

# GOVERNMENTAL AFFAIRS WEEKLY REPORT

## Weekly Highlights At-A-Glance

### FEDERAL – Legislative

**U.S. Congress Back in Session.** The U.S. Congress is back in regular session following the scheduled holiday recess. [Read more.](#)

### FEDERAL – Regulatory

**BLM Resource Advisory Councils.** On January 10, the Bureau of Land Management (BLM) published *FY2020 National Call for Nominations for Resource Advisory Councils* ([85 Fed. Reg. 1323](#)) for the purpose of requesting public nominations for 27 of the BLM's statewide and regional Resource Advisory Councils (RAC) located in the West that have vacant positions and/or members whose terms are scheduled to expire. 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 by February 24, 2020. [Read more.](#)

**BLM Oil and Gas Lease Sale – Colorado.** On December 30, the BLM announced it is seeking public scoping comments on approximately 6,095 acres of public lands proposed for the upcoming June 2020 competitive oil and gas lease sale in Jackson, Lincoln, Moffat, Rio Blanco, and Weld counties. Some of the parcels include those in Greater Sage-Grouse habitat areas. The public comment period ends January 15, 2020. [Read more.](#)

**BLM Director Appointment.** (*Update to 10/7/19 Weekly Report*) Interior Secretary David Bernhardt has extended the tenure of William Perry Pendley as acting BLM Director until a Senate-confirmed appointee is in place. Pendley's assignment will continue until April 3, 2020, unless extended again

or Pendley is formally nominated by President Trump. Pendley had been BLM Deputy Director of Policy and Programs. Prior to holding this position, Pendley, an attorney, was the president of the Mountain States Legal Foundation. [Read more.](#)

**EPA Midwestern States Administrator.** On January 8, U.S. Environmental Protection Agency (EPA) Administrator Andrew Wheeler announced Kurt Thiede, a former Wisconsin Department of Natural Resources deputy secretary, will succeed Cathy Stepp as EPA Region 5 regional administrator. Region 5 has a focus on Midwestern state protection and oversees federal environmental protection matters in Illinois, Indiana, Michigan, Minnesota, Ohio, and Wisconsin. "I look forward to helping to continue to advance this administration's priorities of protecting public health and the environment, while promoting a strong and vibrant economy," said Mr. Thiede. [Read more.](#)

**NEPA Rulemaking.** On January 10, the Trump administration [published a notice of proposed rulemaking](#) to overhaul National Environmental Policy Act (NEPA) regulations making it easier for federal agencies, like the Bureau of Land Management, to approve infrastructure, construction, and oil and gas development projects without considering climate change. The *Update to the Regulations Implementing the Procedural Provisions of the National Environmental Policy Act* ([85 Fed. Reg. 1684](#)) "would modernize and clarify the regulations to facilitate more efficient, effective, and timely NEPA reviews by Federal agencies in connection with proposals for agency action." The move has been widely praised by the pipeline, construction, and oil and gas industry as well as legislators in energy producing states. "I applaud President Trump's decision to overhaul burdensome

NEPA requirements, which for too long have thwarted energy development and critical infrastructure projects in Wyoming,” said Rep. Liz Cheney (R-WY). “NEPA’s out-of-date regulations have been abused by far-left environmental extremists to delay countless energy and infrastructure projects across the country.” The public comment period is open through March 10, 2020. [Read more.](#)

## **FEDERAL – Judicial**

**Gathering Agreements – Texas.** On December 20, in [Alta Mesa Holdings, LP v. Kingfisher Midstream, LLC](#) (Case No. 19-35133), the U.S. Bankruptcy Court for the Southern District of Texas held that midstream gathering agreements created covenants running with the land under Oklahoma law that could not be rejected by bankrupt debtors. In the case, debtors sought a declaration that certain gathering agreements were subject to rejection pursuant to sections of the Bankruptcy Code, which included a provision that a debtor may, subject to the court’s approval, “assume or reject any executory contract or unexpired lease of the debtor.” The declaratory relief requested by the debtors directly implicated whether a gathering agreement constitutes a covenant running with the land. “Significantly, covenants running with the land do not qualify as executory contracts that a debtor can reject under the Bankruptcy Code.” Here, the Court found the debtors’ gathering agreements satisfied all elements required to form real property covenants under Oklahoma law and the precedent set by other federal courts. Accordingly, the Court ordered that the midstream contracts qualified as covenants running with the land under Oklahoma law that could not be rejected pursuant to the Bankruptcy Code. [Read more.](#)

## **STATE – Legislative**

**Severance Tax – California.** An oil and gas severance tax bill that stalled in the state legislature throughout 2019 has been revived and referred to the Senate Governance and Finance Committee.

Although the bill may stall again in 2020, AAPL will be closely monitoring any developments and whether it moves out of committee. Sen. Bob Wieckowski (D) introduced [SB 246](#) in February 2019 to levy a 10 percent severance tax on oil and natural gas extracted in the state. The severance tax would be based on the average price per barrel of oil or average price per unit of gas extracted. Wieckowski said California should join the roughly 30 other oil and gas producing states that already impose a severance tax. Western States Petroleum Association President Catherine Reheis-Boyd called the proposal an “unnecessary tax” that would harm the state’s economy at a time when elected officials are touting a large budget surplus. “California voters have already rejected this bad idea,” she said, referring to a 2006 ballot measure. Voters “understand it would increase costs, devastate jobs, local services and compromise our state’s sustainable energy future.” [Read more.](#)

**Government Liability for Banning Hydraulic Fracturing – Colorado.** On January 8, HB20-1070 was introduced by Rep. Perry Buck (R). The bill specifies that a local government that bans hydraulic fracturing of an oil and gas well is liable to the mineral interest owner for the value of the mineral interest and that a local government that enacts a moratorium on oil and gas activities shall compensate oil and gas operators, mineral lessees, and royalty owners for all costs, damages, and losses of fair market value associated with the moratorium. [Read more.](#)

**Notaries Public – Missouri.** On January 8, HB 1874 was read the first time in the House since its pre-filing on December 23, 2019. The bill, sponsored by Rep. David Gregory (R), would amend existing notaries public law to allow nonresidents to qualify as notaries; sets effective dates and bond requirements; and sets forth other recordkeeping, notice and form requirements. [Read more.](#)

**Employee Misclassification – Missouri.** On January 2, HB 1920 was pre-filed by Rep. Justin Hill (R). The bill would repeal current law regarding independent

contractors and employee misclassification by providing a checklist of criteria in which a worker may be considered an independent contractor, rather than an employee by default, if those conditions are met. [Read more.](#)

**Division of Land – New Mexico.** On December 16, 2019, Rep. Greg Nibert (R) pre-filed HB 28 for the legislative session beginning January 21. The bill amends existing law regarding an exception to the New Mexico Subdivision Act for parcels divided for oil or gas operations to add “the division of land for oil or gas operations; provided the land continues to be used for oil or gas operations” as an exception to the definition of “subdivision” under the Act. [Read more.](#)

**Hydraulic Fracturing – New York.** In late December 2019, Sen. Jen Metzger (D) introduced, [SB 6909](#), a bill providing for a permanent ban on hydraulic fracturing in the state. This comes despite the December 2014 existing regulatory ban on hydraulic fracturing from Gov. Andrew Cuomo (D). The American Petroleum Institute immediately expressed its dissatisfaction noting, “New York already benefits from abundant, clean and reliable natural gas produced by our neighbors in Pennsylvania and elsewhere, and it’s a shame that New Yorkers aren’t able to tap into those same resources and economic opportunities.” [Read more.](#)

**Forced Pooling – West Virginia.** On January 8, HB 2055 was introduced by Rep. Isaac Sponaugle (D). The purpose of the “bill is to prohibit drilling units from being established without consent of all owners. The bill prohibits coal bed methane units from being established without consents from all owners. The bill prohibits deep oil or gas well units from being established without consents from all owners.” [Read more.](#)

**Setbacks; Monitoring – West Virginia.** On January 8, HB 2073 was introduced by Rep. Terri Sypolt (R). “The purpose of this bill is to implement the recommendations arising out of the studies required by the Natural Gas Horizontal Well Control Act

passed by the Legislature in 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 setback from horizontal well work activity to a residence to 1,500 feet from the limit of well work disturbance.” [Read more.](#)

**Setbacks; Notice – West Virginia.** On January 8, HB 2102 was introduced by Rep. Barbara Evans Fleischauer (D). “The purpose of this bill is to change an elective obligation to a mandatory one. The bill requires notice in certain instances to the occupants of residential property. The bill prohibits the disturbance of a well site be no closer than 1,500 feet of an occupied dwelling. The bill provides notices include certain information. The bill establishes standards relating to air, noise, light and dust. The bill permits landowners be compensated for any decrease in the values of the land for its highest and best use. The bill requires the notice of a claim be also provided to an occupant of residential structure on the property. The bill establishes a statute of limitations for claims being filed.” [Read more.](#)

**Abandoned Mineral Interests – West Virginia.** On January 8, HB 2373 was introduced by Rep. Pat McGeehan (R). “The purpose of this bill is to create a procedure to streamline the process to claim abandoned mineral interests.” [Read more.](#)

**Severance Tax – West Virginia.** On January 8, HB 2489 was introduced by Rep. William Anderson (R). “The purpose of this bill is to remove the severance tax on oil and gas produced from low producing wells.” [Read more.](#)

**Well Production – West Virginia.** On January 8, HB 2641 was introduced by Rep. Joe Canestraro (D). “The purpose of this bill is to require owners of oil and gas wells to install and maintain separate meters that calculate the amount of production from those wells. The bill requires the Secretary of the Department of Environmental Protection to work

with the State Tax Commissioner to implement procedures allowing the Office of Oil and Gas to verify production. The bill requires the information be shared with county assessors and royalty owners.”

[Read more.](#)

**Production Tax – West Virginia.** On January 8, HB 2659 was introduced by Rep. Mick Bates (D). “The purpose of this bill is to provide for a new fee on [...] natural gas produced to fully fund [Public Employees Insurance Agency] benefits at current levels; allow a tax credit for value added jobs in West Virginia for persons paying this fee; and creating a special reserve account to assume that sufficient moneys are collected to preserve the existing insurance program for a 5-year period, then allowing excess proceeds to be directed to general revenue.”

[Read more.](#)

**Partition Actions; Heirs – West Virginia.** On January 8, HB 2802 was introduced by Rep. John R. Kelly (R). “The purpose of this bill is to enact the Uniform Partition of Heirs Property Act. The bill defines terms and provides for a court hearing to determine if the partition action concerns heirs’ property and the manner in which such property and interests may be sold.” [Read more.](#)

**Well Plugging; Bonds – West Virginia.** On January 8, SB 120 was introduced by Sen. Mike Romano (D). “The purpose of this bill is to require money that results from the forfeiture of an oil and gas operator’s bond as a result of the operator’s failure to plug a well or otherwise comply with state statutes and rules to first be applied to correct or mitigate an immediate threat to the environment or hindrance or impediment to the development of mineral resources of this state that caused the forfeiture of the bond.”

[Read more.](#)

**Severance Tax Exemption; Abandoned Wells – West Virginia.** On January 9, SB 198 was introduced by Sen. Craig Blair (R). “The purpose of this bill is to exempt low volume oil and gas wells from severance tax, and to provide for a special use fee on sales from oil and gas wells which produce more than 5,000

cubic feet of natural gas or one-half barrel of oil per day but less than 60,000 cubic feet of natural gas or for oil produced from any well which produced an average between ½ barrel per day [and] 10 barrels of oil per day. The special use fee shall be used by the Secretary of the Department of Environmental Protection to plug abandoned oil and gas wells.”

[Read more.](#)

**Unknown Owners – West Virginia.** On January 8, SB 79 was introduced by Sen. Randy Smith (R). “The purpose of this bill is to provide that proceeds from certain oil and gas wells that are due to persons whose name or address are unknown are to be kept in a special fund and if unclaimed within seven years the proceeds shall be transferred to the Oil and Gas Reclamation Fund. The bill provides that if there is a surface disturbance those named surface owners of a leased interest subject to pooling for a horizontal well are the only surface owners insofar as the well permit is concerned. The bill provides that if another surface owner should become known his or her name shall be added as a surface owner on the permit. The bill provides that if proceeds from other mineral tracts in a unit or pool of a horizontal well are not claimed by an unknown, missing or abandoned owner within seven years the proceeds shall be transferred to the Oil and Gas Reclamation Fund. The bill provides that certain provisions take effect beginning when funds have been unclaimed for seven years after the special commissioner’s lease regardless of when the lease was signed.”

[Read more.](#)

**Leasing; Releases; Notice – West Virginia.** On January 8, SB 81 was introduced by Sen. Randy Smith (R). “The purpose of this bill is to provide a requirement for a lessee to execute and deliver to the lessor, within a specified time and without cost, a recordable release for terminated, expired, or canceled oil or natural gas leases; provide for a procedure by which a lessor may serve notice to a lessee, if a lessee fails to timely provide the release; require a lessee to timely notify the lessor in writing of a dispute; provide for a recordable affidavit of termination, expiration, or cancellation with specified

contents; provide that with proper notification in the absence of a dispute, a recorded affidavit creates a rebuttable presumption of termination and cancellation for the oil or natural gas lease regarding certain interests and renders it insufficient notice of the recorded lease under the notice statute.”

[Read more.](#)

**Well Plugging; Permitting Restrictions – West Virginia.** On January 8, SB 82 was introduced by Sen. Randy Smith (R). The purpose of this bill is to create the Orphan Oil and Gas Well Prevention Act which provides for certain well plugging assurances; permitting restrictions related to well plugging; providing for limitations on the transfer of wells; providing for responsibility of previous operators to plug transferred wells; and providing for different methods for operators to provide plugging assurance of wells including for wells not producing in paying quantities. [Read more.](#)

**Permitting – West Virginia.** On January 8, SB 84 was introduced by Sen. Randy Smith (R). “The purpose of this bill is to allow for expedited oil and gas well permitting and expedited oil and gas well permit modifications upon the payment of applicable expedited fees, the designation of the proceeds of such expedited fees, and the daily pro rata refund of the expedited fees if the permit is not approved between the 45th and 60th days after the submission of a permit application, and daily pro rata refund of one half of the modification fees between the 10th and 20th days after the submission of a permit modification application; all generally related to horizontal well oil and gas permitting.” [Read more.](#)

**Sage Grouse Mitigation Credits – Wyoming.** On December 10, HB 13 was pre-filed by the Joint Minerals, Business & Economic Development Committee for the legislative session beginning February 10. The bill would establish a program for compensatory mitigation credits for conservation of the Greater Sage-Grouse. The bill recognizes that industry, including energy development, must be considered when managing the Sage-Grouse and in

some cases where adverse species impacts occur, a system of compensatory mitigation would offset impacts to the species. [Read more.](#)

**Drilling Units; Pooling; Royalties – Wyoming.** On December 10, HB 14 was pre-filed by the Joint Minerals, Business & Economic Development Committee for the legislative session beginning February 10. The bill would amend the calculation of owners' shares for drilling units; provides for the expiration of pooling orders under specified conditions; and provides a royalty during payment of risk penalty. [Read more.](#)

## **[STATE – Regulatory](#)**

**Oil and Gas Emissions – Colorado.** On December 19, 2019, the Colorado Air Quality Control Commission [approved new rules](#) “designed to minimize emissions from oil and gas operations state-wide.” Tougher oil and gas emissions controls were part of the comprehensive oil and gas regulatory bill, [SB 19-181](#), signed into law last year. The rule eliminates the existing 90-day permitting deferral on new oil and gas facilities and now these facilities must be permitted before they can begin exploration and production activities. The rule also imposes new leak detection and repair requirements, emissions reporting and enhanced recordkeeping and new inspection requirements. “The objective is simple – minimize emissions at the source,” said Garry Kaufman, director of the Air Pollution Control Division. “These new rules represent months of hard work and communication with affected communities. They will slash emissions, make Colorado’s air cleaner and improve the quality of life for Coloradans across the state, including those citizens that live or work near oil and gas sites.” During December 2019 hearings on the rulemaking, industry representatives expressed concerns about redundant inspection requirements and rule changes that would significantly increase costs with little to no benefits in reduced emissions. “Unfortunately, politics can often get in the way of effective governance, and that’s what we saw in this rulemaking,” said Dan Haley, president and CEO of the Colorado Oil and Gas

Association. “Conversations about complicated technologies and emission reductions need to be steeped in facts, not scare tactics or suppositions.” [Read more.](#)

**Employee Misclassification – Virginia.** At the close of 2019, Virginia Governor Ralph Northam (D), issued his [Inter-Agency Taskforce on Worker Misclassification and Payroll Fraud report](#) which resulted from the governor’s August 2019 appointment of a taskforce charged with providing recommendations on how to “measure and combat misclassification in Virginia.” The taskforce included representatives from several state agencies, including the Virginia Employment Commission, the Department of Labor and Industry, the Department of Professional and Occupational Regulation, and the Office of the Attorney General. The report made [11 recommendations](#) but does not have the force of law. However, it may be used as a starting point for future legislative and/or regulatory proposals targeting independent contractors and those that hire them. AAPL will keep an eye on any developments that arise from the taskforce recommendations. [Read more.](#)

## **[INDUSTRY NEWS FLASH](#)**

► **Nationwide hydraulic fracturing ban would invite global recession, says API.** On January 7, American Petroleum Institute president and CEO, Mike Sommers, told an audience at the State of American Energy event that Democratic presidential candidate plans to ban hydraulic fracturing would cost American jobs, spike household energy costs and spur a manufacturing downturn. “You don’t abolish the most dynamic asset in the world’s leading energy supplier without severe consequences,” said Sommers. [Read more.](#)

► **Upstream oil and gas outlook for 2020.** On December 27, IHS Markit Energy Research released their podcast interview of experts revisiting their upstream oil and gas predictions for 2019 and to make their 2020 upstream oil and gas predictions.

Reed Olmstead, from the IHS North America Plays & Basins team, and David Vaucher, one of IHS Markit’s onshore services and materials experts, joined the latest episode of *Upstream in Perspective*. To access the podcast recording: [Read more.](#)

## **[LEGISLATIVE SESSION OVERVIEW](#)**

**Session Notes:** California, Colorado, Idaho, Illinois, Indiana, Kentucky, Maine, Maryland, Massachusetts, Michigan, Mississippi, Missouri, Nebraska, New Hampshire, New Jersey, New York, Ohio, Pennsylvania, Rhode Island, Vermont, Virginia and West Virginia are in regular session. The District of Columbia Council, Puerto Rico and U.S. Congress is also in regular session.

The following states are expected to convene their 2020 sessions on the dates provided: **Arizona, Georgia, Iowa, Kansas and Washington** (January 13); **Delaware, Florida, New Jersey, North Carolina, South Carolina, South Dakota, Tennessee and Wisconsin** (January 14); **Hawaii** (January 15), **New Mexico and Alaska** (January 21), **Utah** (January 27), **Oklahoma and Oregon** (February 3) and **Alabama** (February 4).

**Signing Deadlines:** Alaska Republican Gov. Mike Dunleavy has 20 days from delivery, Sundays excepted, to act on legislation or it becomes law without signature. Delaware Democratic Gov. John Carney has 10 days, Sundays excepted, to act on legislation or it becomes law. North Carolina Democratic Gov. Roy Cooper has 10 days from presentment to act on legislation or it becomes law without signature. Wisconsin Democratic Gov. Tony Evers has six days, Sundays excepted, to act on legislation or it becomes law without signature.

**Interim Committee Hearings:** The following states are currently holding 2020 interim committee hearings: [Alabama](#), [Alaska](#), [Arizona](#), [Connecticut](#), [Delaware](#), Florida [House](#), Georgia [House](#) and [Senate](#), [Hawaii](#), [Iowa](#), [Kansas](#), [Louisiana](#), [Montana](#), [Nevada](#), [New Mexico](#), [North Carolina](#), [North](#)

[Dakota](#), [Oklahoma House](#) and [Senate](#), [South Carolina House](#) and [Senate](#), [South Dakota](#), [Tennessee](#), [Texas House](#), [Utah](#), [Washington](#) and [Wyoming](#).

**Bill Pre-Files:** The following states are currently posting bill drafts, pre-files and interim studies: [Alabama House](#), [Arizona](#), [Arkansas](#), [Florida House](#) and [Senate](#), [Georgia](#), [Iowa](#), [Kansas House](#), [New Mexico](#), [Oklahoma House](#) and [Senate](#), [Oregon](#), [South Carolina](#), [South Dakota](#), [Tennessee](#), [Utah](#), and [Washington](#). ■

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## Weekly Highlights At-A-Glance

### FEDERAL – Legislative

**Buffalo Tract Protection Act – H.R. 2640.** On January 15, the House Natural Resources Committee held a hearing on H.R. 2640, known as the *Buffalo Tract Protection Act*. The bill, sponsored by Rep. Debra Haaland (D-NM), would withdraw “specified Bureau of Land Management (BLM) lands in Placitas, New Mexico, from all forms of mineral development under all laws pertaining to mineral leasing or mineral materials, including locatable minerals. Any disposal of the surface estate of the BLM lands shall be subject to the condition that the mineral estate of those lands shall remain under the ownership of the BLM, subject to the withdrawal under this bill.”

[Read more.](#)

**Migratory Bird Protection Act of 2020 – H.R. 5552.**

On January 15, [H.R. 5552](#), known as the *Migratory Bird Protection Act of 2020*, was approved by the House Natural Resources Committee for the bill introduced January 8 by Rep. Alan Lowenthal (D). Oil and gas companies would face the risk of criminal prosecution for the unintentional killing of migratory birds. A new regulatory system would be due from the U.S. Fish and Wildlife Service within five years of enactment of the legislation. However, Rep. Lowenthal stressed during a [January 15 hearing](#) in the Natural Resources Committee that companies would be exempt from criminal prosecution if they adhere to the regulations, even if birds are killed. But Republicans on the committee objected to a new array of regulations and fees and uncertain liabilities. Even if the bill passes the House it is likely dead-on-arrival in the Republican-led Senate. [Read more.](#)

### FEDERAL – Judicial

**BLM Leasing – California.** On January 14, a group

of environmental activists sued the Trump administration in an attempt to halt oil and gas leasing and development on federal lands in California. The litigants in *Center for Biological Diversity v. U.S. Bureau of Land Management* (Case No. 2:20-cv-00371) claim the final Supplemental Environmental Impact Statement (SEIS) adopted by the Bakersfield Field Office of the Bureau of Land Management (BLM) “fails to adequately analyze the serious environmental and health impacts from hydraulic fracturing” on “more than a million acres of federal land and mineral estate that BLM has opened to harmful oil and gas leasing and development, in violation of the National Environmental Policy Act.” The SEIS supports a resource management plan encompassing 400,000 acres of federal land and 1.2 million acres of federal mineral estate across eight California counties. The government has yet to respond to the lawsuit. [Read more.](#)

**BLM Leasing – Washington, DC.** On January 9, environmental activists filed suit against the Interior Department and BLM challenging the BLM’s approval of 2,067 oil and gas leases encompassing almost two million acres of public lands across five western states—Colorado, Montana, New Mexico, Utah, and Wyoming. According to the complaint, in *WildEarth Guardians v. Bernhardt* (Case No. 1:20-cv-00056), the BLM approved the leases at issue “without fully analyzing the direct, indirect, and cumulative impacts of oil and gas leasing on our climate in violation of the National Environmental Policy Act (NEPA).” This case comes as the Trump administration is finalizing rulemaking to relax NEPA climate analysis reviews when approving federal infrastructure and oil and gas leasing projects. The government has yet to respond to the lawsuit. [Read more.](#)



**Overriding Royalties; Assignments; Leasing – Ohio.** On January 7, in *Talmage v. Bradley* (Case No. 2:17-cv-544), the U.S. District Court for the Southern District of Ohio, Eastern Division, denied motions to reconsider an earlier opinion. In this action, the plaintiffs claimed the assignment granting the overriding royalty (ORRI) was invalid in one of the counties at issue because it was not recorded there. For their part, the defendants sought to invalidate the ORRI as to new wells. The Court denied both motions, allowing a [March 26, 2019 opinion](#) to stand. [Read more.](#)

**Royalties; Leasing – Ohio.** On December 23, 2019, in *Bounty Minerals, LLC v. Chesapeake Exploration, LLC* (Case No. 5:17-cv-1695), Bounty Minerals alleged that Chesapeake breached the royalty provisions of the subject leases because "the royalties that Bounty receives for production under the Leases is not comparable to values that could be obtained in an arms-length transaction and are not 'without any deductions or expenses.'" Chesapeake argued that they are entitled to judgment in their favor with respect to this claim because Bounty Minerals' royalty payment is directly tied to the arms-length sales price that is received downstream and is, therefore, "comparable" to the value that could be obtained in an arms-length transaction. The Court agreed with Chesapeake holding that Bounty Minerals' royalties were properly calculated at the wellhead via the netback method. As such, Bounty Minerals' royalty payments were directly derived from sales made in arms-length transactions with unaffiliated, third-party purchasers. [Read more.](#)

**Seated Lands; Mineral Rights – Pennsylvania.** On December 18, in *Pennsylvania v. Thomas E. Proctor Heirs Trust* (Case No. 1:12-CV-1567), the U.S. District Court for the Middle District of Pennsylvania addressed a dispute between the state and a private trust over the ownership of subsurface estates. The case touched on the pre-1948 issue of [title washing](#) in Pennsylvania and its application to unseated lands and tax sales. Here, the Court held that in applying that legal framework to the facts at issue, a 1908 tax sale extinguished the mineral rights claimed by the

trust. Hence, "a 1920 deed conveyed the entire warrant to the [Pennsylvania] Game Commission, including the subsurface estate." [Read more.](#)

## **STATE – Legislative**

**Oil and Gas Production Taxes – Alaska.** On January 10, SB 129 was pre-filed by Sen. Bill Wielechowski (D) for the legislative session beginning January 21. The bill would make certain changes to the oil and gas production tax as well as credits taken against tax payments. The bill also makes public certain information related to the oil and gas production tax. [Read more.](#)

**Supervision of Oil and Gas – California.** On January 15, an amended version of AB 1441 was referred to the Appropriations Committee after passing the Committee on Natural Resources. The bill was originally introduced by Asm. Marc Levine (D) in February 2019 and stalled in committee. "Under existing law, the Geologic Energy Management Division in the Department of Conservation regulates the drilling, operation, maintenance, and abandonment of oil and gas wells in the state. Existing law requires the State Oil and Gas Supervisor to supervise the drilling, operation, maintenance, and abandonment of wells and the operation, maintenance, and removal or abandonment of tanks and facilities related to oil and gas production within an oil and gas field, so as to prevent damage to life, health, property, and natural resources, as provided; to permit owners and operators of wells to utilize all known methods and practices to increase the ultimate recovery of hydrocarbons; and to perform the supervisor's administrative duties in a manner that encourages the wise development of oil and gas resources to best meet oil and gas needs in this state. This bill would revise and recast the duty on the supervisor to supervise the drilling, operation, maintenance, and abandonment of wells so as to permit the owners or operators of the wells to utilize methods and practices known to the oil industry that, in the opinion of the supervisor, are suitable in each proposed case. The bill would revise the declared

policy of the state relating to the grant in an oil and gas lease or contract of the right or power to explore for and remove hydrocarbons from any lands in the state. The bill would instead require the supervisor to perform their administrative duties in a manner so as to help ensure the wise oversight of oil and gas development used to meet oil and gas needs in this state.(2) Existing law authorizes the State Lands Commission to make leases for the extraction and removal of oil and gas deposits from state-owned lands to the highest qualified bidder, or to joint bidders, as provided by law, and requires that a lease include all oil and gas deposits in the leased land and be for a term of 20 years and for so long thereafter as gas or oil is produced in paying quantities from the leased land, or that the lessee be diligently conducting production, drilling, deepening, repairing, redrilling, or other necessary lease or well maintenance operations on the leased land. Existing law establishes a finding and determination by the Legislature that the people of the State of California have a direct and primary interest in assuring the production of the optimum quantities of oil and gas from lands owned by the state, and that a minimum of oil and gas be left wasted and unrecovered in such lands." [Read more.](#)

**Employee Misclassification – Indiana.** On January 13, SB 309 was introduced by Sen. David Niezgodski (D). The bill would require relevant state agencies to report certain information to the interim study committee on employment and labor for the immediately preceding state fiscal year before November 1 of each year for three years, beginning November 1, 2020. The bill also provides "that the worker's compensation board of Indiana may impose monetary fines on an employer for failure to procure worker's compensation coverage for its employees, if required to do so under the law." The bill also increases certain civil penalties assessed by the worker's compensation board of Indiana and requires relevant state agencies to enter into a memorandum of understanding concerning issues relating to the investigation and enforcement of employee misclassification laws. [Read more.](#)

**Employee Misclassification – Indiana.** On January 13, SB 201 was introduced by Sen. Karen Tallian (D). The bill would require "the department of labor (DOL), the department of workforce development (DWD), the department of state revenue (DOR), and the worker's compensation board (WCB) to share information concerning instances in which a construction contractor paid a worker in cash. Establishes the payroll fraud task force (task force), consisting of the commissioners of the DOL, DWD, and DOR, and the chair of the WCB, or their designees, to investigate suspected instances of payroll fraud, employee misclassification, and violations of other state labor and employment statutes occurring on commercial and industrial construction projects. Requires the DOL to hire and assign to the task force an investigator to conduct the task force's investigation and enforcement activities. Establishes a nonreverting and annually appropriated payroll fraud task force administrative fund to carry out the administrative purposes and functions of the task force." [Read more.](#)

