

# GOVERNMENTAL AFFAIRS WEEKLY REPORT

## Weekly Highlights At-A-Glance

### FEDERAL – Legislative

**H.R. 6364 – Securing and Enabling Commerce Using Remote and Electronic Notarization Act of 2020.** On March 23, [H.R. 6364](#), known as the “Securing and Enabling Commerce Using Remote and Electronic Notarization Act of 2020,” was referred to committee following its introduction by Rep. Guy Reschenthaler (R-PA). The bipartisan companion Senate bill, [S. 3533](#), was introduced on March 18 by Sen. Kevin Cramer (R-ND) and Sen. Mark Warner (D-VA). The legislation would “allow notaries in states without enacted remote online notarization (RON) laws to perform RON transactions. States with an enacted RON law that meets minimum standards defined in the federal bills would not be preempted, and any RON law passed by a state in the future would govern RON transactions there, provided they meet these minimum standards.” [Read more.](#)

**House Leaders Call for Oil and Gas Relief.** On April 3, House Republicans [sent a joint letter to President Trump](#) calling for the administration to use its existing authority to reduce fees oil and gas producers pay to drill on federal lands and water “as soon as possible” among other relief requested for the industry. The letter, signed by 41 representatives – including those from the hardest hit oil and gas producing states – also requests use of the Strategic Petroleum Reserve to help producers, regulatory relief from EPA rules, and continued negotiation with Saudi Arabia and Russia on production levels. On the latter, late last week the Saudis and Russians reach a deal to cut oil production by 10 million barrels per day. ([Read more](#)) Other OPEC+ nations, such as Mexico, also agreed to cuts. [Read more.](#)

### FEDERAL – Regulatory

**Federal Support for the Oil & Gas Industry – Washington, DC.** On April 1, Sen. Lisa Murkowski (R-AK) [sent a letter](#) to U.S. Treasury Secretary Steven Mnuchin asking him to use his agency’s “significant discretion” to ensure access to federal loans for the oil and gas industry under the latest relief measure. “Producing companies and the businesses that contract with them are being impacted not only by the market demand shock from the coronavirus, but also the Russia-Saudi Arabia power struggle against American energy,” said Murkowski. Under the Coronavirus Aid, Relief, and Economic Security (CARES) Act stimulus package, the Treasury Secretary has authority to facilitate certain loan programs. “Section 4003 of the CARES Act provides your Department with significant discretion to support many of the businesses that would otherwise never need or be eligible for federal loans, but that are currently threatened by liquidity freeze-ups. As you work to urgently develop an implementing framework, I write to emphasize four aspects of the present situation,” wrote Murkowski. For his part, Secretary Mnuchin announced on April 2 that “energy companies squeezed by the oil-price war” can turn to the Federal Reserve’s lending facilities for aid but won’t get direct loans from his department. “I have very limited ability to do direct loans out of the Treasury,” he said. The \$2.2 trillion coronavirus-related economic package authorizes the secretary to provide loans and grants to passenger airlines, cargo airlines, contractors and companies important to national security, Mnuchin said. Other companies must turn to the Federal Reserve, which is authorized to inject \$4 trillion into the U.S. economy through various lending facilities approved by Congress. “Our expectation is the energy companies, like all our other companies,

will be able to participate in broad-based facilities, whether it's the corporate facility or whether it's the main street facility, but not direct lending out of the Treasury," he said. [Read more.](#)

**Oil & Gas Executives Meet with President Trump – Washington, DC.** On April 3, [chief executives from at least seven energy companies met with President Trump at the White House to discuss energy policy.](#) The meeting included CEOs from Exxon, Chevron, Occidental Petroleum, Devon Energy, Phillips 66, Enterprise Transfer Partners and former Continental Resources CEO and now Executive Chairman, Harold Hamm. This came as President Trump was also in discussions with Saudi Arabia and Russia pertaining to production levels and the drop in oil prices. But, according to Bloomberg News, "there are deep divisions among the various factions over what should be done, especially on the question of possible tariffs on Saudi Arabian oil, which may force Trump to make a difficult decision that could hurt some executives who are among his most ardent supporters." Trump said during a portion of the meeting that was open to reporters, "We'll work this out and we'll get our energy business back. I'm with you 1,000%. It's a great business, it's a very vital business," he said. Trump was still in discussions on forging an agreement with Russia and Saudi Arabia to end their price war by cutting back on production, "a move that could boost prices and help drillers and refiners located in states like Texas and Louisiana that are crucial to his re-election in the fall." But at that time, it wasn't clear "whether Russia and Saudi Arabia would agree to cut output unless the U.S. also takes part, a move that would be unpopular with some U.S. producers. It also isn't clear whether a U.S. cut would be supported by Trump." [Read more.](#)

**EPA Halts Enforcement – Washington, DC.** On March 26, the U.S. Environmental Protection Agency (EPA) [announced it is halting enforcement of environmental laws during the coronavirus outbreak.](#) The notice informs companies they would not need to meet environmental standards during this time and sets no end date. "The EPA has been under pressure from a number of industries, including the

oil industry, to suspend enforcement of a number of environmental regulations due to the pandemic," said EPA Administrator Andrew Wheeler in a statement regarding the temporary policy. The "EPA is committed to protecting human health and the environment, but recognizes challenges resulting from efforts to protect workers and the public from COVID-19 may directly impact the ability of regulated facilities to meet all federal regulatory requirements." [Read more.](#)

**EPA Settlement Agreements – Washington, DC.** On March 12, the U.S. Department of Justice (DOJ) announced "a major shift in policy towards settling environmental cases." ([Read the DOJ Memorandum](#)) As reported by the law firm Covington & Burling LLP, "DOJ, and EPA along with it, will no longer offer settling defendants the option of undertaking supplemental environmental projects in lieu of paying penalties to the United States. Supplemental environmental projects (or 'SEPs,' as they are commonly called) are environmentally beneficial projects or activities not required by law that a defendant agrees to undertake as part of the settlement of an enforcement action." For its part, the EPA said, it "will no longer include SEPs in administrative settlement agreements" in light of the DOJ memorandum. [Read more.](#)

**Greater Sage-Grouse – California; Nevada.** On March 31, the U.S. Fish and Wildlife Service (FWS) announced the withdrawal of a 2013 rule that aimed to protect a population of greater sage-grouse in California and Nevada because the FWS no longer believes the threats to the bird there are significant. In its proposed rule, *Endangered and Threatened Wildlife and Plants; Withdrawal of the Proposed Rules to List the Bi-State Distinct Population Segment of Greater Sage-Grouse with Section 4(d) Rule and to Designate Critical Habitat* ([85 Fed. Reg. 18054](#)), the FWS states, "These withdrawals are based on our conclusion that the threats to the [Bi-State distinct population segment (DPS)] DPS as identified in the proposed listing rule no longer are as significant as believed at the time of publication of the 2013 proposed rule. We find the best scientific and

commercial data available indicate that the threats to the DPS and its habitat, given current and future conservation efforts, are reduced to the point that the DPS does not meet the Act's definition of an 'endangered species' or of a 'threatened species.'" [Read more.](#)

**BLM Greater Sage-Grouse Planning.** (*Update to 3/2/20 Weekly Report*) On April 6, the Bureau of Land Management (BLM) announced it is extending the public comment period for draft environmental reviews for six greater sage-grouse plans. The comment period originally closed April 6, as we previously reported, but due to disruptions caused by the ongoing coronavirus pandemic, that deadline has been extended to May 21. For background, on February 21, the 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.](#)

## **FEDERAL – Judicial**

**Hydraulic Fracturing – California.** On March 27, the U.S. District Court for the Northern District of California ruled against California and a coalition of environmental activists challenging the Trump administration's repeal of an Obama-era rule regulating hydraulic fracturing operations on federal and tribal lands. Industry groups, conservative Western states, and some energy-producing American Indian tribes fiercely opposed the measures, which included well testing requirements, greater oversight and information regimes for hydraulic fracturing operations, and certain public disclosure requirements. The Trump administration repealed the regulation in 2017 as part of a plan seeking to loosen regulatory burdens on energy production. After years of litigation, in *California v. Bureau of Land Management* (Case Nos. 18-cv-00521-HSG; 18-cv-00524-HSG), the Court held the BLM provided a "reasoned explanation" for its decision to rescind the Obama administration's rule. "Although BLM could have provided more detail, it did enough to clear the low bar of arbitrary and capricious review, and that is all the law requires." In a statement following the ruling, the Interior Department said, "This ruling will allow the Department to continue to implement the President's direction to repeal overly burdensome regulations and ensure America's energy

independence, while protecting the safety of our workers and the health of our environment.” [Read more.](#)

**Greater Sage-Grouse – Idaho.** *(Update to 3/2/20 Weekly Report)* On March 31, Trump administration lawyers [provided notice](#) that they are appealing the February 27 federal district court decision regarding the greater sage-grouse. The case will be appealed to the U.S. Court of Appeals for the Ninth District. 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. [Read more.](#)

## **STATE – Legislative**

**Idle and Abandoned Wells – California.** On March 24, a hearing set for SB 1012 was postpone. The bill, sponsored by Sen. Melissa Hurtado (D), would require certain reporting regarding idle, abandoned and plugged wells and directs state regulators to take steps to recover plugging and abandonment costs for oil and gas wells. [Read more.](#)

**Severance Taxes – Louisiana.** On March 31, HCR 34

was introduced by Rep. Phillip DeVillier (R). The resolution seeks to suspend severance taxes amidst the current oil price downturn. [Read more.](#)

**Franchise Taxes – Louisiana.** On March 31, HCR 43 was introduced by Rep. Rick Edmonds (R). The resolution seeks to suspend corporate franchise taxes amidst the current oil price downturn. [Read more.](#)

**Notaries – Louisiana.** On March 31, SB 472 was introduced by Sen. Jay Luneau (D). The bill provides for electronic notarial acts and the recognition of such instruments. [Read more.](#)

**Tax Filing – Louisiana.** On March 31, SB 498 was introduced by Sen. R.L. Bret Allain (R). The bill would provide extensions for tax filing and payments in light of the current epidemic. [Read more.](#)

**Well Plugging – South Dakota.** *(Update to 3/16/20 Weekly Report)* On March 27, SB 17 was signed into law by Gov. Kristi Noem (R). The Act, 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. The Act is effective July 1, 2020. [Read more.](#)

**Oil and Gas Bonding; Penalties – Utah.** *(Update to 3/16/20 Weekly Report)* On March 30, SB 148 was signed into law by Gov. Gary Herbert (R). The Act, sponsored by Sen. Ralph Okerlund (R), amends current law regarding the regulation of oil and gas activities, including oversight, bonding requirements, and administrative penalties. The Act is effective 90 days after March 12, 2020. [Read more.](#)

**Mineral Lease Payments – Utah.** *(Update to 2/17/20 Weekly Report)* On March 30, SB 15, was signed into law by Gov. Gary Herbert (R). The Act, sponsored by Sen. Daniel Thatcher (R), repeals the sunset date in [Sec. 63I-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.](#)



**State Trust Lands – Utah.** (*Update to 3/30/20 Weekly Report*) On March 24, HB 335 was signed into law by Gov. Gary Herbert (R). The Act, sponsored by Rep. Michael McKell (R), amends existing law to address penalties for illegal and unauthorized activities on state institutional trust lands, and includes mineral resources. The Act is effective 90 days after March 12, 2020. [Read more.](#)

**Trespass – West Virginia.** On March 25, Gov. Jim Justice (R) signed HB 4615 into law. The Act, sponsored by Del. John Kelly (R), codifies criminal penalties for persons convicted of willfully trespassing or entering property containing a critical infrastructure facility, such as certain natural gas facilities, without permission by the owner of the property, and holds a person liable for any damages to personal or real property while trespassing. The Act also prescribes criminal penalties for organizations conspiring with persons who willfully trespass and/or damage critical infrastructure sites and holds conspiring organizations responsible for any damages to personal or real property while trespassing. The Act is effective 90 days after March 7, 2020. [Read more.](#)

**Severance Tax – Wyoming.** (*Update to 3/16/20 Weekly Report*) On March 26, HB 243 was signed into law by Gov. Mark Gordon (R). The Act, sponsored by Rep. Donald Burkhardt, Jr. (R), amends existing law to provide for certain severance tax rates and exemptions based on production dates and spot oil prices. The Act is effective July 1, 2020. [Read more.](#)

## **STATE – Regulatory**

**Railroad Commission Proration Meeting – Texas.** On April 14 at 9:30 am, the Railroad Commission of Texas (RRC) will hold a virtual, online conference meeting to consider the joint application of Pioneer Natural Resources USA, Inc. and Parsley Energy, Inc. for market-demand prorationing of oil production in Texas as a response to current market conditions. According to law firm, Jackson Walker, “This type of regulation – which has not happened in Texas since 1973 – could have a serious impact on oil and gas

producers, working interest owners, royalty owners, and midstream companies.” ([Read more](#)) The RRC notes that this conference is not a hearing. The public may view the meeting live through the RRC website and later through their archives. For more information on attending, [click here](#). To view advanced comments the RRC received regarding the meeting, [Read more.](#)

**Severance Tax Collections – Texas.** On April 6, Texas Railroad Commissioner Christi Craddick [sent a letter to state Comptroller Glenn Hegar](#) requesting he extend the monthly deadline to file crude oil and natural gas production taxes, as he has done with the state’s franchise tax. “These are unprecedented times and if we can give Texas businesses time and flexibility to weather this storm, policymakers should employ every avenue to do it,” said Craddick. [Read more.](#)

## **STATE – Judicial**

**Life Estates; Open Mines Doctrine – North Dakota.** On February 12, in *Reese v. Reese-Young* (Case No. 2020 ND 35), the North Dakota Supreme Court addressed a case where Reese argued on appeal that the district court erred when it concluded the open mines exception to the doctrine of waste does not apply and, as a holder of a life estate in the property, she was not entitled to the royalties and bonus payments resulting from the production of oil and gas from the property. The Supreme Court agreed and reversed the district court, noting the open mines doctrine is a common law doctrine and it “is part of the law in North Dakota, and the district court erred in determining it did not apply because it is not the law in this state.” Here, the Supreme Court noted that, “Although there is no North Dakota case law specifically applying the open mines doctrine, other courts have applied the doctrine and their decisions provide guidance.” In sum, the Court held, “where the deed creating the life estate only reserved the minerals in the property and did not reserve the surface, it is clear to us that the open mines doctrine applies. A life estate in mineral interests alone is nearly worthless except for mining or oil and gas

production purposes and, without application of the open mines doctrine, the result would be that the entity holding the life estate would have the responsibility of being the trustee for the remainder interest with little or no benefit therefrom. We conclude, as a matter of law, Cheryl Reese is entitled to the proceeds from the oil and gas production, including the royalties and bonus payments." [Read more.](#)

## **INDUSTRY NEWS FLASH**

► **Oil companies back plan to cut output.** On March 30, two of the biggest drillers in Texas – Pioneer Natural Resources Co. and Parsley Energy Inc. – asked the Texas Railroad Commission (RRC) to consider a cut to crude output after a historic price crash (*See above for April 14 live conference information*). The request came less than a week after RRC Commissioner Ryan Sitton “surprised the oil market with his own controversial call for state caps on oil output. His proposal for a 10% cut in production was blasted by the American Petroleum Institute,” as a “shortsighted” and “anti-competitive” effort that will “harm U.S. consumers and American businesses.” [Read more.](#)

## **LEGISLATIVE SESSION OVERVIEW**

**Session Notes:** Arkansas, Massachusetts, Missouri House, 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: Connecticut, Kentucky, Missouri Senate, New Jersey and Puerto Rico (April 13), Minnesota (April 14), Michigan (April 15), Rhode Island (April 17), Illinois Senate (April 21), Ohio Senate (April 22), Kansas (April 27), Alabama and Ohio House (April 28), Iowa (April 30), California and New Hampshire (May 4), Delaware (May 15), Colorado (May 18), Tennessee (June 1) and Alaska, Arizona, Georgia,

Hawaii, Illinois House, Louisiana, Mississippi, Nebraska, New York, Oklahoma, South Carolina and Wisconsin. (TBD).

