When the State Land Office has huge revenue months like this, New Mexicans benefit directly from that success.” [Read more.](#)

Draft Oil and Gas Division Monitoring and Enforcement Plan; Railroad Commission – Texas.

On May 11, the Texas Railroad Commission (RRC) [published a notice regarding their Draft Oil And Gas Division Monitoring And Enforcement Plan.](#) The RRC is accepting public comments regarding their “annual plan to assess the most effective use of its limited resources to protect public safety and minimize damage to the environment.” According to the announcement, “The purpose of this plan is to define and communicate the Oil and Gas Division’s strategic priorities for its monitoring and enforcement efforts. The plan confirms many of the division’s current priorities as well as establishing direction for data collection, stakeholder input, and new priorities for fiscal year 2022.” The public comment period is open through June 10, 2021. [Read more.](#)

Production Reporting; Railroad Commission – Texas.

On May 5, the Texas Railroad Commission (RRC) published a notice alerting oil and gas operators of [electronic filing requirements for Form PR, Monthly Production Report.](#) Per the RRC notice, “The revisions support the RRC’s regulation of flaring and venting of produced natural gas. The proposed revisions are to the Form PR Instructions and how

operators need to complete the form, not to the structure of the form itself.” Specifically, “The RRC is delaying implementation of the revised Form PR to provide operators and the RRC time to make changes to their production reporting systems. Operators will continue to use the existing Form PR until the phased implementation. On September 1, 2021, Disposition Code 4 will no longer be accepted. Gas that is flared must be allocated to Disposition Code 10 and gas that is vented must be allocated to Disposition Code 11. On January 1, 2022, operators must report the applicable 2-letter authorization codes in the ‘REMARKS’ field on the form.”

[Read more.](#)

STATE – Judicial

Well Plugging – New Mexico. On April 22, Stephanie Garcia Richard, Commissioner of Public Lands of the State of New Mexico, filed suit against two oil and gas companies, seeking “damages against a former State Land Office oil and gas lessee, BC&D Operating, Inc., and a related company, Dominion Production Company, for their failure to clean up two massive abandoned leases on state land in McKinley County.” In the case, [Richard v. BC & D Operating, Inc.](#) (Case No. not yet docketed), the State Land Office claims the companies had not “honored their part of the state’s Accountability and Enforcement Program, launched in November 2020,” which is an “agency-wide programmatic approach being undertaken to ensure oil and gas companies, and other lease holders, honor their contractual promise to operate and close out responsibly.” [Read more.](#)

Deeds; Reservations; Bona Fide Purchasers – Pennsylvania. In [Walters v. McIlvee](#) (Case No. 1415 WDA 2019), the Pennsylvania Superior Court addressed a dispute over oil and gas rights underlying a parcel of property and whether they were subject to reservation. As noted by law firm Houston Harbaugh of the case, “The question of whether a sale of real estate includes the underlying gas rights remains a troubling issue for some Pennsylvania landowners.” Here, there were several transactions and deeds concerning 220 acres of real

estate and a recorded deed which was missing reservation language agreed upon in a sale agreement which created the dispute upon which this case is premised. The appellate court “had to wrestle with several competing, and in some ways, contradictory concepts, namely i) the doctrine of ‘merger’, ii) the equitable remedy of deed reformation and iii) *bona fide* purchaser status.” But in the end, by “harmonizing” these concepts, the Superior Court found that a reservation of “minerals” did in fact intend to include oil and gas, the parties had notice, and the defendants were not *bona fide* purchasers, and in so doing affirmed the trial court’s findings. [Read more.](#)

Allocation and Production Sharing Wells; Railroad Commission – Texas. On May 12, a Travis County district court held that the Railroad Commission of Texas (RRC) has no authority to issue permits for allocation and production sharing wells. In [Opiela v. Railroad Commission of Texas](#) (Case No. D-1-GN-20-000099), the 53rd Judicial District court held that the RRC “violated the Administrative Procedure Act by informally adopting rules for issuance of allocation and production sharing well permits without following the rule-making procedures of the Act. The Court ruled in an appeal by a mineral owner of the Commission’s order granting a well permit to Magnolia Oil & Gas Operating for a well in Karnes County.” The judge found that the RRC “should have considered whether the Opielas’ lease and its pooling clause gave Magnolia authority to drill the well.” However, the RRC “had concluded that it has no authority to consider the lease terms.” According to Austin law firm, Graves, Dougherty, Hearon & Moody, “Although the Commission has been issuing permits for allocation and production-sharing wells for years, it has never adopted formal rules as required by the Administrative Procedure Act setting forth the requirements for such well permits. The Act requires publication of proposed rules and opportunity for public comment before adopting them. Mineral owners have protested applications for allocation wells before, but until now no court has ruled whether the Commission has authority under its rules to issue such permits. In all prior

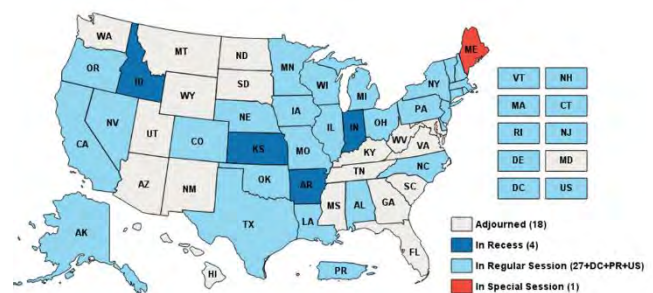
protests, either the parties settled or the permit was withdrawn or expired before a court could address the issue.” Here, the Court has remanded the case back to the RRC for further proceedings consistent with the judgment. [Read more.](#)

INDUSTRY NEWS FLASH

► **Oil rises to highest level since March.** On May 12, Rigzone reported that oil rose to the highest level since early March with a second straight weekly decline in U.S. crude supplies underscoring the progress the world has made in draining a record supply glut built up last year. “Inventories are still trending in the right direction,” said Quinn Kiley, a portfolio manager at Tortoise, a firm that manages roughly \$8 billion in energy-related assets. “The economy globally is reopening and that should continue, so we should see continuing draws.” [Read more.](#)

LEGISLATIVE SESSION OVERVIEW

States in Session



Session Notes (by date): Alabama, Alaska, California, Colorado, Connecticut, Delaware, Illinois, Iowa, Louisiana, Massachusetts, Michigan, Minnesota, Missouri, Nebraska, Nevada, New Hampshire, New Jersey, New York, North Carolina, Ohio, Oklahoma, Oregon, Pennsylvania, Rhode Island, Texas, Vermont, and Wisconsin are in regular session. The U.S. Congress is also in session.

The following legislatures are in recess until the dates provided: **Kansas** (May 26), **Arkansas** and **Indiana** (TBD) and **Idaho** House (call of the speaker).

The **Idaho** Senate adjourned on May 12, while the House went into recess, subject to the call of the House speaker, to a date no later than December 31, reports the [Idaho Capital Sun](#).

Alaska Republican Gov. Mike Dunleavy is scheduled to call the legislature into two special sessions this summer; the first on May 20 to address the state's operating budget and the second on August 2 to fix the yearlong fiscal conflict over the Permanent Fund dividend, reports the [Anchorage Daily News](#).

The following states adjourned their 2021 legislative sessions on the dates provided: **Tennessee** (May 6), and **Montana** and **South Carolina** (May 13).

The following states are scheduled to adjourn their 2021 legislative sessions on the dates provided: **Alabama** and **Minnesota** (May 17) and **Alaska** (May 19).

Signing Deadlines (by date): **Arizona** Republican Gov. Doug Ducey had until May 6 to sign or veto legislation or it became law without signature. **Georgia** Republican Gov. Brian Kemp had until May 10 to sign or veto legislation or it became law without signature. **Washington** Democratic Gov. Jay Inslee has until May 18 to sign or veto legislation or it becomes law without signature. **Maryland** Republican Gov. Larry Hogan has until June 1 to sign or veto legislation or it becomes law without signature. **Hawaii** Democratic Gov. David Ige has until July 1 to sign or veto legislation or it becomes law without signature. **Florida** Republican Gov. Ron DeSantis has 15 days from presentment 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. **Indiana** Republican Gov. Eric Holcomb has seven days from presentment to sign or veto legislation, or it becomes law without signature. **Kentucky** Democratic Gov. Andy Beshear has 10 days from presentment, except Sundays, to sign or veto legislation or it becomes law without signature.