**Methane Emissions – Michigan.** On January 8, SB 702 was introduced by Sen. Jeff Irwin (D). The bill amends existing law to require wells to operate "in conjunction with a methane control or capture system capable of reducing fugitive emissions by 99%. This subsection does not apply to a well that consists only of a wellhead." The bill disallows flaring as a method of methane control, imposes civil fines for violations, and provides for reporting and inspections. [Read more.](#)

**Uniform Wills Recognition Act – Nebraska.** On January 13, LB 966 was introduced by Sen. Wendy DeBoer. The bill would adopt the Uniform Wills Recognition Act (1977). The Act implements an international convention calling for all countries and states to adopt a uniform formality for executing wills. The Act also allows probate courts of the enacting state to recognize any will meeting the Act's requirements. As of this report, [19 states](#) have already adopted the Act. [Read more.](#)

**Independent Contractors – New Jersey.** On

January 13, A1526 passed both houses of the New Jersey Legislature. The bill, sponsored by Asm. Andrew Zwicker (D), provides that an independent contractor is required to be paid the remuneration earned according to work terms agreed to by the independent contractor and its client, and requires the Department of Labor and Workforce Development to act as a regulatory agency in certain circumstances regarding these work agreements. Under the bill, an “independent contractor” means an individual who performs services for remuneration, where the services are not regarded as employment for the purposes of the “unemployment compensation law” with certain exceptions. The bill provides that any individual who believes himself or herself to be an independent contractor may file with the Commissioner of Labor and Workforce Development a complaint regarding a violation of the bill by a client, and damages may be assessed. [Read more.](#)

**Employee Misclassification – New Jersey.** On January 13, A5843 passed both houses of the New Jersey Legislature. The bill, sponsored by Asm. Shanique Speight (D), requires employers to post a notice for their employees regarding employee misclassification. The bill also requires the Department of Labor and Workforce Development to maintain a webpage that contains information regarding employee misclassification. [Read more.](#)

**Hydraulic Fracturing Permits – New Mexico.** On January 13, [SB 104](#) was introduced by Sen. Antoinette Sedillo Lopez (D). The bill would impose a moratorium on the issuance of new hydraulic fracturing permits through 2024. The bill also imposes reporting requirements on certain state agencies regarding oil and gas permitting, impacts, and development. If passed, the legislation could reportedly cost the state up to \$3.5 billion. For background, Lopez introduced a similar hydraulic fracturing prohibition bill ([SB 459](#)) in the 2019 legislative session and it never received any votes and died in committee. The Democratic governor understands such oil and gas activities “were the main source of revenue that led to multi-billion

surpluses in the state’s general fund this year and in 2019.” For those reasons and prior bill outcomes we do not expect this bill to move forward but will continue to watch it very closely. [Read more.](#)

**Well Plugging – South Dakota.** On January 9, the House Committee on Agriculture and Natural Resources introduced HB 1025. The bill would revise certain provisions regarding plugging and performance bonds for oil and gas wells. [Read more.](#)

**Well Plugging – South Dakota.** On January 9, the House Committee on Appropriations introduced SB 17. The bill makes an appropriation from state funds for the plugging and surface reclamation of natural gas wells and to declare an emergency. [Read more.](#)

**Notaries Public – Virginia.** On January 7, SB 694 was introduced by Sen. Mark Obenshain (R). The bill would prohibit “a person who has been convicted of a felony offense of (i) fraud or misrepresentation or (ii) robbery, extortion, burglary, larceny, embezzlement, fraudulent conversion, perjury, bribery, treason, or racketeering from qualifying to be a notary, regardless of whether his civil rights have been restored.” [Read more.](#)

**Offshore Leasing – Virginia.** On January 7, HB 1016 was introduced by Del. Nancy Guy (D). The bill “prohibits any form of leasing for purposes of exploration, development, or production of oil or gas in Virginia’s territorial sea, which encompasses the waters within three nautical miles wide adjacent to Virginia’s coast. The measure prohibits state agencies from leasing, or from authorizing or permitting the construction or location of a structure upon, over, or under, any of the submerged and submersible lands within the limits of the territorial sea for the exploration, development, or production of oil or gas. The measure also removes from the Virginia Energy Plan provisions that state that it is the policy of the Commonwealth to support federal efforts to determine the extent of oil and natural gas resources 50 miles or more off the Atlantic shoreline

and to permit the production and development of oil and natural gas resources 50 miles or more off the Atlantic shoreline." [Read more.](#)

**Oil and Gas Conservation Commission – West Virginia.** On January 13, SB 316 was introduced by Sen. Mark Maynard (R). "The purpose of this bill is to remove the requirements that one member, appointed by the Governor, of the Oil and Gas Conservation Commission must possess a degree from an accredited college or university in petroleum engineering or geology, and be a registered professional engineer." [Read more.](#)

**Abandoned Wells – West Virginia.** On January 15, HB 4090 passed the House Energy Committee following its introduction. The purpose of the bill, introduced by Del. William Anderson (R), "is to reduce the severance tax on marginal oil and natural gas wells, excluding wells utilizing horizontal drilling techniques targeting shale formations, to 2.5% from 5% and to provide that the 2.5% tax paid on such wells is to be used by the Secretary of the Department of Environmental Protection to plug abandoned oil and gas wells without a responsible operator through the use of a new fund called the Oil and Gas Abandoned Well Plugging Fund. The vertical oil and gas wells which are affected by the severance tax reduction produce on average more than 5,000 cubic feet of natural gas or one-half barrel of oil per day and on average less than 60,000 cubic feet of natural gas or 10 barrels of oil per day." [Read more.](#)

**Real Property Excise Tax – West Virginia.** On January 14, HB 4190 was introduced by Del. Joe Canestraro (D). The bill would amend real property excise tax law by making changes to the definitions section of the code regarding mineral interests as they pertain to the "documents" definition. [Read more.](#)

**Partition Actions; Heirs – West Virginia.** On January 10, HB 4081 was introduced by Del. William Anderson (R). The purpose of this bill is to enact the Uniform Partition of Heirs' Property Act. The bill defines terms and provides for a court

hearing to determine if the partition action concerns heirs' property and the manner in which such property and interests may be sold. [Read more.](#)

**Unknown/Unlocatable Owners – West Virginia.** On January 10, HB 4088 was introduced by Del. William Anderson (R). "The purpose of this bill is to provide that proceeds from certain oil and gas wells that are due to persons whose name or address are unknown are to be kept in a special fund and if unclaimed within seven years the proceeds shall be transferred to the Oil and Gas Reclamation Fund. The bill provides that if there is a surface disturbance those named surface owners of a leased interest subject to pooling for a horizontal well are the only surface owners insofar as the well permit is concerned. The bill provides that if another surface owner should become known his or her name shall be added as a surface owner on the permit. The bill provides that if proceeds from other mineral tracts in a unit or pool of a horizontal well are not claimed by an unknown, missing or abandoned owner within seven years the proceeds shall be transferred to the Oil and Gas Reclamation Fund. The bill provides that certain provisions take effect beginning when funds have been unclaimed for seven years after the special Commissioner's lease regardless of when the lease was signed." [Read more.](#)

**Expedited Permitting – West Virginia.** On January 15, HB 4091 passed the House Energy Committee following its introduction. The purpose of the bill, introduced by Del. William Anderson (R), "is to allow for expedited oil and gas well permitting and expedited oil and gas well permit modifications upon the payment of applicable expedited fees, the designation of the proceeds of such expedited fees, and the daily pro rata refund of the expedited fees if the permit is not approved between the 45th and 60th days after the submission of a permit application, and daily pro rata refund of one-half of the modification fees between the 10th and 20th days after the submission of a permit modification application; all generally related to horizontal well oil and gas permitting." [Read more.](#)

**Severance Tax – West Virginia.** On January 8, HB 2568 was introduced by Del. John Doyle (D). “The purpose of this bill is to increase the tax on the privilege of severing natural gas and oil from 5 percent to 10 percent.” [Read more.](#)

## **STATE – Regulatory**

### **Setbacks; Bonding Requirements – Colorado.**

On January 7, activist group, Colorado Rising, “submitted language for six proposed ballot initiatives to the Colorado Secretary of State’s office.” The [six proposed initiatives](#) include increased well setbacks and increased bonding requirements for new wells. To qualify for the state’s November 2020 ballot, the initiatives will require 124,632 voter signatures. In 2018, voters struck down a setback initiative that would have required new oil and gas activity to occur at least 2,500 feet from schools and parks. A similar measure failed to make the ballot in 2016. The initiative process takes many months and the reported initiatives have not yet even been titled or scheduled for public hearings by the Colorado Secretary of State. AAPL will be on alert for any developments in this initial stage. [Read more.](#)

**Permitting – Texas.** On January 13, *Oil & Gas Journal* reported that the Railroad Commission of Texas (RRC) staff set a record in 2019 by taking [two days on average to process standard drilling permits](#), one day less than the legislative requirement. During calendar year 2019 the RRC processed a total of 11,654 new drilling permits. Also [visit the RRC website](#) for the latest monthly drilling permits and completions statistics. [Read more.](#)

## **STATE – Judicial**

**Leasing – Ohio.** On December 6, 2019, the Ohio Court of Appeals, Seventh District, addressed a dispute in *Fiocca v. AIM Energy, LLC* (Case No. 2019-Ohio-544) over whether certain wells were producing in paying quantities. The appellant argued the leases did not hold all of the acreage to extend the lease terms. This Court disagreed and found the requirement of “production in paying quantities”

was met. The appellant also challenged the trial court finding that common metering satisfied production in paying quantities. This Court disagreed and held that undisputed evidence showed that “the wells on the Property, though common metered with each other, have been producing oil and gas in paying quantities.” [Read more.](#)

### **Dormant Mineral Act; Marketable Title Act – Ohio.**

On December 5, 2019, the Ohio Court of Appeals, Seventh District, addressed a dispute involving co-tenants and claims to certain mineral interests in *Brownfield v. J.A. Jeffers* (Case No. 2019-Ohio-5045). The Court rejected surface owner claims that they were entitled to one-fifth of an oil and gas mineral estate based on their mistaken belief that they reserved the underlying oil and gas by owning that same percentage share of the surface estate. [Read more.](#)

### **Title Defects; Leasing – Pennsylvania.**

On December 16, in *Bastin v. Bassi* (Case No. 682 WDA 2019), the Pennsylvania Superior Court addressed an action against an attorney who purportedly failed to discover title defects affecting the leased property. The Court concluded that the attorney “did not, in fact, conduct a title examination of the Property or issue a title report to Appellants. To the contrary, it is apparent that Attorney Bassi simply obtained title insurance from Fidelity [National Title Insurance] on behalf of Appellants.” The Court also held that even if it assumed the attorney was negligent and failed to advise Appellants of the existence of the lease at issue “this failure did not cause Appellants’ alleged injury.” [Read more.](#)

## **INDUSTRY NEWS FLASH**

► **New record: Texas oil and gas industry paid \$16.3 billion in taxes and royalties.** On January 14, the Texas Oil & Gas Association (TXOGA) reported that the Texas oil and natural gas industry paid more than \$16 billion in state and local taxes and state royalties in fiscal year 2019 – the highest total in Texas history. “Continuous innovation and

policies that encourage safe, responsible energy development are driving our nation, our state and our communities to new heights," said TXOGA President Todd Staples. [Read more.](#)

## **LEGISLATIVE SESSION OVERVIEW**

**Session Notes:** Arizona, California, Colorado, Delaware, Florida, Georgia, Hawaii, Idaho, Illinois, Indiana, Iowa, Kansas, Kentucky, Maine, Maryland, Massachusetts, Michigan, Mississippi, Missouri, Nebraska, New Hampshire, New Jersey, New York, Ohio, Pennsylvania, Rhode Island, South Carolina, South Dakota, Tennessee, Wisconsin, Vermont, Virginia, Washington and West Virginia are in regular session. The District of Columbia Council, Puerto Rico and U.S. Congress are also in regular session.

**North Carolina** convened on January 14 and adjourned later that day; with the Senate failing to override Democratic Gov. Roy Cooper's veto of a teacher pay raise bill, reports [The News & Observer](#). The legislature is in recess until April 28.

**New Jersey** adjourned its 2019 session on January 14.

The following states are expected to convene their 2020 sessions on the dates provided: **New Mexico** and **Alaska** (January 21), **Utah** (January 27), **Oklahoma** and **Oregon** (February 3), **Alabama** (February 4), **Connecticut** (February 5), **Wyoming** (February 10) and **Minnesota** (February 11).

**Signing Deadlines:** **Alaska** Republican Gov. Mike Dunleavy has 20 days from delivery, Sundays excepted, to act on legislation or it becomes law without signature. **New Jersey** Democratic Gov. Phil Murphy has until January 21 to act on 2018-2019 bills that passed the legislature after January 4 or they are pocket vetoed. **North Carolina** Democratic Gov. Roy Cooper has 10 days from presentment to act on legislation or it becomes law without signature. **Wisconsin** Democratic Gov. Tony Evers has six days,

Sundays excepted, to act on legislation or it becomes law without signature.

**Interim Committee Hearings:** The following states are currently holding 2020 interim committee hearings: [Alabama](#), [Alaska](#), [Connecticut](#), [Louisiana](#), [Montana](#), [Nevada](#), [New Mexico](#), [North Dakota](#), [Oklahoma House](#) and [Senate](#), [Texas House](#), [Utah](#), and [Wyoming](#).

**Bill Pre-Files:** The following states are currently posting 2020 bill drafts, pre-files and interim studies: [Alabama House](#), [Alaska](#), [Arkansas](#), [New Mexico](#), [Oklahoma House](#) and [Senate](#), [Oregon](#), and [Utah](#). ■

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# GOVERNMENTAL AFFAIRS WEEKLY REPORT

## Weekly Highlights At-A-Glance



**Note:** Due to NAPE Summit next week, the next report will be published on February 10. To attend NAPE Summit in Houston held February 3-7: [click here](#).

### FEDERAL – Legislative

**End Speculative Oil and Gas Leasing Act of 2020 – S. 3202.** On January 16, [S. 3202](#), known as the *End Speculative Oil and Gas Leasing Act of 2020*, was introduced by Sen. Catherine Cortez Masto (D-NV) and referred to the Senate Committee on Energy and Natural Resources. The bill would “prohibit oil and gas leasing on public lands that are determined by the Bureau of Land Management (BLM) to have low or no potential for development. The bill would thereby reprioritize BLM’s administration of these lands for other purposes, like wildlife habitat preservation, outdoor recreation and grazing.” [Read more.](#)

**Transparency in Energy Production Act of 2020 – H.R. 5636.** On January 16, H.R. 5636, known as the *Transparency in Energy Production Act of 2020*, was introduced by Rep. Alan Lowenthal (D-CA) and referred to the House Committee on Natural Resources. The bill would impose certain disclosure and reporting requirements by “any entity seeking a lease” for fossil fuel operations on federal land. [Read more.](#)

**Listing Reform Act – H.R. 5585.** On January 13, H.R. 5585, known as the *Listing Reform Act*, was introduced by Rep. Pete Olson (R-TX) and referred to the House Committee on Natural Resources. The bill would amend the Endangered Species Act to consider the economic cost of listing a species as endangered or threatened. [Read more.](#)

### FEDERAL – Regulatory

**BLM Information Collection.** On January 23, the BLM published a notice for comment regarding land use applications and permits, *Agency Information Collection Activities; Land Use Application and Permit (85 Fed. Reg. 3943)*. The BLM is interested in public comment addressing the following issues: (1) is the collection necessary to the proper functions of the BLM; (2) will this information be processed and used in a timely manner; (3) is the estimate of burden accurate; (4) how might the BLM enhance the quality, utility, and clarity of the information to be collected; and (5) how might the BLM minimize the burden of this collection on the respondents, including through the use of information technology. The public comment period is open through March 23, 2020. [Read more.](#)

### FEDERAL – Judicial

**Climate Change Lawsuit – California.** (*Update to 11/19/18 Weekly Report*) On January 17, in [Juliana v. United States](#) (Case No. 6:15-cv-01517), a federal appeals court dismissed the years-long high-profile climate change lawsuit filed by 21 young people who argued that the U.S. government violated their constitutional rights by failing to do enough to reduce climate change despite long-established science showing the dangers of a warming planet. In the Ninth Circuit Court of Appeals three-judge panel opinion written by Obama appointees, the historically liberally-leaning court said it was beyond the court’s authority to “order, design, supervise, or implement” the sweeping changes that the young people were seeking in their potentially landmark lawsuit, and in short, the litigants did not have standing to sue. The Court stated that, instead, the Constitution gives those powers to Congress, the

president and voters, the court concluded. “The plaintiffs’ impressive case for redress must be presented to the political branches of government,” Judge Andrew Hurwitz (D) wrote for the majority. A lawyer for the children said the group intended to appeal the decision to a panel of the full circuit court but according to the Ninth Circuit itself, “as a practical matter, these avenues of relief are unlikely to be fruitful.” [Read more.](#)

**BLM Leasing – California.** On January 17, California sued the Trump administration to halt a BLM plan to open up more than one million acres of federal land in California to oil and gas drilling. In [State of California v. Stout](#) (Case No. 2:20-cv-00504), filed in the U.S. District Court for the Central District of California, Attorney General Xavier Becerra (D) is asking a judge to set aside a December 2019 BLM decision that the state claims would endanger public health and potentially damage water resources, infrastructure, and protected habitats. The lawsuit claims the government violated the federal law by not fully evaluating the impacts on communities and the environment. Specifically, the state claims a final environmental review relied on incorrect assumptions about the frequency of hydraulic fracturing, did not provide adequate public comment opportunities, and ignored the danger to millions of people living near oil and gas wells, according to the news release. A BLM spokeswoman in California defended the agency’s hydraulic fracturing review as having incorporated the best available information, including the state’s own analysis. California Asm. Vince Fong, (R-Bakersfield) has been a vocal critic of state efforts to reign in natural resource development. In a statement regarding the lawsuit, the Assemblyman said, “Again, the Governor continues to take California in the wrong direction. Everyday Californians continue to be harmed by the lack of sensible and commonsense energy policies in Sacramento. It is unfortunate that there seems to be more focus on making political statements instead of helping Californians get affordable and reliable energy,” he said. The government has yet to respond to the lawsuit. [Read more.](#)

**Oil and Gas Proceeds – Oklahoma.** On December 10, 2019, the U.S. District Court for the Eastern District of Oklahoma addressed a dispute regarding withheld interest on late proceeds payments to well interest owners. The Court, in *Cline v. Sunoco, Inc.* (Case No. 6:17-cv-00313-JAG), noted that the Oklahoma Production Revenue Standards Act (PRSA) “dictates when Sunoco must pay the proceeds, and it requires Sunoco to pay statutory interest to interest owners when it pays the proceeds late.” Here, the Court held that the “PRSA requires Sunoco to pay interest on late payments at the same time it makes those payments, and Sunoco cannot require an interest owner to make a demand before paying that interest.” [Read more.](#)

## **STATE – Legislative**

**Oil and Gas Production Tax – Alaska.** On January 21, SB 129 was introduced by Sen. Bill Wielechowski (D). The bill would amend current law regarding certain tax credits, payments of the tax, lease expenditures and adjustments, and making public certain information related to the Oil and Gas Production Tax. [Read more.](#)

**Notarial Acts – Arizona.** On January 23, SB 1226 was introduced by Sen. Kate Brophy McGee (R). The bill would make numerous changes to existing notarial law, including electronic notarial acts, authority to perform notarial acts, and certain requirements, among other provisions. [Read more.](#)

**Hydraulic Fracturing – Arizona.** On January 17, HB 2574 was pre-filed by Rep. Myron Tsosie (D). The bill would prohibit the use of hydraulic fracturing in the state. [Read more.](#)

**Setbacks – California.** (Update to 6/10/19 Weekly Report) [AB 345](#), a well setback bill, has been revived after dying in committee last session. The bill, sponsored by Asm. Al Muratsuchi (D), failed to receive an Assembly vote before the May 31, 2019 session deadline but has since been amended for reconsideration. On January 23, the Assembly Appropriations Committee passed an amended



version of the bill. The amended version now contains “environmental justice” language and, if passed, sets July 1, 2022 as the date for state regulators to adopt regulations protecting public health and safety near oil and gas extraction facilities. The setback language has been amended to read: “The regulations shall include safety requirements and the establishment of a minimum setback distance between oil and gas activities and sensitive receptors such as schools, childcare facilities, playgrounds, residences, hospitals, and health clinics based on health, scientific, and other data. The department shall consider a setback distance of 2,500 feet at schools, playgrounds, and public facilities where children are present.” The amended version relaxes the “mandatory” setback requirements of the original bill to instead allow for discretion by state regulators. At present, the state has a patchwork of local/state requirements for setbacks ranging from 300 to 1,500 feet depending on use location. [Read more.](#)

**Independent Contractors – California.** On January 15, AB 1928 was introduced by Asm. Kevin Kiley (R). The bill seeks to overturn [AB 5](#) passed last year and covered extensively by AAPL and instead requires a determination of whether a person is an employee or an independent contractor to be based on the specific multifactor test set forth in the 1989 California Supreme Court case, [S.G. Borello & Sons, Inc. v. Dept. of Industrial Relations](#) (Case No. 48 Cal. 3d 342), which includes whether the person to whom service is rendered has the right to control the manner and means of accomplishing the result desired, and other identified factors. [Read more.](#)

**Independent Contractors – California.** On January 14, AB 1925 was introduced by Asm. Jay Obernolte (R). This bill would add small businesses to those entities exempted from the three-part “ABC” test used to determine if a worker is an employee or independent contractor. [Read more.](#)

**Employee Misclassification – New Jersey.** (*Update to 1/20/20 Weekly Report*) On January 20, A5843 was enacted into law. The Act did not require the

governor’s signature under transmittal rules covering prior session bills. The Act, sponsored by Asm. Shanique Speight (D), requires employers to post a notice for their employees regarding employee misclassification. The bill also requires the Department of Labor and Workforce Development to maintain a webpage that contains information regarding employee misclassification. [Read more.](#)

**Employee Misclassification – New Jersey.** On January 14, A1439 was introduced by Asm. Betty Lou DeCrose (R). The bill would revise the test used to determine whether a worker is an employee or an independent contractor. This bill eliminates the B and C factors of the [ABC employment status test](#), thereby limiting the test to factor A (Such individual has been and will continue to be free from control or direction over the performance of such service, both under his contract of service). According to the bill sponsor, “[b]y limiting the factors used in the employment status test to the control test, it will be easier for employers to comply with regulations and categorize workers for purposes of State labor laws.” [Read more.](#)

**Employee Misclassification – New Jersey.** On January 14, S863 was introduced by Sen. Stephen Sweeney (D). The bill “provides that, for the purposes of all State employment laws, individuals who are suffered or permitted to work are employees, not independent contractors” and retains and modifies the [ABC employment status test](#) to redefine the C part of that test. [Read more.](#)

**Subdivided Parcels – New Mexico.** On January 22, HB 28 was introduced by Rep. Cathrynn Brown (R). The bill creates an exception to the existing [New Mexico Subdivision Act](#) for parcels divided for oil and gas operations. [Read more.](#)

**Well Plugging – Oklahoma.** On January 15, Sen. Lonnie Paxton (R) introduced SB 1439. The bill would amend existing law related to well plugging, closure of surface impoundments, and removal of trash and equipment to double the bond requirements to \$50,000, and if an operator operates more than

four wells, that amount is doubled from its current amount to \$200,000. [Read more.](#)

**Hydraulic Fracturing – Virginia.** On January 21, SB 106 passed the Senate Agriculture, Conservation and Natural Resources Committee. The bill, introduced by Sen. Scott Surovell (D), states that “No person shall conduct any hydraulic fracturing in any well that has been drilled through any portion of a groundwater management area declared by regulation pursuant to the provisions of the Ground Water Management Act of 1992 (§ [62.1-254](#) et seq.). For purposes of this section, ‘hydraulic fracturing’ means the treatment of a well by the application of hydraulic fracturing fluid, including a base fluid and any additive, under pressure for the express purpose of initiating or propagating fractures in a target geologic formation to enhance production of oil or natural gas.” [Read more.](#)

**Partition of Heirs Property – Virginia.** On January 16, HB 1605 was introduced by Del. Patrick Hope (D). The bill incorporates major provisions of the Uniform Partition of Heirs Property Act and provides that in partition actions the court shall order an appraisal to determine fair market value of the property, unless the parties have agreed to the value of the property or to another valuation method. The bill also provides factors to be considered by the court when making an allotment of the property when there is a dispute among the parties. The bill further provides that if the court orders a sale of property in a partition action, the sale shall be conducted on the open market, unless the court finds that a sale by sealed bids or at auction would be more economically advantageous to the parties as a group and outlines the procedure for such an open-market sale. [Read more.](#)

**Employee Misclassification – Virginia.** On January 22, [SB 744](#) was reported favorably out of the Senate Finance and Appropriations Committee. The bill, introduced by Sen. Jeremy McPike (D), provides “that, if an individual performs services for an employer for remuneration, that individual shall be considered an employee of the party that pays that remuneration unless such individual or his employer

demonstrates to the satisfaction of the Department of Taxation (‘the Department’) that such individual is an independent contractor.” [Read more.](#)

**Employee Misclassification – Virginia.** On January 8, HB 1407 was introduced by Del. Jeion Ward (D). The bill would prohibit an employer from classifying an individual as an independent contractor if he is an employee. An individual shall be considered an employee of the party that pays the remuneration for purposes of applicable law “unless and until it is shown to the satisfaction of the Department of Taxation that such individual is an independent contractor under Internal Revenue Service guidelines.” [Read more.](#)

**Leasing – West Virginia.** On January 21, SB 554 was introduced by Sen. Randy Smith (R). “The purpose of this bill is to provide a requirement for a lessee to execute and deliver to the lessor, within a specified time and without cost, a recordable release for terminated, expired, or cancelled oil or natural gas leases; provide for a procedure by which a lessor may serve notice to a lessee, if a lessee fails to timely provide the release; require a lessee to timely notify the lessor in writing of a dispute; provide for a recordable affidavit of termination, expiration, or cancellation with specified contents; provide that with proper notification in the absence of a dispute, a recorded affidavit creates a rebuttable presumption of termination and cancellation for the oil or natural gas lease.” [Read more.](#)

**Expedited Permitting – West Virginia.** (*Update to 1/20/20 Weekly Report*) On January 20, HB 4091 passed the House and was transmitted to the Senate. The purpose of the bill, introduced by Del. William Anderson (R), “is to allow for expedited oil and gas well permitting and expedited oil and gas well permit modifications upon the payment of applicable expedited fees, the designation of the proceeds of such expedited fees, and the daily pro rata refund of the expedited fees if the permit is not approved between the 45th and 60th days after the submission of a permit application, and daily pro rata refund of one-half of the modification fees between

the 10th and 20th days after the submission of a permit modification application; all generally related to horizontal well oil and gas permitting.” [Read more.](#)

**Spacing Requirements – West Virginia.** On January 20, SB 535 was introduced by Sen. Randy Smith (R). “The purpose of this bill is to eliminate the minimum spacing requirements for the drilling of deep wells which will authorize oil and gas operators to efficiently utilize changing drilling practices and techniques developed in recent years, and encourage cost-effective and efficient exploration and production of oil and gas using evidence based best practices.” [Read more.](#)

**Natural Gas Production Tax Credit – West Virginia.** On January 16, SB 520 was introduced by Sen. Chandler Swope (R). The bill would create the Natural Gas Liquids Economic Development Act, noting that the “Legislature declares that facilitating the development of business activity directly and indirectly related to development, transportation, storage and use of the natural gas liquids serves the public interest of the citizens of this state by promoting economic development and improving economic opportunities for the citizens of this state.” In efforts to encourage development, transportation and the use of natural gas, the bill would provide for certain tax credits for the production of natural gas, among other natural gas related tax credits. [Read more.](#)

**Oil and Gas Conservation Commission – West Virginia.** On January 15, SB 488 was introduced by Sen. Mark Maynard (R). “The purpose of this bill is to eliminate the requirements that one of the appointed members of the oil and gas conservation commission be a registered professional engineer and have a degree in geology or petroleum engineering from an accredited university or college.” [Read more.](#)

## **STATE – Regulatory**

**Railroad Commission – Texas.** On January 22, the Railroad Commission of Texas (RRC) announced the

opening of a new oil and gas field office in Lubbock. “The new Lubbock office will enhance our regulatory capability in the region. It is a key strategic decision to address both operational and recruiting challenges we have experienced in our Western regional offices in recent years,” said RRC’s Executive Director Wei Wang. “The opening of our Lubbock office enables RRC staff to keep pace with the energy industry’s growth in West Texas and the Permian Basin, and ultimately to ensure Texas oil and gas is produced safely and in compliance with our rules.” [Read more.](#)