North Carolina is in a scheduled recess until April 28.

Oklahoma held a regular session and special session on April 6 to approve Republican Gov. Kevin Stitt's declaration of a health emergency in all 77 counties, reports [The Oklahoman](#). Along with approving the health emergency declaration, the legislature approved sweeping changes to the state's Open Meeting Act to allow government bodies to meet via teleconference.

Kentucky is expected to adjourn on April 15.

**Signing Deadlines:** Florida Republican Gov. Ron DeSantis had a signing deadline on April 3. Washington Democratic Gov. Jay Inslee had a signing deadline on April 4.

**Interim Committee Hearings:** [North Dakota](#) is currently holding 2020 interim committee hearings. ■

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## Weekly Highlights At-A-Glance

### FEDERAL – Legislative

**H.R. 266– Paycheck Protection Program and Health Care Enhancement Act.** Late last week, the [U.S. Congress passed another round of COVID-19 stimulus](#), passing [H.R. 266](#), known as the Paycheck Protection Program and Health Care Enhancement Act, which President Trump signed into law. The legislation provides \$484 billion in new funding due to the COVID-19 pandemic and was negotiated between the Trump administration and congressional leaders. It provides \$310 billion to replenish the Paycheck Protection Program, which was part of the \$2 trillion stimulus approved late last month and which recently ran out of money. The law allows the government to take new applicants for the program, which provides forgivable loans to small businesses that keep employees on their payroll for eight weeks. The bill sets aside \$30 billion of the loan funds for banks and credit unions with \$10 billion to \$50 billion in assets and another \$30 billion for even smaller institutions. The plan also includes \$60 billion in loans and grants for the separate Economic Injury Disaster Loan program and makes farms and ranches eligible for the loans. The package also includes \$25 billion for expanded testing capacity and \$75 billion for hospitals and health care providers. As reported, Republicans originally wanted to pass a smaller package, but Democrats demanded more funding for hospitals and testing. Democrats did fail to secure \$150 billion for aid to state and local governments, which may be part of future stimulus. [Read more.](#)

**Congressional Schedule Changes.** The U.S. House of Representatives Majority Leader Steny Hoyer (D-MD) announced that due to the ongoing coronavirus pandemic, the chamber is not expected to meet again prior to May 4, 2020. However, if

action is required on critical legislation related to the coronavirus response (as seen above) or other legislative priorities, legislators may be called back to Washington. U.S. Senate Majority Leader Mitch McConnell (R-KY) echoed the House announcement and said he also does not expect his chamber to reconvene until May 4. [Read more.](#)

### FEDERAL – Regulatory

#### **Proposed BLM Interim Guidance to Provide Relief for Oil & Gas Operators – Washington, DC.**

On April 21, the Bureau of Land Management (BLM) issued two separate Interim Guidance statements to help alleviate some of the hardships created by the COVID-19 pandemic and collapse in oil prices. The draft Interim Guidance statements are outlined below. The first guidance, *Interim Guidance for Lease Suspension Requests During the COVID-19 National Emergency*, may allow for a suspension of production or a suspension of operations under the force majeure provision of the Mineral Lease Act. The second guidance, *Interim Guidance for Royalty Rate Reduction Requests for Oil and Gas Leases during the COVID-19 national emergency*, would qualify federal oil and gas leases for a temporary royalty reduction under specified circumstances. We will keep members updated once the BLM officially publishes the guidance statements. [Read more.](#)

**Oil Production; Strategic Petroleum Reserve – Washington, DC.** Amidst the rout in oil prices, last Monday President Trump said he wants to add as much as 75 million barrels of oil to the national Strategic Petroleum Reserve to take advantage of low prices and help U.S. producers. Trump also said he will look at a proposal from Sen. Kevin Cramer (R-ND) seeking to block Saudi oil shipments to the U.S. [Read more.](#)

**Oil Production; Tariffs – Washington, DC.** On April 20, Sen. James Inhofe (R-OK) delivered a letter to U.S. Commerce Secretary Wilbur Ross urging the Trump administration to do more to punish Saudi Arabia and Russia for continuing to flood the global oil market, including imposing tariffs on imported oil from Saudi Arabia and Russia. “Despite recently agreed to production cuts by Russia, Saudi Arabia and members of the Organization of Petroleum Exporting Countries (OPEC), the global oil market is still well oversupplied as the price of oil has failed to stabilize,” wrote Inhofe. “It remains clear that the Saudis and Russians continue to flood the global oil market in what I view as an effort to crush American oil and gas producers and capture their market share.” According to Inhofe, the actions of OPEC, the Russians and Saudis “are hindering our economic and national security.” [Read more.](#)

**BLM Uncompahgre Resource Management Plan – Colorado.** On April 10, the Bureau of Land Management (BLM) published its Record of Decision (ROD) for the Approved Resource Management Plan (RMP) for the Uncompahgre Field Office located in southwestern Colorado, in Montrose, Delta, Gunnison, Ouray, San Miguel and Mesa counties (See [85 Fed. Reg. 20296](#)). The Colorado State Director signed the ROD on April 2, 2020. The ROD makes the Approved RMP effective immediately. The Uncompahgre Approved RMP replaces the 1985 San Juan/San Miguel RMP, as amended; and the 1989 Uncompahgre Basin RMP, as amended. The BLM developed the Uncompahgre Field Office RMP in collaboration with 18 cooperating agencies. The Approved RMP describes landscape-level management actions and allowable uses for resources and special designations within the Uncompahgre Planning Area. [Read more.](#)

**BLM Resource Advisory Council Meeting – Utah.** On April 24, the BLM announced a *Notice of Public Meeting, Utah Resource Advisory Council, Utah* ([85 Fed. Reg. 23056](#)). The Utah Resource Advisory Council (RAC) is scheduled to meet on June 10, 2020, from 8 a.m. to 3:30 p.m. MDT. However, a teleconference may substitute for an in-person

meeting if public health restrictions are in effect. The meeting will be held at the Richfield Interagency Fire Center, 2031 South Industrial Park Road, Richfield, Utah 84701. Written comments to address the RAC may be sent to the BLM Utah State Office, 440 West 200 South, Suite 500, Salt Lake City, Utah 84101, or via email to [BLM\\_UT\\_External\\_Affairs@blm.gov](mailto:BLM_UT_External_Affairs@blm.gov) with the subject line “Utah RAC Meeting.” The meeting is open to the public. RAC meetings discuss various topics including public land issues, BLM regulations updates, and other issues to be determined.

[Read more.](#)

## **FEDERAL – Judicial**

### **Leasing; Unitization; Bonus Payments – Ohio.**

On March 26, the U.S. District Court for the Southern District of Ohio denied a motion to dismiss a complaint which alleged lease expiration, failure to make bonus payments, and other claims. In *Scenicview Estates, LLC v. Eclipse Resources I, LP* (Case No. 2:19-CV-39), the lessee-defendants claim the operation of wells within the unit extended the lease at issue without having to make bonus payments. The plaintiff claimed the unit was not properly unitized and the lease expired. The Court found that “Scenicview has sufficiently pleaded that the Remaining Property was not validly unitized or pooled at the time the primary term expired.” However, the Court also held that “dismissal may still be warranted if it is found that [one of the defendants] conducted operations or produced oil or gas on the Remaining Property prior to the primary term’s expiration.” [Read more.](#)

### **Leasing; Surface Rights– Fifth Circuit (Mississippi).**

On March 25, in *Petro Harvester Operating Co., L.L.C. v. Keith* (Case No. 19-60151), the U.S. Court of Appeals, Fifth Circuit, on appeal from the U.S. District Court for the Southern District of Mississippi, addressed a case where Petro Harvester was assigned the rights under a mineral lease and became the mineral lessee and operator. When the lease expired, Petro Harvester sought a declaratory judgment that it could continue to operate its oil and gas extraction activities on the



Keiths' surface land even without a surface lease, pointing to its explicit and implicit surface rights as a mineral lessee. The Keiths responded that the surface lease required Petro Harvester to return the surface land to its pre-lease condition upon expiration, meaning Petro Harvester was required to remove its machinery and vacate the property. The district court granted summary judgment in favor of Petro Harvester. The Keiths appealed and this court affirmed in favor of the lessee-operator. The Court held that the surface lease did not supersede the mineral lessee rights in this case, but also noted "that our holding should not be construed to preclude the possibility that a surface owner who also owns the mineral rights could include surface-use restrictions in the mineral lease. Indeed, an appropriately drafted surface lease that refers explicitly to the mineral lease may be capable of modifying the mineral lease; and a mineral deed that initially severs the surface from the mineral rights might also establish surface-use restrictions. But no such language is presented here, so the question is academic, and we need not address the issue." [Read more.](#)

**Royalty Class Action Settlement – Tenth Circuit (Colorado).** On March 18, the U.S. Court of Appeals, Tenth Circuit, on appeal from the U.S. District Court for the District of Colorado, upheld a royalty class action settlement in *Elna Sefcovic, LLC v. TEP Rocky Mountain, LLC* (Case No. 19-1120). The case involved the alleged underpayment of lease royalties to class members. Here, the litigants attacked the fairness of the settlement agreement approved by the district court. Upholding the agreement, the Court noted, "the *Sefcovic* complaint alleged an array of errors in the calculation and payment of royalties to the *Sefcovic* class based on the sale of natural gas and similar products, and this is precisely what the release purports to cover." [Read more.](#)

## **STATE – Legislative**

**Remote and Electronic Notarial Acts Update – Multiple States.** In the wake of the COVID-19 pandemic, many states have issued remote and

electronic notarization emergency orders. At present, 32 states have issued such orders and/or relaxed notarial act rules. Access the list of orders and their implementing dates here: [Read more.](#)

**Employee Misclassification – Virginia.** (*Update to 3/2/20 Weekly Report*) On April 6, Gov. Ralph Northam (D) signed HB 1407 into law. The Act, 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. The Act is effective January 1, 2021. [Read more.](#)

**Employee Misclassification – Virginia.** (*Update to 3/2/20 Weekly Report*) On April 6, Gov. Ralph Northam (D) signed SB 744 into law. The Act, sponsored 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." The Act is effective January 1, 2021. [Read more.](#)

**Hydraulic Fracturing – Virginia.** (*Update to 3/16/20 Weekly Report*) On April 2, Gov. Ralph Northam (D) signed SB 106 into law. The Act, sponsored 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.). The Act defines hydraulic fracturing as 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.](#)

**Ad Valorem Taxes – Wyoming.** *(Update to 3/16/20 Weekly Report)* On March 24, Gov. Mark Gordon (R) signed HB 159 into law. The Act, sponsored by the Select Committee on Coal/Mineral Bankruptcies (R), requires 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.](#)

**Tax Liens on Mineral Production – Wyoming.** *(Update to 3/2/20 Weekly Report)* On March 24, Gov. Mark Gordon (R) signed SF 139 into law. The Act, sponsored by the Select Committee on Coal/Mineral Bankruptcies (R), amends prior 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 which is effective July 1, 2020. [Read more.](#)

**Underground Disposal Wells – Wyoming.** *(Update to 3/16/20 Weekly Report)* On March 10, Gov. Mark Gordon (R) signed SF 45 into law. The Act, sponsored by the Joint Minerals, Business & Economic Development Interim Committee (R), amends prior 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. The Act is effective July 1, 2020. [Read more.](#)

## **STATE – Regulatory**

**COGCC Hearing – Colorado.** As members are aware, over the past year we have been covering

SB19-181 and the Colorado Oil & Gas Conservation Commission (COGCC) rulemaking process to implement the law, which “ensures that oil and gas development and operations in Colorado are regulated in a manner that protects public health, safety, welfare, the environment and wildlife resources.” In recent months, COGCC has stalled the process due to COVID-19 disruptions. However, on April 24, the COGCC announced it will hold an online hearing on April 29 regarding the rulemaking process to implement SB19-181. According to COGCC Director Jeff Robbins, he will provide an update to the SB 19-181 rulemaking schedule and the COGCC will have a discussion following. To access the agenda, [click here](#). The public may submit written comments in advance but there will be no public comment during the hearing itself. To submit advance comments on the COGCC portal: [click here](#). For background information on SB19-181, [Read more.](#)

**Severance Tax Extension – Louisiana.** The deadline for Louisiana oil and gas severance tax filings and collections has been pushed back to June 25. The state’s Department of Revenue formally announced the delay last Wednesday following an announcement by Gov. John Bel Edwards (D) that a delay was expected. The February 2020 monthly oil and gas severance returns, payments, and reports typically were due April 25. No penalties or interest will be assessed if those collections are made by June 25, according to Revenue Information Bulletin No. 20-011. [Read more.](#)

**Emergency Temporary Shut-In Rule – New Mexico.** As a response to the current oil glut and related COVID-19 impacts, on April 21, New Mexico State Land Office Commissioner Stephanie Garcia Richard announced the issuance of an emergency rule allowing operators to apply for a temporary shut-in of oil wells. The rule will “allow oil and gas lessees to temporarily stop production of oil wells for at least thirty days, with longer-term relief coming through the statutory rule change process. The next steps for a longer-term shut-in rule and language to make operators comply with future bonding increases

will be announced soon. By statute, the State Land Office must provide the public with 30 days of notice and opportunity to provide public comment. After that period, a hearing will be held on the consideration of the rule change. Members of the public will be able to provide testimony." [Read more.](#)

**Shut-In Discussions – North Dakota.** On April 21, the North Dakota Industrial Commission (NDIC) met to consider what actions might be appropriate amidst the current oil market problems. Lynn Helms, director of the Oil and Gas Division of the state's Department of Mineral Resources, told the commission about 5,000 oil wells in the state have been shut in, an approximation based on his division's conversations with producers. Those shut-ins have cut the state's production by almost 300,000 b/d or about 20 percent from its February average of 1.45 million b/d. Helms advised against a decision to order output pro-rationing for now. The Department of Mineral Resources will continue to monitor the market situation and gather information and plans to conduct a hearing to consider the impact of such an emergency order. NDIC has yet to announce a date for the hearing. [Read more.](#)