Maine Democratic Gov. Janet Mills must act on legislation presented within 10 days of adjournment or it becomes law unless returned within three days after the next meeting of the same legislature. **Mississippi** Republican Gov. Tate Reeves has 15 days from presentment, except Sundays, to sign or veto legislation or it becomes law without signature. **Montana** Republican Gov. Greg Gianforte has 10 days from presentment to act on 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. **North Dakota** Republican Gov. Doug Burgum has 15 days from presentment, Saturdays and Sundays excepted, to sign or veto legislation or it becomes law without signature. **South Carolina** Republican Gov. Henry McMaster has five days from presentment, excluding Sundays, to act on legislation or it becomes law without signature. **Tennessee** Republican Gov. Bill Lee has 10 days starting the day after presentment, Sundays excluded, to sign or veto legislation or it becomes law without signature. ■

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GOVERNMENTAL AFFAIRS WEEKLY REPORT

Weekly Highlights At-A-Glance

FEDERAL – Legislative

H.R. 2176 – Ensuring Access to Domestic Mineral Production Act. On June 9, official bill text was made available for [H.R. 2176](#), known as the *Ensuring Access to Domestic Mineral Production Act*. Sponsored by Rep. Chris Stewart (R-UT), the bill would “provide for the continued and uninterrupted production of domestic minerals in the United States.” According to Rep. Stewart, “Right now, massive areas of land are ‘withdrawn’ from mineral exploration in the name of environmental protection without any consideration for the national security and economic consequences. This bill prohibits the Secretary of the Interior from any withdrawal until a study has been completed that demonstrates our national security will not be jeopardized.” [Read more.](#)

H.R. 2184 – End Oil and Gas Tax Subsidies Act of 2021. (*Update to 5/31/21 Weekly Report*) On June 2, official bill text was made available for [H.R. 2184](#), known as the *End Oil and Gas Tax Subsidies Act of 2021*. The bill, sponsored by Rep. Earl Blumenauer (D-OR), is similar to a Senate bill we recently reported on sponsored by Sen. Bernie Sanders (I-VT). That bill, [S. 1167](#), known as the *End Polluter Welfare Act of 2021*, would eliminate certain subsidies for fossil fuel production. Specifically, the legislation would “prohibit taxpayer-funded fossil fuel research and development; update below-market royalty rates for oil and gas production on federal lands; recoup royalties from offshore drilling in public waters; and ensure competitive bidding and leasing practices for coal development on federal lands.” H.R. 2184 would similarly “repeal fossil fuel subsidies for oil companies” by eliminating certain tax deductions and credits for oil and gas production companies. According to Rep. Blumenauer, “The oil and gas sectors are some of the world’s most profitable

industries, with billions of dollars in earnings each year. Despite this success, these fossil fuel companies receive billions in tax breaks and subsidies annually, undermining the nation’s ability to invest in renewable energy sources and damaging our environment. The End Oil and Gas Tax Subsidies Act would eliminate 11 of these provisions in the tax code that unfairly benefit oil and gas companies.” [Read more.](#)

H.R. 2836 – Florida Coastal Protection Act. On June 8, official bill text was made available for [H.R. 2836](#), known as the *Florida Coastal Protection Act*. Sponsored by Rep. Kathy Castor (D-FL), the bill would amend the Outer Continental Shelf Lands Act to prohibit oil and gas preleasing, leasing, and related activities in certain areas of the Outer Continental Shelf off the coast of Florida. The bill would make permanent the current moratorium on oil drilling off Florida’s coast that is slated to expire in 2022. [Read more.](#)

S. 1537 – Strategic Energy and Minerals Initiative Act of 2021. On June 8, official bill text was made available for [S. 1537](#), known as the *Strategic Energy and Minerals Initiative Act of 2021* or *SEMI Act*. Sponsored by Sen. Lisa Murkowski (R-AK), the bill aims to help American companies better compete in global markets by promoting domestic production of oil, gas, and minerals. Among other provisions, the legislation would direct the U.S. Export-Import Bank to create a strategic energy and minerals portfolio to provide financing for infrastructure projects related to civil nuclear energy, natural gas, and critical minerals that would increase American exports. “As a resource development state, Alaska has immense potential at a national and global scale. But, despite our desire to bring domestic resources to market, we are unnecessarily relying on foreign countries such

as China and Russia to meet our oil, gas, and mineral needs,” said Sen. Murkowski. “By allowing ourselves to remain dependent on other nations, we are missing opportunities to strengthen America’s national security and nationwide economy. My legislation, the SEMI Act, is a commonsense approach to strengthening our domestic energy and critical minerals supply.” [Read more.](#)

S. 1298 – Clean Energy for America Act. On June 4, official bill text was made available for [S. 1298](#), known as the *Clean Energy for America Act*. Sponsored by Sen. Ron Wyden (D-OR), the bill [primarily provides tax incentives for increased investment in clean energy](#) but also sunsets the use of percentage depletion for oil and gas wells and repeals the Intangible Drilling Costs deduction. Barry Russell, President and CEO of the Independent Petroleum Association of America, has come out publicly against the bill stating, “The Democrat bill considered by the Senate Finance Committee today demonstrates an unjustified bias against American oil and natural gas that imperils future energy security. The provisions of this bill that repeal an array of oil and natural gas tax deductions were written solely to undermine American production. They target small businesses; they target the 12 million royalty owners who rely on their oil and natural gas income for their farms, ranches, and retirement; they will not reduce American reliance on oil and natural gas for two-thirds of its energy but return the nation to reliance of foreign energy supply.” [Read more.](#)

Democrat Wins Interior Secretary’s Former Congressional Seat – New Mexico. On June 1, New Mexico state Rep. Melanie Stansbury (D) defeated New Mexico state Sen. Mark Moores (R) in the special election to fill the House seat formerly held by Interior Secretary Deb Haaland (D). According to The Hill, “Stansbury, an environmental consultant who was elected to the state House in 2018, leaned heavily on her science background to cast herself as a champion for New Mexico’s natural resources.” New Mexico’s 1st District “has been in Democratic hands for more than a decade. Haaland won the seat

in 2018 but stepped down in March after she was confirmed to lead the Interior Department.” [Read more.](#)

FEDERAL – Regulatory

Arctic National Wildlife Refuge Oil and Gas Leasing Program. On June 1, at President Biden’s direction, [the Interior Department suspended all oil and gas leases and related activities in the Arctic National Wildlife Refuge](#). According to the Interior Department announcement, “[Secretarial Order 3401](#) directs the Department to initiate a comprehensive environmental analysis to review the potential impacts of the Program and to address legal deficiencies in the current leasing program’s environmental review under NEPA. The Department is notifying lessees that it is suspending oil and gas leases in the Arctic Refuge, pending the review, to determine whether the leases should be reaffirmed, voided, or subject to additional mitigation measures.” Under the Trump administration, “the Bureau of Land Management (BLM) established and began administering an oil and gas program in the Coastal Plain of the Arctic Refuge” which this order overturns. According to CNBC reporting, President Biden’s inauguration day executive order pausing federal oil and gas leasing “suggested a new environmental review was needed to address possible legal flaws in a drilling program approved by the Trump administration under a 2017 law enacted by Congress. After conducting a required review, Interior said it ‘identified defects in the underlying record of decision supporting the leases, including the lack of analysis of a reasonable range of alternatives’ required under the National Environmental Policy Act, a bedrock environmental law.” While neither the BLM nor the Interior Department has provided a deadline for their further environmental review, the Secretarial Order states that “Within 60 days of the issuance of this Order, the Assistant Secretary for Land and Minerals Management will, in coordination with the Assistant Secretary for Fish and Wildlife and Parks and the Solicitor’s Office, publish a notice of intent in the Federal Register to initiate the process to conduct a

comprehensive environmental analysis, complete necessary consultation, and correct the identified legal deficiencies.” We will continue to keep AAPL members informed as the environmental review progresses. [Read more.](#)

BLM Onshore Oil and Gas Operations Trespass Penalties. On June 9, the Bureau of Land Management published a final rule, *Onshore Oil and Gas Operations and Coal Trespass-Annual Civil Penalties Inflation Adjustments* ([86 Fed. Reg. 30548](#)), which takes immediate effect. According to the BLM, “This final rule adjusts the level of civil monetary penalties contained in the Bureau of Land Management’s (BLM) regulations governing onshore oil and gas operations and coal trespass as required by the Federal Civil Penalties Inflation Adjustment Act Improvements Act of 2015 and consistent with applicable Office of Management and Budget (OMB) guidance. The oil and gas operations penalty adjustments made by this final rule constitute the 2021 annual inflation adjustments, accounting for 1 year of inflation spanning the period from October 2019 through October 2020. The coal trespass inflation adjustments in this rule include the initial ‘catch-up’ adjustment for 2016, and the annual adjustments for years 2017 to 2021.” [Read more.](#)