## **STATE – Judicial**

**Rule of Capture; Trespass – Pennsylvania.** (*Update to 9/23/19 Weekly Report*) On January 22, the Pennsylvania Supreme Court finally ruled in the long-running, pivotal case, [Briggs v. Southwestern Energy Production Co.](#) (Case No. 63 MAP 2018). Chief Justice Saylor delivered a victory for all producers with the Court overturning a lower court ruling that could have opened a floodgate of trespass claims about hydraulic fracturing in the state’s gas-rich Marcellus Shale. The Pennsylvania Supreme Court held that the “rule of capture” applies to hydraulic fracturing in the state, meaning oil and gas companies can’t be held liable for underground trespass when their production technique drains hydrocarbons from adjacent land. In this case, a Pennsylvania family claimed a producer trespassed on their property by extracting gas from an 11-acre parcel of family-owned land by drilling and hydraulically fracturing a well sited on a neighboring property. The issue before the Supreme Court was whether the rule of capture applied to oil and gas produced from wells that were completed using hydraulic fracturing and preclude trespass liability for allegedly draining oil or gas from under nearby property, where the well is drilled solely on and beneath the driller’s own property and the hydraulic fracturing fluids are injected solely on or beneath the driller’s own property. At trial, the Superior Court drew a distinction between hydraulic fracturing and conventional drilling, holding the rule did not apply to prohibit a trespass claim by an adjoining unleased

landowner against a producer when that producer utilizes hydraulic fracturing for a horizontal well. The appellate Superior Court overturned that ruling, and the Pennsylvania Supreme Court affirmed in favor of the producer. Here, the Court held “that the rule of capture remains extant in Pennsylvania, and developers who use hydraulic fracturing may rely on pressure differentials to drain oil and gas from under another’s property, at least in the absence of a physical invasion.” Further, the Court concluded that “insofar as the panel’s decision may be construed to suggest that a natural-versus-artificially-induced-flow litmus should be employed to determine whether the rule of capture applies in a given situation, that standard rests on a false distinction and is disapproved.” [Read more.](#)

**Severed Oil and Gas Interests – Ohio.** On January 21, the Ohio Supreme Court [granted review](#) of an appeal from the Court of Appeals, Seventh District, in [West v. Bode](#) (Case No. 18-MO-0017). The issue accepted for review is whether the Ohio Dormant Mineral Act, being the specific statute, supersedes and controls over the Ohio Marketable Title Act, being the general statute, as to the termination of severed oil and gas interests. According to law firm, Vorys, Sater, Seymour and Pease LLP, “The Court’s decision should provide some clarity to operators in Ohio regarding the ownership of severed oil and gas interests.” We will keep AAPL members updated once oral argument and other case related information is provided by the court. [Read more.](#)

**Leasing – Texas.** On December 20, 2019, in *Creative Oil & Gas v. Lona Hills Ranch, LLC* (Case No. 18-0656), the Texas Supreme Court addressed the then operable Texas Citizens Participation Act (TCPA) in a dispute over an oil and gas lease and the application of the TCPA as it governs free speech rights and the protections afforded it involving matters of public concern. In this action, some of the lessee’s and the operator’s counterclaims alleged they were damaged when the Ranch communicated to third parties that the lease expired. The Court held “the Ranch’s communications to third parties about an oil and gas lease, on which some of the counterclaims are

based, did not involve matters of public concern under the TCPA.” The Court, in reversing the appellate decision, noted that “the alleged communications were made to two private parties concerning modest production at a single well. These communications, with a limited business audience concerning a private contract dispute, do not relate to a matter of public concern under the TCPA.” The Court also affirmed a portion of the appellate decision disposing of a counterclaim regarding the alleged breach of the lease’s notice-and-cure provision that fell within the TCPA because it was in response to the Ranch’s exercise of the right to petition.” [Read more.](#)

**Royalties; Deeds – Texas.** On January 8, in *WTX Fund, LLC v. Brown* (Case No. 08-17-00104-CV), the Texas Court of Appeals, Eighth District (El Paso), was “asked to interpret a 1951 mineral deed to determine whether grantors conveyed their entire mineral interest without reservation, or instead, reserved from the conveyance at least one incident of mineral ownership—the royalty interest—either in whole or in fractional share.” The Court held “we construe the 1951 deed as expressly excluding grantors’ royalty right in its entirety from the conveyance” and specifically, “the 1951 deed did not convey the royalty right, but instead, reserved grantors’ floating non-participatory royalty interest.” In sum, the Court found “the deed unambiguously reserved the royalty interest” and reversed the trial court’s judgment, rendering partial judgment in favor of WTX. [Read more.](#)

**Deeds; Strip-and-Gore Doctrine; Leasing – Texas.** On December 19, 2019, the Texas Court of Appeals, Second District (Fort Worth), addressed a case involving title and disputed ownership of mineral rights in light of the “strip-and-gore” doctrine. Here, in *Crawford v. XTO Energy, Inc.* (Case No. 02-18-00217-CV), the Court agreed with the trial court in favor of XTO Energy that the strip-and-gore presumption applied as a matter of law to the deed and construction of its oil and gas reservation, and that Crawford’s predecessor did not retain her interest in the oil and gas when conveying the

surrounding property at issue in 1984 such that XTO Energy was not obligated to pay royalties on the disputed Crawford tract. [Read more.](#)

## **INDUSTRY NEWS FLASH**

### **► Phillips 66 CEO named new API chairman.**

Last Wednesday, the American Petroleum Institute (API) named Phillips 66 CEO Greg Garland the new chairman of the trade group. He succeeds ExxonMobil CEO Darren Woods, who will remain on the Washington-based API's executive committee. "API is extremely fortunate to have Greg's expertise as the natural gas and oil industry continues to address the challenge of meeting growing energy demand while driving environmental progress," said API CEO Mike Sommers. [Read more.](#)

## **LEGISLATIVE SESSION OVERVIEW**

**Session Notes:** Alaska, Arizona, California, Colorado, Delaware, Florida, Georgia, Hawaii, Idaho, Illinois, Indiana, Iowa, Kansas, Kentucky, Maine, Maryland, Massachusetts, Michigan, Mississippi, Missouri, Nebraska, New Hampshire, New Jersey, New Mexico, New York, Ohio, Pennsylvania, Rhode Island, South Carolina, South Dakota, Tennessee, Vermont, Virginia, Washington, West Virginia, and Wisconsin are in regular session. The District of Columbia Council, Puerto Rico and U.S. Congress are also in regular session.

**North Carolina** convened on January 14 and adjourned later that day; with the Senate failing to override Democratic Gov. Roy Cooper's veto of a teacher pay raise bill, reports [The News & Observer](#). The legislature is in recess until April 28.

**Wisconsin** Democratic Gov. Tony Evers used his State of the State address to announce a special session of the legislature to address the state's farm crisis, reports [WXOW](#). Planned for next week, Governor Evers states that the special session will be

part of a three-pronged plan on rural and agriculture revitalization.

The following states are expected to convene their 2020 sessions on the dates provided: **Utah** (January 27), **Oklahoma** and **Oregon** (February 3), **Alabama** (February 4), **Connecticut** (February 5), **Wyoming** (February 10), **Minnesota** (February 11), **Louisiana** (March 9) and **Arkansas** (April 8).

**Signing Deadlines:** North Carolina Democratic Gov. Roy Cooper has 10 days from presentment to act on legislation or it becomes law without signature.

**Interim Committee Hearings:** The following states are currently holding 2020 interim committee hearings: [Alabama](#), [Connecticut](#), [Louisiana](#), [Montana](#), [Nevada](#), [North Dakota](#), [Oklahoma House](#) and [Senate](#), [Texas House](#), [Utah](#) and [Wyoming](#).

**Bill Pre-Files:** The following states are currently posting 2020 bill drafts, pre-files and interim studies: [Alabama](#), [Connecticut](#), [Louisiana](#), [Montana](#), [Nevada](#), [North Dakota](#), [Oklahoma House](#) and [Senate](#), [Texas House](#), [Utah](#) and [Wyoming](#). ■

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# GOVERNMENTAL AFFAIRS WEEKLY REPORT

## Weekly Highlights At-A-Glance

### FEDERAL – Legislative

**Fracking Ban Act – S. 3247.** On January 28, Sen. Bernard Sanders (I-VT) introduced [S. 3247](#), known as the *Fracking Ban Act*. The bill would institute an immediate federal ban on all new federal permits for hydraulic fracturing-related infrastructure and a ban on hydraulic fracturing within 2,500 feet of homes and schools by 2021. Then, starting in 2025, it would ban hydraulic fracturing across the board nationwide. The bill is unlikely to receive floor consideration in the Republican-controlled Senate. [Read more.](#)

### FEDERAL – Regulatory

**BLM Oil and Gas Lease Sale – Colorado.** On January 24, the Bureau of Land Management (BLM) announced it will offer 26 parcels totaling approximately 30,548 acres in the March quarterly oil and gas lease sale. The BLM will offer parcels managed by the Kremmling Field Office in Jackson County and the Royal Gorge Field Office in Las Animas County. [Read more.](#)

**BLM Oil and Gas Lease Sale – New Mexico; Texas.** On January 24, the BLM New Mexico office announced the availability of the environmental analysis for its May 21, 2020 oil and gas lease sale. The BLM is offering 102 parcels (46,365.76 acres) of federal minerals proposed for lease in Eddy, Lea, Rio Arriba and Chaves counties, New Mexico, and Wise County, Texas. [Read more.](#)

**BLM Oil and Gas Lease Sale – Utah.** On January 23, the BLM announced that it will offer 25 parcels of land, totaling approximately 32,714 acres, at the March quarterly oil and gas lease sale. The parcels are located in Uintah County on lands managed by

the BLM's Vernal Field Office. The 30-day public protest comment period ends on February 24, 2020. [Read more.](#)

**New BLM California State Director.** (*Update to 10/21/19 Weekly Report*) On January 21, Karen Mouritsen started in her new position as BLM California State Director. Mouritsen is a 27-year career public servant who comes to the California post after serving the past three years as the State Director for the BLM Eastern States Office, which manages BLM lands and minerals in 22 states along and east of the Mississippi River. Over the course of her career, Mouritsen, a Dallas native who received her bachelor's degree from the University of Texas at Austin College of Engineering in 1983 and her law degree from the University of Texas at Austin Law School, served in key government leadership roles. These include senior level positions as the BLM Deputy Assistant Director for Energy, Minerals, and Realty Management, BLM Budget Officer and BLM liaison to the Assistant Secretary for Land and Minerals Management where she advised and briefed senior leadership on renewable energy, wildlife, wilderness, recreation, land use planning, and interagency cooperation with military partners. Mouritsen also worked as Acting State Director in Alaska and New Mexico, as well as Acting Associate District Manager in the BLM Southern Nevada District Office in Las Vegas and the Medford District Office in Oregon. [Read more.](#)

### FEDERAL – Judicial

**Overriding Royalties – North Dakota.** On January 14, in *Enerplus Resources (USA) Corp. v. Wilkinson* (Case No. 17-3708), the U.S. Court of Appeals, Eight Circuit, on appeal from the U.S. District Court for the District of North Dakota-Bismarck, addressed a

dispute in which Enerplus sought to recover more than \$2.9 million in overriding royalty overpayments to Wilkinson. The overpayments stemmed from an overriding royalty interest (ORRI) paid in connection with a settlement agreement between Wilkinson, Enerplus' predecessor in interest and other parties. The trial court awarded summary judgment in favor of Enerplus, holding it was entitled to a return of the ORRI overpayment. This court affirmed that decision noting, "[t]he record shows that, in response to Enerplus's motion for summary judgment, Wilkinson never contested the amount of the overpayment or provided proof contrary to the declarations and exhibits that Enerplus produced." [Read more.](#)

## **STATE – Legislative**

**Hydraulic Fracturing – Arizona.** *(Update to 1/27/20 Weekly Report)* On January 27, HB 2574 was referred to the House Natural Resources, Energy & Water Committee. The bill, sponsored by Rep. Myron Tsosie (D), would prohibit the use of hydraulic fracturing in the state. The Senate companion bill, [SB 1259](#), sponsored by Sen. Juan Mendez (D), was referred to the Senate Natural Resources and Energy Committee on January 23. [Read more.](#)

**Oil and Gas Production – California.** AB 1441 has been revived after dying in committee last legislative session. On January 27, the bill, sponsored by Asm. Marc Levine (D), passed the Assembly and has been referred to the Senate. The legislation would recast provisions "relating to the state's declared policy on oil and gas leases and the removal of underground hydrocarbons." The major provisions are: "(1) Deletes the section of law that promotes the recovery of underground hydrocarbons. (2) Deletes a codified finding that states "the people of the State of California have a direct and primary interest in assuring the production of optimum quantities of oil and gas from lands owned by the state." (3) Recasts the state's policy from encouraging the wise development of oil and gas resources to ensuring the wise oversight of oil and gas development." The California Independent Petroleum Association publicly opposes the bill, saying "the contents of

which were vetoed by the governor last year ([AB 1440](#)), remains unnecessary considering the governor's signing of [Assembly Bill 1057 \(Limon\)](#) last year, which already accomplished what your bill seeks to achieve." [Read more.](#)

**Setbacks – California.** *(Update to 1/27/20 Weekly Report)* On January 27, [AB 345](#), sponsored by Asm. Al Muratsuchi (D), passed the Assembly and has been transmitted to the Senate. On January 23, the Assembly Appropriations Committee passed an amended version of the bill. The amended version now contains "environmental justice" language and, if passed, sets July 1, 2022 as the date for state regulators to adopt regulations protecting public health and safety near oil and gas extraction facilities. The setback language has been amended to read: "The regulations shall include safety requirements and the establishment of a minimum setback distance between oil and gas activities and sensitive receptors such as schools, childcare facilities, playgrounds, residences, hospitals, and health clinics based on health, scientific, and other data. The department shall consider a setback distance of 2,500 feet at schools, playgrounds, and public facilities where children are present." The amended version relaxes the "mandatory" setback requirements of the original bill to instead allow for discretion by state regulators. At present, the state has a patchwork of local/state requirements for setbacks ranging from 300 to 1,500 feet depending on use location. [Read more.](#)

**Local Control; Oil and Gas Applications – Colorado.** On January 15, HB20-1126 was introduced by Rep. Lori Saine (R). Current law allows the director of the oil and gas conservation commission to delay the final determination regarding an oil and gas permit application pursuant to specified objective criteria. The bill repeals this authority and specifies that if a local government that has so-called "House Bill 1041 authority" ([C.R.S. 24-65.1-102](#)) approves an oil and gas application, the commission or director shall approve the application for a permit to drill. [Read more.](#)

**Employee Misclassification – Indiana.** (*Update to 1/20/20 Weekly Report*) On February 4, SB 309 passed the Senate and has been referred to the House. The bill, sponsored by Sen. David Niezgodski (D), would require relevant state agencies to report certain information to the interim study committee on employment and labor for the immediately preceding state fiscal year before November 1 of each year for three years, beginning November 1, 2020. The bill also provides “that the worker’s compensation board of Indiana may impose monetary fines on an employer for failure to procure worker’s compensation coverage for its employees, if required to do so under the law.” The bill also increases certain civil penalties assessed by the worker’s compensation board of Indiana and requires relevant state agencies to enter into a memorandum of understanding concerning issues relating to the investigation and enforcement of employee misclassification laws. [Read more.](#)

**Ad Valorem Taxes – Mississippi.** On January 28, HB 329 was introduced by Rep. Donnie Bell (R). The bill amends current law regarding ad valorem taxes on nonproducing oil, gas or mineral interests in real estate which are owned or held separately from the surface rights. [Read more.](#)

**Severed Estates – Mississippi.** On January 27, HB 253, sponsored by Rep. Bob Evans (D), was introduced and referred to committee. The bill provides that mineral estates separated from the surface estate shall revert to the owner of the surface estate after 10 years of non-production. The bill identifies how “production” is determined for these purposes. On January 28, a similar bill, [HB 332](#), was introduced by Rep. Donnie Bell (R). [Read more.](#)

**Tax Repeal – Nebraska.** On January 23, Sen. Steve Erdman introduced Legislative Resolution 300 CA (LR 300CA) which has been referred to the Revenue Committee and is a proposed constitutional amendment seeking to repeal all forms of taxation in the state other than a single-rate consumption tax. If adopted, the elimination of other taxes and

implementation of the consumption tax would begin on January 1, 2022. [Read more.](#)

**Greenhouse Gas Evaluations – New Mexico.** On February 3, HB 293 was reportedly favorably out of the House Energy, Environment & Natural Resources Committee following its introduction. The bill, sponsored by Rep. Matthew McQueen (D), would appropriate \$150 thousand from the general fund to the New Mexico Environment Department for the purpose of finalizing an evaluation of emissions trends and proposed policies to reduce carbon dioxide and other greenhouse gas emissions, to include market-based approaches. [Read more.](#)

**Severance Tax – New Mexico.** On January 31, Rep. James Strickler (R) introduced HB 318. The bill would create “a temporary tax rate differential for oil produced from a qualified enhanced recovery project that uses anthropogenic carbon dioxide to displace oil,” adds a definition for “posted price” and provides for the oil and gas severance tax to effectuate the bill provisions. [Read more.](#)

**Bond Requirements – New Mexico.** On January 29, House Memorial 29 (HM 29) was introduced by Rep. Matthew McQueen (D). A memorial is a formal expression of legislative desire, usually addressed to another governmental body, in the form of a petition or declaration of intent. A memorial does not have the force of law. HM 29 resolves that support be expressed for establishing financial assurance amounts that are sufficient to cover remediation and reclamation costs and lease obligations and requests a review of New Mexico’s statewide remediation and reclamation bonds and an expression of support for establishing sufficient bonding amounts for energy production and infrastructure. HM 29 requests that the New Mexico State Land Office, the Energy, Minerals and Natural Resources Department, and the New Mexico Environment Department conduct the bond adequacy review and evaluate how to ensure adequate bonding to fulfill their respective statutory obligations to avoid having excess expenses fall on taxpayers or state land trust beneficiaries. The agencies are to report their



findings to the appropriate legislative interim committee by December 1, 2020.. [Read more.](#)

**Well Pollution – Oklahoma.** On February 3, SB 1577 was introduced by Sen. Greg McCortney (R). The bill requires persons owning and operating a well to prevent surface or subsurface pollution at or from adjacent, nearby, or surrounding oil and gas wells and to take immediate action to halt any activity causing surface or subsurface pollution and provide remediation for any pollution. Additionally, such persons are bound as a reasonably prudent operator to not precipitate, induce or cause adverse impact or damage to adjacent, concurrent, nearby, or surrounding oil and gas leases. [Read more.](#)

**Injection Wells – Oklahoma.** On February 3, SB 1615 was introduced by Sen. Darcy Jech (R). The bill creates the Task Force on Injection Well Stability. The Task Force is comprised of nine members. Members of the Task Force shall not be reimbursed for travel expenses or receive compensation. The Task Force is authorized to issue any reports it deems necessary and appropriate and may make any legislative recommendations available to the Governor and the Legislature. The sunset date for the Task Force is December 1, 2023. [Read more.](#)

**Produced Water; Wells – Oklahoma.** On February 3, SB 1875 was introduced by Sen. Dave Rader (R). The bill creates the Oil and Gas Water Recycling and Reuse Act. The measure declares that the operator and nonoperators of the well are the sole owners of the produced water and waste as it relates to oil and gas production. Owners of the produced water shall be entitled to proceeds for any of the uses of the produced water and waste. Owners are also responsible for storing, transporting, and handling produced water. If the owners transfer the water to a person or entity to process the water, such water will be the property of the transferee until such time as the water is disposed of or transferred to another person. Current owners of the water are not liable in tort for consequences of subsequent use of recycled water or treated constituents if they follow procedures outlined in the measure. [Read more.](#)

**Setback Requirements – Oklahoma.** On February 3, SB 1736 was introduced by Sen. Paul Scott (R). The bill provides that beginning “January 1, 2021, any new permit to authorize an intent to commence oil and gas development in this state shall not be issued by the Corporation Commission until setback stipulations are satisfied as approved by the Commission. The Commission shall promulgate rules to implement the provisions of this section.” [Read more.](#)

**Well Plugging – South Dakota.** *(Update to 1/20/20 Weekly Report)* On February 5, HB 1025 passed the House. The committee-sponsored bill would revise certain provisions regarding plugging and performance bonds for oil and gas wells. [Read more.](#)

**Mineral Lease Payments – Utah.** On January 28, SB 15, sponsored by Sen. Daniel Thatcher (R) was received in the House after passing the Senate. This bill repeals the sunset date in [Sec. 631-1-211](#) as it applies to [Sec. 11.14.308](#) for provisions that allow a local district to secure certain bonds with mineral lease payments. [Read more.](#)

**Employee Misclassification – Virginia.** *(Update to 1/27/20 Weekly Report)* On February 4, HB 1407 passed the House of Delegates. The bill, introduced by Del. Jeion Ward (D), would prohibit an employer from classifying an individual as an independent contractor if he/she is an employee. An individual shall be considered an employee of the party that pays the remuneration for purposes of applicable law “unless and until it is shown to the satisfaction of the Department of Taxation that such individual is an independent contractor under Internal Revenue Service guidelines.” [Read more.](#)

**Employee Misclassification – Virginia.** On February 5, HB 1199 passed the House of Delegates. The bill, sponsored by Del. Kathy Tran (D), prohibits an employer from discharging, disciplining, threatening, discriminating against, or penalizing an employee or independent contractor because the employee or independent contractor reported or plans to report that an employer or any officer or agent has failed to

properly classify an individual as an employee and failed to pay required benefits or other contributions. The measure also prohibits such actions against an employee or independent contractor who is requested or subpoenaed by an appropriate authority to participate in an investigation, hearing, or inquiry by an appropriate authority or in a court action. These prohibitions apply only if an employee or independent contractor acts in good faith and upon a reasonable belief that the information is accurate. The measure authorizes the Commissioner of Labor and Industry to institute proceedings against an employer who has taken such prohibited retaliatory action. Available remedies include reinstatement of the employee and recovery of lost wages. An employer that violates these provisions is subject to a civil penalty equal to the employee's lost wages. [Read more.](#)

**Employee Misclassification – Virginia.** On February 5, HB 984 passed the House of Delegates. The bill, sponsored by Del. Karrie Delaney (D), authorizes an individual who has not been properly classified as an employee to bring a civil action for damages against his employer for failing to properly classify the employee if the employer had knowledge of the individual's misclassification. The court may award damages in the amount of any wages, salary, employment benefits, including expenses incurred by the employee that would otherwise have been covered by insurance, or other compensation lost to the individual, a reasonable attorney fee, and the costs incurred by the employee in bringing the action. The measure provides that an individual who performs services for a person for remuneration shall be presumed to be an employee unless it is shown that the individual is an independent contractor as determined under the Internal Revenue Service guidelines. [Read more.](#)

**Partition of Heirs Property – Virginia.** On February 4, SB 553 passed the Senate. The bill, sponsored by Sen. Frank Ruff, Jr. (R), incorporates major provisions of the Uniform Partition of Heirs Property Act. The bill provides that in partition actions the court shall order an appraisal to determine fair

market value of the property, unless the parties have agreed to the value of the property or to another valuation method. The bill also provides factors to be considered by the court when making an allotment of the property when there is a dispute among the parties. The bill further provides that if the court orders a sale of property in a partition action, the sale shall be conducted on the open market, unless the court finds that a sale by sealed bids or at auction would be more economically advantageous to the parties as a group. The bill outlines the procedure for such open-market sales. [Read more.](#)

**Hydraulic Fracturing – Virginia.** (Update to 1/27/20 Weekly Report) On January 24, SB 106 passed the Senate. The bill, introduced by Sen. Scott Surovell (D), states that “No person shall conduct any hydraulic fracturing in any well that has been drilled through any portion of a groundwater management area declared by regulation pursuant to the provisions of the Ground Water Management Act of 1992 (§ 62.1-254 et seq.). For purposes of this section, ‘hydraulic fracturing’ means the treatment of a well by the application of hydraulic fracturing fluid, including a base fluid and any additive, under pressure for the express purpose of initiating or propagating fractures in a target geologic formation to enhance production of oil or natural gas.” [Read more.](#)

**Employee Misclassification – Virginia.** (Update to 1/27/20 Weekly Report) On January 27, SB 744 passed the Senate. The bill, introduced by Sen. Jeremy McPike (D), provides “that, if an individual performs services for an employer for remuneration, that individual shall be considered an employee of the party that pays that remuneration unless such individual or his employer demonstrates to the satisfaction of the Department of Taxation (‘the Department’) that such individual is an independent contractor.” [Read more.](#)

**Abandoned Wells – West Virginia.** (Update to 1/20/20 Weekly Report) On February 5, HB 4090 passed the House of Delegates and has been transmitted to the Senate. The purpose of the bill,

introduced by Del. William Anderson (R), “is to reduce the severance tax on marginal oil and natural gas wells, excluding wells utilizing horizontal drilling techniques targeting shale formations, to 2.5% from 5% and to provide that the 2.5% tax paid on such wells is to be used by the Secretary of the Department of Environmental Protection to plug abandoned oil and gas wells without a responsible operator through the use of a new fund called the Oil and Gas Abandoned Well Plugging Fund. The vertical oil and gas wells which are affected by the severance tax reduction produce on average more than 5,000 cubic feet of natural gas or one-half barrel of oil per day and on average less than 60,000 cubic feet of natural gas or 10 barrels of oil per day.” [Read more.](#)

**Expedited Permitting – West Virginia.** (*Update to 1/20/20 Weekly Report*) As of February 5, HB 4091 passed both houses of the legislature. The purpose of the bill, introduced by Del. William Anderson (R), “is to allow for expedited oil and gas well permitting and expedited oil and gas well permit modifications upon the payment of applicable expedited fees, the designation of the proceeds of such expedited fees, and the daily pro rata refund of the expedited fees if the permit is not approved between the 45th and 60th days after the submission of a permit application, and daily pro rata refund of one-half of the modification fees between the 10th and 20th days after the submission of a permit modification application; all generally related to horizontal well oil and gas permitting.” [Read more.](#)

**Oil and Gas Conservation Commission – West Virginia.** (*Update to 1/20/20 Weekly Report*) On February 6, SB 316, sponsored by Sen. Mark Maynard (R), was introduced in the House of Delegates after passing the Senate on February 5. “The purpose of this bill is to remove the requirements that one member, appointed by the Governor, of the Oil and Gas Conservation Commission must possess a degree from an accredited college or university in petroleum engineering or geology, and be a registered professional engineer.” [Read more.](#)

**Royalties – West Virginia.** On January 30, HB 4610 was introduced by Del. Lisa Zukoff (D). The purpose of this bill is to require lessees of West Virginia real estate who make natural resources royalty payments for in-state property to any nonresident lessor to withhold West Virginia personal income tax on natural resources royalty payments. The bill provides exceptions, penalties, defines terms and grants rule-making authority. [Read more.](#)

**Taxation – West Virginia.** On January 29, Sen. Eric Tarr (R) introduced SB 655. The “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.” [Read more.](#)

**Taxation – West Virginia.** On January 22, HB 4460 was introduced by Del. Vernon Criss (R) and referred to multiple committees. “The 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.” [Read more.](#)

**Mineral Exploration Tax Incentives – Wyoming.** On February 3, HB 91 was pre-filed for the session beginning February 10. The bill, sponsored by Rep.

David Miller (R), provides a severance tax credit for certain mineral exploration, including oil and gas. The credit for oil and gas exploration is provided under an amendment provided in the bill to Wyoming statute [Sec. 39-14-209\(d\)](#). [Read more.](#)

## **STATE – Regulatory**

### **Railroad Commission Oil and Gas Data – Texas.**

On January 27, the Railroad Commission of Texas (RRC) announced the launch of two more interactive data maps showing oil and gas drilling permit approvals and the number of wells spudded. The information is displayed by counts, operators, county locations and on a statewide level and is available 24-hours a day, seven days a week beginning with Calendar Year 2018. “With this latest interactive data on the Commission’s drilling permit approvals and wells spudded, our agency is providing more detailed insight into Texas’ energy industry,” said Wei Wang, RRC’s Executive Director. [Read more.](#)

## **STATE – Judicial**

**Pooling; Royalties; Leasing – Texas.** On January 16, in *Samson Exploration, LLC v. T.W. Moak* (Case No. 09-18-00463-CV), the Texas Court of Appeals for the Ninth District (Beaumont), addressed “a dispute over whether land associated with mineral interests that were leased and included in a pooled unit remained in the unit after the leases were terminated via foreclosure.” At trial, Samson asserted that the court misapplied oil and gas law as Moak “held neither a leasehold interest nor a reversionary interest that warranted a share of production in the pooled unit. Samson further argues that it did not have a duty to afford Moak, an unleased co-tenant, the opportunity to ratify prior leases that were terminated via foreclosure.” Moak claims the trial court correctly determined it had an interest in the pooled unit but misconstrued that interest as a royalty rather than working interest. Here, the Court reversed the trial court, ruling that “Moak take nothing as to Samson.” The Court noted that “even though the original leases included all of the land described in the lease, together with any

reversionary rights of the lessor, the original lessors never acquired any reversionary rights in the lands because the properties were foreclosed upon.” With the foreclosures terminating the leases, the Court found there was no longer any authority to pool all or any part of the land or any interest covered by the leases. [Read more.](#)

**Assignments; Overriding Royalties – Texas.** On January 16, in *Jones Energy, Inc. v. Pima Oil and Gas, L.L.C.* (Case No. 07-17-00456-CV), the Texas Court of Appeals for the Seventh District (Amarillo), addressed a contract construction case involving the interpretation of an assignment of an overriding royalty interest (ORRI). Here, the Court found the trial court erred in finding that the ORRI burdened production from one of the identified formation intervals in that the ORRI assignment and related agreements excluded the ORRI from that interval, or zone. [Read more.](#)

## **INDUSTRY NEWS FLASH**

► **EIA predicts higher U.S. oil and gas output through 2050.** U.S. energy production should continue to outgrow energy consumption through 2050, according to the U.S. Energy Information Administration (EIA) in its [Annual Energy Outlook 2020](#), released January 29. Domestic crude oil production forecasts 14 million b/d by 2022—up from more than 12.6 million b/d in late 2019—then remains near that level through 2045, then a decline to 2050. U.S. natural gas production is projected to grow at a faster rate than consumption through 2050. The EIA also estimated the U.S. will be a net energy exporter through 2050. [Read more.](#)

## **LEGISLATIVE SESSION OVERVIEW**

**Session Notes:** Alaska, Alabama, Arizona, California, Colorado, Connecticut, Delaware, Florida, Georgia, Hawaii, Idaho, Illinois, Indiana, Iowa, Kansas, Kentucky, Maine, Maryland, Massachusetts, Michigan, Mississippi, Missouri,

**Nebraska, New Hampshire, New Jersey, New Mexico, New York, Ohio, Oklahoma, Oregon, Pennsylvania, Rhode Island, South Carolina, South Dakota, Tennessee, Utah, Vermont, Virginia, Washington and West Virginia** are in regular session. The **District of Columbia Council, Puerto Rico** and **U.S. Congress** are also in regular session.