**Landman Registration Renewal Extension – Ohio.** For those landmen who are already registered with the Ohio Department of Commerce, Division of Real Estate & Professional Licensing, the annual registration renewal date has been extended due to the COVID-19 pandemic. Per the Superintendent's notice: "We hope you are staying safe and healthy during this time. While Ohio land professional registrations expire annually on April 30, on March 27, 2020, Governor Mike DeWine signed House Bill 197. This bill provides an extension of time to file your renewal. The extension is until either ninety days after the emergency order ends or December 1, 2020 – whichever is sooner. During this time, any registrations not renewed will remain active. We are still processing your renewals as they are coming into our office. You may send in the paperwork as soon as you are able. Please contact Laura Monick at [Laura.Monick@com.state.oh.us](mailto:Laura.Monick@com.state.oh.us)

with any questions." [Read more.](#)

**School Land Board Policy Updates – Texas.** On April 21, Texas Land Commissioner George P. Bush announced the Texas School Land Board unanimously approved policies to work with operators to mitigate the oil and gas crisis. The policies delegate "the Land Commissioner the authority to grant up to a six-month extension on all drilling commitments, when it's deemed to be in the state's best interest, made by lessees of permanent school fund property during 2020, and a 90-day tolling on calculations for enforcing lease terminations for halting of production or failure to produce in paying quantities. Additional actions include adopting a policy addressing a waiver of penalties and interest on late royalty payments submitted from April 1, 2020 through June 30, 2020 in light of the current oil and gas crisis facing the nation." The Texas School Land Board is the state agency that oversees oil, gas and mineral acreage owned by the Permanent School Fund. [Read more.](#)

**Railroad Commission Proration Meeting – Texas.** (*Update to 4/13/20 Weekly Report*) As members are aware, on April 14 the Texas Railroad Commission (RRC) held an open meeting via teleconference to consider a [joint motion filed by Pioneer Natural Resources U.S.A., Inc. and Parsley Energy Inc. Requesting a Market Demand Hearing and Market Demand Order Effective for May 2020 Production](#) with the RRC which requested that the agency conduct a hearing (a) to determine whether waste of oil and gas is taking place in Texas or is reasonably imminent and, if so, to adopt an order to prevent waste and (b) to inquire as to the reasonable market demand for oil pursuant to Section 85.058 of the Texas Natural Resources Code and to issue any order, effective for May 2020 production, as the RRC may deem appropriate in response to its findings." You may view the [archived hearing here](#). You may [review the submitted public comments here](#). (For [further background information click here](#).) On April 21, RRC commissioners debated the matter and decided to hold off on a vote until May 5. "Chairman Wayne Christian and Commissioner

Christi Craddick said they intend to consult with legal staff and the state attorney general in the hope of preventing any action from being hung up in court by lawsuits. Christian argued that a legal challenge could hold up action far longer than a 2-week delay to the May 5 meeting." [Read more.](#)

**Unemployment Benefits – Texas.** On April 23, WFAA-ABC (DFW) Senior Business/Consumer Reporter Jason Wheeler interviewed Texas Workforce Commission (TWC) Executive Director Ed Serna to get answers on the many difficulties Texans have had claiming their unemployment benefits. Many of the same issues noted in the AAPL member discussion forums were also addressed with Serna. Among many topics covered, Wheeler's report and interview answer important questions, including how independent contractor filings work, claimants who previously received TWC benefits but now have trouble accessing their accounts, and how the extra \$600/week federal payments are distributed. To access Wheeler's report and the 31-minute interview with TWC Executive Director Serna, [Read more.](#)

**Production Cuts; Well Shut-Ins – Oklahoma.** On the heels of proration requests in Texas, the Oklahoma Energy Producers Alliance has asked the Oklahoma Corporation Commission (OCC) for production controls as well. The application argues there is no correlation in Oklahoma between what producers in the state are getting and its actual value, and further asserts the cost to recover crude oil for many operators exceeds current value, which statutorily constitutes waste under Oklahoma law. "Crude oil waste, the application states, adversely impacts royalty owners, working interest owners, the operators themselves and Oklahoma, which gets much of its revenue from gross production taxes and is the state's largest mineral owner. The organization and its supporting companies ask in their application that the commission adjust, modify, amend, set or establish allowables for Oklahoma crude oil production or to take other steps it deems appropriate to prevent its waste." However, "[opponents of prorationing](#), including the American

Petroleum Institute, Marathon, Occidental and Chevron, argue that the government should let the marketplace determine oil production, and not try to manipulate output." [Read more.](#) [UPDATE: On April 22, the OCC issued an emergency order allowing operators to shut-in or curtail oil production in wells to prevent economic waste. "There was no way for Oklahoma and other U.S. producers to anticipate and plan for up to 30 million barrels per day of consumption to disappear within just a few weeks," said OCC Commissioner Dana Murphy. The order allows oil companies to "consider their unprofitable production economic waste, allowing oil and gas producers with money-losing wells to retain leases that could otherwise be voided if they halted output." [Read more.](#) At press time, the OCC had yet to make the announcement and order publicly available on their website, but until then, for further information please call the OCC Oil & Gas Division directly at 405-522-0577 or view the April 23 Landnews posting with a PDF of the announcement and order.]

**Tax Exemptions – Texas.** On April 13, Texas Attorney General Ken Paxton issued a legal opinion ([No. KP-0299](#)) at the request of state Sen. Paul Bettencourt (R-Houston). The nonbinding opinion was issued in response to Bettencourt's request for guidance on whether "purely economic, non-physical damage to property caused by the COVID-19 disaster" is eligible for the state temporary tax exemption that state legislators approved in 2019 in response to property damage caused by Hurricane Harvey in 2017. "Section 11.35 of the Tax Code creates a temporary tax exemption for qualified property damaged by a disaster, as declared by the Governor," Concluding that the tax exemption would not apply to the COVID-19 situation, Paxton wrote, "A court would likely conclude that the Legislature intended to limit the temporary tax exemption to apply to property physically harmed as a result of a declared disaster." [Read more.](#)

## **STATE – Judicial**

**Leasing; Bonus Payments; Statute of Frauds – Michigan.** On March 19, in *Murray v. Chesapeake*



*Energy Corp.* (Case No. 346062), the Michigan Court of Appeals ruled in favor of Chesapeake and other oil and gas production defendants when addressing a case where various oil and gas companies planned to explore for minerals in the northern lower peninsula and arranged to pay signing bonuses to landowners willing to lease their mineral rights. Before all the agreements were reduced to writing, the companies changed their minds. In a separate action, those landowners who had executed agreements with the oil and gas companies received their signing bonuses. The plaintiffs in this appeal did not have completed agreements and were not part of that earlier settlement. The trial court summarily dismissed the plaintiffs' breach-of-contract action because the leasing "agreements" did not comport with the statute of frauds. This Court agreed and affirmed the lower court holding. Here, the Court noted that as to the agreement at issue, the "form" requirements to satisfy the statute of frauds were not met and other documents did not mend this deficiency. [Read more.](#)

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

On March 28, in *McClellan v. McGarty* (Case No. 2020-Ohio-1109), the Ohio Court of Appeals affirmed a lower court ruling interpreting the Dormant Mineral Act (DMA) and Marketable Title Act (MTA) to a mineral interest dispute. The trial court found that a mineral interest exception in a 1921 warranty deed was extinguished by operation of the MTA, and that court also concluded that a warranty deed recorded in 1974 was appellees' root of title because it contains a specific reference to an oil and gas exception in a 1947 deed. Here, the Court held "the trial court did not err in concluding that the 1974 deed is Appellees' root of title." The appellants also contended that specific provisions of the DMA prevailed over general provisions of the MTA. However, this Court found that "assignment of error is meritless" holding that "the trial court extinguishing the mineral interest in this case pursuant to the MTA is affirmed." [Read more.](#)

**Leasing; Delay Rentals – Pennsylvania.** On March 26, in *Barton v. Graham* (Case No. 1704 WDA 2018),

the Pennsylvania Superior Court affirmed a trial court summary judgment ruling in favor of the successor lessors. Those lessors had sent letters by certified mail to the successor lessees advising them that the lease had expired due to a lack of production, and because the Bartons (lessors), specifically their predecessor the Barton Equity Partnership, had purchased the Property in good faith and for value in 1999. Because the lease was not recorded until 2011, the Bartons advised that the partnership was a bona fide purchaser for value without record notice of the lease which, therefore, cannot encumber the property. The Bartons requested that the Grahams execute releases of their interest in the Lease, but the successor lessees refused to do so. Issues were also raised regarding rejection of rental payments. Here, the Court affirmed the lower court holding, concluding that pursuant to the lease terms and prior judicial holdings, the lease at issue "ended when production ceased and the Bartons refused the Grahams' delay rental payments." [Read more.](#)

#### **INDUSTRY NEWS FLASH**

► **TXOGA President appointed to Gov. Abbott's Strike Force to Open Texas.** On April 20, Gov. Greg Abbott (R-TX) announced the Governor's Strike Force to Open Texas and appointed Texas Oil & Gas Association (TXOGA) President Todd Staples as a leader of the Energy Working Group. The Strike Force and its working groups, including TXOGA, are being assembled to provide input and guidance on safely reopening Texas in the wake of the COVID-19 pandemic. [Read more.](#)

► **Oil production shut-ins.** On April 20, Rystad Energy estimated that in March at least 175,000 barrels-per-day of domestic production was shut in, mainly in the Bakken. "For May, 177,000 b/p/d of shut-ins is expected across multiple shale plays, based on the latest press releases from Continental Resources and ConocoPhillips," said Rystad Energy analysts. This came the same day Crescent Point Energy Corp. announced it is shutting-in 25,000

barrels-per-day of its current production, of which 70 percent is oil. [Read more.](#)

## **LEGISLATIVE SESSION OVERVIEW**

**Session Notes:** Arkansas, Massachusetts, Minnesota, the Missouri House, Pennsylvania and Vermont are in regular session. The District of Columbia Council is also in regular session.

The following legislatures are postponing their 2020 legislative sessions due to COVID-19 until the dates provided: **Missouri** Senate (April 27), **Ohio** House and **Rhode Island** (April 28), **Ohio** Senate (April 29), **Iowa** and **Michigan** (April 30), **Puerto Rico** (May 1), **Alabama**, **California**, **New Hampshire**, **New Jersey** and the **U.S. Congress** (May 4), **Kansas** (May 6), **Delaware** (May 15), **Colorado** (May 18), **Tennessee** (June 1) and **Alaska**, **Arizona**, **Georgia**, **Hawaii**, **Illinois**, **Louisiana**, **Mississippi**, **Nebraska**, **New York**, **Oklahoma**, **South Carolina** and **Wisconsin** (TBD).

**North Carolina** is in a scheduled recess until April 28.

The **Utah** legislature adjourned its special session on April 17 after expanding voting by mail for upcoming elections, reports [The Houston Chronicle](#). After a historic virtual special session, the legislature approved mail in voting for the upcoming primary on June 30.

**Connecticut** adjourned its 2020 legislative session early on April 21, reports [WTNH](#). In a joint statement, House and Senate leaders stated that they are planning to convene for a special session within the next several months to ensure the continuity of government functions.

**Arkansas** is expected to adjourn on April 24. **Arizona** was originally scheduled to adjourn on April 25 but is now expected to adjourn on May 1.

**Nebraska** was scheduled to adjourn on April 23 but will instead adjourn on a date to be decided.

**Mississippi** is scheduled to adjourn on May 3 but is

likely to postpone in response to the COVID-19 pandemic.

**Signing Deadlines:** **Maryland** Republican Gov. Larry Hogan has until May 7 to act on legislation or it becomes law without signature. **Connecticut** Democratic Gov. Ned Lamont must sign or veto legislation within 15 calendar days of presentment or it becomes law without signature. **Florida** Republican Gov. Ron DeSantis has 15 days from presentment to act on legislation or it becomes law without signature. **Kentucky** Democratic Gov. Andy Beshear has 10 days from presentment, Sundays excepted, to act or legislation becomes law without signature.

**Interim Committee Hearings:** [North Dakota](#) has cancelled all interim hearings from now until the end of May. ■

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# GOVERNMENTAL AFFAIRS WEEKLY REPORT

## Weekly Highlights At-A-Glance

### FEDERAL – Legislative

**Resources for Workforce Investments, not Drilling (ReWIND) Act.** On May 5, a group of more than 40 federal lawmakers backed legislation to prevent fossil fuel companies from receiving coronavirus-related aid. The [Resources for Workforce Investments, Not Drilling, or ReWIND, Act](#) (bill not yet numbered) would prevent fossil fuel companies from receiving loans under federal loan programs; caps the Strategic Petroleum Reserve emergency oil supply at its current level of 714.5 million barrels and prevents private companies from storing their oil in the reserve; and would seek to halt the sale of new fossil fuel leases while the administration continues to sell leases on federal land and prevent the Interior Department from cutting royalties for companies with such leases. Other bill provisions would suspend new federal rulemaking and keep all public comment periods open and prevent banks affected by certain stimulus package provisions from making new equity investments in fossil fuel companies for two years. “It would be unconscionable to bail out big oil and gas corporations with money intended to help families, workers and small businesses survive this global pandemic,” said a statement from Rep. Nanette Barragán (D-CA), who is leading the legislation alongside Sen. Jeff Merkley (D-OR) ([Read more here](#)). The bill is considered dead-on-arrival in the Republican-led Senate should it even move through the House. [Read more.](#)

### FEDERAL – Regulatory

**Financial Risk to Oil and Gas Companies.** On May 4, a group of U.S. congressional representatives sent a letter to Federal Reserve Chairman Jerome Powell and the Commodity Futures Trading Commission Chair Heath Tarbert expressing their concerns that

“major U.S. banks are poised to take ownership over highly leverage oil and gas assets.” The letter urges them to “mitigate the risks to the financial system and consumers as oil and gas companies face financial challenges.” As a result of COVID-19, “these conditions have seemingly necessitated a transfer of ownership to existing creditors, at a rate and scale that could prove to be disruptive to credit and commodity markets.” The letter sets forth certain requested conditions to better protect against these financial risks. [Read more.](#)

**BLM Exemptions from NEPA Review.** On May 1, the Bureau of Land Management (BLM) published its notice of revisions, *National Environmental Policy Act Implementing Procedures for the Bureau of Land Management* ([85 Fed. Reg. 25472](#)), which establishes a categorical exclusion that will exempt from environmental review some proposals for oil drilling, road-building, sage-grouse habitat improvement and other projects under the National Environmental Policy Act (NEPA). The move has been lauded by industry representatives who remind environmental activists that habitat areas are still protected. These new procedures are being proposed as the Interior Department, the U.S. Forest Service, and other agencies are increasing the kinds of proposals excluded from environmental review under NEPA and reducing the time it takes for those reviews in order to speed up the approval process for energy development, logging, and other projects. The new procedures “will help to improve the BLM’s NEPA compliance by allowing it to spend less time analyzing low-impact projects and give more attention to larger projects,” said attorney Bob Comer, co-head of mining for Denver-based Norton Rose Fulbright US LLP and a former associate Interior Department solicitor in the George W. Bush administration. [Read more.](#)