BLM Director Confirmation Hearing. On June 8, President Biden’s pick to head the Bureau of Land Management (BLM) was subjected to tough questioning by Republican lawmakers at her Senate confirmation hearing. According to the Associated Press, “Republicans lambasted her role as treasurer and board member of the environmental group Montana Conservation Voters, which ran ads against [Sen. Steve] Daines. The Republicans also raised concerns she would impede energy development.” While Tracy Stone-Manning testified that she wanted to work in a bipartisan manner, she avoided answering questions about the BLM’s move to Grand Junction, Colorado, and failed to provide specifics on the current moratorium on federal oil and gas leasing. With a tight Senate vote looming on her nomination, Stone-Manning’s confirmation remains uncertain. [Read more.](#)

Lesser Prairie-Chicken; U.S. Fish and Wildlife Service. On June 1, the U.S. Fish and Wildlife Service (FWS) published a proposed rule, *Endangered and Threatened Wildlife and Plants; Lesser Prairie-Chicken; Threatened Status With Section 4(d) Rule for the Northern Distinct Population Segment and Endangered Status for the Southern Distinct Population Segment* ([86 Fed. Reg. 29432](#)), which seeks to list two Distinct Population Segments (DPSs) of the Lesser Prairie-Chicken. According to the FWS, the DPSs would be added “to the List of Endangered and Threatened Wildlife and extend the Act’s protections to them.” The rulemaking would cover species population living in Texas and New Mexico, whose range overlaps with the Permian Basin. According to The Washington Post, “The agency stopped short of awarding the same protections to the birds’ northern population, in Oklahoma and Kansas, on the grounds that their numbers had declined less drastically.” Regarding the DPSs, “The southern population of about 5,000 birds living along the New Mexico-Texas border would be considered endangered, while a northern group would be listed as threatened, a less-restrictive designation. After taking input from the public, the agency will make a final decision on these listings within a year.” The public comment period is open through August 2, 2021. [Read more.](#)

Office of Natural Resources Revenue; Royalties. On June 11, the Office of Natural Resources Revenue (ONRR) published a proposed rule, *ONRR 2020 Valuation Reform and Civil Penalty Rule: Notification of Proposed Withdrawal* ([86 Fed. Reg. 31196](#)), which would withdraw a Trump-era rule that lowered some companies’ royalty payments to the federal government for oil, gas, and coal extracted from federal lands. The withdrawal of the royalty valuation regulation, which was finalized five days before President Biden took office, contains at least 15 potential defects, according to the ONRR. The ONRR stated that the “the process used for its adoption” did not follow legally required procedures, and the regulation may have exceeded the agency’s statutory authority. The public comment period is open through August 10, 2021. [Read more.](#)

FEDERAL – Judicial

Sage-Grouse Habitat; BLM Leasing – Idaho.

(Update to 5/11/20 Weekly Report) On June 9, a federal judge ruled that environmental plaintiffs had standing to challenge BLM Wyoming and Montana lease sales in the ongoing case, [Western Watersheds Project v. Zinke](#) (Case No. 1:18-cv-00187). The court also found the “BLM (1) failed to consider the reasonable alternative of deferring priority sage-grouse habitat; (2) failed to take a hard look at the direct and indirect impacts to greater sage-grouse; and (3) failed to take a hard look at the cumulative impacts on greater sage-grouse.” The Court has ordered the BLM to “address the deficiencies identified by the Court” and until those concerns are “sufficiently addressed” the “BLM may not authorize new drilling/surface disturbing activities on the leased parcels.” The environmentalists have argued that the BLM should have considered deferring parcels in the sage-grouse priority habitat management areas. For background, on February 27, in [Western Watersheds Project v. Zinke](#) (Case No. 1:18-cv-00187), the U.S. District Court for the District of Idaho addressed a dispute over BLM policy changes promulgated under the Trump administration. The case involves a lengthy history of procedural moves which resulted in a number of oil and gas lease sales being set aside in 2018 and subsequent review by the BLM to comply with certain court orders. However, this case “applies only to oil and gas lease sales contained in whole or in part within sage-grouse habit management areas.” At issue was BLM Instruction Memorandum (IM 2018-034) which implemented new procedures for the handling of leasing oil and gas rights on certain federal lands. The environmentalist plaintiffs claim that IM 2018-034 “unlawfully restricts public participation in and environmental review of BLM oil and gas lease decisions that affect and threaten sage-grouse populations and habitats across the western United States.” Here, the Court agreed, holding the “BLM inescapably intended to reduce and even eliminate public participation in the future decision-making process. Regardless of the reasons for doing so, the fact of doing so in the manner

pursued by BLM cannot be reconciled with [the Federal Land Policy and Management Act and National Environmental Policy Act] overarching mandates. IM 2018-034 is therefore substantively invalid.” [Read more.](#)

Hydraulic Fracturing Ban; Delaware River Basin – Pennsylvania.

(Update to 1/25/21 Weekly Report) On June 11, a federal court dismissed a lawsuit by Republican state lawmakers that sought to overturn a ban on gas drilling and hydraulic fracturing in the Delaware River Basin, ruling that the plaintiffs lacked standing to sue. In dismissing the suit, which was first filed in January, the Court stated that the dispute “is primarily partisan and is best resolved through the political process.” However, the Court did allow the Pennsylvania municipal plaintiffs representing Carbon and Wayne counties and Damascus and Dyberry Townships to proceed, giving them permission to refile the suit by July 1, 2021, to give them a chance to “articulate how the moratorium has actually injured them.” For background, on January 12, two Republican Pennsylvania state senators, along with the Pennsylvania Senate Republican Caucus and the counties and townships 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 contended that the ban had 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 argued 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 wanted 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.](#)

Federal Oil and Gas Leasing Moratorium – Wyoming. (*Update to 3/22/21 Weekly Report*) On June 7, the Biden administration responded to the Western Energy Alliance and Petroleum Association of Wyoming’s lawsuit and motion for preliminary injunction regarding the government’s current moratorium on federal onshore oil and gas leasing. In its [Opposition to Motions for Preliminary Injunction](#), government lawyers argued that these “are not typical petitions for review of agency action. Petitioners Western Energy Alliance et al. (WEA) and Wyoming do not challenge a published agency action. Instead, they ask the Court to infer that the Secretary of the Interior has adopted a *de facto* moratorium on all oil and gas leasing in order to implement the leasing pause directive of President Biden’s Executive Order 14,008. The Court, in Petitioners’ view, should: overlook that the agency’s decision documents identify compliance with the National Environmental Policy Act (NEPA)—not the Executive Order—as the basis for the deferrals; ignore that the agency has not yet announced how it will address future lease sales like the third- and fourth-quarter Wyoming sales; and disregard that the Secretary has continued to issue and sell oil and gas leases since the issuance of the Executive Order. Simply put, Petitioners request that the Court ignore the record and deduce the existence of a *de facto* agency moratorium from several website postings.” The federal court is currently weighing whether to issue a preliminary injunction that would force the Interior Department to resume lease sales that had been postponed. Government lawyers, however, argued that “compelling the permanent disposal of federal property now would frustrate Interior’s ongoing process of determining how best to manage those resources under its governing statutes.” For background, the Western Energy Alliance 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.” As always, we will keep AAPL members updated as this case progresses. [Read more.](#)

Independent Contractors – New Mexico; Texas. On May 28, in [Hargrave v. Aim Directional Services, LLC](#) (Case No. 2:18-cv-00449), the U.S. District Court for the Southern District of Texas, Corpus Christi, provided a “big win for the energy industry, and in particular the energy-service industry,” according to Texas law firm Kane Russell Coleman Logan. The oil and gas directional drilling company defendant prevailed in a worker misclassification case in which the federal court granted its motion for summary judgment, holding that the plaintiff, who worked as a directional driller, was an independent contractor and not an employee. Here, that worker was hired through a third-party staffing agency and the company engaged his services as an independent contractor in New Mexico and Texas. The plaintiff, however, later brought suit against the company alleging that he was denied overtime compensation in violation of the Fair Labor Standards Act (FLSA) and the New Mexico Minimum Wage Act as a result of his misclassification as an independent contractor. The Court applied the economic realities test, which relies upon a multi-factor analysis, and held that among other factors, the control issue

weighed towards finding the plaintiff was an independent contractor, as did the opportunity for profit and loss, the skill and initiative factor, and the business relationship was not only short-lived but was also non-exclusive. [Read more.](#)