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The following states are expected to convene their 2020 sessions on the dates provided: **Wyoming** (February 10), **Minnesota** (February 11), **Louisiana** (March 9) and **Arkansas** (April 8).

**Wisconsin** convened for a special session on January 28 after Democratic Gov. Tony Evers used his State of the State address to bring attention to the state's farm crisis, reports [The Daily Cardinal](#). Governor Evers stated that the special session will be part of a three-pronged plan on rural and agriculture revitalization.

Governor Evers also held a news conference on February 6 where he signed an executive order calling for a special session to increase state funding for public schools, reports [Channel 3000](#). With a budget surplus, Evers is interested in special education, mental health services and rural sparsity aid. The special session is scheduled for February 11.

**Signing Deadlines:** No state in legislative session currently has an impending signing deadline as of February 10, 2020.

**Interim Committee Hearings:** The following states are currently holding 2020 interim committee hearings: [Louisiana](#), [Montana](#), [Nevada](#), [North Dakota](#), Texas [House](#) and [Wyoming](#).

**Bill Pre-Files:** The following states are currently posting 2020 bill drafts, pre-files and interim studies: [Arkansas](#) and [Louisiana](#). ■

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# GOVERNMENTAL AFFAIRS WEEKLY REPORT

## Weekly Highlights At-A-Glance

### FEDERAL – Regulatory

**BLM Funding.** On February 10, the Bureau of Land Management (BLM) announced President Trump has proposed an appropriation of \$1.2 billion for the BLM in Fiscal Year 2021, “providing the funds needed to strike the right balance of conservation and sustainable use of America’s BLM-managed public lands and resources.” This represents a nearly \$22 million increase over last year’s budget. “We are responding to the demand in the marketplace and reality is there just a lot more interest in our historical programs, in oil, gas and coal,” said Scott Cameron, the Interior Department’s principal Deputy Assistant Secretary for policy, management and budget. [Read more.](#)

**BLM Oil and Gas Lease Sale – Wyoming.** On February 11, the BLM Wyoming office announced a proposal to offer 135 parcels totaling about 169,751 acres for oil and gas leasing in June 2020. The announcement opens a 30-day public comment period on the proposed lease sale, which will close March 12, 2020. [Read more.](#)

**BLM Oil and Gas Lease Sale – Nevada.** On February 10, the BLM announced it is holding a multi-day competitive oil and gas lease sale beginning on March 24, 2020. The agency will offer 45 parcels for lease totaling approximately 73,591 acres in Lander and Nye Counties in Nevada. [Read more.](#)

**NEPA Rulemaking.** (*Update to 1/13/20 Weekly Report*) The Trump administration recently [published a notice of proposed rulemaking](#) to overhaul National Environmental Policy Act (NEPA) regulations relaxing the review standards for federal agencies, like the Bureau of Land Management, in order to approve infrastructure,

construction, and oil and gas development projects without considering climate change. The *Update to the Regulations Implementing the Procedural Provisions of the National Environmental Policy Act (85 Fed. Reg. 1684)* “would modernize and clarify the regulations to facilitate more efficient, effective, and timely NEPA reviews by Federal agencies in connection with proposals for agency action.” The move has been widely praised by the pipeline, construction, and oil and gas industries as well as legislators in energy producing states. To submit comments, visit the [federal comment page here](#). The comment period is open through March 10, 2020. To view the full docket, [Read more.](#)

### FEDERAL – Judicial

**Overriding Royalties; Top Leases – Eighth Circuit.** On February 6, in *Pitchblack Oil, LLC v. Hess Bakken Investments II, LLC* (Case No. 18-1734), the U.S. Court of Appeals for the Eighth Circuit on appeal from the North Dakota district court addressed a dispute over whether overriding royalty interests (ORRIs) in a number of oil and gas leases burdened various top leases. The district court granted summary judgment in favor of Hess explaining that none of the top leases were extensions or renewals of the subject leases, and thus the ORRIs did not burden the top leases. Here, the Eighth Circuit agreed and affirmed the decision. The Court held that “[b]ased on these material differences, it is apparent that the district court correctly concluded that the Top Leases were not extensions or renewals of the Subject Leases. Because the Top Leases were new leases, the extension or renewal clause did not attach the overriding royalty interests to the Top Leases. Therefore, the Top Leases were not burdened by the overriding royalty interests.” [Read more.](#)

**Independent Contractors – Fifth Circuit.** On January 10, in [Hobbs v. Petroplex Pipe and Construction, Inc.](#) (Case No. 19-50350), the U.S. Court of Appeals for the Fifth Circuit, on appeal from the U.S. District Court for the Western District of Texas, addressed whether certain oilfield contractors were employees or independent contractors as it related to overtime pay under the Fair Labor Standards Act. Plaintiffs were former pipe welders for Petroplex and they claimed they worked more than forty hours per week for the company without overtime pay. Although not a case involving landmen, the case is instructive on how federal courts in oil and gas jurisdictions are applying employee misclassification tests. According to law firm Jackson Walker, this case “demonstrates that the form of a superficial classification combined with shards of indicia of ‘independence’ will not prevail over the substance of a relationship that should actually be classified as that of ‘employer-employee.’” Further, “the *Hobbs* decision demonstrates two realities for energy industry employers: First, the Fifth Circuit will not support an independent contractor classification based upon superficial labeling or efforts to camouflage the true nature of a relationship by myopic focus based upon the skill of the worker involved; and Second, employers will be obliged to ensure that they can satisfy proof of independent contractor status in a majority, if not all, of the enumerated factors thoroughly reviewed by the Court in this case.” [Read more.](#)

## **STATE – Legislative**

**Energy Production – Arizona.** On February 12, HCR 2022 was introduced by Rep. Gail Griffin (R). This House Concurrent Resolution, although not a bill with the force of law, resolves to condemn federal legislation restricting land use and obstructing domestic energy production. [Read more.](#)

**Local Control; Oil and Gas Applications – Colorado.** (Update to 2/10/20 Weekly Report) On March 2, the House Energy & Environment Committee will hold a public hearing on HB20-1126. Current law allows the

director of the oil and gas conservation commission to delay the final determination regarding an oil and gas permit application pursuant to specified objective criteria. The bill, sponsored by Rep. Lori Saine (R), repeals this authority and specifies that if a local government that has so-called “House Bill 1041 authority” ([C.R.S. 24-65.1-102](#)) approves an oil and gas application, the commission or director shall approve the application for a permit to drill. The hearing will be held in Room HCR-0107 at 1:30 pm at the State Capitol. For more information on attending, call 303-866-2604. [Read more.](#)

**Preemption of Local Occupational Licensing – Florida.** On February 13, [HB 3](#) was ordered to its final reading in the House. The bill, sponsored by House Majority Whip Michael Grant (R), would preempt local governments in the state from imposing their own occupational and licensing requirements. According to Grant, the bill “will provide uniformity across the state and help new workers find employment by eliminating constraints currently required like passing competency exams and geographic limitations.” [Read more.](#)

**Licensing Recognition – Indiana.** On February 11, HB 1008 received its first reading in the Senate after passing the House last month. The bill, sponsored by Rep. Martin Carbaugh (R), allows for professional licenses from other states to be honored in Indiana if certain specified circumstances are met. [Read more.](#)

**Employee Misclassification – Maryland.** On February 7, HB 1448 was introduced in the House. The bill, sponsored by Del. Terri Hill (D), requires the Commissioner of Labor and Industry, in consultation with the Office of the Attorney General, to develop certain guidelines relating to the meaning, classification and treatment of employees and independent contractors, including providing steps that an employer may take to ensure compliance. The bill also amends current property tax law to include an acknowledgment certification from business entities regarding the classification and treatment of employees and independent contractors. [Read more.](#)

**Notarial Acts – Mississippi.** On February 13, SB 2394 was introduced by Sen. Tyler McCaughn (R). The bill would amend existing notary law regarding electronic signatures and affidavits, among other technical changes. [Read more.](#)

**Severed Estates – Mississippi.** On February 5, HB 586 was introduced by Rep. Randy Boyd (R). The bill provides that mineral estates separated from the surface estate shall revert to the surface owner after 20 years of nonproduction and defines “production” for purposes of the bill. [Read more.](#)

**Real Estate Licensure – Nebraska.** On February 12, an amended version of LB 929 was filed. The bill, sponsored by Sen. Brett Lindstrom (no party affiliation in Nebraska), would allow for an exemption from real estate licensure for those who only provide a list or lists of potential purchases to a broker or salesperson on who makes calls or facilitates the initial contact between a potential client or customer and a broker or salesperson. The unlicensed person is not permitted to discuss with a potential client or customer the services to be offered by the broker or salesperson. The unlicensed person does not have authority to obligate a potential client or customer to work with a particular broker or salesperson or a particular broker's or salesperson's place of business. The unlicensed person shall not perform any activity of a broker or salesperson. The amended version adds a new section (36) regarding providing notifications. [Read more.](#)

**Well Pollution/Damage Mitigation – Oklahoma.** On February 15, SB 1435 was introduced by Sen. Lonnie Paxton (R). The bill requires the operator of a producing well to take reasonable preventative action to prevent the producing well from causing pollution and to prevent or mitigate potential damage to the producing well during hydraulic fracturing operations upon receiving notice of hydraulic fracturing operations occurring in the area. The measure outlines what shall constitute evidence of taking reasonable preventative action. Companion House bill, [HB 3609](#), was introduced by Rep. Terry O'Donnell (R) on February 3. [Read more.](#)

**Waste – Oklahoma.** On February 13, SB 1334 was introduced by Sen. Lonnie Paxton (R). The bill would amend current law to hold that when onsite waste disposal occurs on private land in accordance with relevant statutes, “the Commission shall require that notice identifying the exact location of the onsite waste disposal, using its legal description, be filed with the county clerk in the county where the onsite disposal occurs. The notice required by this subsection shall not apply to any onsite waste disposal location in use prior to the effective date of this act.” [Read more.](#)

**Takings – Oklahoma.** On February 9, SB 1241 was introduced by Sen. Micheal Bergstrom (R). The bill “designates ordinances, resolutions, rules, regulations, or other forms of official policy adopted by a municipality that substantially interfere with the use and enjoyment of the mineral estate, development of minerals, and reducing the fair market value of a mineral estate as a taking of property rights as described in the Oklahoma Constitution.” [Read more.](#)

**Production Proceeds – Oklahoma.** On February 8, SB 1232 was introduced by Sen. Julie Daniels (D). The bill amends existing law to lengthen the timeframe in which the first payment of proceeds from oil and gas sales is to be made from 6 months to 12 months and modifies the way interest is calculated on those payments when not paid on time. The measure also states that persons remitting payment shall be entitled to a signed division order containing certain items outlined in the measure. [Read more.](#)

**Well Unitization – Oklahoma.** On February 10, SB 1894 was referred to committee. The bill, introduced by Sen. Julie Daniels (R), would allow the expansion of a unit by additional governmental sections. Current law under the Horizontal Well Unitization for Targeted Reservoirs section authorizes the Oklahoma Corporation Commission to grant permission to a well operator to expand the well only up to a maximum of 4 governmental sections. [Read more.](#)



**Professional Privilege Tax – Tennessee.** On February 10, SB 2669 was referred to committee. The bill, sponsored by Sen. Dolores Gresham (R), would eliminate the existing professional privilege tax on attorneys and other non-landman related occupations and instead impose an annual professional registration fee of \$400 on nonresidents engaged in certain professions in the state. The House companion bill, HB 2676, was referred to committee on February 12. [Read more.](#)

**Registration of Instruments – Tennessee.** On February 5, SB 2376 was introduced by Sen. Shane Reeves (R). The bill amends existing law to require “either a licensed attorney or the custodian of the original version of an electronic document, instead of the custodian of the electronic version, to certify the electronic document for registration by a county register.” The House companion bill, HB 2370 was introduced by Rep. Dave Wright (R) on February 4. [Read more.](#)

**Mineral Lease Payments – Utah.** *(Update to 2/10/20 Weekly Report)* On February 13, SB 15, sponsored by Sen. Daniel Thatcher (R), passed both houses of the legislature and is awaiting transmittal to the governor. The bill would repeal the sunset date in [Sec. 631-1-211](#) as it applies to [Sec. 11.14.308](#) for provisions that allow a local district to secure certain bonds with mineral lease payments. [Read more.](#)

**Employee Misclassification – Virginia.** On February 13, SB 662 was referred to the House of Delegates after passing the Senate. The bill, introduced by Sen. Jennifer Boysko (D), prohibits an employer from discharging, disciplining, threatening, discriminating against, or penalizing an employee or independent contractor because the employee or independent contractor reported or plans to report that an employer or any officer or agent has failed to properly classify an individual as an employee and failed to pay required benefits or other contributions. The measure also prohibits such actions against an employee or independent contractor who is requested or subpoenaed by an appropriate

authority to participate in an investigation, hearing, or inquiry by an appropriate authority or in a court action. These prohibitions apply only if an employee or independent contractor acts in good faith and upon a reasonable belief that the information is accurate. The measure authorizes the Commissioner of Labor and Industry to institute proceedings against an employer who has taken such prohibited retaliatory action. Available remedies include reinstatement of the employee and recovery of lost wages. An employer that violates these provisions is subject to a civil penalty equal to the employee's lost wages. [Read more.](#)

**Employee Misclassification – Virginia.** *(Update to 2/10/20 Weekly Report)* On February 11, SB 894 passed the Senate. (The House version, [HB 984](#), passed the House of Delegates on February 5.) No further information has been reported as to which version the legislature moves forward. The Democrat sponsored bills authorize an individual who has not been properly classified as an employee to bring a civil action for damages against his employer for failing to properly classify the employee if the employer had knowledge of the individual's misclassification. The court may award damages in the amount of any wages, salary, employment benefits, including expenses incurred by the employee that would otherwise have been covered by insurance, or other compensation lost to the individual, a reasonable attorney fee, and the costs incurred by the employee in bringing the action. The measure provides that an individual who performs services for a person for remuneration shall be presumed to be an employee unless it is shown that the individual is an independent contractor as determined under the Internal Revenue Service guidelines. [Read more.](#)

**Correcting Recorded Instruments – West Virginia.** On February 12, HB 4576, introduced by Del. John Shott (R), passed the House of Delegates and has been referred to the Senate. “The purpose of this bill is to establish a procedure for correcting obvious errors in deeds, deeds of trust, and mortgages, and establishing a format for the corrective affidavit and

notice of an intent to correct an obvious description error.” [Read more.](#)

**Notaries Public – West Virginia.** On February 7, HB 4748 was introduced by Del. Gary Howell (R). “The purpose of this bill is increase the fees that private nongovernment notary publics may charge for notarial acts, and clarifies that notary publics may advertise for services so long as a clear disclaimer that the notary is not permitted to provide legal services including document drafting, document review, or legal advice as a non-attorney is provided either at the place of the notarial act or in the actual advertisement.” [Read more.](#)

**Leasing – West Virginia.** (*Update to 1/27/20 Weekly Report*) On February 14, SB 554, sponsored by Sen. Randy Smith (R), passed the Senate and was transmitted to the House of Delegates. “The purpose of this bill is to provide a requirement for a lessee to execute and deliver to the lessor, within a specified time and without cost, a recordable release for terminated, expired, or cancelled oil or natural gas leases; provide for a procedure by which a lessor may serve notice to a lessee, if a lessee fails to timely provide the release; require a lessee to timely notify the lessor in writing of a dispute; provide for a recordable affidavit of termination, expiration, or cancellation with specified contents; provide that with proper notification in the absence of a dispute, a recorded affidavit creates a rebuttable presumption of termination and cancellation for the oil or natural gas lease.” [Read more.](#)

**Unknown/Unlocatable Owners – West Virginia.** (*Update to 1/20/20 Weekly Report*) On February 13, HB 4088, sponsored by Del. William Anderson (R), passed the House of Delegates and was transmitted to the Senate. “The purpose of this bill is to provide that proceeds from certain oil and gas wells that are due to persons whose name or address are unknown are to be kept in a special fund and if unclaimed within seven years the proceeds shall be transferred to the Oil and Gas Reclamation Fund. The bill provides that if there is a surface disturbance those named surface owners of a leased interest subject to

pooling for a horizontal well are the only surface owners insofar as the well permit is concerned. The bill provides that if another surface owner should become known his or her name shall be added as a surface owner on the permit. The bill provides that if proceeds from other mineral tracts in a unit or pool of a horizontal well are not claimed by an unknown, missing or abandoned owner within seven years the proceeds shall be transferred to the Oil and Gas Reclamation Fund. The bill provides that certain provisions take effect beginning when funds have been unclaimed for seven years after the special Commissioner’s lease regardless of when the lease was signed.” [Read more.](#)

**Expedited Permitting – West Virginia.** (*Update to 2/10/20 Weekly Report*) On February 11, HB 4091 was transmitted to Gov. Jim Justice (R) after passing the legislature. The governor must sign or veto legislation within 5 days of transmittal (excluding Sunday). The purpose of the bill, introduced by Del. William Anderson (R), “is to allow for expedited oil and gas well permitting and expedited oil and gas well permit modifications upon the payment of applicable expedited fees, the designation of the proceeds of such expedited fees, and the daily pro rata refund of the expedited fees if the permit is not approved between the 45th and 60th days after the submission of a permit application, and daily pro rata refund of one-half of the modification fees between the 10th and 20th days after the submission of a permit modification application; all generally related to horizontal well oil and gas permitting.” [Read more.](#)

**Preemption of Local Occupational Licensing – West Virginia.** On January 13, HB 4145 was referred to the House Government Organization Committee. The bill, introduced by Del. Geoff Foster (R), would prohibit the regulation and licensing of occupations by local government. [Read more.](#)

**Occupational Licensing – Wisconsin.** On February 11, [SB 541](#) was cleared for a Senate floor vote after passing out of committee. The bill, sponsored by Sen. Chris Kapenga (R), would require that before the legislature could take up any

proposals for new state occupational licensing requirements, the measures would first have to be evaluated on whether licensure is necessary to protect the public as well as what the cost and benefit would be. The companion Assembly bill, [AB 605](#), was introduced by Rep. Rob Hutton (R) on November 15, 2019. [Read more.](#)

**Underground Disposal Wells – Wyoming.** On February 11, SF 45 was introduced by the joint Minerals, Business & Economic Development Interim Committee (R). The bill amends current law regarding regulation of underground disposal wells to remove the term “noncommercial” from regulations governing Wyoming Oil and Gas Conservation Commission authority over underground disposal injection wells. [Read more.](#)

**State Mineral Royalties – Wyoming.** On February 7, House Joint Resolution HJ0001 was introduced by Rep. Tim Hallinan (R). The Joint Resolution proposes to amend the Wyoming Constitution to provide that for six years two-thirds of state mineral royalties earned from the lease of state school lands may be appropriated by the legislature for the support of public schools and provides a ballot statement. Such a constitutional amendment resolution, if passed by the legislature, would be put to the ballot in November for Wyoming voters to decide. [Read more.](#)

## **STATE – Regulatory**

**Oil and Gas Production – North Dakota.** On February 11, the Department of Mineral Resources Director Lynn Helms testified before an [Assembly Government Finance Committee hearing](#) in which he told lawmakers North Dakota’s oil production may peak within five years as companies finish drilling the most prolific portions of the state’s oil patch. Helms, the state’s top oil regulator, said about 20% of drilling activity is now outside of the “core” areas of the western North Dakota’s oil producing region. “The end of (core area-drilling) is on the horizon; we can see it from here,” Helms told the legislature’s committee. [Read more.](#)

## **STATE – Judicial**

**Partnership Agreements – Texas.** On January 31, the Texas Supreme Court rendered its highly anticipated decision in [Energy Transfer Partners, L.P. v. Enterprise Production Partners, LP](#) (Case No. 17-0862). The case involved a dispute over whether the parties created a partnership to market and pursue a pipeline project to transport crude oil from Oklahoma to the Gulf Coast. Although this decision focuses on a pipeline agreement, the case is instructive on the application of Texas partnership law. The Court found that no partnership had been formed because the preliminary agreements between the parties specified conditions to forming such a relationship which had not been satisfied. The Court held that Texas law permits parties to conclusively agree that no partnership will exist unless certain conditions are satisfied. According to law firm, McGuire Woods, “the significant but concise opinion provides legal and business certainty for companies looking to explore business opportunities on a nonbinding and preliminary basis, including in the capital-intensive oil and gas industry. The case rejects the theory of ‘partnership by ambush’ and reinforces Texas’ strong public policy favoring freedom to contract — including for conditions precedent to further contract formation.” [Read more.](#)

**Wills; Mineral Estates – Texas.** On January 24, the Texas Supreme Court addressed a family dispute over mineral ownership and ConocoPhillips’ claim to an oil and gas lease covering those minerals. In [ConocoPhillips Co. v. Ramirez](#) (Case No. 17-0822), the Court stated the issue to be decided in this case was whether a devise of “all . . . right, title and interest in and to Ranch ‘Las Piedras’” refers only to a surface estate by that name as understood by the testatrix and beneficiaries at the time a relevant will was made or also includes the mineral estate. In reversing the appellate court judgment, the Court concluded that only the surface estate was devised in part based on the prior history of the family’s use of the term “Ranch Las Piedras” in partition deeds as including only the surface estate. The evidence of a life estate and the conditions surrounding it, which

only affected the surface, also weighed on the Court's decision. [Read more.](#)

#### **Working Interests; Contract Interpretation – Texas.**

On January 22, the Texas Eleventh Court of Appeals (Midland) in *Great Western Drilling, Ltd. v. Pathfinder Oil & Gas, Inc.* (Case No. 11-14-00206-CV) addressed Pathfinder's claim that Great Western breached an agreement to convey 25% of the working interest in certain mineral leases. Pathfinder disputed that there was an agreement. Here, the Court found that a letter between the parties was a binding agreement. The Court also addressed certain stipulations regarding shares of historical net revenue and upheld a finding that Pathfinder was entitled to an accounting. [Read more.](#)

#### **Deeds; Reservations; Executive Rights– Texas.**

On January 22, the Texas Fourth Court of Appeals, (San Antonio), addressed a case arising from a dispute over the interpretation of a warranty deed and its application to an oil and gas lease. In *Geary v. Two Bow Limited Partnership* (Case No. 04-18-00610-CV), the Court found the deed established that the Grantors did not convey ownership of the executive rights in their retained one-half mineral interest. But, by including the Provisional Authority clause, the Grantors gave the Grantee conditional permission to exercise the Grantors' executive rights. Further, the Court found the Provisional Authority did not pass through subsequent conveyances as "part and parcel" of the subject property. The Court also addressed various issues of breach of contract, breach of fiduciary duty by failure to lease and breach of fiduciary duty by failure to inform. [Read more.](#)

**Drilling and Spacing Applications; Regulatory – Wyoming.** On January 17, in *Exaro Energy III, LLC v. Wyoming Oil and Gas Conservation Commission* (Case No. 2020 WY 8), the Wyoming Supreme Court reversed the judgment of the Wyoming Oil and Gas Conservation Commission approving only one out of two applications filed by Exaro seeking the approval of adjacent drilling and spacing units (DSUs) in the Jonah Field, holding that the Commission's denial

of Exaro's other application was arbitrary and capricious. At a contested case hearing, the parties agreed that the evidence presented would apply to both applications. At the hearing's conclusion, the Commission found as to both applications that Exaro had met its burden of proof and provided evidence satisfying the statutory requirements for the establishment of a DSU. However, the Commission approved one application and denied the other. Here, the Court reversed in part, holding (1) substantial evidence supported the Commission's finding that Exaro's evidence satisfied the statutory requirements for establishment of a DSU in both applications; and (2) the Commission's decision to grant only one of the applications was arbitrary and capricious. [Read more.](#)

#### **INDUSTRY NEWS FLASH**

► **Oil from federal sources breaks record.** On February 11, the U.S. Interior Department reported oil production from U.S. managed lands and waters topped a record 1 billion barrels last year as the Trump administration eased rules on the industry. The production figure was up 122 million barrels, or more than 13 percent, from 2018. It includes oil from onshore and offshore parcels and Native American-owned lands managed by the U.S. Interior Department during fiscal year 2019, which ended September 30, 2019. [Read more.](#)

► **Drilling more popular with those living the closest.** According to new research, those who live closest to oil and gas wells are more likely to support continued drilling, according to a new report reviewing Coloradans' view of the industry. The researchers from Resources for the Future and the Colorado School of Mines overlay Coloradans' vote for Proposition 112 that would have sharply limited drilling in the state (it ultimately failed with 56% voting against) with proximity to oil and gas operations. They found proximity to oil and gas development is associated with increased industry support. In fact, fewer than 4% of the Colorado precincts that backed the proposition to curb drilling had any oil and gas wells. [Read more.](#)

## **LEGISLATIVE SESSION OVERVIEW**

**Session Notes:** Alaska, Alabama, Arizona, California, Colorado, Connecticut, Delaware, Florida, Georgia, Hawaii, Idaho, Illinois, Indiana, Iowa, Kansas, Kentucky, Maine, Maryland, Massachusetts, Michigan, Minnesota, Mississippi, Missouri, Nebraska, New Hampshire, New Jersey, New Mexico, New York, Ohio, Oklahoma, Oregon, Pennsylvania, Rhode Island, South Carolina, South Dakota, Tennessee, Utah, Vermont, Virginia, Washington, West Virginia and Wyoming are in regular session. The District of Columbia Council, Puerto Rico and U.S. Congress are also in regular session.

The following states are expected to convene their 2020 sessions on the dates provided: **Louisiana** (March 9) and **Arkansas** (April 8).

The following states are expected to adjourn their 2020 sessions on the dates provided: **New Mexico** (February 20) and **Oregon, Virginia and West Virginia** (March 7).

**Signing Deadlines:** No state in regular legislative session currently has an impending signing deadline as of February 17, 2020.

**Interim Committee Hearings:** The following states are currently holding 2020 interim committee hearings: [Louisiana](#), [Montana](#), [Nevada](#), [North Dakota](#), Texas [House](#) and [Wyoming](#).