**BLM Director Appointment.** (*Update to 1/13/20 Weekly Report*) Last week, Interior Secretary David Bernhardt issued a written order once again extending the tenure of William Perry Pendley as acting BLM Director until a Senate-confirmed appointee is in place. Pendley's assignment will continue until June 5, 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 that position, Pendley, an attorney, was the president of the Mountain States Legal Foundation. [Read more.](#)

**Federal Reserve Oil and Gas Industry Lending – Washington, DC.** On April 30, the Federal Reserve announced changes to a lending program that paves the way for the oil and gas industry to qualify for government financing amidst the COVID-19 pandemic. The expanded criteria to qualify for the [Main Street Lending Program](#) follows requests from Sen. Ted Cruz (R-TX) and a push by small and mid-sized oil producers who said financing was needed to save the industry from bankruptcy. ([See the news release from Sen. Cruz here](#)) The new guidelines ease restrictions on borrowing for heavily indebted companies and also allows them to use the loans to refinance existing debts — a departure from the first set of criteria released by the board. "Because of these restrictions, small- and medium-sized oil and gas companies, who desperately need liquidity because of massive demand disruption caused by COVID-19 and foreign oil aggressive overproduction and price discounts, are unable to access the short-term liquidity they need to avoid bankruptcy," Cruz wrote in a letter to the Treasury Department and the Federal Reserve Board last week. According to Cruz, this change to the lending program will alleviate those concerns. [Read more.](#)

**U.S. Treasury Department Oil Producer Lending – Washington, DC.** On April 28, U.S. Energy Secretary Dan Brouillette told industry representatives that lending programs under development include one within the Treasury Department that would provide "bridge loans" to smaller players, and another at the Federal Reserve

that would provide emergency lending authority, as noted above. Brouillette's remarks were made to the North Dakota Petroleum Council which later [posted](#) them on their website. Brouillette also said he has asked Treasury Secretary Mnuchin and others to work with bank regulators to guard against "discriminatory lending" against the energy industry. This echoes comments previously made on April 24 by Secretary Mnuchin who announced the Trump administration is considering the creation of a lending program to provide money for U.S. oil producers. "One of the components we're looking at is providing a lending facility for the industry," said Mnuchin. "We're looking at a lot of different options and we have not made any conclusions," he added. Mnuchin also said there are internal discussions about alternative lending structures with banks if traditional lending programs are unavailable. [Read more.](#)

## **FEDERAL – Judicial**

**Clean Water Act – U.S. Supreme Court.** On April 23, the U.S. Supreme Court rendered its Clean Water Act decision in [County of Maui v. Hawaii Wildlife Fund](#) (Case No. 18-260). The Clean Water Act forbids "any addition" of any pollutant from "any point source" to "navigable waters" without an appropriate permit from the Environmental Protection Agency (EPA). The Act defines "pollutant" broadly and defines a "point source" as "any discernible, confined and discrete conveyance . . . from which pollutants are or may be discharged," which includes, for example, any container, pipe, ditch, channel, tunnel, conduit, or well, and defines the term "discharge of a pollutant" as "any addition of any pollutant to navigable waters [including navigable streams, rivers, the ocean, or coastal waters] from any point source." It then uses those terms in making "unlawful" the discharge of any pollutant by any person without an appropriate permit. Although the case facts focused on a wastewater reclamation facility that collects sewage from the surrounding area, treats it, and then pumps treated water into the ground through four wells, the case may have broader implications as to "the fundamental issue of



what is a discharge to navigable waters requiring a permit” under the Act. The Court held that a permit is needed when there is the “functional equivalent” of a direct discharge. According to law firm, Covington & Burling LLP, the “Court’s opinion in *Maui* reflects an effort to find a ‘middle ground’ that avoids the consequences of an overly broad or overly narrow interpretation of the statute.” However, this middle ground stance has left the decision muddled as a dissenting Justice Alito pointed out. “Unless or until more guidance is provided by EPA, the lower courts or Congress, affected parties will be left to wrestle with the Court’s new ‘functional equivalent’ standard,” noted Covington & Burling who added that the opinion leaves us in a situation where the lower courts will need to wrestle with this issue and “provide additional guidance through decisions in individual cases” as Justice Breyer states, referring to the “traditional common-law method” as useful even in an era of statutes. In the meantime, until the EPA weighs in, affected parties face uncertainty. [Read more.](#)

**Sage-Grouse Habitat – Idaho.** On February 27, in [Western Watersheds Project v. Zinke](#) (Case No. 1:18-cv-00187), the U.S. District Court for the District of Idaho addressed a dispute over BLM policy changes promulgated under the Trump administration. The case involves a lengthy history of procedural moves which resulted in a number of oil and gas lease sales being set aside in 2018 and subsequent review by the BLM to comply with certain court orders. However, this case “applies only to oil and gas lease sales contained in whole or in part within sage-grouse habit management areas.” At issue was BLM Instruction Memorandum (IM 2018-034) which implemented new procedures for the handling of leasing oil and gas rights on certain federal lands. The environmentalist plaintiffs claim that IM 2018-034 “unlawfully restricts public participation in and environmental review of BLM oil and gas lease decisions that affect and threaten sage-grouse populations and habitats across the western United States.” Here, the Court agreed, holding the “BLM inescapably intended to reduce and even eliminate public participation in the future decision-making

process. Regardless of the reasons for doing so, the fact of doing so in the manner pursued by BLM cannot be reconciled with [the Federal Land Policy and Management Act and National Environmental Policy Act] overarching mandates. IM 2018-034 is therefore substantively invalid.” [Read more.](#)

**BLM Leasing – Montana.** On May 1, the U.S. District Court for the District of Montana ruled in [Wildearth Guardians v. U.S. Bureau of Land Management](#) (Case No. CV-18-73-GF-BMM) that the Bureau of Land Management (BLM) failed to consider risks to Montana’s environment and water supply before issuing 287 oil and gas leases covering 145,063 acres in December 2017 and March 2018 lease sales. In his opinion, Judge Brian Morris wrote that “the Court does not fault BLM for providing a faulty analysis of cumulative impacts or impacts to groundwater, it largely faults BLM for failing to provide *any* analysis.” In sum, “the Court concludes that the proper remedy is to vacate BLM’s finding of no significant impact and its issuance of the leases and to remand to BLM for further analysis and action consistent with this opinion.” BLM officials said the agency would evaluate the ruling and determine its next steps. “With all due respect, we disagree with the Court’s conclusion, and the BLM stands by its analysis in following the letter of the law to issue oil and gas leases in Montana,” said the BLM in a statement. “Regardless of the ultimate outcome of this dispute and despite the attempts of radical, special interest groups, the Department and the BLM will continue to work towards ensuring America’s energy independence while preserving a healthy environment.” [Read more.](#)

**Leasing; Royalties; Statute of Limitations – New Mexico.** On February 27, the U.S. District Court for the District of New Mexico addressed a case where plaintiff-lessors alleged royalty underpayments for agreements dating back to 1989. In *Fullerton v. Energen Resources Corp.* (Case No. 1:19-cv-00346), Energen moved to dismiss the claim arguing the plaintiffs missed their opportunity to recover because the six-year statute of limitations ran on their action. The plaintiffs claimed their action was

toll by a related class action lawsuit filed in 2013 under relevant case law. Here, the Court agreed concluding that since the claims filed in this matter are “nearly identical to those filed in the 2013 class action” tolling would apply to this case.

[Read more.](#)

## **STATE – Legislative**

**Notaries Public – California.** On May 11, AB 2424 was scheduled for a hearing by the Assembly Judiciary Committee. The bill, sponsored by Asm. Ian Calderon (D), would require a notary public who is not licensed as an attorney to disclose, prior to providing services, that the notary public is not authorized to practice law in the state, among other disclosures. The bill would require these disclosures be provided in writing, including by electronic means, and in the language the notary public uses to provide the services to the person. The bill would also require a notary public to obtain a signed, or electronically signed, acknowledgment of receipt of the written disclosures prior to rendering services as a notary public to that person. The bill would authorize the Secretary of State to refuse to appoint any person as a notary public or revoke or suspend the commission of any notary public on the ground that the notary public willfully violated these provisions. [Read more.](#)

**Notaries Public; Recordation – Missouri.** On April 30, SB 578 passed the Senate and has been transmitted to the House. The bill, sponsored by Sen. Sandy Crawford (R), provides processes for the recorder of deeds to record electronic documents and procedures for remote online notarization. [Read more.](#)

## **STATE – Regulatory**

**COGCC Rulemaking Update – Colorado.** (*Update to 4/27/20 Weekly Report*) On April 29, we informed members that the Colorado Oil and Gas Conservation Commission (COGCC) released another notice regarding upcoming Mission Change rulemaking to implement SB19-181. “We are in uncharted territory, as we’ve never seen multiple

large rulemakings folded together into a single mega rulemaking,” said Dan Haley, President and CEO of the Colorado Oil & Gas Association. ([Read more](#)) At the April 29 hearing, the COGCC announced a revised schedule for the Mission Change Rulemaking. The COGCC determined that it was not feasible to begin the Mission Change rulemaking hearings on April 29. The schedule announced on April 29 provided additional time for parties to identify issues with proposed Mission Change rules and to come up with solutions. The new schedule also incorporates the hearing schedule for the 800, 900 and 1200 Series Rules. On May 1, 2020, Staff released draft 800, 900 and 1200 Series Rules. Staff is soliciting stakeholder input on the 800, 900 and 1200 Series Rules (Underground Injection for Disposal and Enhanced Recovery Projects; Environmental Impact Prevention; and Protection of Wildlife Resources, respectively). COGCC Staff requests stakeholders provide written feedback on these draft rules no later than 5:00 pm Friday, May 15, 2020. To access the COGCC announcement, copy of the Series draft rules, and for instructions on how to submit comments and access the COGCC Public Comment Portal, [click here for more](#). Read more about [SB19-181 here](#). For more coverage, [Read more.](#)

**Hydraulic Fracturing Regulations – New Mexico.** On May 6, the New Mexico Oil Conservation Commission announced it will hold a [May 21 hearing](#) regarding an application to amend the Commission’s rules for produced water as it relates to hydraulically fractured wells. To access the virtual online meeting and the related docket: [Read more.](#)

**Shut-In Discussions – North Dakota.** (*Update to 4/27/20 Weekly Report*) As an update to the April 21 meeting held by the North Dakota Industrial Commission (NDIC), the “Oil and Gas Division of the Department of Mineral Resources has scheduled a special hearing to address the oil price that constitutes waste pursuant to [North Dakota Century Code § 38-08-02\(19\)](#); the consequences of determining that waste is occurring, and what relief may be appropriate and necessary to prevent the

waste of North Dakota crude oil production.” The special hearing will be held on May 20. ([Read more about the hearing and the public comment process here](#)) NDIC will accept and consider written comments if received no later than 5:00 pm CDT May 15, 2020. Submit written comments to the Oil and Gas Division, 1016 E. Calgary Ave, Bismarck, ND 58503-5512 or email those to [brkadrmas@nd.gov](mailto:brkadrmas@nd.gov). Lynn Helms, director of the Oil and Gas Division of the state’s Department of Mineral Resources, had previously advised against a decision to order output pro-rationing. [Read more](#).

**Industry Task Force – North Dakota.** Last week, the state Department of Mineral Resources announced the formation of the Bakken Restart Task Force “to facilitate rapid recovery of the oil and gas industry and supporting sectors impacted by COVID-related demand shock.” The task force pulls together representatives from the state’s department of “Mineral Resources, Public Service Commission, Environmental Quality, Trust Lands, Pipeline Authority, Office of Management and Budget, Tax Department, Commerce, Bank of North Dakota and input requested from various industry subject matter experts.” The task force will be focused on three key areas: regulatory relief, economic stimulus and long-term oil and gas industry recovery. [Read more](#).

**Railroad Commission Prorating – Texas.** (*Update to 4/27/20 Weekly Report*) On May 5, the Texas Railroad Commission (RRC) voted not to proceed with prorating during its open meeting ([Access the archived meeting here](#)). “Only one of the three commissioners wanted to take conditional steps in that direction, but that commissioner, Ryan Sitton, recognized he did not have the votes and chose not to make a motion at the hearing.” For background, on April 14 the RRC held an open meeting via teleconference to consider a [joint motion filed by Pioneer Natural Resources U.S.A., Inc. and Parsley Energy Inc. Requesting a Market Demand Hearing and Market Demand Order Effective for May 2020 Production](#) which requested that the agency conduct a hearing (a) to determine whether waste of

oil and gas is taking place in Texas or is reasonably imminent and, if so, to adopt an order to prevent waste and (b) to inquire as to the reasonable market demand for oil pursuant to Section 85.058 of the Texas Natural Resources Code and to issue any order, effective for May 2020 production, as the RRC may deem appropriate in response to its findings.” You may view the [archived hearing here](#). You may [review the submitted public comments here](#). (For [further background information click here](#).) On April 21, RRC commissioners debated the matter and decided to hold off on a vote until May 5. “Chairman Wayne Christian and Commissioner Christi Craddick said they intend to consult with legal staff and the state attorney general in the hope of preventing any action from being hung up in court by lawsuits. Christian argued that a legal challenge could hold up action far longer than a 2-week delay to the May 5 meeting.” [Read more](#).

**Notaries Public – Texas.** As a reminder to prior reporting, Gov. Greg Abbott has suspended a state statute concerning appearance before a notary public to acknowledge real-estate instruments. “The temporary suspension allows for appearance before a notary public via two-way audio-video communication technology when executing such documents. The suspension is intended to permit flexibility for notaries to execute real-estate instruments without the need for in-person contact to protect themselves and others from COVID-19.” This suspension will be in effect until the earlier of May 30, 2020 or the termination of the governor’s March 13, 2020 disaster declaration (which currently remains in effect). [Read more](#).