STATE – Legislative

Royalties; Leasing – Alaska. *(Update to 3/8/21 Weekly Report)* On May 14, HB 81 passed the House and has now been referred to the Senate. The bill, sponsored by the House Rules Committee (R) at the request of the governor, relates to net profit share leases, and 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.](#)

Environmental Justice – Colorado. HB 1266 has been referred to the Senate after passing the House on May 13. The bill, known as the Environmental Justice Act and sponsored by Rep. Dominique Jackson (D), provides for environmental justice strategies, planning, and reporting. The bill creates the Environmental Justice Action Task Force within the Department of Public Health and Environment, and requires the Air Quality Control Commission to engage with disproportionately impacted communities on proposed state actions and includes enforcing emissions reductions in oil and gas and industrial sectors. [Read more.](#)

Notaries Public – Louisiana. On June 1, Gov. John Bel Edwards (D) signed HB 307 into law. The Act, sponsored by Rep. Rodney Schamerhorn (R), repeals the reporting requirement of providers of notary public examination study courses. The Act takes immediate effect. [Read more.](#)

Oil and Gas Taxation – Louisiana. On June 3, House Concurrent Resolution, HCR 98, was enacted by the legislature. Sponsored by Rep. Beau Beaulieu (R), the measure, while not a law, “expresses the opposition of the Louisiana Legislature to disproportionately increasing the tax burden on natural gas, oil, and fuel industries.” [Read more.](#)

Risk Charges; Nonparticipating Mineral Owners – Louisiana. *(Update to 5/17/21 Weekly Report)* On June 3, Senate Concurrent Resolution, SCR 44, was enacted by the legislature. Sponsored by Sen. Bob Hensgens (R), the measure, while not a law, creates “the Risk Charge Commission to study current [R.S. 30:10](#), relative to risks and cost of drilling in a compulsory unit and to submit recommendations to the Senate Committee on Natural Resources and the House Committee on Natural Resources and Environment no later than February 4, 2022. The commission terminates upon the date of submission of such report or February 4, 2022, whichever occurs first.” SCR 44 had been introduced in place of [SB 59](#) which did not advance and would have provided for the risk charge against nonparticipating mineral owners in drilling units, and among other amendatory provisions, set forth the obligations owed by the lessee and drilling owner with respect to the payment of any lessor royalty and overriding royalty due. [Read more.](#)

Notaries Public – Nevada. On May 29, Gov. Steve Sisolak (D) signed AB 245 into law. The Act, sponsored by Asm. Edgar Flores (D), makes certain changes to existing notarial law regarding fees that may be charged by a notary public. The Act is effective July 1, 2021. [Read more.](#)

Estates; Testamentary Instruments – Nevada. *(Update to 5/31/21 Weekly Report)* On May 29, Gov. Steve Sisolak (D) signed AB 318 into law. The Act, sponsored by Asm. Elaine Marzola (D), amends existing law regarding certain procedures and processes related to the administration of testamentary instruments and estates. The Act is effective October 1, 2021. [Read more.](#)

Well Setbacks – Pennsylvania. On June 7, Sen. Steve Santarsiero (D) introduced SB 650. The bill would increase existing well setbacks of 500 feet from a building or private water well, and within 1000 feet of a public water supply well, surface water intake, reservoir, or other water supply extraction point used by a water purveyor without the consent of the owner in either case, to increase the distance from buildings and water wells to 2,500 feet and 5,000 feet from reservoirs, schools, and hospitals. [Read more.](#)

Offset Wells – Texas. On June 7, Gov. Greg Abbott (R) signed SB 1258 into law. The Act was sponsored by Sen. Brian Birdwell (R). According to the legislative analysis, “S.B. 1258 amends three outdated Texas statutes that currently require an operator producing oil from state land that is overseen by University Lands and the General Land Office (GLO) to drill an offset well if a well or wells are drilled on non-university lands within 1,000 feet of the premises or are otherwise draining the university lands or state lands managed by GLO leased by the operator. This requirement does not make sense in the context of more modern production methods, otherwise known as horizontal drilling and fracking. This is because natural porosity and permeability are not at issue with modern horizontal drilling and hydraulic fracturing in tight shale formations with low permeability. S.B. 1258 changes the requirement to drill an offset well when an operator drills a horizontal well to the greater of the applicable lease-line spacing distance requirement of the Railroad Commission of Texas, or a perpendicular distance of 330 feet for GLO-managed lands; and the greater of the applicable lease-line spacing distance requirement of the Railroad Commission of Texas, or a perpendicular distance of 400 feet for University Lands. S.B. 1258 amends current law relating to the duty of a lessee or other agent in control of certain state land to drill an offset well, pay compensatory royalty, or otherwise protect the land from drainage of oil or gas by a horizontal drainhole well located on certain land.” The Act is effective September 1, 2021. [Read more.](#)

Oil and Gas Liens – Texas. (Update to 4/5/21 Weekly Report) On June 4, Gov. Greg Abbott (R) signed HB 3794 into law. The Act, sponsored by Rep. Charlie Geren (R), amends existing law regarding provisions related to oil and gas liens by repealing the existing first purchaser statute. According to the bill sponsor’s statement, “There are concerns that, unless the first purchaser statute is amended, the security interests of Texas oil and gas interest owners are likely to continue to be interpreted as unsecured and subordinate to other perfected security interests in cases where the first purchaser is organized or incorporated out of state.” The Act is effective September 1, 2021. [Read more.](#)

Severance Tax Refunds – Texas. (Update to 3/8/21 Weekly Report) On May 30, Gov. Greg Abbott (R) signed SB 833 into law. The Act, sponsored by Sen. Donna Campbell (R), authorizes “certain oil and gas producers who already file severance tax returns, but who do not hold sales tax permits, to file refund claims for overpaid sales and use taxes directly with the comptroller.” The Act is effective September 1, 2021. [Read more.](#)

STATE – Judicial

Lease Terms; Habendum Clauses – Colorado. On May 13, in *Board of County Commissioners of Boulder County v. Crestone Peak Resources Operating LLC* (Case No. 2021-CO-A67), the Colorado Court of Appeals considered the meaning of “production” as that term is used in oil and gas leases in an appeal that “centers on one question: What constitutes ‘production’ under an oil and gas lease?” The Board of County Commissioners of Boulder County sued Crestone regarding a temporary cessation in extraction, “alleging that wells subject to two of Crestone’s oil and gas leases had stopped producing, and therefore that the leases had terminated.” However, the district court disagreed and granted summary judgment in favor of Crestone. In affirming the lower court decision, the appellate court concluded that “We hold that production means capable of producing oil or gas in commercial quantities. Thus, the district court

correctly concluded that Crestone's wells never stopped producing and, consequently, the leases never lapsed." [Read more.](#)

Leasing; Arbitration – Ohio. (Update from 2/22/21 Weekly Report) On April 27, the Ohio Supreme Court [accepted the case](#), *French v. Ascent Resources-Utica, L.L.C.* (Case No. 2020-Ohio-6828), for review. For background, 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 appeal, 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.](#)

Joint Operating Agreements; Operator Willful Misconduct – Texas. On May 11, in [Apache Corp. v. Castex Offshore, Inc.](#) (Case No. 14-19-00605-CV), the Texas Court of Appeals, Fourteenth District (Houston), addressed "the main question presented" in a breach of contract case arising from several joint operating agreements of "whether the non-operator produced sufficient evidence that its damages resulted from the operator's willful misconduct. To answer that question, we must first determine the meaning of 'willful misconduct.'" The Court held "that willful misconduct means deliberate mismanagement committed without regard for the consequences." Here, the Court found "there is sufficient evidence that the operator engaged in such willful misconduct with respect to one of the non-operator's counterclaims, but not both of them." According to law firm, Adams and Reese LLP,

"Apache represents a significant development in Texas oil-and-gas law because it lowers the burden of proof for non-operators who claim that an operator has engaged in willful misconduct. Non-operators no longer have to prove intent to cause substantial harm. Evidence that an operator was indifferent to cost overruns and was 'hiding the ball' on its financial mismanagement is enough." [Read more.](#)