**Bill Pre-Files:** The following states are currently posting 2020 bill drafts, pre-files and interim studies: [Louisiana](#), [Montana](#), [Nevada](#), [North Dakota](#) and the Texas [House](#). ■

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# GOVERNMENTAL AFFAIRS WEEKLY REPORT

## Weekly Highlights At-A-Glance

### FEDERAL – Legislative

**Ban Fracking Act - H.R. 5857.** On February 12, Rep. Alexandria Ocasio-Cortez (D-NY) introduced [H.R. 5857](#), known as the *Ban Fracking Act*. As of 2021, the bill bans hydraulic fracturing on federal lands and revokes existing permits within 2,500 feet of a home, school or other inhabited structure. In 2025, all hydraulic fracturing is banned nationwide. As reported in the February 10, 2020 *Weekly Report*, Sen. Bernard Sanders (I-VT) introduced the Senate companion version, [S. 3247](#), in January. That bill is unlikely to receive floor consideration in the Republican-controlled Senate. [Read more.](#)

**America's Red Rock Wilderness Act - H.R. 5775.** On February 6, Rep. Alan Lowenthal (D-CA) introduced [H.R. 5775](#), known as *America's Red Rock Wilderness Act*. The bill would designate as wilderness certain federal portions of the Red Rock canyons of the Colorado Plateau and the Great Basin Deserts in the State of Utah from coal mining and oil and gas production. [Read more.](#)

### FEDERAL – Regulatory

**BLM Resource Management Plan – Utah.** On February 20, the Bureau of Land Management (BLM) published its *Resource Management Plan: Grand Staircase-Escalante National Monument and Kanab-Escalante Planning Area* ([85 Fed. Reg. 9802](#)) which announces the availability of the Records of Decision (RODs) and the Approved Resource Management Plans (RMPs) for the Grand Staircase-Escalante National Monument and Kanab-Escalante Planning Area. The RODs were signed on February 6, 2020 by the Department of the Interior (DOI) Acting Assistant Secretary for Land and Minerals Management, Casey Hammond. The RODs approve the RMPs and certain

implementation-level decisions and constitute the final decision of the Interior Department. After over eight months of public outreach and the completion of consultation and coordination obligations, the approved RMPs “provide for uses within the Monument, including recreational uses, while protecting significant geological, paleontological, and natural resources and other objects.” The approved “RMP for the KEPA provides for multiple uses, including surface-disturbing and mineral leasing activities, while protecting natural, cultural, and recreational values of the public land.” [Read more.](#)

**BLM Resource Management Plan – Idaho.** On February 18, the BLM published its *Notice of Availability of the Proposed Four Rivers Field Office Resource Management Plan and Final Environmental Impact Statement, Idaho* ([85 Fed. Reg. 8888](#)) which proposes multiple alternatives for the land use resource management plans (RMP) and associated final environmental impact statement (EIS) in an area including approximately 783,000 surface acres and 1,173,150 acres of mineral estate in Ada, Adams, Boise, Camas, Canyon, Elmore, Gem, Owyhee, Payette, Valley, and Washington counties. Instructions for filing a protest with the Director of the BLM regarding the Proposed RMP and Final EIS may be found online at the [BLM Plan Protest](#) webpage. [Read more.](#)

**NEPA Exclusions – U.S. Forest Service.** On February 14, the U.S. Forest Service (USFS) published its notice announcing the establishment of “categorical exclusions” (CEs) to the National Environmental Policy Act (NEPA). Under NEPA, CEs exclude certain routine activities from more extensive, time-consuming analyses under an environmental assessment or environmental impact

statement. This notice includes oil and gas leasing on federal USFS lands. “We have pored over 10 years of environmental data and have found that in many cases, we do redundant analyses, slowing down important work to protect communities, livelihoods and resources,” said USFS Chief Vicki Christiansen. The *National Environmental Policy Act, Revised Procedures* ([85 Fed. Reg. 8544](#)) will be incorporated into the Forest Service Handbook on March 16, 2020. [Read more.](#)

## **FEDERAL – Judicial**

**NEPA Rulemaking – Virginia.** On February 13, environmental activists sued the Trump administration in an effort to halt National Environmental Policy Act (NEPA) rulemaking revisions which will relax environmental reviews on federal projects, including oil and gas resource development on federal lands. The lawsuit, [Southern Environmental Law Center v. Council on Environmental Quality](#) (Case No. 3:18-cv-00113-GEC) claims the proposed rulemaking should be stopped by court injunction because the Council on Environmental Quality (CEQ) has not provided certain rulemaking documents to the public. For its part, the White House has rebuffed these claims and says the requested documents will be available by November. The CEQ, which crafted the new NEPA rule, has not yet responded to the lawsuit. [Read more.](#)

## **STATE – Legislative**

**Notarial Acts – California.** On February 19, AB 2424 was introduced by Asm. Ian Calderon (D). Existing law authorizes the Secretary of State to appoint and commission notaries public in the number the Secretary of State deems necessary for the public convenience. Existing law authorizes notaries public to act as notaries in any part of the state and prescribes the manner and method of notarizations. This bill, the California Online Notary Act of 2020, would provide that an online notary public is a notary public for purposes of, and is authorized to perform notarial acts under that existing law. [Read more.](#)

**Employee Classification – California.** On February 14, the current version of [AB 1850](#) was adopted by the Assembly Committee on Labor and Employment. The bill, introduced by Asm. Lorena Gonzalez (D), would amend existing law to exempt freelance and independent contractor writers and photographers and remove the controversial “35 content submissions a year” rule that resulted from last year’s passage of [AB 5](#), which has been roundly criticized since its enactment for limiting Californians’ ability to work as independent contractors and freelancers. Many bills and court challenges are already forthcoming this year that seek to either limit, amend, or repeal AB 5. We previously reported on Republican-sponsored bills, [AB 1925](#) and [AB 1928](#), seeking to amend or overturn AB 5. [Read more.](#)

**Independent Contractors – California.** On February 14, SB 1039 was introduced by Sen. Cathleen Galgiani (D). The bill seeks to rectify deficiencies in recently passed AB 5 (see above) to create a framework to allow for independent workers in the state. [Read more.](#)

**Franchise Tax – California.** On February 14, AB 2306 was introduced by Asm. Melissa Menendez (R). This bill, for taxable years beginning on and after January 1, 2020, would repeal the minimum franchise tax imposed upon a corporation doing business in the state. [Read more.](#)

**Notarial Acts – Illinois.** On February 14, SB 3698 was introduced by Sen. Linda Holmes (D). The bill amends the Illinois Notary Public Act to provide requirements concerning electronic notarization and electronic notaries public. The bill also amends the Uniform Real Property Electronic Recording Act to provide that a paper or tangible copy of an electronic document that a notary public has certified to be a true and correct copy satisfies specified recording requirements. The bill further provides requirements concerning the certification of electronic documents by notaries public. [Read more.](#)

### **Independent Contractors; Unemployment Benefits**

– **Kansas.** On February 14, the House Committee on Commerce, Labor and Economic Development introduced HB 2705 which would exempt contract landmen (i.e., independent contractors) from the unemployment security benefits law. This would foreclose independent contractors from later bringing actions against their oil and gas hiring companies claiming they were employees and due unemployment benefits. [Read more.](#)

**Notary Law – Kansas.** On February 14, the House Judiciary Committee (R) introduced HB 2713. The bill updates existing notary law to add numerous sections, including those on electronic documents. [Read more.](#)

**Notarial Acts – Mississippi.** On February 17, HB 1156 was introduced by Rep. Shane Aguirre (R). The bill revises notarial law to define certain terms, set electronic documents provisions, and provide for the procedures and processes related to the performance of notarial acts. [Read more.](#)

**Severance Tax Payments – Mississippi.** On February 14, HB 977 was introduced by Rep. Brent Powell (R). The bill amends existing law to change the severance tax payment due date. [Read more.](#)

**Severed Estates – Mississippi.** On February 13, HB 836 was introduced by Rep. Price Wallace (R). The bill provides that mineral estates separated from the surface estate shall revert to the surface owner after 10 years of nonproduction and defines “production” for purposes of the bill. [Read more.](#)

**Business Entities – South Dakota.** On February 12, was referred to Senate committee after passing the House. The bill, sponsored by Rep. Tim Rounds (R) would authorize additional abbreviations in naming corporations, limited liability companies, and limited liability partnerships. [Read more.](#)

**Natural Resources Hearing – Texas.** The Texas Senate Committee on Natural Resources and Economic Development and Committee on Water

and Rural Affairs will hold an [interim charges](#) (issues study in an off-year) joint hearing on April 30, 2020 at 9 am in the Senate Chamber on Local Economic Development Incentives (Study the use of local tax abatements allowed under Chapter 313 of the Texas Tax Code. Make recommendations to promote transparency and enhance effectiveness of tax abatements, capital investment incentives, and similar programs); Eminent Domain (Examine current law regarding the balance of private property rights and continued improvement in oil and gas infrastructure. Make recommendations to ensure stability between private property owner protections and emergent oil and gas infrastructure; and water related issues). For more information on attending the hearing, please contact the Texas Senate Committee Coordinator at 512-463-0070. [Read more.](#)

**Water Issues Hearing – Texas.** On January 22, the Texas Senate Committee on Natural Resources and Economic Development and Committee on Water and Rural Affairs held a joint hearing “to consider Lt. Governor Dan Patrick’s 2019 interim legislative charge related to one of the most pressing matters facing the state—future water supply issues. This interim charge requires that these legislative committees make recommendations to promote the state’s water supply, including the development of new sources. The recommendations made will be the subject of consideration when the Texas Legislature reconvenes in 2021 and will inform future legislative initiatives.” A “broad range of water supply topics was discussed during the hearing, notably, the subject of produced water, including opportunities for reuse within and outside the oil field, continues to be a focal point under review by state policymakers.” [Read more.](#)

**Oil and Gas Bonding; Penalties – Utah.** On February 18, SB 148 was introduced by Sen. Ralph Okerlund (R). The bill amends current law regarding the regulation of oil and gas activities, including oversight, bonding requirements and administrative penalties. [Read more.](#)



**State Trust Lands – Utah.** On February 14, HB 335 was introduced by Rep. Michael McKell (R). The bill amends existing law to address penalties for illegal and unauthorized activities on state institutional trust lands, including mineral resources. [Read more.](#)

**Partition of Heirs Property – Virginia.** (*Update to 2/10/20 Weekly Report*) On February 19, SB 553 passed the House. The bill passed the Senate on February 4. The bill, sponsored by Sen. Frank Ruff, Jr. (R), incorporates major provisions of the Uniform Partition of Heirs Property Act. The bill provides that in partition actions the court shall order an appraisal to determine fair market value of the property, unless the parties have agreed to the value of the property or to another valuation method. The bill also provides factors to be considered by the court when making an allotment of the property when there is a dispute among the parties. The bill further provides that if the court orders a sale of property in a partition action, the sale shall be conducted on the open market, unless the court finds that a sale by sealed bids or at auction would be more economically advantageous to the parties as a group. The bill outlines the procedure for such open-market sales. [Read more.](#)

**Partition of Heirs Property – Virginia.** (*Update to 1/27/20 Weekly Report*) On February 18, HB 1605 passed the Senate by unanimous vote. The bill passed the House of Delegates by unanimous vote on February 6. The bill, introduced by Del. Patrick Hope (D), incorporates major provisions of the Uniform Partition of Heirs Property Act and provides that in partition actions the court shall order an appraisal to determine fair market value of the property, unless the parties have agreed to the value of the property or to another valuation method. The bill also provides factors to be considered by the court when making an allotment of the property when there is a dispute among the parties. The bill further provides that if the court orders a sale of property in a partition action, the sale shall be conducted on the open market, unless the court finds that a sale by sealed bids or at auction would be more economically advantageous to the parties

as a group and outlines the procedure for such an open-market sale. [Read more.](#)

**Taxation – West Virginia.** (*Update to 2/10/20 Weekly Report*) On February 19, SB 655 passed the Senate. The purpose of the bill, sponsored by Sen. Eric Tarr (R), is to clarify, “the types of operating expenses that must be used for purposes of valuing producing oil and natural gas wells, the methodology that shall be used by the Tax Commissioner in calculating operating expenses, the confidentiality of information submitted by natural resource producers to the Tax Commissioner, reports that must be submitted by the Tax Commissioner to the Joint Committee on Government and Finance, and to provide for alternate appeal of proposed valuation of natural resources property for ad valorem property tax purposes.” [Read more.](#)

**Independent Contractors – West Virginia.** On February 19, a committee substitute of SB 528 was adopted. The purpose of the bill, sponsored by Sen. Chandler Swope (R), is to “simplify criteria used to define independent contractors and to impose objective standards on the differentiation of independent contractors from employees.” [Read more.](#)

**Oil and Gas Industry Damage – West Virginia.** On February 17, SB 827 was introduced by Sen. Glenn Jeffries (D). “The purpose of this bill is to protect and repair the state’s roads damaged by oil and gas industry operations. The bill requires a permit and a road use agreement and specifies bonding requirements.” [Read more.](#)

**Expedited Permitting – West Virginia.** (*Update to 2/17/20 Weekly Report*) On February 17, HB 4091 was signed into law by Gov. Jim Justice (R). The Act is effective 90 days from final enrolled passage on February 5, 2020. The purpose of the Act, sponsored by Del. William Anderson (R), “is to allow for expedited oil and gas well permitting and expedited oil and gas well permit modifications upon the payment of applicable expedited fees, the

designation of the proceeds of such expedited fees, and the daily pro rata refund of the expedited fees if the permit is not approved between the 45th and 60th days after the submission of a permit application, and daily pro rata refund of one-half of the modification fees between the 10th and 20th days after the submission of a permit modification application; all generally related to horizontal well oil and gas permitting.” [Read more.](#)

**Corporate Taxation – Wisconsin.** On February 18, AB 753, introduced by Rep. John Macco (R), passed the Joint Committee on Finance. The bill makes several changes for tax-option corporations that elect to pay tax at the entity level. Under the bill, these corporations can exclude 30% of the gains realized from the sale of assets held for more than a year and the sale of all assets acquired from a decedent. The bill also limits the excess capital loss deduction from \$3,000 to \$500, requires taxpayers with less than \$250,000 in net income to pay interest on the underpayment of taxes, and requires taxpayers to make quarterly estimated payments according to the standards applicable to taxpayers with net income of less than \$250,000. The Senate version/companion bill, [SB 706](#), was withdrawn from committee consideration. [Read more.](#)

**Drilling Units; Pooling; Royalties – Wyoming.** *(Update to 1/13/20 Weekly Report)* On February 19, HB 14 passed the House. The bill, sponsored by the Joint Minerals, Business & Economic Development Committee (R), would amend the calculation of owners' shares for drilling units; provides for the expiration of pooling orders under specified conditions; and provides a royalty during payment of risk penalty. [Read more.](#)

**State Mineral Royalties – Wyoming.** *(Update to 2/17/20 Weekly Report)* On February 18, House Joint Resolution HJ0001 failed to pass the House Appropriations Committee. The Joint Resolution, introduced by Rep. Tim Hallinan (R), would have authorized the process of amending the Wyoming Constitution to provide that for six years two-thirds of state mineral royalties earned from the lease of

state school lands may be appropriated by the legislature for the support of public schools and provides a ballot statement. Such a constitutional amendment resolution, if passed by the legislature, would have been put to the ballot in November for Wyoming voters to decide. [Read more.](#)

**Severance Tax – Wyoming.** On February 14, HB 243 was introduced by Rep. Donald Burkhardt, Jr. (R). The bill amends existing law to provide for certain severance tax rates under defined circumstances and sets forth certain exemptions. [Read more.](#)

**Water Disposal Rules – Wyoming.** On February 14, HB 219 was introduced by Rep. Aaron Clausen (R). The bill amends existing law regarding rules providing for the disposal of produced and fresh water in connection with oil and gas leases. [Read more.](#)

**State Tax Revenue – Wyoming.** On February 13, SF 110 was introduced by Sen. Cheri Steinmetz (R). The bill establishes that the Office of State Lands and Investments study the impact on the failure of the federal government to make payments in lieu of tax that are equivalent to the property tax revenue that the state of Wyoming would otherwise generate from lands under federal ownership or control within Wyoming. [Read more.](#)

**Transfer of Mineral Interests – Wyoming.** On February 13, HB 196 was introduced by the Select Committee on Coal/Mineral Bankruptcies (R). The bill amends existing law to require mineral producers to make certifications related to taxes prior to transfer to another producer and requires payment of taxes prior to transfer. [Read more.](#)

**Ad Valorem Taxes – Wyoming.** On February 12, HB 159 was introduced by the Select Committee on Coal/Mineral Bankruptcies (R). This bill would require all mineral producers in the state to report and remit ad valorem taxes on mineral production on a monthly basis to the Department of Revenue on behalf of counties as an attempt to reduce uncollectable ad valorem taxes. Ad valorem tax

reports and estimated payments would be due on or before the twenty-fifth day of the second month following the month of production, commencing calendar year 2021. Mineral producers currently make their first ad valorem tax payment on mineral production from 11 to 23 months after the month of production. The bill also provides for a transition period and tax credits for certain remittance procedures. [Read more.](#)

**Tax Liens on Mineral Production – Wyoming.** On February 12, HB 182 was introduced by the Select Committee on Coal/Mineral Bankruptcies (R). The bill amends existing law regarding enforcement of tax liens on mineral production, including provisions for perfecting tax liens; notice provisions and amendments to the definition of “delinquent taxpayer.” The Senate companion bill, [SF 139](#), was introduced on February 14. [Read more.](#)

**Surface Damage; Disruption Payments – Wyoming.** On February 12, HB 111 was introduced by Rep. Aaron Clausen (R). The bill amends existing law related to surface damage and disruption payments regarding split estates. [Read more.](#)

**Well Notice Requirements – Wyoming.** On February 12, HB 221 was received for introduction but has not yet been referred to committee. The bill, sponsored by Rep. Dan Zwonitzer (R), provides for regulatory provisions establishing notice requirements to persons located within certain well distances, but shall not apply to more than ½ mile from a well. [Read more.](#)

**Underground Disposal Wells – Wyoming.** *(Update to 2/17/20 Weekly Report)* On February 21, SF 45 passed the Senate and was transmitted to the House on February 24 for consideration. The bill, sponsored by the Joint Minerals, Business & Economic Development Interim Committee (R), amends current law regarding regulation of underground disposal wells to remove the term “noncommercial” from regulations governing Wyoming Oil and Gas Conservation Commission authority over underground disposal injection wells. [Read more.](#)

## **STATE – Regulatory**

### **Railroad Commission Flaring Report – Texas.**

On February 18, Texas Railroad Commissioner Ryan Sitton released the [2020 Texas Natural Gas Flaring Report](#) in which the state oil and gas regulator said that any large-scale reduction in natural gas flaring in the state will cause a “dramatic” increase in crude prices while having little effect on global efforts to reduce the controversial practice. The report notes that OPEC members such as Iran and Iraq burn off much more of their gas and could cut flaring more easily. “Other nations are flaring at levels four times higher than Texas,” he said. “They, therefore, present much more efficient paths to global flaring reductions.” Texas flared about 650 million cubic of gas a day in 2018, enough to power about 4 million U.S. homes. To reduce that by about a third, the state would have to cut its daily crude oil production by as much as 1 million barrels a day, or a fifth of overall output, according to Sitton’s report. [Read more.](#)

### **Railroad Commission Regulatory Update – Texas.**

As an update to our December 2019 reporting, the Railroad Commission of Texas (RRC) has just announced the adoption of key rule amendments to RRC 16 TAC § 3.40 (Assignment of Acreage to Pooled Development and Proration Units). RRC Commissioners unanimously voted to allow assignment of acreage to multiple wells in unconventional fracture treated (UFT) fields. This UFT rule revision will further protect mineral owner interests and allow access to additional resources, according to an RRC statement. The rule changes adopted by the RRC Commissioners go into effect March 3, 2020. To view the adopted new amendments to RRC 16 TAC § 3.40: [click here for more.](#) To view the existing RRC 16 TAC § 3.40 rule: [click here for more.](#) To view comments on the proposed amendments: [click here for more.](#)

### **Energy Commercialization Program – Wyoming.**

On February 10, Gov. Mark Gordon (R) delivered his [2020 State of the State Address](#), which included a request to legislators of a \$25 million investment

to establish the Wyoming Energy Commercialization Program. The program is designed to provide a coordinated approach to support research on technologies that advance zero or net-negative carbon uses for fossil fuels, while supporting the energy production and jobs in the state. According to a [discussion draft](#) of the enabling legislation, the “purpose of the program is to assist in projects that provide opportunities to preserve and enhance development of Wyoming’s energy resources and energy industry.” The program will also “only fund projects that support practical research, development and expansion of Wyoming’s energy industry and energy resources” as well as “preserve existing jobs and energy production or create new jobs and new production of Wyoming’s energy resources.” [Read more.](#)

## **STATE – Judicial**

**Leasing – Ohio.** On January 24, in *Tewanger v. Stonebridge Operating Company, LLC* (Case No. 2020-Ohio-236), the Ohio Court of Appeals addressed a dispute over the termination of an oil and gas lease based on a lack of production in paying quantities. At trial, it was determined that the primary term of the lease at issue was 60 days and it expired on its own terms based on a failure to fulfill the 60-day term for production. In the alternative, the trial court found the lease had expired due to a lack of production in paying quantities for a nearly five-year period. That court cited Ohio case law “for the rule that cessation of production for more than two years is evidence of a lack of diligence by the lessee.” Here, the Court rejected arguments that the 21-year statute of limitations barred the lessor claims because the lease had terminated by its own terms and by operation of law. The Court also rejected lessee arguments surrounding indispensable parties and other equitable defenses (such as delays in asserting a right; knowledge of injury or wrong; and prejudice to the other party). [Read more.](#)

## **INDUSTRY NEWS FLASH**

► **Texas oil output to grow through 2020.** On February 18, Rystad Energy, an energy research and consultancy firm, reported that Texas oil production rose to an estimated 5.4 million barrels-per-day (bpd) in December and is expected to rise throughout 2020, but the pace is expected to slow thereafter. “We see a monthly addition of 70,000 bpd in December in Texas. A flat oil production would be the most conservative scenario,” said Rystad Energy’s Senior Shale Analyst Alexandre Ramos-Peon, pointing out that the Eagle Ford area contributed most to the increase. [Read more.](#)

## **LEGISLATIVE SESSION OVERVIEW**

**Session Notes:** Alaska, Alabama, Arizona, California, Colorado, Connecticut, Delaware, Florida, Georgia, Hawaii, Idaho, Illinois, Indiana, Iowa, Kansas, Kentucky, Maine, Maryland, Massachusetts, Michigan, Minnesota, Mississippi, Missouri, Nebraska, New Hampshire, New Jersey, New York, Ohio, Oklahoma, Oregon, Pennsylvania, Rhode Island, South Carolina, South Dakota, Tennessee, Utah, Vermont, Virginia, Washington, West Virginia and Wyoming are in regular session. The District of Columbia Council, Puerto Rico and U.S. Congress are also in regular session. North Carolina is in recess until April 28. New Mexico adjourned on February 20.

The following states are expected to convene their 2020 sessions on the dates provided: **Louisiana** (March 9) and **Arkansas** (April 8).

The following states are expected to adjourn their 2020 sessions on the dates provided: **Oregon**, **Virginia** and **West Virginia** (March 7).

**Signing Deadlines:** New Mexico Democratic Gov. Michelle Lujan Grisham has until March 11 to act on legislation or it is pocket vetoed.

**Interim Committee Hearings:** The following states are currently holding 2020 interim committee

hearings: [Louisiana](#), [Montana](#), [Nevada](#), [North Dakota](#) and [Texas House](#).

**Bill Pre-Files:** The following states are currently posting 2020 bill drafts, pre-files and interim studies: [Arkansas](#) and [Louisiana](#). ■

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# GOVERNMENTAL AFFAIRS WEEKLY REPORT

## Weekly Highlights At-A-Glance

**Note:** Due to the upcoming AAPL Board Meeting in Louisville, KY there is no report next Monday. The next report will be published on March 16, 2020.

### FEDERAL – Legislative

**American Public Lands and Waters Climate Solution Act of 2019 - H.R. 5435.** On February 26, [H.R. 5435](#), known as the *American Public Lands and Waters Climate Solution Act of 2019*, was subject to a [hearing](#) in the House Natural Resources Committee. The bill, sponsored by Rep. Raul Grijalva (D-AZ), would “require the Secretary of the Interior and the Chief of the United States Forest Service to meet certain targets for the reduction of the emission of greenhouse gases, and for other purposes.” The measure would set public lands energy leasing policy to effectuate the Department of the Interior (DOI) and the United States Forest Service (USFS) achieving net-zero greenhouse gas emissions from public lands and waters by 2040. In part, the measure would pause federal mineral lease sales for one year and the “DOI and USFS must meet climate pollution reduction targets at specific intervals starting in 2025 and publish strategic plans every four years that detail how the agencies will meet the pollution reduction targets established by the legislation.” The bill also increases federal royalties on fossil fuel extraction and seeks a transition away from fossil fuel production. [Read more.](#)

**California’s Land Preservation and Protection Act - H.R. 5936.** On February 21, [H.R. 5936](#), known as *California’s Land Preservation and Protection Act*, was introduced by Rep. Salud Carbajal (D-CA). The bill prohibits the Bureau of Land Management (BLM) from authorizing future federal oil and gas leasing

in California until the department publishes a comprehensive environmental impact statement to assess potential effects on climate change, air quality, water, wildlife, emissions, and impacted communities. Carbajal called the bill a “direct pushback on the Trump administration’s decision allowing the Bureau of Land Management to pursue oil and gas leasing on over 1.2 million acres of California land, including San Luis Obispo, Santa Barbara, and Ventura counties.” [Read more.](#)

### FEDERAL – Regulatory

**BLM Greater Sage-Grouse Planning.** On February 21, the Bureau of Land Management (BLM) published its multiple revised greater sage-grouse Draft Supplemental Environmental Impact Statement (Draft EIS) planning documents for the Western states. Casey Hammond, acting assistant Interior Secretary for Land and Minerals Management, said the revised plans emphasize the “hard looks” the agency took in a March 2019 planning process, which changed the approach taken in a 2015 land use effort by the Obama administration. Hammond acknowledged that the plans do not include amendments to either the 2019 or 2015 efforts. Additional details would have to wait until after the public comment process closes on April 6, 2020, he said. The BLM said 143 alternatives were considered in 18 different environmental impact statements, with 48,023 pages of analysis, 54 public meetings attended by 2,313 people, in an effort costing a total of \$16.9 million. It referenced \$294 million in habitat investment from 2013-2019 across the bird’s range, with another \$37 million planned for 2020. These efforts arise from a lawsuit brought against the BLM by environmental activists after the 2019 changes

“swept away safeguards designed to protect remaining sagebrush ecosystems.” An Idaho federal judge blocked the 2019 plans in October, ruling in [Western Watersheds Project v. Schneider](#) (Case No. 1:16-CV-83-BLW) that the BLM had failed to analyze how greater sage-grouse would be harmed by the planning. Kathleen Sgamma, president of the Western Energy Alliance, an oil and gas group in Denver, said her group was glad the Interior Department was moving quickly to respond to the judge’s ruling and that the ruling is on appeal. “The judge was insinuating his personal policy preferences into the plans rather than deferring to the wildlife experts at Interior and the legitimate policy direction of the current administration,” she said. The six Federal Register notices of availability for the Draft EIS planning may be accessed here: [85 Fed. Reg. 10185](#) (Idaho); [85 Fed. Reg. 10184](#) (Utah); [85 Fed. Reg. 10184](#) (Nevada; Northeastern California); [85 Fed. Reg. 10186](#) (Oregon); [85 Fed. Reg. 10183](#) (Colorado); and [85 Fed. Reg. 10188](#) (Wyoming). [Read more.](#)

**BLM Onshore Oil and Gas Operations Annual Civil Penalties Adjustment.** On February 25, the BLM published its final rule, *Onshore Oil and Gas Operations-Annual Civil Penalties Inflation Adjustments* ([85 Fed. Reg. 10617](#)), which adjusts for inflation the existing level of civil monetary penalties contained in the BLM regulations governing onshore oil and gas operations as required by the Federal Civil Penalties Inflation Adjustment Act Improvements Act of 2015 (see [43 CFR 3160](#)) and consistent with applicable Office of Management and Budget guidance. The adjustments made by this final rule constitute the 2020 annual inflation adjustments to civil penalties regulations, accounting for one year of inflation spanning the period from October 2018 through October 2019. [Read more.](#)

**BLM Oil and Gas Lease Sale – Utah.** On February 25, the BLM announced its proposal to offer four parcels, totaling approximately 4,376.5 acres, at the June oil and gas lease sale. The parcels are located in Grand and San Juan counties on public lands managed by the BLM’s Moab Field Office. The BLM

has initiated a 30-day public comment period on the environmental assessment that ends on March 26, 2020. [Read more.](#)

## **FEDERAL – Judicial**

**Greater Sage-Grouse – Idaho.** (*Update to 7/29/19 Weekly Report*) In the ongoing legal battles over BLM resource management plans in greater sage-grouse areas, on February 27 the U.S. District Court for the District of Idaho ruled against the Trump administration. In *Western Watersheds Project v. Zinke* (Case No. 1:18-cv-00187-REB), the Court held the BLM did not go through required rulemaking procedures before issuing a 2018 “instruction memorandum” aimed at speeding up timelines for federal leases under the National Environmental Policy Act. Chief Magistrate Judge Ronald E. Bush first issued a preliminary injunction in 2018 that barred the BLM from implementing its policy on lands that are home to the greater sage-grouse. The decision extends that order, barring the agency from using the streamlined approach until it completes a full public notice-and-comment process and must instead revert to Obama-era review processes. The decision also invalidates five BLM oil and gas leases in Nevada, Utah and Wyoming and applies to lease sales in habitat areas across more than 104,000 square miles. Future leases sales in the habitat area must allow a 30-day public comment and administrative protest period, per the court order. The BLM is expected to appeal the decision. [Read more.](#)

**Hydraulic Fracturing Ban – Second Circuit (New York).** On February 25, the U.S. Court of Appeals for the Second Circuit, on appeal from the U.S. District Court for the Western District of New York, rejected a landowner’s bid to overturn the New York State hydraulic fracturing moratorium in place since 2014. In *Morabito v. New York* (Case No. 18-2499), the plaintiff landowner first challenged the policy in state court in 2015. He and his wife own 400 acres in Allegany County in the Marcellus Shale region. The lawsuit accused the state government of denying them due process. Morabito says he negotiated with

dozens of drillers in 2013, hoping to tap into the same resources after the state's then-short-term moratorium lifted. The Morabitos were the only ones to challenge New York's ban in court. Morabito lost at three different levels in state court and then took the case to federal court. Here, the Court concluded "The New York courts held that David Morabito lacked standing to challenge the constitutionality of the regulation because he did not demonstrate his own actual or imminent injury-in-fact," the Court wrote. "The standing issue was fully and fairly litigated in the state courts and was necessary to the courts' decisions." [Read more.](#)