## **STATE – Judicial**

**Working Interests; Contract Formation – Texas.** On February 27, in *Chalker Energy Partners III, LLC v. Le Norman Operating LLC* (Case No. 18-0352), the Texas Supreme Court addressed the issue of “whether an email exchange reflected the meeting of minds required for a contract, given the nature of the transaction and the parties’ expressed

contemplations.” The parties to the working interest asset sale negotiations at issue had agreed that “unless and until a definitive agreement has been executed and delivered, no contract or agreement providing for a transaction between the Parties shall be deemed to exist.” Thus, they agreed “that a definitive agreement was a condition precedent to contract formation.” Here, the Supreme Court disagreed with the appellate court interpretation and held that [a]lthough the emails are writings, they do not form a definitive agreement.” Further, “The emails here are more akin to a preliminary agreement than a definitive agreement to sell the Assets, and the parties’ dealings suggest that they intended that a more formalized document, like a PSA, would satisfy the definitive-agreement requirement.” In sum, the Court found that the parties’ email exchange falls short of an agreement as a matter of law and reversed the judgment of the appellate court. [Read more.](#)

**Assignments; Overriding Royalties – Texas.** On February 21, in [Piranha Partners v. Neuhoﬀ](#) (Case No. 18-0581), the Texas Supreme Court addressed a dispute involving a written assignment of an overriding royalty interest in minerals produced from land in Wheeler County. The Supreme Court reversed the judgment of the court of appeals reversing the trial court’s judgment declaring that the assignment conveyed an overriding royalty interest in all production under the lease, holding that the assignment unambiguously conveyed the assignor’s overriding royalty interest in all production under the lease. The assignment in this case identified the single well that was producing at the time of the assignment, the land on which the well was located, and the lease under which the overriding royalty interest existed. At issue was whether the assignment conveyed the assignor’s interest in all production under the identified lease or only in production from the identified well or from any well drilled on the identified land. The court of appeals held that the assignment conveyed only the 3.75 percent overriding royalty interest in production from the tract of land on which the well was located. The Supreme Court reversed, holding that the

assignment unambiguously conveyed all of the interest that the assignor owned at the time of the conveyance. [Read more.](#)

**Easements; Servient Estates – Texas.** On March 5, in *Atmos Energy Corp. v. Paul* (Case No. 02-19-00042), the Texas Court of Appeals, Second District (Fort Worth) addressed a dispute over the interpretation of a 1960 easement agreement that grants a right-of-way for the grantee to construct, maintain, and operate pipelines over and through 137 acres of property. The owner of a portion of the property denied Atmos access to construct a new pipeline which Atmos claimed was a violation of the easement agreement. Atmos argued that under standard principles of contract interpretation the unambiguous easement is a blanket easement that permitted Atmos to construct a new pipeline anywhere on the property, subject to the requirement that the use of the right does not unreasonably interfere with the property rights of the owner of the servient estate, and Paul did not conclusively prove that the new pipeline would unreasonably burden the property. The appellate court agreed with Atmos and reversed the lower court summary judgment ruling holding Paul “failed to conclusively establish” the unreasonable burdening of his property. [Read more.](#)

**Permitting; Trespass – Wyoming.** On February 27, in *Devon Energy Production Company, LP v. Grayson Mill Operating, LLC* (Case No. S-19-0170), the Wyoming Supreme Court addressed a “race to permit” dispute where both parties hold mineral interests in certain drilling and spacing units and both want to be the operator of those units. Grayson won the race to permit and ultimately obtained operator status over the lands in question. Devon then filed a complaint against Grayson, claiming Grayson illegally trespassed on the lands to obtain data to include in its applications for permits to drill. Devon claims Grayson’s actions violated Wyoming law, which prohibits a party from trespassing on private lands to unlawfully collect resource data. The district court granted Grayson’s motion to dismiss the complaint for lack of subject matter jurisdiction,



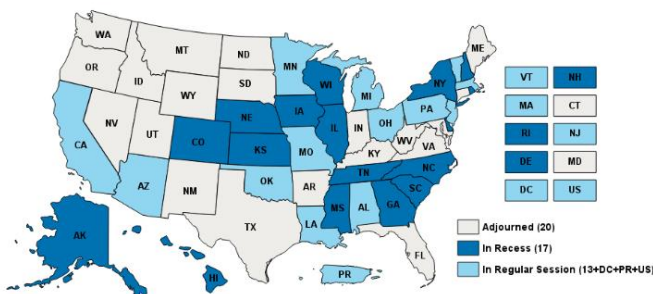
finding the Wyoming Oil and Gas Conservation Commission (Commission) had primary jurisdiction to resolve the dispute and Devon failed to exhaust its administrative remedies with the Commission. On appeal, Devon argued the district court, and not the Commission, is the proper forum to resolve the trespass claim. Here, the Supreme Court agreed with Devon and reversed and remanded the case back to the lower court for further proceedings, holding “[t]he Commission does not have jurisdiction to consider a civil trespass and, therefore, there was nothing for Devon to exhaust at the administrative level regarding its claim” under the applicable statute. [Read more.](#)

## INDUSTRY NEWS FLASH

► **Permian drillers slash output on their own.** As Texas Railroad Commissioner Ryan Sitton called efforts to impose state-mandated production cuts “dead” last week, more and more Permian Basin operators are curbing output voluntarily even without pro-rationing orders. This comes as global oil majors Exxon Mobil Corp., Chevron Corp. and ConocoPhillips announced plans to curb as much as 660,000 barrels a day of combined American output by the end of June. [Read more.](#)

## LEGISLATIVE SESSION OVERVIEW

### States in Session



**Session Notes:** Alabama, Arizona, California, Louisiana, Massachusetts, Michigan, Minnesota, Missouri, New Jersey, Ohio, Oklahoma,

Pennsylvania and Vermont are in regular session. The District of Columbia Council, the Puerto Rico House and the U.S. Congress are also in regular session.

Arizona was scheduled to adjourn on May 8. The following states have upcoming adjournments scheduled but are likely to postpone in response to the COVID-19 pandemic: South Carolina (May 14), Minnesota (May 18), Alabama (May 19) and Alaska (May 20).

The following legislatures are postponing their 2020 legislative sessions due to COVID-19 until the dates provided: Puerto Rico Senate (May 11), Illinois Senate, Rhode Island and South Carolina (May 12), Delaware and Iowa (May 15), Colorado, Mississippi and North Carolina (May 18), Kansas (May 21), Tennessee (June 1) and Alaska, Georgia, Hawaii, Illinois House, Nebraska, New Hampshire, New York and Wisconsin (TBD).

**Signing Deadlines:** Arkansas Republican Gov. Asa Hutchinson has 20 days from presentment to act on legislation or it becomes law without signature. Connecticut Democratic Gov. Ned Lamont must act on legislation within 15 days of presentment or it becomes law without signature. Florida Republican Gov. Ron DeSantis has 15 days from presentment to act on legislation or it becomes law without signature. Kentucky Democratic Gov. Andy Beshear has 10 days from presentment, Sundays excepted, to act or 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 had a signing deadline of May 7.

**Interim Committee Hearings:** The following states are currently holding 2020 interim committee hearings: [Arkansas](#), [Colorado](#), [Maryland](#), [Montana](#), [Nevada](#), [North Dakota](#), [Oregon](#), [South Dakota](#), [Washington](#) and [Wyoming](#). ■

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# GOVERNMENTAL AFFAIRS WEEKLY REPORT

## Weekly Highlights At-A-Glance

### FEDERAL – Legislative

**Leasing Royalty Relief.** On May 21, dozens of U.S. House of Representatives Republicans, including top GOP leaders, urged the Interior Department to accelerate royalty relief for oil and gas companies operating on federal land and waters, arguing that the agency's current case-by-case approach is insufficient. "We appreciate the work you have done to encourage energy producers, both onshore and offshore, to apply for royalty relief on a lease-by-lease basis. However, we encourage you to take additional action to streamline and expedite this process as soon as possible. We are concerned that the current process is unnecessarily onerous and lacks the clarity needed to provide swift relief," wrote the legislators. The group also calls on the Interior Department to allow companies to apply for several leases in a single application, impose a timeline for agency action on those petitions and change its calculations for determining if royalty relief is warranted. [Read more.](#)

### FEDERAL – Regulatory

**BLM Onshore Suspension of Operations and Royalty Reductions Guidance.** The Bureau of Land Management (BLM) has released guidance for oil and gas companies seeking royalty reductions or suspension of operations related to COVID-19 impacts. The announcements include *Steps for Lessees to Apply for Oil and Gas Suspensions under "force majeure" due to COVID-19* ([Read more](#)); and *Steps for Operator to Apply for Temporary Oil and Natural Royalty Rate Reduction (RRR) due to COVID-19* ([Read more](#)). The BLM guidance comes on the heels of outreach by federal legislators seeking this relief for the oil and gas industry. [Read more.](#)

**BLM Royalty Reductions – Utah.** In keeping with the above, the BLM has already granted at least 76 petitions to cut royalty payments for oil and natural gas produced on public land in Utah. The approvals temporarily lower royalty rates so that oil and gas companies can pay the federal government as little as 2.5% of the value of oil and natural gas extracted from the tracts, instead of the usual 12.5% rate. The BLM has promised to expedite reviews of royalty relief petitions for onshore leases, especially for companies arguing production from existing wells would be halted without it. "Because of the pandemic, operators are not able to maintain sufficient employees at drilling sites to allow for continuing drilling operations," according to a BLM memo issued to explain [the new royalty reduction guidelines](#). "As a result of these considerations, many operators are not able to operate wells economically or as a practical matter and may find it necessary to simply plug and abandon a significant number of producing wells unless they receive financial relief." [Read more.](#)

### FEDERAL – Judicial

**Delaware River Basin Hydraulic Fracturing Ban – Third Circuit (Pennsylvania).** On May 19, the U.S. Court of Appeals for the Third Circuit, on appeal from the U.S. District Court for the Middle District of Pennsylvania, tossed a lower court ruling which prohibited three Republican state senators from intervening in a dispute over natural gas drilling in the Delaware River Basin. In the case, *Wayne Land and Mineral Group, LLC v. Delaware River Basin Commission* (Case No. 19-2354), Wayne – which owns approximately 180 acres in the region, some in the Basin, and intended to drill for natural gas – sued the Delaware River Basin Commission (DRBC) in 2016, claiming the agency which placed a

moratorium on drilling in the Basin doesn't have the authority to assert control over natural gas drilling there. The DRBC, which includes the governors of Delaware, New Jersey, New York, and Pennsylvania, has been moving to permanently ban hydraulic fracturing in the Basin. In this matter, the lower court rejected a bid by Republican state Senators Joseph B. Scarnati III, Lisa Baker, and Gene Yaw to intervene on behalf of Wayne, saying the lawmakers failed to show a "significantly protectable interest in the litigation." But, according to the appellate court, the lower court failed to determine whether the senators had standing to intervene and has thus sent the case back to the district court to resolve the issue instead of dismissing the legislators' petition out of hand. [Read more.](#)

#### **BLM and NPS Appointments – Washington, DC.**

On May 11, environmentalists filed a lawsuit in federal court challenging the temporary appointments of acting leaders at the Bureau of Land Management (BLM) and National Park Service (NPS). The complaint in [Public Employees for Environmental Responsibility v. Bernhardt](#) (Case No. not yet docketed) argues that repeated tenure extensions of William Perry Pendley as Acting BLM Director and David Vela as Acting NPS Director are unconstitutional and violate applicable federal statutes. The suit adds that Pendley, in particular, "lacks the qualifications" to lead the BLM. Although the Interior Department has yet to file a formal answer to the complaint, an agency spokesman called the lawsuit "baseless." [Read more.](#)

**Leasing – Kentucky.** On February 18, in *Back v. Chesapeake Operating, LLC* (Case No. 7:16-192-KCC), the U.S. District Court for the Eastern District of Kentucky addressed a dispute over whether Chesapeake was required to pay royalties based on the sale price of gas at the time it is sold or a fixed 1/8 royalty. Chesapeake moved to dismiss the case on the grounds that the written lease agreement of its predecessor provided for the 1/8 royalty and also Kentucky law forbids any side agreements as supported by the lease's integration clause. The Court denied the motion at this early stage and held,

"It is true that the complaint does not state who modified the leases, when they were modified, or how. Nor does it state whether there was any consideration for the modified royalty rate or what that consideration was. Back will have to prove all of these facts at some point in this litigation."

[Read more.](#)

#### **STATE – Legislative**

**Notaries – Louisiana.** (Update to 4/12/20 Weekly Report) On May 14, SB 472 was referred to the House after passing the Senate. The bill, sponsored by Sen. Jay Luneau (D), provides for electronic notarial acts and the recognition of such instruments. [Read more.](#)

**Trusts; Mineral Interests – Louisiana.** (Update to 3/2/20 Weekly Report) On May 11, HB 123 was referred to the Senate after passing the House. The bill, sponsored by Rep. Gregory Miller (R), 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 as it relates to a trust. [Read more.](#)

**Partition Actions – Louisiana.** (Update to 3/16/20 Weekly Report) On May 21, HB 594 passed both chambers. The bill, sponsored by Rep. Alan Seabaugh (R), amends 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.](#)



**Energy Industry Support – Louisiana.** *(Update to 3/16/20 Weekly Report)* On May 11, SB 386 was referred to the House after passing the Senate. The bill, introduced by Sen. R.L. Allain (R), 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 Louisiana oil and natural gas exploration, production, and the 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.](#)

**Tax Filing – Louisiana.** *(Update to 4/12/20 Weekly Report)* On May 12, SB 498 was referred to the House after passing the Senate. The bill, sponsored by Sen. R.L. Bret Allain (R), would provide extensions for tax filing and payments in light of the COVID-19 pandemic. [Read more.](#)

**State Natural Resources and Lands – Michigan.** On May 19, Rep. Gary Howell (R) introduced HB 5777. The bill would amend existing law regarding the number of days required for certain procedures regarding surplus land transactions and changes some of the text regarding disposing of, leasing, acquiring, or developing lands more than 80 acres in size. [Read more.](#)

**Notarial Acts – Mississippi.** *(Update to 2/24/20 Weekly Report)* On May 11, HB 1156 was referred to the Senate Judiciary Committee after passing the House. The bill, sponsored by Rep. Shane Aguirre (R), would revise notarial law to define certain terms, set electronic documents provisions, and provides for the procedures and processes related to the performance of notarial acts. [Read more.](#)

**Severance Tax Payments – Mississippi.** *(Update*

*to 3/2/20 Weekly Report)* On May 12, HB 977 was referred to the Senate Energy and Finance Committees after passing the House. The bill, sponsored by Rep. Brent Powell (R), amends existing law to change the severance tax payment due date. This bill mirrors Senate companion bill [SB 2761](#), which was introduced in February by Sen. Joel Carter, Jr. (R). [Read more.](#)

**Partition Actions; Future Interests; Cotenants; Joint Tenants – North Carolina.** On May 14, bipartisan bill SB 729 passed its first reading following introduction. The bill makes certain conforming amendments to existing partition law and also provides that when title to oil, gas or mineral interests in real property has been separated in ownership from the title to the surface of the property, a tenant could partition the oil, gas or mineral interests, distinct from the surface without joining the owner of the surface. A tenant in common or joint tenant of the surface of the property would be able to partition surface distinct from the mineral interest without joining the owner of the surface. Further, in "a partition of oil, gas, or mineral interests of real property, when the court determines any of the following, the court shall order a sale of the oil, gas, or mineral interests and allocate the proceeds according to the interests of the tenants in common or joint tenants: (1) It is in the best interest of the cotenants of the oil, gas, or mineral interests to sell the interests. (2) Actual partition of the oil, gas, or mineral interests would cause injury to some or all of the cotenants of the oil, gas, or mineral interests." [Read more.](#)

**Tax Amnesty – Ohio.** On May 20, the House unanimously passed [HB 609](#), a bipartisan tax amnesty bill. The measure establishes a three-month amnesty period from January 1 through March 31, 2021 during which taxpayers owing past-due state taxes and certain fees may discharge the debt by paying the delinquent tax or fee without having to pay the penalty and accrued interest normally due. Under the bill, amnesty from additional fees and interest for unpaid taxes would be granted for those coming forward with unpaid bills between January 1

and March 31 in 2021. The program applies to a slate of tax types including personal income taxes, commercial activity taxes; state sales and use taxes; institutions taxes; public utility excise taxes; and natural gas consumption taxes, among others. The proposed amnesty program would apply only to unpaid taxes that the Department of Taxation is not already pursuing, said Rep. Derek Merrin (R) during last week's floor debate. He added that any tax debt currently covered by a letter of assessment, investigation, or audit "can't escape." [Read more.](#)