Force Majeure; Leasing – Texas. On April 28, in *MRC Permian Co. v. Point Energy Partners Permian LLC* (Case No. No. 08-19-00124-CV), the Texas Court of Appeals, Eight District (El Paso), addressed in context of competing oil and gas leases covering certain acreage "(1) whether the original leases were perpetuated in their entirety by the operation of their force majeure clauses, (2) if the original leases terminated, what acreage was retained in Production Units under those leases, and (3) if the leases did not terminate, whether the original lessee had valid claims of tortious interference against certain defendants." The Court held that "there is a genuine issue of material fact as to whether the original leases were perpetuated in their entirety by the operation of their force majeure clauses, such that the trial court's summary judgment ruling on this issue in favor of the defendants was error." The Court did not rule on the second question "because it is not ripe for decision due to the factual dispute arising in the first question." And regarding the third question, the Court stated that "we similarly determine there are genuine issues of material fact as to the original lessee's claims of tortious interference, except to the extent those claims are made against a mineral owner for allegedly interfering with its own lease." As such, the Court remanded the case back to the trial court for further determinations consistent with its decision. [Read more.](#)

INDUSTRY NEWS FLASH

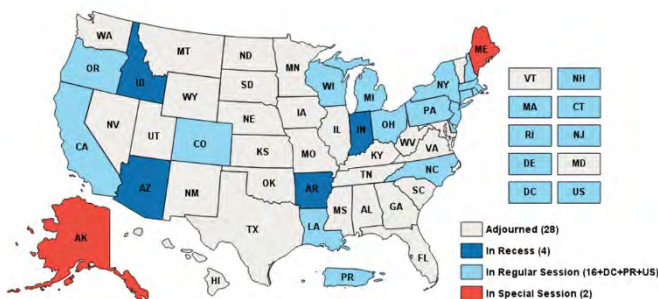
► **Keystone XL Pipeline Officially Terminated.**

On June 9, TC Energy announced that after "a comprehensive review of its options, and in consultation with its partner, the Government of Alberta, it has terminated the Keystone XL Pipeline Project." The decision comes after President Biden killed a border-crossing permit for the pipeline on his first day in office. [Read more.](#)

► **OPEC+ agrees to continue raising oil output levels through July.** On June 1, the Organization of the Petroleum Exporting Countries and its allies (OPEC+) agreed to continue raising output levels "to maintain the current pace of gradual easing of supply curbs through July, signaling confidence in improving oil demand and a drop in the global supply glut." Following the OPEC+ meeting, "Saudi Energy Minister Prince Abdulaziz bin Salman said he saw a good recovery in demand in the U.S. and China. OPEC+ forecasts a 6-million b/d jump in oil demand in 2021 as the world recovers from the COVID-19 pandemic." [Read more.](#)

LEGISLATIVE SESSION OVERVIEW

States in Session



Session Notes (by date): California, Colorado, Connecticut, Delaware, Louisiana, Massachusetts, Michigan, New Hampshire, New Jersey, New York, North Carolina, Ohio, Oregon, Pennsylvania, Rhode Island, and Wisconsin are in regular session. The U.S. Congress is also in session.

The following legislatures are in recess until the dates provided: **Arizona** (June 10), **Arkansas** and **Indiana** (TBD) and **Idaho** House (call of the speaker).

Alaska convened for a special session on May 20 to address the state's operating budget. The current special session is scheduled to end on June 19. Republican Gov. Mike Dunleavy is also scheduled to call the legislature into a second special session on August 2 to fix the yearlong fiscal conflict over the Permanent Fund dividend, reports the [Anchorage Daily News](#).

West Virginia Republican Gov. Jim Justice called the legislature into a special session on June 7 to appropriate funds from President Joe Biden's American Rescue Plan to the Department of Health and Human Resources and the Department of Education, reports [The Inter-Mountain](#).

South Carolina lawmakers returned for a special session on June 8 to allocate as much as \$5 billion in recurring or one-time money, reports [The Center Square](#).

The following states adjourned their 2021 legislative sessions on the dates provided (by date): **Louisiana** (June 10), **Connecticut** (June 9), **Colorado** (June 8), **Nevada** (June 1), **Illinois** and **Texas** (May 31), and **Nebraska** and **Oklahoma** (May 27).

Signing Deadlines (by date): **Minnesota** Democratic Gov. Tim Waltz had until May 31 to sign or veto legislation or it was pocket vetoed. **Maryland** Republican Gov. Larry Hogan had until June 1 to sign or veto legislation or it became law without signature. **Oklahoma** Republican Gov. Kevin Stitt had until June 11 to sign or veto legislation or it is pocket vetoed. **Nevada** Democratic Gov. Steve Sisolak had until June 12 to sign or veto legislation or it becomes law without signature. **Iowa** Republican Gov. Kim Reynolds has until June 18 to sign or veto legislation or it is pocket vetoed. **Texas** Republican Gov. Greg Abbott has until June 20 to sign or veto legislation or it becomes law without signature. **Missouri** Republican Gov. Mike Parson has until June 28 to sign or veto legislation or it becomes law without signature. **Hawaii** Democratic

Gov. David Ige has until July 1 to sign or veto legislation or it becomes law without signature. **Alaska** Republican Gov. Mike Dunleavy has 20 days after delivery, Sundays excepted, to sign or veto legislation or it becomes law without signature. **Florida** Republican Gov. Ron DeSantis has 15 days from presentment 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. **Indiana** Republican Gov. Eric Holcomb has seven days from presentment to sign or veto legislation, or it becomes law without signature. **Kansas** Democratic Gov. Laura Kelly has 10 calendar days from presentment, not including the day it was presented, to sign or veto legislation or it becomes law without signature. **Kentucky** Democratic Gov. Andy Beshear has 10 days from presentment, except Sundays, to sign or veto legislation or it becomes law without signature. **Maine** Democratic Gov. Janet Mills must act on legislation presented within 10 days of adjournment or it becomes law unless returned within three days after the next meeting of the same legislature. **Mississippi** Republican Gov. Tate Reeves has 15 days from presentment, except Sundays, to sign or veto legislation or it becomes law without signature. **Montana** Republican Gov. Greg Gianforte has 10 days from presentment to act on legislation or it becomes law without signature. **Nebraska** Republican Gov. Pete Ricketts has five days from presentment to sign or veto legislation, Sundays excepted, 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. **North Dakota** Republican Gov. Doug Burgum has 15 days from presentment, Saturdays and Sundays excepted, to sign or veto legislation or it becomes law without signature. **South Carolina** Republican Gov. Henry McMaster has five days from presentment, excluding Sundays, to act on legislation or it becomes law without signature. **Tennessee** Republican Gov. Bill Lee has 10 days starting the day after presentment, Sundays excluded, to sign or veto legislation or it becomes law without signature. **Vermont** Republican Gov. Phil Scott has five days from presentment,

excluding Sundays, to act on legislation or it will become law without signature.

The following states are currently holding 2022 interim committee hearings: [Kentucky](#), [Minnesota](#), [New Mexico](#), [Utah](#), [Virginia](#), and [Wyoming](#).