#### **Independent Contractors – Fifth Circuit (Texas).**

On February 14, the U.S. Court of Appeals for the Fifth Circuit, on appeal from the U.S. District Court for the Southern District of Texas, addressed an independent contractor dispute involving a consultant performing legal work for an oil and gas company. In [Faludi v. U.S. Shale Solutions, L.L.C.](#) (Case No. 17-20808), a former practicing attorney, took a consulting job at an oil and gas services company. The defendant paid him on a day rate basis, required him to sign a non-compete, and treated him as an independent contractor. Once the plaintiff left the company, he filed a Fair Labor Standards Act (FLSA) lawsuit claiming he had been an employee who was misclassified and was entitled to unpaid overtime wages. The Court found the facts showed Faludi was an independent contractor, thus, the FLSA did not apply. The Court also noted that the presence of a non-compete clause does not automatically negate independent contractor status, as was argued by the plaintiff. [Read more.](#)

#### **Greenhouse Gas Pollution Pricing Act – Canada.**

On February 24, an Alberta court struck a blow to one of Prime Minister Justin Trudeau's signature policy initiatives when it ruled the Greenhouse Gas Pollution Pricing Act is unconstitutional. In the 273-page ruling, [In the Matter of the Greenhouse Gas Pollution Pricing Act, SC 2018, c. 12](#) (Docket 1903-0157-AC), the Court stated the national levy represents "a constitutional Trojan horse," and noted, "Buried within it are wide ranging

discretionary powers the federal government has reserved unto itself. Their final shape, substance and outer limits have not yet been revealed." The Act imposes a federal carbon tax on provinces that haven't introduced their own plans to meet certain greenhouse gas requirements. The system includes a levy on fuels and rebates to households as well as some exemptions for trade-exposed emitters. Alberta's attorney general argued the carbon tax infringes on the provinces' jurisdiction over the development and management of their natural resources and sets a precedent that would allow the federal government to exert further control over the provinces. Last year, a Saskatchewan appeals court ruled the Act constitutional, setting up a review by the Supreme Court of Canada, which has already agreed to hear the Saskatchewan ruling. [Read more.](#)

#### **Easements; Property Valuation – Third Circuit**

**(Pennsylvania).** On February 11, the U.S. Court of Appeals for the Third Circuit, on appeal from the U.S. District Court for the Middle District of Pennsylvania, issued a precedential opinion regarding consideration of expert testimony as it applied to property valuation in the case of easements. Here, in [UGI Sunbury LLC v. A Permanent Easement for 1,7575 Acres et al.](#) (Case Nos. 18-3126, 18-3127), the analysis applied to a dispute over compensation owed to landowners for a pipeline easement. Although the circumstances in this case involve a pipeline, the Court's analysis on property valuation and the weight given to expert testimony may be instructive in other easement contexts affecting the oil and gas industry in Pennsylvania. [Read more.](#)

#### **Delaware River Basin Commission – Pennsylvania.**

On January 31, in *Wayne Land and Mineral Group, LLC v. Delaware River Basin Commission* (Case No. 3:16-CV-00897), the U.S. District Court for the Middle District of Pennsylvania addressed a dispute over the disclosure of documents withheld by the commission and which were relevant to their decision prohibiting natural gas wells within the Delaware River Basin (DRB). Here, the Court rejected the Commission's argument that their qualified deliberative process privilege outweighed an interest



in nondisclosure and compelled the release of certain documents related to a hydraulic fracturing ban in the DRB area. [Read more.](#)

## **STATE – Legislative**

**Independent Contractors – California.** On February 26, SB 806 advanced through the Senate Rules Committee. The bill would repeal [AB 5](#), signed into law last year and which created a presumption of employee status, to relax the test for independent contractor status recognition and more broadly allow for such status including recognizing work that is customarily engaged in as an independent contractor in trades, occupations or businesses of the nature of the work performed. [Read more.](#)

**Franchise Tax – California.** On February 24, Asm. Joaquin Arambula (D) introduced AB 2929. Existing income tax laws impose a minimum franchise tax on every corporation incorporated in this state, qualified to transact intrastate business in this state, or doing business in this state, and an annual tax in an amount equal to the minimum franchise tax on every limited partnership, limited liability partnership, and limited liability company registered, qualified to transact business, or doing business in this state. This bill, for taxable years beginning on or after January 1, 2021, would provide that a single-owner corporation or a single-member limited liability company is not subject to the minimum franchise tax or annual tax in the company's first taxable year. The tax reduction is available on a first-come-first-served basis until the \$100 million state cap is met. The bill would subject those entities to an annual increase in those taxes by \$200 commencing in the second taxable year, and every taxable year thereafter, until the entity is subject to 100% of those taxes. [Read more.](#)

**Well Records – California.** On February 21, Asm. Monique Limón (D) introduced AB 3214. Existing law requires the State Oil and Gas Supervisor to supervise the drilling, operation, maintenance, and abandonment of oil and gas wells. Existing law requires an owner or operator of a well to keep, or cause to be kept, a careful and accurate log, core

record, and history of the drilling of the well, and provides that a person who fails to comply with requirements relating to the regulation of oil or gas operations is guilty of a misdemeanor. This bill would additionally require the owner or operator to keep, or cause to be kept, a history of the maintenance and repair of the well. Because a violation of this requirement would be a crime, the bill would impose a state-mandated implementing program. [Read more.](#)

**Abandoned Wells – California.** On February 21, Asm. Laura Friedman (D) introduced AB 3230. Existing law requires the State Oil and Gas Supervisor to supervise the drilling, operation, maintenance, and abandonment of oil and gas wells, as provided. Existing law requires the supervisor, in cooperation with appropriate state and local agencies, to both (1) conduct a study of abandoned oil and gas wells located in those areas of the state with substantial potential for methane and other hazardous gas accumulations in order to determine the location, the extent of methane gas and other hazardous gas accumulations, and potential hazards from the abandoned wells, and (2) develop a strategy for extracting existing accumulations of methane gas and other hazardous gas from abandoned oil and gas wells in high-risk areas identified by the supervisor in order to protect the health and safety of the public. This bill would require the Geologic Energy Management Division to review the study and strategy and determine if any of the oil and gas wells identified continue to pose a hazard. [Read more.](#)

**Independent Contractors – California.** On February 21, Asm. William Brough (R) introduced AB 3281. The bill seeks to amend the effects of recently enacted [AB 5](#) (worker status/independent contractor test bill, 2019 session) to allow for independent contractor status under business-to-business contracting relationships relating to sole proprietors and limited partnerships. [Read more.](#)

**Occupational Licensing – Colorado.** On February 25, bipartisan bill, HB20-1326, was introduced. The legislation would create the “occupational credential portability program” to allow the recognition of out

of state occupational credentials “to reduce certification, registration and licensure barriers” and foster economic opportunities for workers.

[Read more.](#)

**Independent Contractors – Kansas.** (*Update to 2/24/20 Weekly Report*) On February 25, HB 2705 passed the House Committee on Commerce, Labor and Economic Development and has moved to the Appropriations Committee. The bill, introduced by that committee, would exempt contract landmen (i.e., independent contractors) from the relevant state law to codify the recognition of independent contractor status. The bill would also foreclose independent contractors from later bringing actions against oil and gas hiring companies claiming they were employees and due unemployment or other wage benefits. AAPL members on the ground have been instrumental in moving this bill forward.

[Read more.](#)

**Notary Law – Kansas.** (*Update to 2/24/20 Weekly Report*) On February 25, HB 2713 passed the House and has been transmitted to the Senate. The bill, introduced by that committee, updates existing notary law to add numerous sections, including those on electronic documents. [Read more.](#)

**Production Payments – Louisiana.** On February 26, HB 227 was pre-filed by Rep. Jean-Paul Coussan (R) for the legislative session beginning March 9. Present law requires written notice of the nonpayment of a production payment to be provided prior to a judicial demand for damages. Proposed law retains present law but eliminates the linguistic redundancy and clarifies the application of present law by stating explicitly that the interest at issue is one created out of a mineral lessee's interest. [Read more.](#)

**Trusts – Louisiana.** On February 20, HB 123 was pre-filed by Rep. Gregory Miller (R) for the legislative session beginning March 9. The bill provides for the allocation of receipts and expenses to income and principal in trusts, and specifically regarding mineral interests, current law provides for the allocation of proceeds of mineral interests and allocates the

royalty payments associated with oil and gas leases in the amount of 27.5% to principal and 72.5% to income. The bill changes current law by providing that royalty payments shall be allocated in accordance with what is reasonable and equitable. The proposed law further provides that allocation of 90% to principal and 10% to income is presumed to be reasonable and equitable but clarifies that other allocations are not necessarily unreasonable or inequitable. The proposed law also abolishes the open mines doctrine in a trust. [Read more.](#)

**Notarial Acts – Louisiana.** On February 20, HB 122 was pre-filed by Rep. Gregory Miller (R) for the legislative session beginning March 9. The bill would provide for the execution of electronic notarial acts and related procedures. [Read more.](#)

**Recordation Fees – Mississippi.** On February 17, HB 1488 was introduced by Rep. Charles Jim Beckett (R). The bill would reduce the clerk fee for recording each oil and gas assignment per assignee per each book and page listed from \$18 to \$2. [Read more.](#)

**Severance Tax Payments – Mississippi.** (*Update to 2/24/20 Weekly Report*) On February 27, Senate companion bill SB 2761 was introduced by Sen. Joel Carter, Jr. (R). This bill mirrors [HB 977](#), introduced in early February by Rep. Brent Powell (R), and which amends existing law to change the severance tax payment due date. [Read more.](#)

**Notarial Acts – Missouri.** On February 27, SB 587 advanced through committee after no action was taken since 2019. The bill, introduced by Sen. Sandy Crawford (R), modifies provisions relating to the certification of documents, including processes for the recorder of deeds and procedures for notaries public and provides provisions related to electronic notarial acts. [Read more.](#)

#### **Legislative Session Roundup – New Mexico.**

The New Mexico legislative session adjourned on February 20, 2020. Gov. Michelle Lujan Grisham (D) has until March 11 to act on any passed legislation or it is pocket vetoed, meaning a bill is considered

effectively vetoed by inaction. AAPL was tracking a number of legislative measures that failed to pass so they are dead for this year's session: [HB 28](#) (Republican bill creating an exception to the subdivision law for parcels divided for oil or gas operations); [HB 293](#) (Democrat bill making appropriations for evaluation of emissions trends and proposed policies to reduce carbon dioxide and other greenhouse gas emissions); [HB 318](#) (Republican bill allowed for severance tax reduction for enhanced recovery projects); [HM 219](#) (Democratic sponsored memorial requesting that support be expressed for establishing financial assurance amounts that are sufficient to cover remediation and reclamation costs and lease obligations and requests a review of New Mexico's statewide remediation and reclamation bonds related to energy production and infrastructure); and [SB 104](#) (Democrat bill that would have imposed a moratorium on new hydraulic fracturing permitting through 2024). [Read more.](#)

**Dormant Mineral Interests – New Jersey.** On February 25, A3223 was introduced by Asm. Ronald Dancer (R). The bill would create a process by which an owner of a surface estate may terminate a dormant mineral interest tied to their property if unused for a period of 20 or more years and has not been preserved. [Read more.](#)

**Independent Contractors – New Jersey.** On February 25, A3303 was introduced by Asm. Andrew Zwicker (D). The bill regards the payment of independent contractors and sets certain payment requirements, prohibition on retaliatory actions, recordkeeping, criminal penalties, and defines both "client" and "independent contractor." [Read more.](#)

**Hydraulic Fracturing – New York.** On February 25, AB 101 was introduced by Asm. David Buchwald (D). The bill would prohibit the deposit of hydraulic fracturing waste from oil or natural gas extraction into solid waste or wastewater treatment facilities. [Read more.](#)

**Hydraulic Fracturing – New York.** On February 25,

AB 9678 was reported favorably out of committee following its introduction. The bill, introduced by Asm. Steven Englebright (D), would prohibit horizontal drilling and high-volume hydraulic fracturing in the state. [Read more.](#)

**Attorney Dues – Oklahoma.** On February 25, SB 1404 passed the Senate Judiciary Committee. The bill, sponsored by Sen. Nathan Dahm (R), would change the fees associated with membership in the Oklahoma Bar Association from mandatory to voluntary. [Read more.](#)

**Business Entities – South Dakota.** (*Update to 2/24/20 Weekly Report*) On February 24, HB 1114 passed both chambers. The bill, sponsored by Rep. Tim Rounds (R), would authorize additional abbreviations in naming corporations, limited liability companies, and limited liability partnerships. [Read more.](#)

**Oil and Gas Bonding; Penalties – Utah.** (*Update to 2/24/20 Weekly Report*) On February 25, SB 148 passed the Senate and has been introduced in the House. The bill, sponsored by Sen. Ralph Okerlund (R), amends current law regarding the regulation of oil and gas activities, including oversight, bonding requirements, and administrative penalties. [Read more.](#)

**Employee Misclassification – Virginia.** (*Update to 2/10/20 Weekly Report*) On February 25, HB 1199 passed both chambers. The bill, sponsored by Del. Kathy Tran (D), prohibits an employer from discharging, disciplining, threatening, discriminating against, or penalizing an employee or independent contractor because the employee or independent contractor reported or plans to report that an employer or any officer or agent has failed to properly classify an individual as an employee and failed to pay required benefits or other contributions. The measure also prohibits such actions against an employee or independent contractor who is requested or subpoenaed by an appropriate authority to participate in an investigation, hearing, or inquiry by an appropriate authority or in a court

action. These prohibitions apply only if an employee or independent contractor acts in good faith and upon a reasonable belief that the information is accurate. The measure authorizes the Commissioner of Labor and Industry to institute proceedings against an employer who has taken such prohibited retaliatory action. Available remedies include reinstatement of the employee and recovery of lost wages. An employer that violates these provisions is subject to a civil penalty equal to the employee's lost wages. [Read more.](#)

**Employee Misclassification – Virginia.** *(Update to 2/10/20 Weekly Report)* On February 26, [SB 744](#) passed both chambers. The bill, introduced by Sen. Jeremy McPike (D), provides “that, if an individual performs services for an employer for remuneration, that individual shall be considered an employee of the party that pays that remuneration unless such individual or his employer demonstrates to the satisfaction of the Department of Taxation (‘the Department’) that such individual is an independent contractor.” If signed into law, the bill has an effective date of January 1, 2021. [Read more.](#)

**Employee Misclassification – Virginia.** *(Update to 2/10/20 Weekly Report)* On February 24, HB 1407 passed both legislative chambers. The bill, sponsored by Del. Jeion Ward (D), provides that if an individual performs services for an employer for remuneration, that individual shall be considered an employee of the party that pays that remuneration unless such individual or his employer demonstrates that such individual is an independent contractor. The bill allows for misclassification civil penalties against employers. If signed into law, the bill would be effective January 1, 2021. [Read more.](#)

**Employee Misclassification – Virginia.** *(Update to 2/17/20 Weekly Report)* On February 24, SB 662 passed the House of Delegates after passing the Senate in January. The bill, sponsored by Sen. Jennifer Boysko (D), prohibits an employer from discharging, disciplining, threatening, discriminating against, or penalizing an employee or independent

contractor because the employee or independent contractor reported or plans to report that an employer or any officer or agent has failed to properly classify an individual as an employee and failed to pay required benefits or other contributions. The measure also prohibits such actions against an employee or independent contractor who is requested or subpoenaed by an appropriate authority to participate in an investigation, hearing, or inquiry by an appropriate authority or in a court action. These prohibitions apply only if an employee or independent contractor acts in good faith and upon a reasonable belief that the information is accurate. The measure authorizes the Commissioner of Labor and Industry to institute proceedings against an employer who has taken such prohibited retaliatory action. Available remedies include reinstatement of the employee and recovery of lost wages. An employer that violates these provisions is subject to a civil penalty equal to the employee's lost wages. If signed into law, the bill would be effective July 1, 2020. [Read more.](#)

**Partition of Heirs Property – Virginia.** *(Update to 2/24/20 Weekly Report)* On February 18, HB 1605 was transmitted to Gov. Ralph Northam (D). The governor has until March 3 to sign or veto the measure. The bill, sponsored by Del. Patrick Hope (D), incorporates major provisions of the Uniform Partition of Heirs Property Act and provides that in partition actions the court shall order an appraisal to determine fair market value of the property, unless the parties have agreed to the value of the property or to another valuation method. The bill also provides factors to be considered by the court when making an allotment of the property when there is a dispute among the parties. The bill further provides that if the court orders a sale of property in a partition action, the sale shall be conducted on the open market, unless the court finds that a sale by sealed bids or at auction would be more economically advantageous to the parties as a group and outlines the procedure for such an open-market sale. [Read more.](#)

**Leasing – West Virginia.** *(Update to 2/17/20 Weekly Report)* On February 28, SB 554 passed

the House of Delegates. If signed into law, the bill would take effect 90 days after passage. The measure, sponsored by Sen. Randy Smith (R), passed the Senate on February 14. "The purpose of this bill is to provide a requirement for a lessee to execute and deliver to the lessor, within a specified time and without cost, a recordable release for terminated, expired, or cancelled oil or natural gas leases; provide for a procedure by which a lessor may serve notice to a lessee, if a lessee fails to timely provide the release; require a lessee to timely notify the lessor in writing of a dispute; provide for a recordable affidavit of termination, expiration, or cancellation with specified contents; provide that with proper notification in the absence of a dispute, a recorded affidavit creates a rebuttable presumption of termination and cancellation for the oil or natural gas lease." [Read more.](#)

**Well Plugging; Bonds – West Virginia.** (*Update to 1/13/20 Weekly Report*) On February 26, SB 120 passed the Senate and has been transmitted to the House of Delegates. The purpose of the bill, sponsored by Sen. Mike Romano (D), "is to require money that results from the forfeiture of an oil and gas operator's bond as a result of the operator's failure to plug a well or otherwise comply with state statutes and rules to first be applied to correct or mitigate an immediate threat to the environment or hindrance or impediment to the development of mineral resources of this state that caused the forfeiture of the bond." [Read more.](#)

**Well Permit Modifications – West Virginia.** On February 26, SB 840 passed the Senate and has been transmitted to the House of Delegates. The bill, sponsored by Sen. Randy Smith (R), allows for modifications of well work permits issued by the Department of Environmental Protection's Office of Oil and Gas. [Read more.](#)

**Partition of Real Property – West Virginia.** On February 20, HB 4956 passed the House of Delegates and was introduced in the Senate. The purpose of the bill, introduced by Del. John Shott (R), "is to enact partition reform by providing for

allotment or sale of real property; providing for appointment, duties, and requirements for commissioners, appraisers, and real estate brokers for partitions; providing factors to be considered in determining whether partition in kind is appropriate; providing procedures to be followed in determining the fair market value of property being partitioned; providing for open-market sales, sealed bids, or public auctions of property being partitioned; providing reporting requirements; and providing protections from sale for certain specified interests." [Read more.](#)

**Independent Contractors – West Virginia.** On February 24, SB 528 passed the Senate. The purpose of the bill, introduced by Sen. Chandler Swope (R), "is to simplify criteria used to define independent contractors and to impose objective standards on the differentiation of independent contractors from employees." [Read more.](#)

**Oil and Gas Road Damage – West Virginia.** (*Update to 2/24/20 Weekly Report*) On February 20, SB 827 passed the Transportation and Infrastructure Committee. The purpose of the bill, introduced by Sen. Glenn Jeffries (D), "is to protect and repair the state's roads damaged by oil and gas industry operations. The bill requires a permit and a road use agreement and specifies bonding requirements." [Read more.](#)

**Corporate Taxation – Wisconsin.** On February 20, AB 753, introduced by Rep. John Macco (R), passed the House and has been transmitted to the Senate. The bill makes several changes for tax-option corporations that elect to pay tax at the entity level. Under the bill, these corporations can exclude 30% of the gains realized from the sale of assets held for more than a year and the sale of all assets acquired from a decedent. The bill also limits the excess capital loss deduction from \$3,000 to \$500, requires taxpayers with less than \$250,000 in net income to pay interest on the underpayment of taxes, and requires taxpayers to make quarterly estimated payments according to the standards applicable to taxpayers with net income of less than

\$250,000. The Senate version/companion bill, [SB 706](#), was introduced in January. [Read more.](#)

**Severance Tax – Wyoming.** *(Update to 2/24/20 Weekly Report)* On February 28, HB 243 passed the House. The bill, sponsored by Rep. Donald Burkhart, Jr. (R), amends existing law to provide for certain severance tax rates under defined circumstances and sets forth certain exemptions, specifically crude oil and natural gas produced from wells drilled on or after January 1, 2020 would be exempt from 2% of the total 6% severance tax rate for the first 6 months and exempt from 1% of the total 6% severance tax for the next 6 months, but the exemption does not apply when the WTI spot price of sweet crude oil is \$60/barrel or more at the time of production. The bill also specifies increases on the severance tax rate by 2% on crude oil production from wells drilled on or after July 1, 2020 when the 12-month rolling average of the WTI spot price of sweet crude oil is \$80/barrel or more at the time of production, among other related provisions. [Read more.](#)

**Mineral Exploration Tax Incentives – Wyoming.** *(Update to 2/10/20 Weekly Report)* On February 27, HB 91 passed the House. The bill, sponsored by Rep. David Miller (R), provides a severance tax credit for certain mineral exploration, including oil and gas. The credit for oil and gas exploration is provided under an amendment provided in the bill to Wyoming statute [Sec. 39-14-209\(d\)](#). [Read more.](#)

**Ad Valorem Taxes – Wyoming.** *(Update to 2/24/20 Weekly Report)* On February 27, HB 159 passed the House. The bill, sponsored by the Select Committee on Coal/Mineral Bankruptcies (R), would require all mineral producers in the state to report and remit ad valorem taxes on mineral production on a monthly basis to the Department of Revenue on behalf of counties as an attempt to reduce uncollectable ad valorem taxes. Ad valorem tax reports and estimated payments would be due on or before the twenty-fifth day of the second month following the month of production, commencing calendar year 2021. Mineral producers currently make their first ad valorem tax payment on mineral production from 11

to 23 months after the month of production. The bill also provides for a transition period and tax credits for certain remittance procedures. [Read more.](#)

**State Tax Revenue – Wyoming.** *(Update to 2/24/20 Weekly Report)* On February 27, SF 110 passed the Senate. The bill, sponsored by Sen. Cheri Steinmetz (R), establishes that the Office of State Lands and Investments study the impact on the failure of the federal government to make payments in lieu of tax that are equivalent to the property tax revenue that the state of Wyoming would otherwise generate from lands under federal ownership or control within Wyoming. [Read more.](#)

**Tax Liens on Mineral Production – Wyoming.** *(Update to 2/24/20 Weekly Report)* On February 27, SF 139 passed the Senate. The bill amends existing law regarding enforcement of tax liens on mineral production, including provisions for perfecting tax liens, notice provisions, and amendments to the definition of “delinquent taxpayer.” The House companion bill, [HB 182](#), did not move in favor of the Senate version. [Read more.](#)

**Sage Grouse Mitigation Credits – Wyoming.** *(Update to 1/13/20 Weekly Report)* On February 25 HB 13 passed the House and has been introduced in the Senate. The bill, sponsored by the Joint Minerals, Business & Economic Development Committee, would establish a program for compensatory mitigation credits for conservation of the greater sage-grouse. The bill recognizes that industry, including energy development, must be considered when managing the bird habitat and in some cases where adverse species impacts occur, a system of compensatory mitigation would offset impacts to the species. [Read more.](#)

**State Mineral Royalties – Wyoming.** *(Update to 2/24/20 Weekly Report)* On February 20, House Joint Resolution HJ0001 was recalled from the House Appropriations Committee and brought to a floor vote. As of February 25, the bill is awaiting its third reading vote in the House. The Joint Resolution, introduced by Rep. Tim Hallinan (R),

would authorize the process of amending the Wyoming Constitution to provide that for six years two-thirds of state mineral royalties earned from the lease of state school lands may be appropriated by the legislature for the support of public schools and provides a ballot statement. Such a constitutional amendment resolution, if passed by the legislature, would have been put to the ballot in November for Wyoming voters to decide. [Read more.](#)

**Water Disposal Rules – Wyoming.** (*Update to 2/24/20 Weekly Report*) On February 14, HB 219 was received for introduction by Rep. Aaron Clausen (R), but the bill was never considered by the House for introduction and will die by the March 6, 2020 legislative session adjournment date. The bill would have amended existing law regarding rules providing for the disposal of produced and fresh water in connection with oil and gas leases. [Read more.](#)

**Well Notice Requirements – Wyoming.** On February 12, HB 221 was received for introduction by Rep. Dan Zwonitzer (R), but the bill was never considered by the House for introduction and will die by the March 6, 2020 legislative session adjournment date. The bill would have provided for regulatory provisions establishing notice requirements to persons located within certain well distances, but would not have applied to more than ½ mile from a well. [Read more.](#)

## **STATE – Regulatory**

**COGCC Draft Rulemaking – Colorado.** As an update to our ongoing reporting of Colorado Oil & Gas Conservation Commission (COGCC) draft rulemaking to effectuate the state's oil and gas regulatory overhaul legislation ([SB 19-181](#)), which was signed into law last year, on February 24, the COGCC released additional portions of [Draft 300 \(Operating and Reporting\) and 900 \(Environmental Impact Prevention\) Rules](#). For background, the COGCC is considering amendments to the Commission Rules of Practice and Procedure to implement SB 19-181. On April 16, 2019, Governor Polis signed SB 19-181 into law, which changed the mandate of the COGCC from fostering oil and gas

development to regulating oil and gas development “in a reasonable manner to protect and minimize adverse impacts to public health, safety, and welfare, the environment and wildlife resources.” These draft rulemakings represent the early stages of regulatory changes to the rules and regulations governing the mandate of the COGCC. To [submit a public comment](#) please visit the COGCC website. [Read more.](#)

## **Railroad Commission Oil and Gas Notice – Texas.**

On February 25, the Railroad Commission of Texas (RRC) announced “Geologic Formation Information and County Formation Lists Updates.” According to the RRC notice, “The geologic formation information is provided to oil and gas operators as a guideline for compliance with 16 Texas Administrative Code §3.13 (Statewide Rule 13), relating to casing, cementing, drilling, well control and completion requirements. The geologic formation information will also be updated within the Drilling Permits (W-1) application in the RRC Online System.” The RRC also notes, “One change to geologic formation information is the removal of the formation depth (or “tops”) estimates from all the county formation lists. Most changes are to the county formation lists for districts 8 and 8A, where formations have been added.” [Read more.](#)

## **STATE – Judicial**

**Local Oil and Gas Ordinance – California.** On February 25, California's Fifth Appellate District Court of Appeals held in [King and Gardiner Farms, LLC v. County of Kern](#) (Case No. F077656) that Kern County violated the California Environmental Quality Act (CEQA) when adopting the County's Oil and Gas Ordinance. The ordinance, adopted in 2015, “approved an ordinance to streamline the permitting process for new oil and gas wells.” The opinion addressed the inadequacy of an environmental impact report (EIR) and “CEQA violations involving water, agricultural land, and noise.” According to law firm, Day Carter & Murphy LLP, “The Court's decision sets aside the County's certification of the EIR for the Ordinance and invalidates the Ordinance as of 30 days from the date of the Court's decision. Oil and gas activities under existing permits may

continue as the Court recognized those permits issued before the invalidation will remain in effect. For further directives on how the decision affects permitting and operations, please see the Day Carter & Murphy LLP [California Oil & Gas Newsletter](#). [Read more.](#)

**Impact Fees – Pennsylvania.** On February 6, in *Snyder Brothers, Inc. v. Pennsylvania Public Utility Commission* (Case No. 1043 C.D. 2015), the Commonwealth Court of Pennsylvania addressed a dispute over the payment of well impact fees. The Public Utility Commission (PUC) claimed Snyder had not paid impact fees on certain vertical wells. Snyder argued the wells were stripper wells and thus not subject to the fee. In this case, the issues surrounded the imposition of penalties and interest and due process violations. Finding in favor of Snyder, the Court found PUC advice, representations and notice were inadequate and deficient in other respects and could not substantiate imposition of interest and penalties under the circumstances. [Read more.](#)

**Easements – Texas.** On February 28, the Texas Supreme Court decided the “hotly contested case,” [Southwestern Electric Power Company v. Lynch et al.](#) (Case No. 18-0768), regarding several general easements. The dispute centered on the width of several general easements that Southwestern Electric Power Company (SWEPCO) acquired from the respondent landowners’ predecessors-in-title in 1949. SWEPCO argued that the easements are general easements with no fixed width, while the landowners contended that the transmission line easements should have a fixed, 30-foot width. After conducting a bench trial, the trial court concluded that the easements are fixed at a thirty-foot width, and therefore the trial court rendered judgment for the landowners. The Court of Appeals affirmed the trial court’s judgment, concluding that because the original 1949 easements did not specify a width, the trial court was within its discretion to admit extrinsic evidence of past use to determine how much of the landowners’ land “was reasonably necessary” for the petitioner to utilize pursuant to the easements. The Texas Supreme Court disagreed with the Court of

appeals, however, and concluded that the easements have no fixed width, but SWEPCO’s use of the land under the easements nevertheless must be “reasonable and necessary.” In so doing, the Court held that “[t]he use of a general easement without a fixed width is a strategic decision that does not render an easement ambiguous or require a court to supply the missing term.” However, the Court also noted that its holding did not mean that the affected landowners “are without recourse as to SWEPCO’s future use of the easements. The holder of a general easement must utilize the land in a reasonable manner and only to an extent that is reasonably necessary.” According to Texas law firm, Jackson Walker, “[t]his is a significant decision, as general easements have historically been used widely by electric utilities, pipeline companies, and other entities as tools that allow flexibility to account for future growth, innovation, and development.” [Read more.](#)

## **INDUSTRY NEWS FLASH**

► **BP to quit three energy trade groups over climate policies.** On February 26, [BP announced](#) the company will be leaving three energy trade associations “due to misalignment on climate policy, citing its support of the Paris Agreement goals and net zero ambition as reasons for withdrawing membership.” The three associations are Western Energy Alliance, Western States Petroleum Association, and American Fuel and Petrochemical Manufacturers. [Read more.](#)

## **LEGISLATIVE SESSION OVERVIEW**

**Session Notes:** Alaska, Alabama, Arizona, California, Colorado, Connecticut, Delaware, Florida, Georgia, Hawaii, Idaho, Illinois, Indiana, Iowa, Kansas, Kentucky, Maine, Maryland, Massachusetts, Michigan, Minnesota, Mississippi, Missouri, Nebraska, New Hampshire, New Jersey, New York, Ohio, Oklahoma, Oregon, Pennsylvania, Rhode Island, South Carolina, South Dakota,



Tennessee, Utah, Vermont, Virginia, Washington, West Virginia and Wyoming are in regular session. The District of Columbia Council, Puerto Rico and U.S. Congress are also in regular session.