**Produced Water; Wells – Oklahoma.** (*Update to 3/30/20 Weekly Report*) On May 19, SB 1875 was signed into law by Gov. Kevin Stitt (R). The Act, 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. The Act is effective November 1, 2020. [Read more.](#)

## **STATE – Regulatory**

**Economic Recovery – Louisiana.** On May 8, the Louisiana Economic Recovery Task Force – a private sector group created by the Louisiana legislature to advise on economic recovery amidst the COVID-19 pandemic – [presented its recommendations in its Phase 1 Report](#) to the Louisiana House Ways and Means Committee for lawmakers to consider in the regular session that ends June 1. Those recommendations include multiple tax incentives as well as protecting businesses and healthcare

providers from being held liable when people might be exposed to the coronavirus, except when there is "gross negligence or willful misconduct." It also would postpone businesses' contributions to the state's unemployment fund, and it would prohibit "unfunded mandates" such as requiring businesses to supply employees with personal protective equipment. The recommendations also include measures desired by business groups before the pandemic, such as ending lawsuits by coastal parishes against oil and gas companies, enacting measures discouraging "frivolous" lawsuits to bring down car insurance rates, and reversing changes made by Gov. John Bel Edwards (D) to the state's largest tax incentive, the Industrial Tax Exemption Program. For background, on April 17, 2020, Louisiana Speaker of the House Clay Schexnayder (R) and Senate President Patrick Page Cortez (R) announced the establishment of the Louisiana Economic Recovery Task Force, which is comprised of more than sixty members of the private sector representing a multitude of industries and interests, including healthcare, hospitality, food and beverage, oil and gas, construction, trucking, manufacturing, banking, utilities, and a wide variety of small business owners, as well as leaders from economic development organizations across the state. [Read more.](#)

### **Production Cuts; Well Shut-Ins – Oklahoma.**

(*Update to 4/27/20 Weekly Report*) On May 11, the Oklahoma Corporation Commission (OCC) [held a public meeting](#) to consider a call for production cuts amidst the COVID-19 oil slump. ([You may view the archived meeting here](#)) The meeting came at the request of the Oklahoma Energy Producers Alliance and supporting companies who filed an application seeking production controls. The application argues there is no correlation in Oklahoma between what producers in the state are getting and its actual value, and further asserts the cost to recover crude oil for many operators exceeds current value, which statutorily constitutes waste under Oklahoma law. "Crude oil waste, the application states, adversely impacts royalty owners, working interest owners, the operators themselves and Oklahoma, which gets

much of its revenue from gross production taxes and is the state's largest mineral owner. The organization and its supporting companies ask in their application that the commission adjust, modify, amend, set or establish allowables for Oklahoma crude oil production or to take other steps it deems appropriate to prevent its waste." However, ["opponents of prorationing"](#), including the American Petroleum Institute, Marathon, Occidental and Chevron, argue that the government should let the marketplace determine oil production, and not try to manipulate output." [Read more](#). For background, on April 22, the OCC issued an emergency order allowing operators to shut-in or curtail oil production in wells to prevent economic waste. "There was no way for Oklahoma and other U.S. producers to anticipate and plan for up to 30 million barrels per day of consumption to disappear within just a few weeks," said OCC Commissioner Dana Murphy. The order allows oil companies to "consider their unprofitable production economic waste, allowing oil and gas producers with money-losing wells to retain leases that could otherwise be voided if they halted output." [Read more](#). Although the OCC heard more than five hours of testimony on May 11, the regulators have not yet taken any vote on the matter and "did not set a date or a plan for any future decisions." [Read more](#).

## **STATE – Judicial**

**Permitting; State Regulations – California.** In a blow to environmental activists, on April 8, the California Court of Appeal, Fifth Appellate District, on appeal from the Superior Court of Kern County, affirmed a lower court decision upholding well permits. In the case, the plaintiffs challenged the issuance of 213 permits to drill new oil wells within the South Belridge oil field by the Department of Conservation, Division of Oil, Gas, and Geothermal Resources (DOGGR), now known as the Geologic Energy Management Division. According to the complaint, DOGGR failed to comply with the California Environmental Quality Act (CEQA) when it issued each of the individual permits because, allegedly, no exemption was available and DOGGR failed in each instance to

conduct any environmental review. The court disagreed, holding, "Under the narrow facts of this case, including DOGGR's adoption of specific field rules applicable to drilling wells in the South Belridge oil field, we hold that DOGGR's approvals to drill the new wells in question were ministerial in nature. As will be seen, the field rules, understood in light of foundational regulatory provisions and supplemented by a technical manual referenced in the field rules themselves, constituted fixed objective standards that delineated the technical specifications for drilling new wells at that particular oil field. Thus, DOGGR's role in approving the subject new wells—wells that DOGGR acknowledged were 'routine'—was simply to confirm whether the proposals conformed to those fixed objective standards. As such, the unique scenario that was presented here fit the CEQA definition of what constitutes ministerial decision-making. Accordingly, the judgment of the trial court is affirmed." [Read more](#).

**Oil and Gas Development Zones – Pennsylvania.** (*Update to 12/9/19 Weekly Report*) On May 13, the Pennsylvania Supreme Court [denied an appeal](#) by an environmentalist group plaintiff over whether Westmoreland County township's zoning rules properly deemed the effects of drilling and hydraulically fracturing a gas well as "temporary" and thus required a different level of scrutiny over such a well. The appellate court held in part, "because evidence of stage duration and of modest impacts during long-term production provides a sufficient factual basis upon which to distinguish the temporary industrial-type impacts during the much shorter preproduction stages from the incremental impacts during the majority lifespan of a [fracking] well. There is no abuse of discretion in affording less weight to evidence of temporary impacts." Following their loss at both the trial and appellate stages, Protect PT then filed an appeal to the state Supreme Court. For background, on November 14, 2019, the appellate Commonwealth Court of Pennsylvania issued its opinion in *Protect PT v. Pennsylvania Township Zoning Hearing Board* (Case No. 1632 CD 2018), in which the environmental group challenged the constitutionality of the Mineral

Extraction Overlay (MEO) District which permits unconventional natural gas development (UNGD) in specific areas. The Court upheld the trial court decision against the environmentalists finding that “the trial court rejected Protect PT’s argument that the MEO District allows for UNGD in the majority of the Township’s residential areas. The court noted the Township made a great effort to develop and refine the Zoning Ordinance to provide for UNGD only in specifically delineated areas. In considering the setbacks and other required considerations,” UNGD could properly take place in approximately 9.46% of the Township. “Given the Township’s thorough analysis of the particulars of oil and gas development evidenced by the Zoning Ordinance’s many drafts and revisions, and the countless public meetings from 2010 through 2016, the trial court determined that the Zoning Ordinance provides for an exceedingly heightened level of protection for neighboring property owners.” Further, the Court held “the Zoning Ordinance properly balances the rights of citizens to benefit economically from UNGD, which helps them sustain their agricultural-based livelihoods, with the interests of the general public by adopting an extensive regulatory scheme far beyond that imposed on any other use. The Zoning Ordinance addresses issues such as minimum lot size, required yards, setbacks, wastewater, health and safety, access routes, erosion and sediment control, security, site reclamation, road use, and compliance with the [Environmental Rights Amendment] ERA. Also, because the Zoning Ordinance regulates UNGD as a special exception, the Township can impose additional conditions.” In sum, the Court held that “Protect PT failed to establish that UNGD posed any substantial actual risk to the environment or health of Township residents.” [Read more.](#)

**Rule Against Perpetuities; Overriding Royalties; Leasing – Texas.** On May 15, the Texas Supreme Court issued its long-awaited opinion in [Yowell v. Granite Operating Company](#) (Case No. 18-0841) regarding whether an overriding royalty interest (ORRI) applied to new leases, rather than merely to extensions or renewals of existing leases and if so,

even if such a finding violated the Rule Against Perpetuities could it nevertheless be deemed valid in Texas by a court applying the state reformation statute. Specifically on appeal before the Texas Supreme Court was: (1) whether a reserved ORRI in a lease that includes an anti-washout provision extending the interest to new leases violates the Rule Against Perpetuities (the Rule); (2) whether Texas Property Code Section 5.043 mandates judicial reformation of a commercial instrument creating a property interest that violates the Rule; (3) whether an indemnity agreement covers a particular suit; and (4) whether sufficient evidence supports the appellate attorneys’ fees awarded. The appellate court held that the ORRI in new leases violated the Rule and was not subject to reformation under the Property Code. Here, the Texas Supreme Court reversed the appellate court regarding the validity of the ORRI and the applicability of the state reformation statute. While the Texas Supreme Court noted that the ORRI is a real property interest that violates the Rule because it was not certain to “vest, if at all, within twenty-one years after the death of some life or lives in being at the time of the conveyance” as a new lease may have never been executed, the ORRI shall be reformed by a court to conform with the creators’ intent to make it valid in accordance with [Section 5.043 of the Texas Property Code](#). On other grounds, the Texas Supreme Court affirmed the appellate court’s judgment on the issues of indemnity for successor assignees and attorneys’ fees. For background, on October 4, 2019, the Texas Supreme Court agreed to review this case addressing the extent to which “anti-washout” provisions can prevent ORRIs from lapsing when the lessee of an oil and gas interest enters into a new lease for the same assets. On July 26, 2018, the Texas Court of Appeals, Seventh District, addressed for the first time whether anti-washout provisions could extend existing ORRIs to completely new leases. The Court of Appeals rejected this argument, finding that anti-washout provisions cannot extend ORRIs to a completely new lease—which in this case contained materially different terms and different lessees—when there is any uncertainty as to when the interest in the new lease would vest. The Court of



Appeals rested its decision on the Rule Against Perpetuities which holds that “no interest is valid unless it must vest, if at all, within twenty-one years after the death of some life or lives in being at the time of the conveyance.” Because (1) the underlying lease was of indeterminate duration and (2) the time between the expiration of the underlying lease and the creation of a new lease was also an indeterminate period, the Court of Appeals held that the anti-washout provision at issue violated the Rule and was void. The ORRI owners then sought review from the Texas Supreme Court, which was granted. [Read more.](#)

**State Leasing; Well Bonds – Wyoming.** On April 2, in *Black Diamond Energy of Delaware, Inc. v. Wyoming Oil and Gas Conservation Commission* (Case Nos. S-19-0018; S-19-0128), the Wyoming Supreme Court addressed a dispute over the forfeiture of a blanket bond. The Commission argued that the challenge to the validity of the Commission’s order forfeiting the blanket bond was invalid because Black Diamond brought their claim in court and the Commission claimed the “only avenue of relief to challenge the Commission’s order was to file a petition for review with the district court within 30 days of the order under Wyoming Rule of Appellate Procedure 12.04(a). Because it did not do so, the Commission argued the district court lacked subject matter jurisdiction.” The district court granted the Commission’s motion to dismiss. It agreed with the Commission that it lacked jurisdiction over the matter. The Supreme Court affirmed the consolidated case dismissals under different grounds related to administrative procedures but clarified that for one of the cases, the dismissal was made without prejudice leaving open the possibility of a future complaint. [Read more.](#)

## INDUSTRY NEWS FLASH

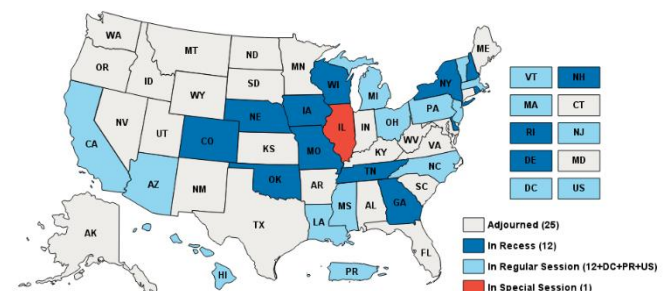
► **Industry experts are bullish on oil and gas.** In a recent *Forbes* article, Bill Gilmer, director of the Institute for Regional Forecasting at the University of Houston’s Bauer College of Business, says he “sees

an industry that’s poised to roar back to life as soon as demand returns and inventories clear. This is not a speculative bust like the 1980s or 2015-16, with the price of oil falling from \$110 per barrel,” according to Gilmer, who expects prices to return to near \$60 or \$65 per barrel by 2022. “It is a severe, but relatively short-lived, virus-driven event.” Echoing Gilmer’s predictions, analysts at some large financial institutions and banks agree. Goldman Sachs expects a “V-shaped” recovery in demand for oil. [Read more.](#)

► **Gasoline demand begins rebound as lockdowns ease.** On May 11, Bloomberg News reported gasoline demand is beginning to rebound as lockdowns ease and more travelers take to their cars since “driving has emerged as the socially distant transportation mode of choice and is offering some near-term relief to an oil market fresh off its worst crash in history and reeling from an unprecedented collapse in energy demand.” [Read more.](#)

## LEGISLATIVE SESSION OVERVIEW

### States in Session



**Session Notes:** Arizona, California, Hawaii, Louisiana, Massachusetts, Michigan, Mississippi, New Jersey, North Carolina, Ohio, Pennsylvania, and Vermont are in regular session. The District of Columbia Council, Puerto Rico 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, Delaware House and Rhode

**Island** (May 26), **Delaware** Senate and **New York** Senate (May 27), **Tennessee** (June 1), **Iowa** (June 3), **Georgia** and **New Hampshire** House (June 11), **Nebraska** (July 20) and **New Hampshire** Senate, **New York** Assembly and **Wisconsin** (TBD).

The **Illinois** legislature returned for a three-day special session beginning on May 20 to deal with legislation pending due to the coronavirus pandemic, reports [STLToday](#).

**Missouri**'s House will stand adjourned until May 27 when it will meet for a technical session and will adjourn, along with the Senate, sine die on May 30. The Senate will convene for a technical session on May 22.

**New Mexico** Democratic Gov. Michelle Lujan Grisham announced a special session beginning June 18. The agenda includes issues ranging from balancing the budget to coronavirus relief stimulus funding, reports the [Albuquerque Journal](#).

**Oklahoma**'s legislature adjourned on May 15 after signing a resolution allowing them to return at any point before the constitutional adjournment on May 29.

**South Carolina** adjourned on May 12 and is expected to meet for a two-week special session starting September 15, reports [The News & Observer](#).

**Wyoming** concluded their special session on May 16. Committees will continue to meet and legislators are discussing a second special session for June, reports the [Wyoming Tribune Eagle](#).

The following states adjourned on the dates provided: **Alabama** and **Minnesota** (May 18), **Alaska** (May 20) and **Kansas** (May 22). The following states are scheduled to adjourn on the dates provided: **Oklahoma** (May 29) and **Missouri** (May 30).