The following states are currently posting 2022 bill drafts, pre-files, and interim studies: [Alabama](#), [Kentucky](#), and [Utah](#). ■

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GOVERNMENTAL AFFAIRS WEEKLY REPORT

Weekly Highlights At-A-Glance

FEDERAL – Legislative

Congressional Recess. The U.S. Senate is scheduled to be in summer recess from June 28 through July 9. [Read more.](#) The U.S. House of Representatives will be in recess from July 2 through July 12. [Read more.](#)

H.R. 2415 – Orphaned Well Cleanup and Jobs Act of 2021. On June 16, official bill text was made available for [H.R. 2415](#), known as the *Orphaned Well Cleanup and Jobs Act of 2021* and which has passed the House Natural Resources Committee. The bill, sponsored by Rep. Teresa Leger Fernandez (D-NM), would “amend the Energy Policy Act of 2005 to require the Secretary of the Interior to establish a program to permanently plug, remediate, and reclaim orphaned wells and the surrounding lands and to provide funds to States and Tribal Governments to permanently plug, remediate, and reclaim orphaned wells and the surrounding lands.” According to Rep. Leger Fernandez, the “legislation would authorize \$7.25 billion to clean up abandoned oil and gas wells that leak methane and pollutants into communities and create jobs in rural communities.” [Read more.](#)

H.R. 2644 – Green New Deals for Cities Act of 2021. On June 14, official bill text was made available for [H.R. 2644](#), known as the *Green New Deals for Cities Act of 2021*. The bill, sponsored by Rep. Cori Bush (D-MO), would provide direct funding to local, Tribal, and territorial governments to establish Green New Deal programs and initiatives, and also provides an ABC test for independent contractors related to those programs and initiatives. According to Rep. Bush, the legislation “would federally fund city, state, local, tribal, and territorial governments to respond to the climate crisis, creating hundreds of thousands of jobs in the process.” [Read more.](#)

H.R. 1187 – ESG Disclosure Simplification Act of 2021. On June 16, [H.R. 1187](#), known as the *ESG Disclosure Simplification Act of 2021*, passed the House on a slim party-line vote over objections by Republican lawmakers. Sponsored by Rep. Juan Vargas (D-CA), the bill would require publicly traded companies to disclose financial risks related to climate change. Annual disclosures would be required of information related to the physical risks of flooding, extreme weather, and rising temperatures to fixed assets, as well as “transition risks” created by efforts to reduce greenhouse gas emissions and increase resilience to climate change. According to Bloomberg Government, “The measure is unlikely to muster the Republican support needed to pass the narrowly divided Senate, but it comes as the Securities and Exchange Commission is preparing its own set of new corporate disclosure requirements for climate change risks, board diversity, and companies’ workforces by October.” [Read more.](#)

S. 1076 – Revive Economic Growth and Reclaim Orphaned Wells Act of 2021. On June 15, official bill text was made available for [S. 1076](#), known as the *Revive Economic Growth and Reclaim Orphaned Wells Act of 2021* or *REGROW Act of 2021*. This bipartisan bill would “amend the Energy Policy Act of 2005 to require the Secretary of the Interior to establish a program to plug, remediate, and reclaim orphaned oil and gas wells and surrounding land, [and] to provide funds to State and Tribal governments to plug, remediate, and reclaim orphaned oil and gas wells and surrounding land.” Bureau of Land Management Deputy Director Nada Culver said the agency “strongly supports” the bill which would address the more than “56,000 documented abandoned oil and gas wells with no

responsible party for cleanup.” Co-sponsor Sen. Kevin Cramer (R-ND) noted that “While thousands of the nation’s oilfield workers are out of a job, our country has over fifty thousand abandoned oil and gas wells with no one responsible for their cleanup. As a top energy and agricultural producer, North Dakota excels at prioritizing the reclamation of these orphaned wells, which keeps people employed, reduces environmental hazards and public health risks, and makes previously unusable land productive again. The REGROW Act would follow our state’s lead by providing states, tribes, and federal agencies the resources they need to properly plug orphaned wells. It’s a win for workers, landowners, and the environment.” [Read more.](#)

S. 1750 – Wyoming Public Lands Initiative Act of 2021. On June 15, official bill text was made available for [S. 1750](#), known as the *Wyoming Public Lands Initiative Act of 2021*. The bill, sponsored by Sen. John Barrasso (R-WY), would resolve the management status of thousands of acres of federal public lands in seven counties in Wyoming. According to Sen. Barrasso, the “bill is the direct result of a collaborative process started under the Wyoming Public Lands Initiative (WPLI). The WPLI was created by the Wyoming County Commissioners Association in 2015 to seek locally driven solutions on the future of federal public lands that have been in management limbo for more than 30 years.” The legislation includes 5 wilderness designations totaling 20,381 acres; 3 designations of a “Special Management Area” totaling 27,711 acres; 10 release and manage as multiple-use totaling 99,750 acres; and related policy directives. [Read more.](#)

FEDERAL – Regulatory

Interior Secretary Says No Plan for Permanent Oil and Gas Leasing Ban. On June 22, Interior Secretary Deb Haaland told Congressional lawmakers that “there is not currently a plan to permanently ban new drilling leases on public lands and waters.” During a House Natural Resources Committee budget hearing, Haaland “also reiterated that the administration’s assessment of oil and gas

drilling on public lands and oceans would be released in ‘early summer.’” However, Haaland was evasive in answering questions about the recent Louisiana federal court order lifting the pause. The complete committee hearing archive [may be accessed here.](#) [Read more.](#)

Interior Department Deputy Secretary Confirmed.

On June 17, the U.S. Senate confirmed President Biden’s nominee for Deputy Secretary of the U.S. Department of the Interior. With bipartisan support, senators voted 88-9 to confirm Tommy Beaudreau as Deputy Interior Secretary, with eight Republicans and Sen. Bernie Sanders (I-VT) opposing the nomination. Beaudreau is an attorney and former Obama administration official who previously held several roles at the Interior Department as well as serving as the first director of the Bureau of Ocean Energy Management, as Interior Department Chief of Staff and acting Assistant Secretary for Land and Minerals Management. “His performance at his nomination hearing demonstrated that he has both a firm grasp of the issues and the ability to listen, learn and work with all sides and to find common sense solutions to difficult problems,” said Sen. Joe Manchin (D-WV). [Read more.](#)

BLM Information Collection. On June 24, the Bureau of Land Management (BLM) published a notice of information collection, *Agency Information Collection Activities; Onshore Oil and Gas Operations and Production* ([86 Fed. Reg. 33347](#)), which seeks public input on certain BLM information collection related to onshore oil and gas activities. The public comment period is open through August 23, 2021. [Read more.](#)

BLM Resource Advisory Council – New Mexico.

On June 22, the BLM announced the Southern New Mexico Resource Advisory Council (RAC) will hold its next meeting on August 5. The meeting will be open to the public and held via the Zoom Webinar Platform. According to the BLM notice, “The 12-member Southern New Mexico RAC provides recommendations to 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." [Read more.](#)

FEDERAL – Judicial

Climate Change – U.S. Supreme Court. (*Update to 6/8/2020 Weekly Report*) On June 14, [the U.S. Supreme Court denied a petition](#) from Chevron and other oil and gas company defendants seeking the high court's review of climate change lawsuits filed by Oakland and San Francisco on jurisdictional venue grounds. Chevron said it was "confident" the Supreme Court will resolve jurisdictional questions in climate litigation eventually. "Claims like these should be resolved in federal court, because they have sweeping implications for national energy policy, national security, foreign policy, and other uniquely federal interests," wrote Chevron spokesman Braden Reddall in an email to Bloomberg Government. For background, on May 26, 2020, the U.S. Court of Appeals for the Ninth Circuit, on appeal from the U.S. District Court for the Northern District of California, ruled that climate change lawsuits against major oil and gas companies could proceed in state court rather than a federal venue thought to be more favorable to the energy industry. In the consolidated case opinion, [City of Oakland v. BP PLC](#) (Case Nos. 3:17-cv-06011-WHA; 3:17-cv-06012-WHA), litigants sought to reimburse taxpayers for costs associated with adapting to impacts such as rising sea levels—from building multibillion-dollar sea walls and repairing damage from powerful storms to—perhaps soon—moving whole communities inland. Lawyers for the cities and counties have long argued that such local infrastructure damage raises classic local-level concerns that belong in state court. Industry lawyers, supported by the Trump administration, had countered that climate change is a global issue, pushing the litigation to a federal jurisdiction. Lawyers for cities and counties bringing the lawsuits said in a joint comment, "We are grateful that the Court of Appeals agreed with Judge Chhabria's order to remand our cases back to the state courts where they were originally filed." [Read more.](#)

Federal Oil and Gas Leasing – Louisiana. (*Update to 4/5/21 Weekly Report*) In a victory for the oil and gas industry and landman profession, on June 15, a federal judge issued a [Preliminary Injunction Order](#) lifting President Biden's "pause" on new federal oil and gas leasing, which the administration has halted since January. While Interior Secretary Debra Haaland initially said her agency will comply with the judge's order, the administration is expected to appeal the injunction order, so the status of the oil and gas leasing program may be in limbo if an appeal is filed. [Read more.](#) For background, on March 24, Louisiana led 12 other states in suing the Biden administration "to end a suspension of new oil and gas leases on federal land and water and to reschedule canceled sales of leases in the Gulf of Mexico, Alaska waters and western states." In [Louisiana v. Biden](#) (Case No. 2:21-cv-00778), the litigants claim the Biden administration's "stated policy of banning new drilling permits contravenes congressional commands" and is a violation of various federal statutes. "By executive fiat, Joe Biden and his administration have single-handedly driven the price of energy up — costing the American people where it hurts most, in their pocketbooks," said Louisiana Attorney General Jeff Landry (R). [Louisiana and 12 other states followed up this lawsuit with another filing on March 31](#) demanding that the U.S. District Court for the Western District of Louisiana order the Biden administration to immediately lift the federal oil and gas leasing pause by way of preliminary injunction. [Read more.](#)