The following states are expected to convene their 2020 sessions on the dates provided: **Louisiana** (March 9) and **Arkansas** (April 8).

The following states are expected to adjourn their 2020 sessions on the dates provided: **Oregon**, **Virginia** and **West Virginia** (March 7).

**Signing Deadlines:** New Mexico Democratic Gov. Michelle Lujan Grisham has until March 11 to act on legislation or it is pocket vetoed.

**Interim Committee Hearings:** The following states are currently holding 2020 interim committee hearings: [Louisiana](#), [Montana](#), [Nevada](#), [North Dakota](#) and the [Texas House](#).

**Bill Pre-Files:** The following states are currently posting 2020 bill drafts, pre-files and interim studies: [Arkansas](#) and [Louisiana](#). ■

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# GOVERNMENTAL AFFAIRS WEEKLY REPORT

## Weekly Highlights At-A-Glance

**Please Note:** Due to the coronavirus (COVID-19) pandemic and ever-changing federal/state government protocols, the AAPL Governmental Affairs Weekly Reports will be published on a biweekly basis in the near term to accommodate foreseeable workplace disruptions and telecommuting planning. As you will see on the last page of this report, some state legislatures have already begun postponing their legislative sessions and hearings are also being postponed during this time. Please stay safe, healthy and informed during this unprecedented public health emergency. Personally, I've found the CDC's [coronavirus.gov](https://www.cdc.gov/coronavirus) website to be one of the most reliable sources for protecting you and your family during this challenging time.

### FEDERAL – Legislative

#### **Fair Returns for Public Lands Act of 2020 – S. 3330.**

On February 25, bi-partisan bill [S. 3330](#), known as the *Fair Returns for Public Lands Act of 2020*, was introduced by Sen. Tom Udall (D-NM) and Sen. Chuck Grassley (R-IA). The bill increases onshore oil and gas royalty rates from 12.5% to 18.75% on new or reinstated onshore federal oil and gas leases. The bill also increases mineral bid amounts and rental rates, authorizes fees for expression of interest, and provides for payment of back rentals in reinstatement of leases. "Low royalty rates on oil produced on federal lands has deprived the federal treasury of billions of dollars. Today marks 100 years since Congress passed the Mineral Leasing Act of 1920. Since then, the royalty rate has not been addressed," said Grassley, who also stated that "similar measures in Texas and Colorado did not affect the state's overall production." [Read more.](#)

**Congressional Spring Recess.** The U.S. Senate and House of Representatives were scheduled to be on a week-long recess the week of March 16, 2020

but due to the coronavirus pandemic, legislators will remain in Washington, DC to hammer out a national emergency aid package. [Read more.](#)

### FEDERAL – Regulatory

#### **BLM/Bureau of Indian Affairs Draft Resource**

**Management Plan – New Mexico.** On February 28, The Bureau of Land Management (BLM) Farmington Field Office, in coordination with the Bureau of Indian Affairs Navajo Regional Office, prepared a joint [Draft Resource Management Plan Amendment \(RMPA\) and Environmental Impact Statement \(EIS\)](#) to analyze resource management issues for lands in San Juan, Rio Arriba, McKinley, and Sandoval counties, including lands surrounding the Chaco Culture National Historical Park. "The Draft Resource Management Plan will help guide BIA's stewardship and development of energy resources on Indian trust lands and assists tribal governments in managing, developing and protecting important cultural sites, surface acres of trust lands, and subsurface trust mineral estates," said BIA Deputy Director for Field Operations Jim James. This planning effort, *Notice of Availability of the Farmington Mancos-Gallup Resource Plan Amendment and Draft Environmental Impact Statement, New Mexico (85 Fed. Reg. 12012)*, will update management decisions such as oil and gas development, lands and realty, and vegetation. The decisions made will determine how public, Navajo Tribal Trust land, and Navajo Indian allotments and resources within the planning area will be managed for the next 10 to 15 years. During the process of drafting the amendment, the BLM has foregone new oil and gas leasing within a 10-mile radius of Chaco Culture National Historical Park and rather the preferred action highlighted in the draft documents could open up much of that land to oil and gas leasing by reducing the size of the buffer

zone. The public comment period is open and [comments may be submitted here](#) through May 28, 2020. [Read more.](#)

**Critical Habitat; Yellow-Billed Cuckoo – Multiple States.** On February 27, the U.S. Fish and Wildlife Service (FWS) published proposed rule revisions for the critical habitat for the western distinct population segment of the yellow-billed cuckoo under the Endangered Species Act in *Endangered and Threatened Wildlife and Plants; Revised Designation of Critical Habitat for the Western Distinct Population Segment of the Yellow-Billed Cuckoo* ([85 Fed. Reg. 11458](#)). In total, approximately 493,665 acres are now being proposed for designation as critical habitat in Arizona, California, Colorado, Idaho, New Mexico, Texas, and Utah. If finalized, the rule would extend the Act's protections to this species' critical habitat. The songbird migrates each year from Central and South America to its breeding grounds in Mexico and the U.S. and nesting pairs find refuge in willows, cottonwoods and other trees along waterways. The FWS is seeking input on the possible economic impacts of designating the critical habitat. The [public comment](#) period is open through April 27, 2020. [Read more.](#)

## **FEDERAL – Judicial**

**Climate Change Suit – Fourth Circuit (Maryland).** (Update to 11/4/19 Weekly Report) On March 6, in *Baltimore v. BP P.L.C. et al* (Case No. 19-1644), the U.S. Court of Appeals for the Fourth Circuit, on appeal from the United States District Court for the District of Maryland, affirmed that Baltimore's pending lawsuit seeking to hold multiple oil and gas companies liable for climate change harms belongs in state court. The lawsuit, which seeks monetary damages to help pay for climate impacts, was originally filed in Maryland state court last year but the oil and gas company defendants moved it to federal court. [Read more.](#)

**Federal Leases; Records – Fifth Circuit (Texas).** On January 29, in *Statoil USA E&P, Inc. v. U.S. Dept. of Interior* (Case No. 18-20827), the U.S. Court of

Appeals, Fifth Circuit, on appeal from the U.S. District Court for the Southern District of Texas, affirmed the district court ruling against Statoil regarding information maintained regarding royalties on federal leases. The Court stated that "Statoil pays the federal government royalties in order to develop oil and gas reserves on federal land. These royalties are based on the sales that Statoil reports. After multiple warnings, the Department of the Interior assessed a civil penalty against Statoil under 30 U.S.C. § 1719(d) for the knowing or willful maintenance of false information related to reported gas sales." However, Statoil contended that this penalty is invalid because, as a matter of law, Statoil cannot "maintain" false information if the reports are physically stored on a government server. The Court agreed with the district court that the plain meaning of "maintains" includes keeping information in a state of validity and the facts showed Statoil had actual notice that its reports were inaccurate. [Read more.](#)

## **STATE – Legislative**

**Notarial Acts – Arizona.** (Update to 1/27/20 Weekly Report) On March 5, SB 1226 passed the Senate. The bill, introduced by Sen. Kate Brophy McGee (R), would make numerous changes to existing notarial law, including electronic notarial acts, authority to perform notarial acts, and certain requirements, among other provisions. [Read more.](#)

**Abandoned Wells – Kansas.** On March 9, the House Committee on Appropriations (R) adopted its version of HB 2536. That same committee introduced the bill. The legislation would amend law concerning the filing of complaints and investigations pertaining to abandoned wells, responsible parties for plugging abandoned wells, and funds used by the Kansas Corporation Commission for plugging abandoned wells. [Read more.](#)

**Notarial Acts – Kentucky.** On March 6, SB 283 was introduced by Sen. Morgan McGarvey (D). The bill would amend existing notary law to provide for electronic acts. [Read more.](#)

**Notarial Acts – Louisiana.** On March 9, HB 274 was introduced by Rep. Ray Garofalo (R). The bill provides for the execution of electronic notarial acts. [Read more.](#)

**Ad Valorem Tax – Louisiana.** On March 9, HB 360 was introduced by Rep. Mike Huval (R). The bill provides for the methodology of valuation of oil and gas wells for the purpose of ad valorem assessment. [Read more.](#)

**Severance Tax – Louisiana.** On March 9, HB 506 was introduced by Rep. Phillip DeVillier (R). The bill reduces the severance tax rate for oil over a certain period of time and clarifies the severance tax rate for oil produced from certain incapable wells. [Read more.](#)

**Partition Actions – Louisiana.** On March 9, HB 594 was introduced by Rep. Alan Seabaugh (R). The bill would amend existing law to provide for partitions by private sale; provides for absentee co-owners and provides other guidance relative to these partition actions. [Read more.](#)

**Boundary Agreements – Louisiana.** On March 9, SB 176 was introduced by Sen. R.L. Allain (R). The bill allows for state and private landowners to enter into boundary agreements concerning disputed property and concerning water bottom boundary agreements. [Read more.](#)

**Riparian Landowner Agreements – Louisiana.** On March 9, SB 177 was introduced by Sen. R.L. Allain (R). The joint resolution proposes a constitutional amendment authorizing the state to enter into agreements with riparian landowners to establish a permanent, fixed boundary between state owned or claimed and privately owned or claimed water bottoms, regardless of the navigability of the water body, and provides for donation, and the disposition of mineral rights. [Read more.](#)

**Energy Industry Support – Louisiana.** On March 9, SB 386 was introduced by Sen. R.L. Allain (R). The bill would create the Commission for Louisiana's

Energy, Environment, and Restoration within the Department of Natural Resources for the purpose of supporting programs designed to demonstrate to the general public the importance of the Louisiana oil and natural gas exploration, production, and service industry; encouraging the wise and efficient use of energy; promoting environmentally sound production methods and technologies; developing existing supplies of Louisiana's oil and natural gas resources; supporting research and educational activities concerning the oil and gas exploration and production industry; and causing remediation of historical oilfield environmental problems. [Read more.](#)

**Employee Misclassification – Louisiana.** On March 9, HB 397 was introduced by Rep. Mandie Landry (D). The bill provides for an increase in the administrative penalties assessed for the misclassification of employees. The measure is unlikely to move forward in the Republican-controlled House. [Read more.](#)

**Marketable Title – Michigan.** On March 11, Rep. James Lower (R) introduced HB 5611. The bill amends the preservation provision of marketable title law from the filing of record of 2 to 5 years and the effective date related to filing. [Read more.](#)

**Severance Tax Payment Date – Mississippi.** On March 5, SB 2761 passed the Senate. The bill, sponsored by Sen. Joel Carter (R), changes the remittance date/month for which oil and gas severance taxes are due. [Read more.](#)

**Recording Fees – Mississippi.** On March 5, HB 1175 passed the House. The bill, sponsored by Rep. Brent Powell (R), revises court clerk fees charged for recording oil and gas assignment instruments from a per book and page fee to a "per assignee" flat fee and allows for a set fee for marginal notations entered pertaining to the recording of oil and gas assignments. [Read more.](#)

**Recording Fees – Mississippi.** (*Update to 3/2/20 Weekly Report*) On March 3, HB 1488 died in

committee in favor of HB 1175 above. The bill, sponsored by Rep. Charles Jim Beckett (R), would have reduced the clerk fee for recording each oil and gas assignment per assignee per each book and page listed from \$18 to \$2. [Read more.](#)

**Severed Estates – Mississippi.** (*Update to 2/10/20 Weekly Report*) On March 3, HB 253 died in committee. The bill, sponsored by Rep. Bob Evans (D), would have provided that mineral estates separated from the surface estate shall revert to the owner of the surface estate after 10 years of non-production. A similar bill, [HB 332](#), sponsored by Rep. Donnie Bell (R), also died in committee on March 3. [Read more.](#)

**Ad Valorem Taxes – Mississippi.** (*Update to 2/10/20 Weekly Report*) On March 3, HB 329 died in committee. The bill, sponsored by Rep. Donnie Bell (R), would have amended current law regarding ad valorem taxes on nonproducing oil, gas or mineral interests in real estate which are owned or held separately from the surface rights. [Read more.](#)

**Severed Estates – Mississippi.** (*Update to 2/17/20 Weekly Report*) On March 3, HB 586 died in committee. The bill, sponsored by Rep. Randy Boyd (R), would have provided that mineral estates separated from the surface estate shall revert to the surface owner after 20 years of nonproduction and defines “production” for purposes of the bill. [Read more.](#)

**Severed Estates – Mississippi.** (*Update to 2/24/20 Weekly Report*) On March 3, HB 836 died in committee. The bill, sponsored by Rep. Price Wallace (R), would have provided that mineral estates separated from the surface estate shall revert to the surface owner after 10 years of nonproduction. [Read more.](#)

**Well Plugging – Oklahoma.** (*Update to 1/27/20 Weekly Report*) On March 5, SB 1439 passed the Senate and has been introduced in the House. The bill, sponsored by Sen. Lonnie Paxton (R), would amend existing law related to well plugging, closure

of surface impoundments, and removal of trash and equipment to double the bond requirements to \$50,000, and if an operator operates more than four wells, that amount is doubled from its current amount to \$200,000. [Read more.](#)

**Injection Wells – Oklahoma.** (*Update to 2/10/20 Weekly Report*) On March 5, SB 1615 passed the Senate. The bill, sponsored by Sen. Darcy Jech (R), creates the Task Force on Injection Well Stability. The Task Force is comprised of nine members. Members of the Task Force shall not be reimbursed for travel expenses or receive compensation. The Task Force is authorized to issue any reports it deems necessary and appropriate and may make any legislative recommendations available to the Governor and the Legislature. The sunset date for the Task Force is December 1, 2023. [Read more.](#)

**Well Plugging – South Dakota.** (*Update to 1/20/20 Weekly Report*) On March 9, SB 17 passed the House. The bill passed the Senate on March 4. The measure, sponsored by the Senate Committee on Appropriations (R), makes an appropriation from state funds for the plugging and surface reclamation of natural gas wells and to declare an emergency. [Read more.](#)

**Well Plugging – South Dakota.** (*Update to 2/10/20 Weekly Report*) On March 9, HB 1025 was signed into law by Gov. Kristi Noem (R). The Act, sponsored by the House Agriculture and Natural Resources Committee (R), revises certain provisions regarding plugging and performance bonds for oil and gas wells. The Act is effective July 1, 2020. [Read more.](#)

**Business Entities – South Dakota.** (*Update to 3/2/20 Weekly Report*) On March 4, HB 1114 was signed into law by Gov. Kristi Noem (R). The Act, sponsored by Rep. Tim Rounds (R), authorizes additional abbreviations in naming corporations, limited liability companies, and limited liability partnerships. The Act is effective July 1, 2020. [Read more.](#)

**Registration of Instruments – Tennessee.** (*Update*

to 2/17/20 Weekly Report) On March 9, HB 2370 passed the House. The bill, sponsored by Rep. Dave Wright (R), amends existing law to require “either a licensed attorney or the custodian of the original version of an electronic document, instead of the custodian of the electronic version, to certify the electronic document for registration by a county register.” The Senate companion bill, SB 2376, was introduced on February 5 by Sen. Shane Reeves (R) and has been set aside in favor of the House bill.

[Read more.](#)

**Oil and Gas Bonding; Penalties – Utah.** (Update to 3/2/20 Weekly Report) On March 5, SB 148 passed the House. The bill, sponsored by Sen. Ralph Okerlund (R), passed the Senate in February. The measure amends current law regarding the regulation of oil and gas activities, including oversight, bonding requirements, and administrative penalties. [Read more.](#)

**Partition of Heirs Property – Virginia.** (Update to 2/24/20 Weekly Report) On March 6, SB 553 was signed into law by Gov. Ralph Northam (D). The Act, sponsored by Sen. Frank Ruff, Jr. (R), incorporates major provisions of the Uniform Partition of Heirs Property Act and provides that in partition actions the court shall order an appraisal to determine fair market value of the property, unless the parties have agreed to the value of the property or to another valuation method; provides factors to be considered by the court when making an allotment of the property when there is a dispute among the parties; provides that if the court orders a sale of property in a partition action, the sale shall be conducted on the open market, unless the court finds that a sale by sealed bids or at auction would be more economically advantageous to the parties as a group; and outlines the procedure for such open-market sales. The Act is effective July 1, 2020.

[Read more.](#)

**Employee Misclassification – Virginia.** (Update to 2/17/20 Weekly Report) On March 5, SB 894 passed both legislative chambers. The House version, [HB 984](#), passed both legislative chambers on March

3 and has been transmitted to Gov. Ralph Northam (D) for a bill signing deadline of April 6, 2020. These Democrat sponsored bills, which are reported by the legislature as identical, authorize an individual who has not been properly classified as an employee to bring a civil action for damages against his employer for failing to properly classify the employee if the employer had knowledge of the individual's misclassification. The court may award damages in the amount of any wages, salary, employment benefits, including expenses incurred by the employee that would otherwise have been covered by insurance, or other compensation lost to the individual, a reasonable attorney fee, and the costs incurred by the employee in bringing the action. The measure provides that an individual who performs services for a person for remuneration shall be presumed to be an employee unless it is shown that the individual is an independent contractor as determined under the Internal Revenue Service guidelines. [Read more.](#)

**Employee Misclassification – Virginia.** (Update to 3/2/20 Weekly Report) On March 3, HB 1199 was signed into law by Gov. Ralph Northam (R). The Act, sponsored by Del. Kathy Tran (D), prohibits an employer from discharging, disciplining, threatening, discriminating against, or penalizing an employee or independent contractor because the employee or independent contractor reported or plans to report that an employer or any officer or agent has failed to properly classify an individual as an employee and failed to pay required benefits or other contributions. The measure also prohibits such actions against an employee or independent contractor who is requested or subpoenaed by an appropriate authority to participate in an investigation, hearing, or inquiry by an appropriate authority or in a court action. These prohibitions apply only if an employee or independent contractor acts in good faith and upon a reasonable belief that the information is accurate. The measure authorizes the Commissioner of Labor and Industry to institute proceedings against an employer who has taken such prohibited retaliatory action. Available remedies include reinstatement of the employee and recovery of lost

wages. An employer that violates these provisions is subject to a civil penalty equal to the employee's lost wages. The Act is effective July 1, 2020. [Read more.](#)

**Employee Misclassification – Virginia.** *(Update to 2/17/20 Weekly Report)* On March 10, HB 984 was signed into law by Gov. Ralph Northam (R). The Act, sponsored by Del. Karrie Delaney (D), authorizes an individual who has not been properly classified as an employee to bring a civil action for damages against his employer for failing to properly classify the employee if the employer had knowledge of the individual's misclassification. The court may award damages in the amount of any wages, salary, employment benefits, including expenses incurred by the employee that would otherwise have been covered by insurance, or other compensation lost to the individual, a reasonable attorney fee, and the costs incurred by the employee in bringing the action. The measure provides that an individual who performs services for a person for remuneration shall be presumed to be an employee unless it is shown that the individual is an independent contractor as determined under the Internal Revenue Service guidelines. The Act is effective July 1, 2020. [Read more.](#)

**Hydraulic Fracturing – Virginia.** *(Update to 2/10/20 Weekly Report)* On March 2, SB 106 passed both legislative chambers. The bill, introduced by Sen. Scott Surovell (D), states that “No person shall conduct any hydraulic fracturing in any well that has been drilled through any portion of a groundwater management area declared by regulation pursuant to the provisions of the Ground Water Management Act of 1992 (§ 62.1-254 et seq.). For purposes of this section, ‘hydraulic fracturing’ means the treatment of a well by the application of hydraulic fracturing fluid, including a base fluid and any additive, under pressure for the express purpose of initiating or propagating fractures in a target geologic formation to enhance production of oil or natural gas.” [Read more.](#)

**Unknown/Unlocatable Owners – West Virginia.** *(Update to 2/17/20 Weekly Report)* On March 5,

HB 4088 passed both legislative chambers. The purpose of the bill, sponsored by Del. William Anderson (R), “is to provide that proceeds from certain oil and gas wells that are due to persons whose name or address are unknown are to be kept in a special fund and if unclaimed within seven years the proceeds shall be transferred to the Oil and Gas Reclamation Fund. The bill provides that if there is a surface disturbance those named surface owners of a leased interest subject to pooling for a horizontal well are the only surface owners insofar as the well permit is concerned. The bill provides that if another surface owner should become known his or her name shall be added as a surface owner on the permit. The bill provides that if proceeds from other mineral tracts in a unit or pool of a horizontal well are not claimed by an unknown, missing or abandoned owner within seven years the proceeds shall be transferred to the Oil and Gas Reclamation Fund. The bill provides that certain provisions take effect beginning when funds have been unclaimed for seven years after the special Commissioner’s lease regardless of when the lease was signed.” [Read more.](#)

**Correcting Recorded Instruments – West Virginia.** *(Update to 2/17/20 Weekly Report)* On March 5, HB 4576 passed both legislative chambers. The purpose of the bill, sponsored by Del. John Shott (R), “is to establish a procedure for correcting obvious errors in deeds, deeds of trust, and mortgages, and establishing a format for the corrective affidavit and notice of an intent to correct an obvious description error.” [Read more.](#)

**Abandoned Wells – West Virginia.** *(Update to 2/10/20 Weekly Report)* On March 2, HB 4090 passed both legislative chambers. The purpose of the bill, introduced by Del. William Anderson (R), “is to reduce the severance tax on marginal oil and natural gas wells, excluding wells utilizing horizontal drilling techniques targeting shale formations, to 2.5% from 5% and to provide that the 2.5% tax paid on such wells is to be used by the Secretary of the Department of Environmental Protection to plug abandoned oil and gas wells without a responsible

operator through the use of a new fund called the Oil and Gas Abandoned Well Plugging Fund. The vertical oil and gas wells which are affected by the severance tax reduction produce on average more than 5,000 cubic feet of natural gas or one-half barrel of oil per day and on average less than 60,000 cubic feet of natural gas or 10 barrels of oil per day." [Read more.](#)

**Notaries Public – West Virginia.** *(Update to 2/17/20 Weekly Report)* On February 24, HB 4748 passed the House and has been transmitted to the Senate. The purpose of this bill, sponsored by Del. Gary Howell (R), is to "increase the fees that private nongovernment notary publics may charge for notarial acts, and clarifies that notary publics may advertise for services so long as a clear disclaimer that the notary is not permitted to provide legal services including document drafting, document review, or legal advice as a non-attorney is provided either at the place of the notarial act or in the actual advertisement." [Read more.](#)

**Leasing – West Virginia.** *(Update to 3/2/20 Weekly Report)* On March 2, SB 554 passed both legislative chambers. If signed into law, the bill would take effect 90 days after passage. The measure, sponsored by Sen. Randy Smith (R), passed the Senate on February 14. "The purpose of this bill is to provide a requirement for a lessee to execute and deliver to the lessor, within a specified time and without cost, a recordable release for terminated, expired, or cancelled oil or natural gas leases; provide for a procedure by which a lessor may serve notice to a lessee, if a lessee fails to timely provide the release; require a lessee to timely notify the lessor in writing of a dispute; provide for a recordable affidavit of termination, expiration, or cancellation with specified contents; provide that with proper notification in the absence of a dispute, a recorded affidavit creates a rebuttable presumption of termination and cancellation for the oil or natural gas lease." [Read more.](#)

**Underground Disposal Wells – Wyoming.** *(Update to 2/24/20 Weekly Report)* On March 4, SF 45 passed the House. The bill passed the

Senate in February. The bill, sponsored by the Joint Minerals, Business & Economic Development Interim Committee (R), amends current law regarding regulation of underground disposal wells to remove the term "noncommercial" from regulations governing Wyoming Oil and Gas Conservation Commission authority over underground disposal injection wells. [Read more.](#)

**Drilling Units; Pooling; Royalties – Wyoming.** *(Update to 2/24/20 Weekly Report)* On March 9, HB 14 was signed into law by Gov. Mark Gordon (R). The Act, sponsored by the Joint Minerals, Business & Economic Development Committee (R), amends as it relates to nonconsenting owners and forced pooling, pooling order expiration, royalty rates and share of production costs calculations. The Act is effective July 1, 2020. [Read more.](#)

**Ad Valorem Taxes – Wyoming.** *(Update to 3/2/20 Weekly Report)* On March 11, HB 159 passed both legislative chambers. The bill, sponsored by the Select Committee on Coal/Mineral Bankruptcies (R), would require all mineral producers in the state to report and remit ad valorem taxes on mineral production on a monthly basis to the Department of Revenue on behalf of counties as an attempt to reduce uncollectable ad valorem taxes. Ad valorem tax reports and estimated payments would be due on or before the twenty-fifth day of the second month following the month of production, and the bill sets forth effective calendar years for the new provisions. The bill also provides for a transition period and tax credits for certain remittance procedures. [Read more.](#)

**Severance Tax – Wyoming.** *(Update to 3/2/20 Weekly Report)* On March 11, HB 243 failed to meet House and Senate concurrence after passing both legislative chambers and a joint conference committee has been appointed to reconcile the bill. The measure, sponsored by Rep. Donald Burkhart, Jr. (R), would amend existing law to provide for certain severance tax rates and exemptions based on production dates and oil spot prices. [Read more.](#)



**Notice – Wyoming.** On February 27, HB 90 passed the House and has been transmitted to the Senate. The bill, sponsored by Rep. Jim Roscoe (D), would require the Office of State Lands and Investments to provide notice of any proposed lease sale, renewal or trade to private surface owners and private subsurface owners and mineral lessees involving state lands. [Read more.](#)

**State Mineral Royalties – Wyoming.** (*Update to 3/2/20 Weekly Report*) On March 11, House Joint Resolution HJ0001 died at the end of the legislative session adjourned March 12, 2020 for pending measures. The measure had passed the House. The Joint Resolution, introduced by Rep. Tim Hallinan (R), would have authorized the process of amending the Wyoming Constitution to provide that for six years two-thirds of state mineral royalties earned from the lease of state school lands may be appropriated by the legislature for the support of public schools and provides a ballot statement. Such a constitutional amendment resolution, if passed by the legislature, would have been put to the ballot in November for Wyoming voters. [Read more.](#)

**Surface Damage; Disruption Payments – Wyoming.** (*Update to 2/24/20 Weekly Report*) HB 111 died at the end of the legislative session adjourned March 12, 2020 for pending measures. The bill, introduced by Rep. Aaron Clausen (R), would have amended existing law related to surface damage and disruption payments regarding split estates. [Read more.](#)

**Transfer of Mineral Interests – Wyoming.** (*Update to 2/24/20 Weekly Report*) HB 196 died at the end of the legislative session adjourned March 12, 2020 for pending measures. The bill was introduced by the Select Committee on Coal/Mineral Bankruptcies (R) and would have amended existing law to require mineral producers to make certifications related to taxes prior to transfer to another producer and require payment of taxes prior to transfer. [Read more.](#)

**State Tax Revenue – Wyoming.** (*Update to 3/2/20*

*Weekly Report*) On March 11, SF 110 died at the end of the legislative session adjourned March 12, 2020 for pending measures. The measure had passed the Senate. The bill, sponsored by Sen. Cheri Steinmetz (R), would have established that the Office of State Lands and Investments study the impact on the failure of the federal government to make payments in lieu of tax that are equivalent to the property tax revenue that the state of Wyoming would otherwise generate from lands under federal ownership or control within Wyoming. [Read more.](#)