**Signing Deadlines:** **Alabama** Republican Gov. Kay Ivey has until May 28 to act on legislation presented on or after May 14 or it is pocket vetoed. **Alaska**

Republican Gov. Mike Dunleavy must act on legislation within 20 days of presentment, not including Sundays or it becomes law without signature. **Arkansas** Republican Gov. Asa Hutchinson has 20 days from presentment to act on legislation or it becomes law without signature. **Connecticut** Democratic Gov. Ned Lamont must act on legislation within 15 days of presentment or it becomes law without signature. **Florida** Republican Gov. Ron DeSantis has 15 days from presentment to act on legislation or it becomes law without signature. **Kansas** Democratic Gov. Laura Kelly has 10 days from presentment to act on legislation or it becomes law without signature. **Kentucky** Democratic Gov. Andy Beshear has 10 days from presentment, Sundays excepted, to act or 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. **Minnesota** Democratic Gov. Tim Walz has until June 3 to act on legislation presented on or before May 20 or it is pocket vetoed. **South Carolina** Republican Gov. Henry McMaster has until two days after the next meeting of the legislature to act on legislation or it becomes law.

**Interim Committee Hearings:** The following states are currently holding 2020 interim committee hearings: [Arkansas](#), [Colorado](#), [Indiana](#), [Kentucky](#), [Maryland](#), [Montana](#), [Nevada](#), [North Dakota](#), [Oregon](#), [South Dakota](#), [Utah](#), [Virginia](#), [Washington](#) and [Wyoming](#).

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

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# GOVERNMENTAL AFFAIRS WEEKLY REPORT

## Weekly Highlights At-A-Glance

### FEDERAL – Legislative

**H.R. 7010 – Paycheck Protection Program Flexibility Act of 2020.** On May 27, the U.S. House of Representatives passed a bipartisan extension of COVID-19 federal stimulus related to the Paycheck Protection Program. The bill, [H.R. 7010](#), known as the *Paycheck Protection Program Flexibility Act of 2020*, will “provide struggling small businesses with more flexibility while using loans provided” under the program. The legislation, authored by Reps. Dean Phillips (D-MN) and Chip Roy (R-TX), expands the terms of the loans from the Paycheck Protection Program (PPP) to give small businesses up to 24 weeks, up from the current eight weeks, to use PPP loans and extend the deadline for rehiring workers from June 30 to the end of this year. It would also give small businesses the ability to spend more of the money on non-payroll costs. The current terms of the loans require recipients to use 75 percent of the funds on payroll and up to 25 percent on other costs to qualify for loan forgiveness. But this legislation would change the ratio to at least 60 percent on payroll and up to 40 percent on rent, overhead and other costs. “As we work to get America open again, we’ve got to be mindful of the fact that times are continuing to move on and these businesses are struggling and they can’t meet some of these restrictions and deadlines,” said Rep. Roy. For background, in April President Trump signed [H.R. 266](#), the Paycheck Protection Program and Health Care Enhancement Act, into law, which replenished some of the program funding. The program originally provided forgivable loans to small businesses that keep employees on their payroll for eight weeks. (For more, see the [U.S. Small Business Administration Paycheck Protection Program fact sheets](#)) The bill will now head to the Senate. [Read more.](#)

### FEDERAL – Regulatory

**BLM/Bureau of Indian Affairs Draft Resource Management Plan – New Mexico.** (Update to 3/16/20 Weekly Report) [The Interior Department has announced](#) it will give the public four more months to comment on a plan to expand oil and gas development near New Mexico’s Chaco Culture National Historical Park. The public comment period, originally set to close May 28, has been extended to September 25. For background, 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. Public comments may be [submitted here](#). [Read more.](#)

**BLM Lease Sales – Mississippi; Nevada; New Mexico; Utah.** The Interior Department has reported the postponement of at least two more oil and gas lease sales that had originally been set for later in June. Parcels in both Mississippi and Nevada were set for those sales. A Utah sale of four parcels on more than 4,000 acres scheduled for this week was also removed from EnergyNet’s online lease sale calendar. BLM officials in Utah had not initiated a 10-day public protest period required before a sale may proceed. These come on the heels of a May sale postponement for parcels in New Mexico. [Read more.](#)

**BLM Lease Sales – Montana; North Dakota.** On May 28, the BLM announced the opening of a 30-day public comment period for nominated oil and gas lease parcels located in Montana and North Dakota. Parcels nominated for inclusion in the September sale are located in Dawson, Sheridan, and Richland counties in Montana, and Burke, McKenzie, Williams, Billings, and Slope counties in North Dakota. The public comment period will be open through June 24. [Read more.](#)

**EPA Oil and Gas Extraction Wastewater Report.** The U.S. Environmental Protection Agency (EPA) has announced the issuance of its final report on a [stakeholder engagement effort begun in 2018](#) that sought input on how the agency, states, Native American tribes and industry stakeholders regulate and manage wastewater from the oil and gas industry. In late May, the EPA issued its report, entitled [Summary of Input on Oil and Gas Extraction Wastewater Management Practices Under the Clean Water Act](#) (EPA-821-S19-001), to examine available approaches to manage wastewater from both conventional and unconventional oil and gas extraction at onshore facilities. EPA’s effort considered questions such as how existing federal

approaches to produced water management under the Clean Water Act (CWA) can interact more effectively with state and tribal regulations, requirements, or policy needs, and whether potential federal regulations that may allow for broader discharge of treated produced water to surface waters are supported. EPA is particularly interested in working with its regulatory partners at the state level, who are at the forefront of the changing industry, and often manage complex water allocation programs under state law. The EPA report summarizes the input received to date, but it leaves to a later date any announcement of measures that may be undertaken by EPA to address produced water management options under the CWA. [Read more.](#)

## **FEDERAL – Judicial**

### **Climate Change – Ninth Circuit (California).**

On May 26, the U.S. Court of Appeals for the Ninth Circuit, on appeal from the U.S. District Court for the Northern District of California, ruled that climate change lawsuits against major oil and gas companies could proceed in state court rather than a federal venue thought to be more favorable to the energy industry. In the consolidated case opinion, [City of Oakland v. BP PLC](#) (Case Nos. 3:17-cv-06011-WHA; 3:17-cv-06012-WHA), the lawsuits seek to reimburse taxpayers for costs associated with adapting to impacts such as rising sea levels—from building multibillion-dollar sea walls and repairing damage from powerful storms to—perhaps soon—moving whole communities inland. Lawyers for the cities and counties have long argued that such local infrastructure damage raises classic local-level concerns that belong in state court. Industry lawyers, supported by the Trump administration, have countered that climate change is a global issue, pushing the litigation to a federal jurisdiction. Lawyers for cities and counties bringing the lawsuits said in a joint comment, "We are grateful that the Court of Appeals agreed with Judge Chhabria's order to remand our cases back to the state courts where they were originally filed." At this stage in the litigation, the Ninth Circuit remand order puts further



case determinations in the hands of those courts in the ongoing matters. [Read more.](#)

#### **BLM Leasing; Greater Sage-Grouse – Montana.**

On May 22, the U.S. District Court for the District of Montana struck down a Trump Administration leasing plan to increase domestic oil and gas output on public lands, saying government officials failed to protect habitat for the Greater Sage-Grouse when it issued numerous oil and gas leases in an area covering roughly 336,000 acres of Western land. In the case, [Montana Wildlife Federation v. Bernhardt](#) (Case No. CV-18-69-GF-BMM), Judge Brian Morris said the Interior Department did not do enough to encourage development outside of areas with Greater Sage-Grouse. The order invalidates leases on more than 470 square miles of federal public land in Montana and Wyoming. “As for the lease sales, the errors here occurred at the beginning of the oil and gas lease sale process, infecting everything that followed,” Judge Morris wrote. Chris Tollefson, a spokesperson for the Bureau of Land Management, said officials were reviewing the decision. [Read more.](#)

**Leasing; Royalties; Post-Production – Ohio.** On May 21, in [Henceroth v. Chesapeake Exploration, LLC](#) (Case No. 19-3942), the U.S. Court of Appeals for the Sixth Circuit, on appeal from the U.S. District Court for the Northern District of Ohio, ruled in favor of a lessee in an oil and gas lease dispute, finding that the lessee properly considered post-production costs when calculating the landowners’ royalties. In the case, the landowners sued Chesapeake, claiming it underpaid their royalties because the royalties paid were not based on the higher downstream prices that were realized on sales to third-party purchasers. The Court disagreed with the landowners’ claim that Chesapeake did not “market” the oil and gas and that the only actual marketing occurred when the products were sold to unaffiliated third parties. [Read more.](#)

### **STATE – Legislative**

**Occupational Licensing – Colorado.** (*Update to*

*3/2/20 Weekly Report*) On June 3, bipartisan bill, HB20-1326, passed by unanimous vote in the Senate. The bill passed unanimously in the House in late May. The legislation creates 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.](#)

**Partition Actions – Louisiana.** (*Update to 5/26/20 Weekly Report*) On May 31, HB 594 was referred to conference committee for concurrence on a final bill. The bill already passed the Senate and House. The measure, sponsored by Rep. Alan Seabaugh (R), amends 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.](#)

**Energy Industry Support – Louisiana.** (*Update to 5/26/20 Weekly Report*) On June, SB 386 was signed into law by Gov. John Bel Edwards (D). The Act, sponsored by Sen. R.L. Allain (R), creates 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 Louisiana oil and natural gas exploration, production, and the 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. The Act is effective immediately. [Read more.](#)

**Notarial Acts – Louisiana.** (*Update to 3/16/20 Weekly Report*) On May 29, HB 274 passed the Senate. The bill passed the House earlier in May. The measure, sponsored by Rep. Ray Garofalo (R), provides for the execution of electronic notarial acts. [Read more.](#)

**Ad Valorem Tax – Louisiana.** *(Update to 3/16/20 Weekly Report)* On May 29, HB 360 passed the Senate. The bill passed the House earlier in May. The measure, sponsored by Rep. Mike Huval (R), provides for the methodology of valuation of oil and gas wells for the purpose of ad valorem assessment. [Read more.](#)

**Notarial Acts – Louisiana.** *(Update to 3/2/20 Weekly Report)* On May 28, HB 122 passed the Senate. The bill passed the House earlier in May. The measure, sponsored by Rep. Gregory Miller (R), provides for the execution of electronic notarial acts and related procedures. [Read more.](#)

**Trusts; Mineral Interests – Louisiana.** *(Update to 5/26/20 Weekly Report)* On May 27, HB 123 passed the Senate. The bill passed the House in early May. The bill, sponsored by Rep. Gregory Miller (R), 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 as it relates to a trust. [Read more.](#)

**Tax Filing and Extensions– Louisiana.** *(Update to 5/26/20 Weekly Report)* On June 4, SB 498 was signed into law by Gov. John Bel Edwards (D). The Act, sponsored by Sen. R.L. Bret Allain (R), provides extensions for tax filing and payments in light of the COVID-19 pandemic. The Act is effective immediately. [Read more.](#)

**Severance Taxes– Louisiana.** On June 2, HB 1746 passed the House and has been transmitted to the

Senate. The bill, sponsored by Rep. John Lamar (R), would temporarily reduce oil and gas severance taxes. [Read more.](#)

**Production Payments – Louisiana.** *(Update to 5/26/20 Weekly Report)* On May 26, HB 227 passed the Senate by unanimous vote. The bill passed the House in March. The measure, sponsored by Rep. Jean-Paul Coussan (R), provides for clarification of the nature of production payments and eliminates redundancy in terminology. Present law requires written notice of the nonpayment of a production payment to be provided prior to a judicial demand for damages. This new law would retain 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.](#)

**Severance Tax – Louisiana.** *Update to 3/16/20 Weekly Report)* On May 22, HB 506 passed the House and has been transmitted to the Senate. The bill, sponsored by Rep. Phillip DeVillier (R), 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.](#)

**Local Control of Natural Gas – Oklahoma.** On May 19, Gov. Kevin Stitt (R) signed HB 3619 into law. The Act, sponsored by Rep. Terry O'Donnell (R), "prohibits a municipality or county from adopting estate development building or construction ordinances, rules, or codes restricting or prohibiting connections to the facilities of utility providers. The measure also prohibits discrimination in adoption of rules or codes against one or more utility providers based upon the nature or source of the utility service provided." The goal of the legislation is to prohibit local governments from banning certain utility connections, such as natural gas hookups. The electric-versus-natural gas debate heated up last year when Berkeley, California became the first city to ban natural gas infrastructure in new buildings, starting in 2020. Other municipalities have also been pushing to ban natural gas connections in favor of

electric hookups. “What we are trying to do is send a market signal to the rest of the country to say that Louisiana is open for business when it comes to natural gas,” said Tyler Gray, Louisiana Mid-Continent Oil & Gas Association president and general counsel. The Act is effective November 1, 2020. [Read more.](#)

**Conventional Wells – Pennsylvania.** (*Update to 11/4/19 Weekly Report*) On May 27, [SB 790](#), sponsored by Sen. Joseph Scarnati (R), passed the House. The bill passed the Senate in October 2019. The measure establishes the Conventional Oil and Gas Well Act “providing for standards for protections, plugging of wells, and imposing power and duties on the Department of Environmental Protection (DEP) as it relates to conventional wells and well sites only.” According to the sponsoring memo, the bill “will provide a legislative framework for regulations specific to conventional oil and gas drillers in a way that protects the environment while preserving this valuable industry.” Specifically, the bill would require a permit to be obtained to drill or alter a well and to operate an abandoned or orphaned well; addresses DEP enforcement and remedies; and provides for funding and other miscellaneous provisions. [Read more.](#)

## **STATE – Regulatory**

**Ballot Initiatives – Colorado.** A number of oil and gas ballot initiatives have once again reared their heads for the November general election. On May 29, the Colorado Supreme Court gave the green light to ballot initiative titles to appear before November voters should the measures collect sufficient signatures. Once a title is set, proponents are allowed to gather signatures for placement on the statewide ballot. Due to the COVID-19 pandemic, circulation by mail and email are permitted following Secretary of State Jena Griswold's [issuance of temporary guidance](#) in the wake of a state court decision (see below). Multiple initiatives pertaining to setbacks were approved for receiving signatures: #173-177, all titled, Setback Requirement for Oil and Gas Development, and each varies in setback

distance from an occupied structure or vulnerable area (2,000' to 2,500') but only apply to new oil and gas development. Some include the restriction of development near Superfund Sites, and others include the opportunity for a homeowner waiver. Another initiative, #178 – Oil and Gas Operator Financial Assurance, require every operator to provide assurance that it is financially capable of fulfilling every obligation imposed. The rulemaking must consider: increasing financial assurance for inactive wells and for wells transferred to a new owner; requiring a financial assurance account, which must remain tied to the well in the event of a transfer of ownership, to be fully funded in the initial years of operation for each new well to cover future costs to plug, reclaim, and remediate the well; and creating a pooled fund to address orphaned wells for which no owner, operator, or responsible party is capable of covering the costs of plugging, reclamation, and remediation. The minimum financial assurance must not be less than \$270,000 per well. Two other initiatives, #284 and #297, both titled, Prohibit Restrictions on the Utilization of Natural Gas, are pro-industry and would prohibit state or local governments from limiting the installation of natural gas in homes and businesses, unless such regulations are grounded in safety protocols. One proposal would amend state statute, while the other is a constitutional change. ([Access all ballot initiatives here](#)) In related news, last Wednesday, a Denver District Court let stand an Executive Order ([D 2020 065](#)) issued by Gov. Jared Polis (D) that allows petition gatherers to collect signatures for ballot initiatives by mail or email during the coronavirus pandemic. In [Ritchie v. Polis](#) (Case No. 2020CV31708), the Court held the executive order “strikes a careful balance that facilitates petition circulation while protecting public health, especially for ‘Vulnerable Individuals.’” In support of the decision, Gov. Polis said, “The constitutional right of citizens to petition the government should not be sacrificed in a pandemic.” [Read more.](#)

**COGCC Mission Change Rulemaking – Colorado.** On June 5, the Colorado Oil and Gas Conservation

Commission (COGCC) announced the following upcoming Wellbore Integrity Rulemaking Hearing to implement the ongoing SB19-181 mandated COGCC Mission Changes which AAPL has been reporting on over the past few months. ([Read more about SB19-181 here](#)) The COGCC invites the public and stakeholders to attend their virtual June Wellbore Integrity Rulemaking Commission Hearing on June 10-11. According to the COGCC, "The Wellbore Integrity rulemaking, required by SB 19-181, proposes to improve oversight through the entire lifecycle of the oil and gas well, ensuring protection of groundwater resources." According to COGCC Director Jeff Robbins, "The COGCC Staff worked with a diverse group of stakeholders and the Water Quality Control Division to deliver these proposed rules to cover the life of the well and improve protections for the environment and our groundwater. The draft rules reflect broad consensus across multiple stakeholder perspectives on almost all issues, which shows how COGCC Staff, sister state agencies and our stakeholders can work together to find solutions to complex issues." For more information on how to access the Hearing, [Read more](#). If you need any assistance accessing the online Hearing you may [contact the COGCC here](#).