STATE – Legislative

Income Taxes – Colorado. On June 23, Gov. Jared Polis (D) signed HB 1311 into law. Sponsored by Rep. Emily Sirota (D), the Act makes numerous changes to the state income tax code ([See full analysis here](#)). The tax revisions affect both individuals and businesses. The Act has multiple effective dates. [Read more.](#)

Severance Taxes – Colorado. On June 23, Gov. Jared Polis (D) signed HB 1312 into law. Sponsored by Rep. Emily Sirota (D), the Act makes numerous

changes regarding personal and property taxes, and also provides that for the severance tax on oil and gas, it requires the net-back deductions used to determine gross income be direct costs actually paid by the taxpayer; and phases out tax credits and exemptions for the severance tax on coal ([See full analysis here](#)). The Act has multiple effective dates. [Read more.](#)

Severance Tax Trust Fund – Colorado. On June 18, Gov. Jared Polis (D) signed SB 281 into law. Sponsored by Sen. Chris Hansen (D), the Act requires new metropolitan districts to pay the state for the property tax credits on oil and gas severance taxes. The Act also eliminates automatic severance tax funding for eight existing grant programs and establishes alternative financing for six of these programs. Lastly, it directs several state agencies to recommend changes to the state’s severance tax structure. The Act has multiple effective dates. [Read more.](#)

Severance Taxes; Orphan Wells – Louisiana. (*Update to 4/19/21 Weekly Report*) On June 16, Gov. John Bel Edwards (D) signed SB 171 into law. Sponsored by Sen. R. L. Bret Allain, II (R), the Act provides for severance tax exemptions and site-specific trust funds for certain orphan wells. The Act is effective June 16, 2021. [Read more.](#)

Independent Contractors – Louisiana. (*Update to 5/17/21 Weekly Report*) On June 14, Gov. John Bel Edwards (D) signed SB 244 into law. Sponsored by Sen. Jay Luneau (D), the Act amends and reenacts specific parts of the law pertaining to the misclassification of employees as independent contractors, and provides for certain administrative penalties for misclassification, although the Act supports independent contractor designations by providing clarity on the difference between employees and independent contractors. The Act is effective January 1, 2022. [Read more.](#)

ANWR Oil and Gas Leases – Michigan. On June 17, Senate Resolution 67 was introduced by Sen. Jon Bumstead (R). The resolution opposes “the

suspension of all oil and gas leases in the Arctic National Wildlife Refuge.” [Read more.](#)

Eminent Domain; Pipelines – Texas. (*Update to 4/5/21 Weekly Report*) On June 18, Gov. Greg Abbott (R) signed HB 4107 into law. Sponsored by Rep. Dustin Burrows (R), the Act amends existing law regarding the exercise of the power of eminent domain by a common carrier pipeline. Specifically, the changes affect notice, indemnification, and property entry. The Act is effective September 1, 2021. [Read more.](#)

Well Subcontractors – Texas. (*Update to 5/17/21 Weekly Report*) On June 16, Gov. Greg Abbott (R) signed HB 3416 into law. Sponsored by Rep. Drew Darby (R), the Act relates to indemnity agreements between contractors and subcontractors for services pertaining to certain wells or mines. Specifically, the Act “seeks to provide transparency in these triparty relationship agreements and protect subcontractors by requiring a contractor, before entering into or renewing such an agreement with a subcontractor or third party, to provide written notice to the subcontractor regarding the subcontractor’s indemnification obligations to the contractor and third party and written notice to the third party stating whether the subcontractor possesses liability insurance coverage or qualified self-insurance for the obligations and the dollar limits of the insurance.” The Act is effective September 1, 2021. [Read more.](#)

Oil and Gas Regulation and Cleanup Fund – Texas. (*Update to 4/5/21 Weekly Report*) On June 18, Gov. Greg Abbott (R) signed HB 3973 into law. Sponsored by Rep. Armando Walle (D), the Act amends existing law regarding the composition and use of money in the oil and gas regulation and cleanup fund. The Act is effective September 1, 2021. [Read more.](#)

State Emissions Reduction Plan – Texas. On June 18, Gov. Greg Abbott (R) signed HB 4472 into law. Sponsored by Rep. Brooks Landgraf (R), the Act amends the Health and Safety Code to broaden use of Texas Emissions Reduction Program funds within

the Texas Emissions Reduction Plan Fund (TERP Fund) by the Texas Commission on Environmental Quality (TCEQ) for air monitoring equipment operations, fee-based contracts, the energy efficiency loan guarantee program, and for remitting to the State Highway Fund (SHF) for use by the Texas Department of Transportation (TxDOT) on congestion mitigation and air quality improvement projects in nonattainment areas. The bill would require TCEQ to remit to TxDOT for such projects at least 35 percent of the amount deposited to the credit of the TERP Fund. The Act is effective September 1, 2021. [Read more.](#)

Produced Water Consortium – Texas. On June 18, Gov. Greg Abbott (R) signed SB 601 into law. Sponsored by Sen. Charles Perry (R), the Act creates the Texas Produced Water Consortium, which would be administratively housed at Texas Tech University who will oversee the consortium, partner with other Texas universities, and work with stakeholders to reach specific goals. Within the first year of creation, the consortium will be required to create a report which details the economic and technological feasibility of a facility for oil and gas waste recycling. The Act takes immediate effect. [Read more.](#)

Property Tax Sales – Texas. *(Update to 3/22/21 Weekly Report)* On June 16, Gov. Greg Abbott (R) signed SB 1764 into law. Sponsored by Sen. Paul Bettencourt (R), the Act relates to the payment of delinquent ad valorem taxes on property subject to a tax sale. According to the bill sponsor, the legislation is “necessary due to the exhaustive steps a taxing entity must take to get a delinquent property tax dispute to a tax sale after the defendant property owner has not paid their property taxes by June 30.” The Act takes immediate effect. [Read more.](#)

Pit Locations – Texas. *(Update to 3/8/21 Weekly Report)* On June 15, Gov. Greg Abbott (R) signed HB 2201 into law. Sponsored by Rep. Trent Ashby (R), the Act relates to the location of pits used in the production of oil and gas, and requires the Texas Railroad Commission to establish rules for their

location. The Act is effective September 1, 2021. [Read more.](#)

Energy Company Boycotts – Texas. *(Update to 3/22/21 Weekly Report)* On June 14, Gov. Greg Abbott (R) signed [SB 13](#) into law. Sponsored by Sen. Brian Birdwell (R), regarding state contracts, the Act prohibits “state agencies from contracting with or investing in financial companies that boycott fossil fuel-based energy firms.” The legislation requires 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.” The Act is effective September 1, 2021. [Read more.](#)

Probate and Estates Court Proceedings – Texas. On June 14, Gov. Greg Abbott (R) signed SB 615 into law. Sponsored by Sen. Judith Zaffirini (D), the Act makes certain changes to probate court proceedings, including those related to administration of wills and other testamentary instrument procedures. The Act is effective September 1, 2021. [Read more.](#)

Regulatory Enforcement – Texas. *(Update to 2/8/21 Weekly Report)* On June 9, Gov. Greg Abbott (R) signed HB 1284 into law. The Act, sponsored by Rep. Chris Paddie (R), 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. HB 1284 moved forward over companion Senate bill, [SB 450](#), which was introduced by Sen. Kelly Hancock (R). HB 1284 takes immediate effect. [Read more.](#)