## **STATE – Regulatory**

**CalGEM Regulatory Changes – California.** As a follow-up to our past reporting, the California Geologic Energy Management Division (CalGEM), formerly the Department of Conservation's Division of Oil, Gas and Geothermal Resources, is continuing to hold early public input meetings throughout the state "to prepare for updating and strengthening public health and safety protections near oil and gas facilities" and "advance California's goal to become carbon-neutral by 2045 and manage the decline of oil production and consumption in the state," according to CalGEM. The public meetings are part of new actions being taken under CalGEM's recently strengthened mission to protect public health and safety while safeguarding the environment, as outlined in recent legislation ([AB 1057](#)) which was signed into law by Governor Gavin Newsom (D) in October 2019, and effective as of January 1, 2020. For further information on upcoming regulatory proposals, visit the CalGEM information page: [California Announces New Oil and Gas Initiatives](#) For upcoming public meetings where you can make your voice heard, see the [CalGEM meeting notice website here](#). For recent coverage, [Read more.](#)

## **State Trust Land Royalties – New Mexico.**

On March 6, the New Mexico State Land Office announced record oil and natural gas royalty payments "for development on state trust lands netted nearly \$109 million for New Mexico in one month." Land Commissioner Stephanie Garcia Richard announced the record, "saying the State

Land Office is on track to raise another \$1 billion this year for public schools, hospitals and other beneficiaries." [Read more.](#)

**Texas Railroad Commissioner Ryan Sitton Ousted in Primary Defeat – Texas.** As a follow up to our recent Landnews posting, Texas voters ousted Railroad Commissioner Ryan Sitton in favor of his primary challenger Jim Wright in a surprise primary election upset on March 3. Wright is a rancher and oilfield service company owner from Orange Grove. Wright defeated Sitton 56 percent to 44 percent in a surprise upset. Election results show, "Wright beat Sitton in almost all the counties that make up industry and conservative strongholds such as the Permian Basin of West Texas and the Eagle Ford Shale of South Texas," according to the *Houston Chronicle*. [Read more.](#)

## **STATE – Judicial**

**Climate Change – Hawaii.** On March 9, the city and county of Honolulu, Hawaii filed a lawsuit against 10 oil and gas companies seeking monetary damages to help pay the costs associated with climate change impacts. In *Honolulu v. Sunoco LP, et al.* (Case No. 1-CCV-20-0000380), the plaintiff claims the "massive increase in the extraction and consumption of oil, coal, and natural gas [...] has in turn caused an enormous, foreseeable, and avoidable increase in global greenhouse gas pollution and a concordant increase in the concentration of greenhouse gases." The suit brings charges of public nuisance, failure to warn and trespass among other allegations. [Read more.](#)

**Prescription; Condemnation – Louisiana.** On January 29, in *Crooks v. Dept. of Natural Resources* (Case No. 2019-C-00160), the Louisiana Supreme Court addressed a case involving inverse condemnation and prescription as it related to ownership of land between certain lake waters. The Louisiana Supreme Court granted review of this case to determine whether the plaintiffs' inverse condemnation claims for compensation against the State were prescribed under state and/or federal

law. The lower courts relied on prior case law to conclude the one-year prescriptive period for damage to immovable property found in the Louisiana code governed, and the continuing tort doctrine applied to prevent the running of prescription on the plaintiffs' claims. The Louisiana Supreme Court, however, found the lower courts erred and held that the three-year prescriptive period for actions for compensation for property taken by the state set forth in the Louisiana code governed and the plaintiffs' inverse condemnation claims were prescribed. [Read more.](#)

**Statute of Frauds – Texas.** On January 31, in *Copano Energy, LLC v. Bujnoch* (Case No. 18-0044), the Texas Supreme Court addressed a case involving the statute of frauds and whether certain e-mails satisfied the statute and made a contract enforceable. The appellate court concluded that certain deal-related e-mails, taken together, satisfied the statute of frauds requirement that under the law certain agreements, such as an easement here, require the agreement be in writing, and thus amounted to a contract enforceable against the defendants. The Texas Supreme Court disagreed, holding the "e-mails containing many of the alleged deal's principal terms are part of a forward-looking request to negotiate a contract. Neither those e-mails nor any other writing evidences the defendant's agreement to the particular terms stated in the e-mails. As a result, there is no 'written memorandum which is complete within itself in every material detail,' as required by the statute of frauds." [Read more.](#)

## **INDUSTRY NEWS FLASH**

► **Houston energy conference cancelled over coronavirus.** Houston's annual CERAWEEK energy conference was cancelled as "a precaution to help prevent further spread of the coronavirus in the United States." The week-long event was scheduled to begin March 9, 2020. "Over the last few days concern has mounted rapidly about the COVID-19 coronavirus," said IHS Markit, the event sponsor, in a company statement. [Read more.](#)

► **ExxonMobil proposes industry-wide methane regulatory framework.** On March 3, ExxonMobil released a [model framework](#) for industry-wide methane regulations and urged stakeholders, policymakers and governments to develop comprehensive, enhanced rules to reduce emissions in all phases of production. The company cites its own blueprint which achieved a 20% methane emissions reduction in its U.S. shale fields over the past four years. [Read more.](#)

## **LEGISLATIVE SESSION OVERVIEW**

**Session Notes:** Alaska, Arizona, California, Colorado, Connecticut, Florida, Hawaii, Idaho, Illinois, Indiana, Iowa, Kansas, Louisiana, Maine, Maryland, Massachusetts, Michigan, Minnesota, Mississippi, Missouri, Nebraska, New Hampshire, New Jersey, New York, Ohio, Oklahoma, Pennsylvania, Rhode Island, South Carolina, Tennessee and Vermont are in regular session. The District of Columbia Council, Puerto Rico and U.S. Congress are also in regular session.

The following legislatures are postponing their 2020 legislative sessions due to the coronavirus until the dates provided: **Kentucky** (March 17), **Delaware** and **Vermont** (March 24), **Missouri** (March 30) and **Georgia** (TBD).

**West Virginia** adjourned its 2020 legislative sessions on March 7. **South Dakota, Utah, Virginia, Washington** and **Wyoming** adjourned their 2020 legislative sessions on March 12.

**Virginia** entered a recess on March 8 and reconvened on March 12 for one day to approve the two-year state budget and appoint judges, reports the [Virginia Mercury](#). The session was scheduled to adjourn on March 7 but was dragged into overtime as the legislature gave itself an extra day to consider legislation.

**Arkansas** is expected to convene its 2020 session on April 8.

The following states are expected to adjourn their 2020 sessions on the dates provided: **Florida** (March 13), **Indiana** (March 14) and **Idaho** (March 20).

**Signing Deadlines:** **West Virginia** Republican Gov. Jim Justice has until March 25 to act on legislation or it becomes law without signature. However, if the pending legislation is a budget bill or supplementary appropriations bill, Governor Justice has only five days from adjournment to act or it becomes law without signature. **South Dakota** Republican Gov. Kristi Noem and **Wyoming** Republican Gov. Mark Gordon have until March 27 to act on legislation or it becomes law without signature. **Utah** Republican Gov. Gary Herbert has until April 1 to act on legislation or it becomes law without signature. **Washington** Democratic Gov. Jay Inslee has until April 4 to act on legislation or it becomes law without signature. **Virginia** Democratic Gov. Ralph Northam has until April 11 to act on legislation or it becomes law without signature. **Oregon** Democratic Gov. Kate Brown has until April 16 to act on legislation or it becomes law without signature.

**Interim Committee Hearings:** The following states are currently holding 2020 interim committee hearings: [Montana](#), [Nevada](#), [North Dakota](#) and [Texas House](#).

**Bill Pre-Files:** [Arkansas](#) is currently posting 2020 bill drafts, pre-files and interim studies. ■

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# GOVERNMENTAL AFFAIRS WEEKLY REPORT

## Weekly Highlights At-A-Glance

**COVID-19 UPDATE:** AAPL members have been reaching out with questions about the COVID-19 stimulus bill enacted last week and the benefits it provides for landmen. We have posted an information FAQ on Landnews detailing the provisions that affect landmen, which include small business loans, one-time cash payments to Americans, and unemployment benefits for employees, independent contractors, and the self-employed. We have also detailed the stimulus package provisions below and will continue to update members on any further guidance we receive from federal and state officials. We understand this is a difficult time for our industry and we want to assure you that AAPL governmental affairs is doing its part to advocate for our industry to support our valued members.

### **FEDERAL – Legislative**

**H.R. 748 – Coronavirus Aid, Relief, and Economic Security Act.** Last week, President Trump signed into law the historic [\\$2 trillion coronavirus relief stimulus package](#) which includes one-time direct payments to individuals, stronger unemployment insurance, loans and grants to businesses, various tax credits, and many other provisions related to shoring up the public health system. H.R. 748, known as the “Coronavirus Aid, Relief, and Economic Security Act” or the “CARES Act” also [provides unemployment benefits for freelancers, the self-employed and independent contractors](#). According to the *Independent Contractor Misclassification and Compliance Newsletter*, published by Locke Lord law firm partner Richard Reibstein, “It contains unemployment assistance provisions that expand coverage to individuals not ordinarily covered by unemployment insurance laws: self-employed individuals, also known as independent contractors, freelancers, sole proprietors, or gig workers.” ([read more](#)) The bill does not include the \$3 billion Trump

sought to fulfill his promise of filling the country's Strategic Petroleum Reserve stockpile by purchasing millions of barrels of domestic oil in part to aid U.S. drillers amid a price decline. Senate Minority Leader Charles Schumer (D-NY) told his colleagues that the deal struck with Republicans would not include a “bailout for big oil.” Democrats also failed to clinch language extending tax breaks for renewable energy industries. To view the 880-page bill in its entirety, [read more here](#). For a section-by-section analysis of the provisions: [Read more](#).

**S. 3533 – Securing and Enabling Commerce Using Remote and Electronic (SECURE) Notarization Act of 2020.** On March 18, Sen. Kevin Cramer (R-ND) and Sen. Mark Warner (D-VA) introduced bi-partisan legislation, [S. 3533](#), known as the “Securing and Enabling Commerce Using Remote and Electronic (SECURE) Notarization Act of 2020.” The bill permits immediate nationwide use of Remote Online Notarizations, a type of electronic notarization where the notary and signer are in different physical locations. “The SECURE Notarization Act brings the notary process into the 21st century, allowing people to securely complete documents while still following recommended health and social practices amid the coronavirus pandemic,” said Sen. Kramer. [Read more](#).

### **FEDERAL – Regulatory**

**BLM Information Collection.** On March 24, the Bureau of Land Management (BLM) published its notice, *Agency Information Collection Activities; Submission to the Office of Management and Budget for Review and Approval; Land Use Application and Permit* ([85 Fed. Reg. 16652](#)), which solicits comments on their proposed information collection policy as it relates to the issuance of leases, permits,

and easements for a variety of uses of public lands that is described as follows: (1) Is the collection necessary to the proper functions of the BLM; (2) will this information be processed and used in a timely manner; (3) is the estimate of burden accurate; (4) how might the BLM enhance the quality, utility, and clarity of the information to be collected; and (5) how might the BLM minimize the burden of this collection on the respondents, including through the use of information technology. The public comment period is open through April 23, 2020. [Read more.](#)

#### **BLM Oil and Gas Lease Sale – New Mexico.**

On March 19, the BLM announced its proposal to offer 95 parcels totaling 45,445.76 acres at its May 2020 quarterly oil and gas lease sale. The proposed parcels are located in Chaves, Eddy and Lea counties in New Mexico; and Wise County in Texas. The lease sale is scheduled to occur online on May 20-21, 2020. The protest period is open through April 1, 2020. The announcement is in keeping with BLM's stated commitment to continue oil and gas lease sales during the coronavirus outbreak. [Read more.](#)

#### **BLM Office Closed Until Further Notice – Utah.**

On March 20, the BLM Utah State Office (Salt Lake City) announced the office is closed until further notice following a 5.7 magnitude earthquake that hit the area on March 19. "The Utah State Office will remain closed until assessments, cleanup, and repairs are complete. The safety of our employees and the public is our top priority." [Read more.](#)

**Crude Oil Tariff Opposition – Pennsylvania.** On March 25, the [Marcellus Shale Coalition](#) (MSC) sent a letter to U.S. Department of Commerce Secretary Wilbur Ross urging him not to impose tariffs on imported crude oil as some oil producers have requested. Tariffs on crude imports may "do harm to natural gas producers" already "in serious difficulty" because of inadequate access to capital, the Marcellus Shale Coalition warned. "Flooded markets for gas would become even more untenable, inflicting harm on our Marcellus gas production," said MSC president David Spigelmyer. [Read more.](#)

**Oil Pricing – Washington, DC.** On March 20, a group of U.S. senators sent a letter to U.S. Department of Commerce Secretary Wilbur Ross urging him "to investigate the excessive dumping of crude oil" by Saudi Arabia and Russia and "develop a swift reply." The letter comes in response to the deep dive in crude oil prices and the economic ripple effects it is having on the domestic oil and gas industry. The undersigned stressed that the market manipulations "has roiled the economy, causing severe trauma to the American energy industry." [Read more.](#)

**Offshore Royalties – Washington, DC.** On March 20, a bipartisan group of lawmakers [sent a letter to Interior Secretary David Bernhardt](#) asking the agency to reduce or waive royalties for oil and gas leases in the Gulf of Mexico amid a decline in oil prices linked to international disputes and the coronavirus pandemic. "[W]e urge you to examine the viability of a temporary reduction in royalties as domestic energy producers weather this combination of an OPEC-driven price war and an epidemic that is driving millions of people around the world into quarantines of one kind or another," the legislators wrote. "Such an action in the short term will help mitigate a price war that is sinking prices and decreasing production." [Read more.](#)

**EPA Rule Waivers – Washington, DC.** On March 20, the American Petroleum Institute (API) [sent a letter to EPA Administrator Andrew Wheeler](#) requesting the agency temporarily waive non-essential compliance requirements, including some environmental permitting requirements, amidst the coronavirus epidemic. In his letter, API President and CEO Mike Sommers noted "the COVID-19 pandemic represents a significant and historic threat to our nation. We thank the Administration for its continued efforts in combating this threat, and we look forward to partnering with you to help ensure that critical fuels are available, so that we as a nation can continue to respond to this crisis." [Read more.](#)

## **FEDERAL – Judicial**

**Forced Pooling – Colorado.** On March 18, a federal court dismissed an activist group's lawsuit that alleged Colorado is allowing natural gas drilling over the objections of resource owners. The issue in *Wildgrass Oil and Gas Cmte. v. Colorado* (Case No. 19-cv-00190) centered on Colorado Oil and Gas Conservation Commission's forced pooling order. Wildgrass alleged various constitutional arguments, but the Court rejected those. Wildgrass claimed forced pooling required non-consenting owners to "associate" with oil and gas companies and subsidize private speech for those companies in violation of their First Amendment rights. The Court disagreed, saying there's no evidence that the money drillers could collect from a non-consenting owner's operating costs would be used for "expressive purposes." As to the group's argument that forced pooling violates the contracts clause, the Court said there is no clear contract between operators and non-consenting owners. Because the substance of the case centers on state law and jurisdiction of the agency applying that law, the Court also held that the federal court was "not the appropriate forum to resolve these questions." Most notably, the case was dismissed with prejudice, which means the activist group may not bring the case again in this venue. [Read more.](#)

**Wayne National Forest – Ohio.** On March 13, in *Center for Biological Diversity v. U.S. Forest Service* (Case No. 17-cv-00372), the U.S. District Court for the Southern District of Ohio ruled in favor of environmentalists by holding that the U.S. Forest Service (USFS) and Bureau of Land Management (BLM) failed to take into account all necessary environmental impacts pursuant to the National Environmental Policy Act procedural requirements when approving oil and gas permitting and drilling by hydraulic fracturing in the Wayne National Forest. The Court held that the "USFS and BLM demonstrated a disregard of the different types of impacts caused by fracking in the Forest. The agencies made decisions premised on a faulty foundation: that the 2006 Forest Plan's and 2006

EIS's consideration of vertical drilling sufficiently accounted for the impacts of fracking." The Court, however, has declined for now to vacate the leases of dozens of parcels in the forest offered by the agencies in late 2016 and early 2017, and ordered briefings be filed by the parties on the appropriate remedy. We will continue to report on this case as it progresses. [Read more.](#)

## **STATE – Legislative**

**Independent Contractors – California.** On March 16, AB 2075 was referred to committee. The bill, sponsored by Rep. Kevin Kiley (R), would repeal the three-prong "ABC test" enacted last year under [AB 5](#), and which created a presumption of employee status, and instead revert back to the pre-AB 5 multifactor test to relax the standard for independent contractor status recognition and more broadly allow for such status including recognizing work that is customarily engaged in as an independent contractor in trades, occupations or businesses of the nature of the work performed. [Read more.](#)

**Production Payments – Louisiana.** (*Update to 3/2/20 Weekly Report*) On March 12, HB 227 passed the House and has been referred to the Senate. The bill, sponsored by Rep. Jean-Paul Coussan (R), sets forth that present law requires written notice of the nonpayment of a production payment to be provided prior to a judicial demand for damages. The proposed law retains present law but eliminates the linguistic redundancy and clarifies the application of present law by stating explicitly that the interest at issue is one created out of a mineral lessee's interest. [Read more.](#)

**Notarial Acts – Mississippi.** (*Update to 2/17/20 Weekly Report*) On March 25, SB 2394 was referred to the House Judiciary Committee after passing the Senate. The bill, introduced by Sen. Tyler McCaughn (R), would amend existing notary law regarding electronic signatures and affidavits, among other technical changes. [Read more.](#)

**Injection Wells – Oklahoma.** *(Update to 2/10/20 Weekly Report)* On March 5, SB 1615 passed the Senate and has been referred to the House. The bill, sponsored by Sen. Darcy Jech (R), creates the Task Force on Injection Well Stability. The Task Force is comprised of nine members. Members of the Task Force shall not be reimbursed for travel expenses or receive compensation. The Task Force is authorized to issue any reports it deems necessary and appropriate and may make any legislative recommendations available to the Governor and the Legislature. The sunset date for the Task Force is December 1, 2023. [Read more.](#)

**Produced Water; Wells – Oklahoma.** *(Update to 2/10/20 Weekly Report)* On March 12, SB 1875 passed the Senate and has been referred to the House. The bill, sponsored by Sen. Dave Rader (R), creates the Oil and Gas Water Recycling and Reuse Act. The measure declares that the operator and nonoperators of the well are the sole owners of the produced water and waste as it relates to oil and gas production. Owners of the produced water shall be entitled to proceeds for any of the uses of the produced water and waste. Owners are also responsible for storing, transporting, and handling produced water. If the owners transfer the water to a person or entity to process the water, such water will be the property of the transferee until such time as the water is disposed of or transferred to another person. Current owners of the water are not liable in tort for consequences of subsequent use of recycled water or treated constituents if they follow procedures outlined in the measure.

[Read more.](#)

**Notarial Acts – Pennsylvania.** On March 23, SB 1097 was introduced by Sen. Doug Mastriano (R). The bill allows for electronic notarial acts that may be performed remotely. [Read more.](#)

**State Trust Lands – Utah.** *(Update to 2/24/20 Weekly Report)* On March 20, HB 335 passed both legislative chambers. The bill, sponsored by Rep. Michael McKell (R), amends existing law to address penalties for illegal and unauthorized activities on

state institutional trust lands, including mineral resources. [Read more.](#)

**Employee Misclassification – Virginia.** *(Update to 3/16/20 Weekly Report)* On March 18, SB 894 was signed into law by Gov. Ralph Northam (D). The House version, [HB 984](#), was signed into law on March 10. Both bills are effective July 1, 2020. These Democrat sponsored bills, which are reported by the legislature as identical, authorize an individual who has not been properly classified as an employee to bring a civil action for damages against his employer for failing to properly classify the employee if the employer had knowledge of the individual's misclassification. The court may award damages in the amount of any wages, salary, employment benefits, including expenses incurred by the employee that would otherwise have been covered by insurance, or other compensation lost to the individual, a reasonable attorney fee, and the costs incurred by the employee in bringing the action. The measure provides that an individual who performs services for a person for remuneration shall be presumed to be an employee unless it is shown that the individual is an independent contractor as determined under the Internal Revenue Service guidelines. [Read more.](#)

**Unknown/Unlocatable Owners – West Virginia.** *(Update to 3/16/20 Weekly Report)* On March 25, HB 4088 was signed into law by Gov. Jim Justice (R). The Act, sponsored by Del. William Anderson (R), "provides that proceeds from certain oil and gas wells that are due to persons whose name or address are unknown are to be kept in a special fund and if unclaimed within seven years the proceeds shall be transferred to the Oil and Gas Reclamation Fund. The Act provides that if there is a surface disturbance those named surface owners of a leased interest subject to pooling for a horizontal well are the only surface owners insofar as the well permit is concerned. The Act provides that if another surface owner should become known his or her name shall be added as a surface owner on the permit. The Act provides that if proceeds from other mineral tracts in a unit or pool of a horizontal well are not

claimed by an unknown, missing or abandoned owner within seven years the proceeds shall be transferred to the Oil and Gas Reclamation Fund. The Act is effective July 1, 2020. [Read more.](#)

**Abandoned Wells – West Virginia.** *(Update to 3/16/20 Weekly Report)* On March 23, HB 4090 was signed into law by Gov. Jim Justice (R). The Act, sponsored by Del. William Anderson (R), provides for an exemption from the severance tax under enumerated conditions and also establishes the Oil and Gas Abandoned Well Plugging Fund. The Act is effective 90 days after March 3, 2020. [Read more.](#)

**Notaries Public – West Virginia.** *(Update to 2/17/20 Weekly Report)* On March 25, HB 4748 was signed into law by Gov. Jim Justice (R). The purpose of Act, sponsored by Del. Gary Howell (R), is to “increase the fees that private nongovernment notary publics may charge for notarial acts, and clarifies that notary publics may advertise for services so long as a clear disclaimer that the notary is not permitted to provide legal services including document drafting, document review, or legal advice as a non-attorney is provided either at the place of the notarial act or in the actual advertisement.” The Act is effective 90 days after March 7, 2020. [Read more.](#)

**Well Plugging; Bonds – West Virginia.** *(Update to 3/2/20 Weekly Report)* On March 25, SB 120 was signed into law by Gov. Jim Justice (R). The purpose of the Act, sponsored by Sen. Mike Romano (D), “is to require money that results from the forfeiture of an oil and gas operator’s bond as a result of the operator’s failure to plug a well or otherwise comply with state statutes and rules to first be applied to correct or mitigate an immediate threat to the environment or hindrance or impediment to the development of mineral resources of this state that caused the forfeiture of the bond.” The Act is effective 90 days after March 7, 2020. [Read more.](#)

**Leasing – West Virginia.** *(Update to 3/2/20 Weekly Report)* On March 25, SB 554 was signed into law by Gov. Jim Justice (R). The Act, sponsored by Sen. Randy Smith (R), provides relating to the

termination, expiration, or cancellation of oil or natural gas leases a requirement for a lessee to execute and deliver to the lessor, within a specified time and without cost, a recordable release for terminated, expired, or canceled oil or natural gas leases; provides for a procedure by which a lessor may serve notice to a lessee if a lessee fails to timely provide the release; provides requirements for the content of the notice; requires a lessee to timely notify the lessor in writing of a dispute regarding the termination, expiration, or cancellation of the oil and natural gas lease; provides for an affidavit of termination, expiration, or cancellation with specified contents; and provides a requirement that county clerks accept and record said affidavit. The Act is effective 90 days after March 2, 2020. [Read more.](#)

**Sage Grouse Mitigation Credits – Wyoming.** *(Update to 3/2/20 Weekly Report)* On March 17, HB 13 was signed into law by Gov. Mark Gordon (R). The Act, sponsored by the Joint Minerals, Business & Economic Development Committee, establishes a program for compensatory mitigation credits for conservation of the greater sage-grouse. The Act recognizes that industry, including energy development, must be considered when managing the bird habitat and in some cases where adverse species impacts occur, a system of compensatory mitigation would offset impacts to the species. The Act is effective October 1, 2020. [Read more.](#)

## **STATE – Regulatory**

**Surface and Mineral Rights Purchase – Wyoming.** Gov. Mark Gordon (R) [announced the state is considering purchasing the surface and mineral rights](#) along the Union Pacific Railroad corridor, which stretches across southern Wyoming to northeastern Utah and parts of northern Colorado. The rail corridor runs near Interstate 80. In total, the deal encompasses approximately 4 million acres of mineral rights and 1 million acres of surface rights. The surface and mineral rights currently belong to Occidental Petroleum Corporation (OXY) which acquired the parcels in August 2019 after merging with Anadarko. At this point, Wyoming is



“only interested in what it would take” for the state to buy the OXY interests, according to Gov. Gordon. [Read more.](#)

## **STATE – Judicial**

**Local Oil and Gas Ordinance – California.** (*Update to 3/2/20 Weekly Report*) On March 20, the California Fifth District Court of Appeal [denied petitions](#) submitted by Kern County and industry groups requesting a rehearing in response to its decision last month directing the county to rescind its oil and gas ordinance and associated Environmental Impact Report (EIR). The Court issued a modified opinion which further clarified that permits issued by the county are covered by the California Environmental Quality Act (CEQA) during the ordered 30-day window ending on March 26, 2020, at which point the ordinance is suspended. For background, on February 25, the Court held in [King and Gardiner Farms, LLC v. County of Kern](#) (Case No. F077656) that Kern County violated the CEQA when adopting the County's Oil and Gas Ordinance. The ordinance, adopted in 2015, “approved an ordinance to streamline the permitting process for new oil and gas wells.” The opinion addressed the inadequacy of an environmental impact report (EIR) and “CEQA violations involving water, agricultural land, and noise.” According to law firm, Day Carter & Murphy LLP, “The Court’s decision sets aside the County’s certification of the EIR for the Ordinance and invalidates the Ordinance as of 30 days from the date of the Court’s decision. Oil and gas activities under existing permits may continue as the Court recognized those permits issued before the invalidation will remain in effect.” For further directives on how the decision affects permitting and operations, please see the Day Carter & Murphy LLP [California Oil & Gas Newsletter](#). [Read more.](#)

## **INDUSTRY NEWS FLASH**

► **Energy industry touts commitment to energy delivery during coronavirus pandemic.** From

pipeline owners and operators to petrochemical manufacturers and gas companies, America’s energy industry expressed its commitment to supplying the energy needed during the coronavirus epidemic as cities and states adopt social distancing measures. The companies stressed in a March 18 briefing that while the situation is fluid, they have plans in place to ensure critical energy supplies remain available and companies are working in close coordination with federal agencies to ensure safe operations amidst containment and employee staffing disruptions. [Read more.](#)

► **API study warns of economic consequences under ban on federal leasing and hydraulic fracturing.** The American Petroleum Institute (API) released a [new economic analysis](#) outlining the “dire economic consequences of a ban on federal leasing and hydraulic fracturing (or fracking) for American families and businesses” being pushed by Democratic presidential candidates and other legislators. “If I told you about a technology that would help the environment, that would help American consumers, would reduce our trade deficit and increase American jobs, I think most politicians would jump on that, not try to ban it,” said API President and CEO Mike Sommers. [Read more.](#)

## **LEGISLATIVE SESSION OVERVIEW**

**Session Notes:** Alaska, Kentucky, Massachusetts, Ohio, Pennsylvania and Vermont are in regular session. The District of Columbia Council and the U.S. Congress are also in regular session.

The following legislatures are postponing their 2020 legislative sessions due to COVID-19 until the dates provided: Colorado and Puerto Rico House (March 30), Louisiana and South Carolina Senate (March 31), Michigan and Mississippi (April 1), Rhode Island (April 3), Missouri and South Carolina House (April 6), New Hampshire (April 10), Arizona, California and Connecticut (April 13), Minnesota (April 14), Iowa (April 15), Kansas (April 27), New Jersey (May 4), Delaware (May 15), Tennessee (June 1) and

Georgia, Hawaii, Illinois, Nebraska, New York, Oklahoma and Wisconsin (TBD).

The following states are in a scheduled recess until the dates provided: **Alabama** (March 31) and **North Carolina** (April 28).

**Idaho** adjourned their 2020 session on March 20.

**Arkansas** is expected to convene its 2020 session on April 8.

The following states are expected to adjourn on the dates provided: **Georgia** (April 2) and **Kentucky** (April 15).

**Signing Deadlines:** **South Dakota** Republican Gov. Kristi Noem and **Wyoming** Republican Gov. Mark Gordon have until March 27 to act on legislation or it becomes law without signature. **Idaho** Republican Gov. Brad Little and **Utah** Republican Gov. Gary Herbert have until April 1 to act on legislation or it becomes law without signature. **Florida** Republican Gov. Ron DeSantis has until April 3 to act on legislation or it becomes law without signature. **Washington** Democratic Gov. Jay Inslee has until April 4 to act on legislation or it becomes law without signature. **Virginia** Democratic Gov. Ralph Northam has until April 11 to act on legislation or it becomes law without signature. **Oregon** Democratic Gov. Kate Brown has until April 16 to act on legislation or it becomes law without signature. **Indiana** bills must be presented within seven days of adjournment, from which time Republican Gov. Eric Holcomb has seven days to act or the legislation 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. **Maryland** Republican Gov. Larry Hogan has 30 days from presentment to act on legislation or it becomes law without signature.

**Interim Committee Hearings:** **North Dakota** is currently holding 2020 interim committee hearings. **Nevada** has postponed 2020 interim hearings until April 1.

**Bill Pre-Files:** **Arkansas** is currently posting 2020 bill drafts, pre-files and interim studies. ■

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