STATE – Regulatory

Ozone Regulations – New Mexico. (*Update to 5/17/21 Weekly Report*) On June 23, the New Mexico Environment Department (NMED) announced that the New Mexico Environmental Improvement Board will hold a public hearing beginning at 9:00 a.m. on September 20, 2021, to consider the matter of EIB 21-27 (R), proposed new regulations at 20.2.50 NMAC – Oil and Gas Sector – Ozone Precursor Pollutants (“Part 50”). For background, on May 6, the NMED announced the [release of a proposed rule](#) “that will improve air quality for all New Mexicans by establishing innovative and actionable regulations to curb the formation of ground-level ozone in the state’s most affected regions. The rule will also result in reduced emissions of dangerous greenhouse gases.” ([See proposed rule fact sheet](#)) According to Gov. Michelle Lujan Grisham (D), “This rule will not only hold industry accountable, but will also spur innovation and greener practices in the oil and gas fields. The effect will be equivalent to taking eight million cars off the road every year.” The announcement states that “Once finalized, the new rule will reduce emissions of ozone precursor pollutants – volatile organic compounds and oxides of nitrogen - by nearly 260 million pounds annually and reduce methane emissions by over 851 million pounds annually. The rule will apply in New Mexico counties with high ozone levels. Currently, this includes Chaves, Doña Ana, Eddy, Lea, Rio Arriba, Sandoval, San Juan, and Valencia counties.” Regarding the proposed rule, NMED Cabinet Secretary James Kenney said, “We undertook a two-year planning process, engaging with thousands of New Mexicans across the state, scientists and researchers inside and outside of our agencies, oil and gas operators, and environmental organizations. We listened closely during the public comment process, we invested significant staffing resources, and we delivered a nationally leading oil and gas rule as a result.” [Read more.](#) The September hearing will be held via video conference on a virtual platform, via telephone, and comments will be received by the Board via email at pamela.jones@state.nm.us through the conclusion of the hearing. The hearing

will last as long as required to hear all testimony, evidence, and public comment, and is expected to last approximately two weeks. Information and instructions regarding how to join the virtual hearing will be available on the Board’s webpage at the following link no later than September 6, 2021: <https://www.env.nm.gov/environmental-improvement/main-2/>. If you have difficulties joining the meeting, please contact Pamela Jones at (505) 660-4305 or Madai Corral at (505)-490-5803. [Read more.](#)

STATE – Judicial

Pipelines – Minnesota. On June 14, the Minnesota Court of Appeals dealt a blow to environmental activists and tribal groups when it sided with the state Public Utilities Commission, which had given Canadian company Enbridge Energy approval on their oil pipeline’s Minnesota segment. The activists argued that Enbridge had not properly demonstrated sufficient demand for oil to build that part of the pipeline. *In the Matter of the Application of Enbridge Energy* (Case File Nos. PL-9/CN-14-916, PL-9/PPL-15-137), the Court ruled in a 2-1 opinion that “When balancing harms and predicting future demand, the commission is due deference. It is the agency tasked with these difficult decisions,” wrote the court. “With this deference in mind we affirm the commission’s adequacy ... and its decisions to issue a certificate of need and routing permit for the Line 3 replacement.” According to The Hill, “The Line 3 pipeline, part of a \$9 billion expansion approved by the Army Corps of Engineers during the Trump administration, would carry nearly 800,000 barrels a day of tar-sands oil from Northern Minnesota into Wisconsin.” [Read more.](#)

Purchase and Sale Agreements; Working Interests; Leasing – Texas. On June 10, in *Apollo Exploration, LLC v. Apache Corp.* (Case No. 11-19-00183-CV), the Court of Appeals of Texas, Eleventh District (Eastland), addressed a dispute over provisions of purchase and sale agreements (PSAs) governing working interests in oil and gas leases. The arguments turned on the interpretation of the term

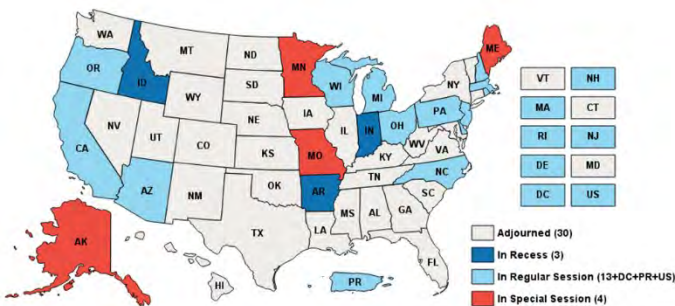
“affected Leases” as well as the seller’s back-in option, among other related claims. According to law firm, McGuire Woods, “The Court reiterated its commitment to the terms memorialized in the PSAs with respect to the revenues and costs to be included in the calculation of the ‘back-in trigger.’” Finally, the Court determined that despite the parties’ differing interpretations as to the language in the agreements, they did not dispute the material and essential terms and thus the agreements were not too indefinite to be enforced.” [Read more.](#)

INDUSTRY NEWS FLASH

► **Conditions ripe for an oil price boom.** On June 15, *Rigzone* reported that “conditions are ripe for an oil price boom during the next two years.” This comes as Boston Consulting Group released a new report which outlined that the company sees high potential for vaccination programs to “unleash huge pent-up demand for oil in key areas of the global economy.” The company also said this surging demand will coincide with a supply shortfall created by producers that cut capital expenditures when oil prices fell sharply last year. [Read more.](#)

LEGISLATIVE SESSION OVERVIEW

States in Session



Session Notes (by date): Arizona, California, Delaware, Massachusetts, Michigan, New Hampshire, New Jersey, North Carolina, Ohio,

Oregon, Pennsylvania, Rhode Island, and Wisconsin are in regular session.

The following legislatures are in recess until the dates provided: **Arkansas and Indiana** (TBD) and **Idaho** House (call of the speaker).

Minnesota Democratic Gov. Tim Waltz called the legislature into a special session on June 14 to finalize the state’s two-year \$52 billion budget, reports [Kare 11](#). The budget must be passed before July 1 in order to avoid a government shutdown.

Alaska Republican Gov. Mike Dunleavy called the legislature into a second special session on June 23 to enact an effective operating budget. If a budget does not take effect by July 1, a government shutdown will begin and state workers who are not engaged in providing critical public health and safety services will be laid off and many services to the public will be suspended, as stated in Governor Dunleavy’s [proclamation](#). Governor Dunleavy is also scheduled to call the legislature into a third special session on August 2 to fix the yearlong fiscal conflict over the Permanent Fund dividend, reports the [Anchorage Daily News](#).

Missouri Republican Gov. Mike Parsons called the legislature into a special session on June 23 to extend provider taxes crucial to the state’s Medicaid program, reports [Missouri Independent](#). The call came in response to anti-abortion lawmakers who want to limit access to contraceptives and ban Planned Parenthood as a Medicaid provider through the tax bill. Governor Parsons laid out \$722 million in budget cuts he will make if provider taxes are not renewed.

West Virginia adjourned a second special session on June 24. The purpose of the special session was to allocate excess tax dollars. Lawmakers in the House and Senate approved 24 appropriations bills to spend \$250 million in surplus tax-revenue on economic development, tourism and corrections projects, reports [WDTV](#).

Texas Republican Gov. Gregg Abbott is scheduled to call the legislature into a special session on July 8, reports [The Texas Tribune](#). Although the legislative priorities for the session have not yet been specified, Governor Abbott has said he will ask lawmakers to work on two controversial elections and bail bonds bills that died in the final hours of the regular session after House Democrats walked out of the chamber.

The following states adjourned their 2021 legislative sessions on the dates provided (by date): **Oregon** (June 28), **Delaware**, **New Hampshire**, and **Rhode Island** (June 30) and **North Carolina** (July 2).

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Gov. Janet Mills must act on legislation presented within 10 days of adjournment or it becomes law unless returned within three days after the next meeting of the same legislature. **Nebraska** Republican Gov. Pete Ricketts has five days from presentment to sign or veto legislation, Sundays excepted, 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. **South Carolina** Republican Gov. Henry McMaster has five days from presentment, excluding Sundays, to act on legislation or it becomes law without signature. **Tennessee** Republican Gov. Bill Lee has 10 days starting the day after presentment, Sundays excluded, to sign or veto legislation or it becomes law without signature. **Vermont** Republican Gov. Phil Scott has five days from presentment, excluding Sundays, to act on legislation or it will become law without signature.

The following states are currently holding 2022 interim committee hearings: [Colorado](#), [Connecticut](#), [Georgia](#), [Kentucky](#), [Louisiana](#), [Maryland](#), [Nebraska](#), [New Mexico](#), [North Dakota](#), [South Carolina House](#) and [Senate](#), [Tennessee](#), [Utah](#), [Vermont](#), [Virginia](#), [Washington](#), [West Virginia](#) and [Wyoming](#).

The following states are currently posting 2022 bill drafts, pre-files, and interim studies: [Alabama](#), [Kentucky](#), [Oklahoma](#) and [Utah](#). ■

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