**Voluntary Well Shut-Ins – Oklahoma.** On June 3, the Oklahoma Corporation Commission (OCC) gave oil producers the legal liability protection to voluntarily shut in wells as prices for oil remain under \$40 per barrel, but no mandatory order has been issued. "The action ended more than two months of efforts by some oil producers to get the state legal protection to shut-in their wells without the fear of being sued by the owners of the wells in order to stabilize markets." On April 22, the OCC also issued an emergency order allowing operators to shut in wells to prevent waste. That order was also voluntary and was set to expire mid-July. [Read more](#).

## **STATE – Judicial**

**Mineral Reservations; Deeds; Inheritances; Life Estates – Ohio.** On May 19, in [Peppertree Farms, LLC v. Thonen](#) (Case No. 2019CA00159), the Court of

Appeals, Fifth District, on appeal from the Stark County Court of Common Pleas, addressed a dispute over mineral rights purportedly reserved by deed and whether those reservations terminated upon the grantor's death. The Court held that they did terminate because the grantors failed to include words of inheritance in their reservation clauses. As a result, each grantor's reserved oil and gas interest did not transfer to his heirs and assigns. The Court noted that each of the deeds created "reservations" which included fee oil and gas interests. In making their finding, the Court relied, in part, on prior related Ohio Supreme Court case precedent "to find that whenever minerals are severed from the surface, two new and separate estates are created – a surface estate and a mineral estate. Thus, although the grantor had title to the oil and gas at the time he executed the subject deed, his reservation was deemed to be a 'reservation' because the severance created a new oil and gas estate." [Read more](#).

## **INDUSTRY NEWS FLASH**

► **Texas Alliance of Energy Producers names new president.** On June 3, the Texas Alliance of Energy Producers named Jason Modglin as its new President. Modglin comes from the Texas Railroad Commission, where he served as director of public affairs for Commissioner Christi Craddick. Previously, he was chief of staff for Texas House Energy Resources Chairman Rep. Drew Darby (R) and was a policy analyst for Texas Agriculture Commissioner Todd Staples. [Read more](#).

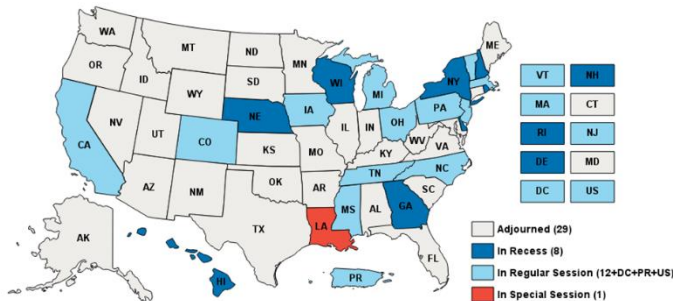
► **Oil market escapes collapse says research.** On May 26, Rigzone reported that the oil market has escaped a collapse and will begin to see a rebound in the second half of 2020. This comes from energy research firm, Rystad Energy, which notes that the 16 million barrel-per-day oversupply in crude during April could be reversed altogether by June. "As things are now, this year's second half is poised to be the time of partial recovery from Covid-19 and also the path to higher oil prices," noted Rystad Energy's



head of oil market research, Bjornar Tonhaugen. [Read more.](#)

## LEGISLATIVE SESSION OVERVIEW

### States in Session



**Session Notes:** California, Colorado, Iowa, Massachusetts, Michigan, Mississippi, New Jersey, North Carolina, Ohio, Pennsylvania, Tennessee, and Vermont are in regular session. The District of Columbia Council, Puerto Rico 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: **Rhode Island** (June 9), **Georgia** and **New Hampshire** House (June 11), **Hawaii** (June 15), **Nebraska** (July 20) and **Delaware**, **New Hampshire** Senate and **Wisconsin** (TBD).

**Louisiana** began a special session immediately after the adjournment of the regular session on June 1, reports [WBRZ](#). The legislature will discuss the spending of federal coronavirus aid and the expansion of tax break programs. This special session cannot last longer than June 30.

**Kansas** adjourned its special session on June 4 after passing legislation related to coronavirus relief spending, reports the [New Haven Register](#).

**New Mexico** Democratic Gov. Michelle Lujan Grisham announced a special session beginning June 18. The agenda includes issues ranging from

balancing the budget to coronavirus relief stimulus funding, reports the [Albuquerque Journal](#).

**New York** is in recess subject to the call of the chair.

**South Carolina** adjourned on May 12 and is expected to meet for a two-week special session starting September 15, reports [The News & Observer](#).

The following states adjourned on the dates provided: **Oklahoma** (May 29), **Missouri** (May 30) and **Louisiana** (June 1).

The following states are scheduled to adjourn on the dates provided: **Delaware** and **Rhode Island** (June 30).

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# GOVERNMENTAL AFFAIRS WEEKLY REPORT

## Weekly Highlights At-A-Glance

### FEDERAL – Legislative

**Congressional Recess.** The U.S. Senate and House of Representatives will be on July 4th recess beginning July 3 for two weeks through July 17. Congressional leaders may try to pass a police reform bill prior to the recess but at present there is no commitment to pass further COVID-19 related measures prior to that date. [Read more.](#)

### FEDERAL – Regulatory

**Lending Discrimination Against the Oil and Gas Industry.** On June 16, U.S. Senators Dan Sullivan and Lisa Murkowski, and Rep. Don Young (all R-AK) sent a letter to Federal Reserve Chairman Jerome Powell and Vice Chair Randy Quarles, Acting U.S. Comptroller of the Currency Brian Brooks, and Chairwoman Jelena McWilliams of the Federal Deposit Insurance Corporation, urging these officials to consider regulatory action and oversight of large American financial institutions that are “openly discriminating against some of the most economically disadvantaged regions of America” by refusing financing of domestic energy projects, particularly in Alaska and the Arctic. The Alaska delegation argues that the banks are harming a foundation of the U.S. economy at a time when businesses, workers, and families are already reeling from the economic fall-out of the COVID-19 pandemic. “It is clear that these policies are overtly political and actually meant to appease extreme activists’ calls for fossil fuel divestment and to discriminate against certain sectors of the energy industry and projects in specific geographical areas,” said the legislators. Since November 2019, Citigroup, Goldman Sachs, JP Morgan, Morgan Stanley, and Wells Fargo have announced policies to stop lending to new oil and gas projects in the Arctic, including the

1002 Area of the Arctic National Wildlife Refuge. The letter writers question whether these policies violate multiple federal laws. [Read more.](#)

**BLM Lease Sale – Utah.** On June 9, the Bureau of Land Management (BLM) announced it will offer 77 parcels, totaling approximately 114,049.77 acres, at its September oil and gas lease sale. The parcels are located in Juab, Sanpete, Sevier, Emery, Duchesne, Grand, Uintah and San Juan counties on public lands managed by the BLM’s Moab, Richfield, Vernal, Price, and Fillmore Field Offices. The BLM has initiated a 30-day public comment period on the lease sale environmental assessment (EA) that ends on July 9, 2020. The BLM included four parcels (4,376.50 acres) previously scheduled for the June oil and gas lease sale in the September lease sale EA. [Read more.](#)

**BLM Lease Sale – Wyoming.** The BLM has postponed a June oil and gas lease sale covering Wyoming parcels. This follows previously delayed sales in Utah, Mississippi, Nevada, and Colorado expected this month, as well as a major sale in New Mexico in late May. Courtney Whiteman, a spokeswoman for BLM’s Wyoming office, confirmed the delay and said the 135 parcels that had been scheduled to be offered on June 23 and 24 would be wrapped into a September sale but Whiteman did not give a reason for the postponement. The parcels cover nearly 170,000 acres. [Read more.](#)

### FEDERAL – Judicial

**Mineral Leasing Act; Natural Gas Pipeline – U.S. Supreme Court.** In a huge victory for the oil and gas industry, on June 15, the U.S. Supreme Court issued a defeat to environmental activists by approving an \$8 billion gas pipeline that will tunnel below the

Appalachian trail and will carry natural gas some 604 miles from West Virginia to North Carolina. In the 7-2 opinion in [U.S. Forest Service v. Cowpasture River Preservation Assoc.](#) (Case No. No. 18-1584), the justices held that the U.S. Forest Service (USFS) had “been duly authorized to greenlight the project, rejecting the challengers’ claim that power over the affected land lay elsewhere. The dispute stemmed from the Department of the Interior’s decision to make the National Park Service (NPS) responsible for the Appalachian Trail. Prior to the court’s Monday decision, the question of whether this move also transferred authority of lands underneath the trail had been an open one.” The case came on appeal from a 2018 ruling by the U.S. Circuit Court of Appeals for the Fourth Circuit, which had sided with environmentalists. The lower court ruled that the Appalachian Trail fell under the authority of the NPS, “which it said was barred by law from granting land access, known as a right-of-way, for energy development.” The Supreme Court ruling reverses that decision, finding that one of the laws in question — the Mineral Leasing Act — authorized the permit issued by the USFS. “We hold that the Mineral Leasing Act does grant the Forest Service that authority and therefore reverse the judgment of the lower court,” wrote Justice Clarence Thomas. According to a spokeswoman for the pipeline operator, “For decades, more than 50 other pipelines have safely crossed the trail without disturbing its public use. The Atlantic Coast Pipeline will be no different.” The company plans to be in operation by 2022. [Read more.](#)

#### **Hydraulic Fracturing; Public Lands – California.**

On June 12, environmental groups and California’s attorney general filed [notices of appeal](#) to the U.S. Court of Appeals for the Ninth Circuit to challenge the Trump administration’s rollback of Obama-era rulemaking regulating hydraulic fracturing on federal and tribal lands. Those restrictions never took effect due to protracted litigation, and the Trump administration officially eliminated them in 2017. In the consolidated cases, [California v. Bernhardt](#) (Case No. 4:18-cv-00521-HSG) and [Sierra Club v. Bernhardt](#) (Case No. 4:18-cv-00524-HSG), the plaintiffs argued that the rollback violated the Administrative

Procedure Act, National Environmental Policy Act, and Endangered Species Act. The U.S. District Court for the Northern District of California, however, rejected the arguments, and ruled in favor of the Trump administration, finding the Interior Department complied with federal law when it scrapped the standards for construction, wastewater management, and chemical disclosure for hydraulic fractured oil and gas wells on those lands. In the wake of the appeal, the Interior Department defended its actions, saying that it “continues to implement the President’s agenda to repeal overly burdensome regulations and ensure America’s energy independence, while protecting the safety of our workers and the health of our environment,” according to a statement by Interior Department spokesman Conner Swanson. “We are confident that the Courts will, again, affirm the Department’s actions.” [Read more.](#)

#### **[STATE – Legislative](#)**

**Occupational Licensing – Colorado.** (*Update to 6/8/20 Weekly Report*) On June 16, bipartisan bill, HB20-1326, was transmitted to Gov. Jared Polis (D) after passing both chambers of the Assembly. The legislation creates 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.](#)

**Ad Valorem Tax – Louisiana.** (*Update to 6/8/20 Weekly Report*) On June 12, HB 360 was enacted. This constitutional amendment will be put to the voters in November. The measure, sponsored by Rep. Mike Huval (R), provides for the methodology of valuation of oil and gas wells for the purpose of ad valorem assessment. Specifically, the ballot measure will read: “Do you support an amendment to permit the presence or production of oil or gas to be included in the methodology used to determine the fair market value of an oil or gas well for the purpose of property assessment?” [Read more.](#)



**Partition Actions – Louisiana.** *(Update to 5/26/20 Weekly Report)* On June 11, HB 594 was signed into law by Gov. John Bel Edwards (D) and is effective immediately. The Act, sponsored by Rep. Alan Seabaugh (R), amended 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.](#)

**Notarial Acts – Louisiana.** *(Update to 3/16/20 Weekly Report)* On June 11, HB 274 was signed into law by Gov. John Bel Edwards (D). The Act, sponsored by Rep. Ray Garofalo (R), provides for the execution of electronic notarial acts. The Act has various effective dates pertaining to its provisions. [Read more.](#)

**Notarial Acts – Louisiana.** *(Update to 3/2/20 Weekly Report)* On June 9, HB 122 was signed into law by Gov. John Bel Edwards (D) and is effective immediately. The Act, sponsored by Rep. Gregory Miller (R), provides for the execution of electronic notarial acts and related procedures. [Read more.](#)

**Trusts; Mineral Interests – Louisiana.** *(Update to 6/8/20 Weekly Report)* On June 4, HB 123 was signed into law by Gov. John Bel Edwards (D). The Act, sponsored by Rep. Gregory Miller (R), 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 Act changes current law by providing that royalty payments shall be allocated in accordance with what is reasonable and equitable. The Act amendments further provide 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 new law also abolishes the open mines doctrine as it relates to a trust. The Act is effective January 1, 2021. [Read more.](#)

**Production Payments – Louisiana.** *(Update to*

*6/8/20 Weekly Report)* On June 5, HB 227 was signed into law by Gov. John Bel Edwards (D). The Act, sponsored by Rep. Jean-Paul Coussan (R), provides for clarification of the nature of production payments and eliminates redundancy in terminology. Prior law required written notice of the nonpayment of a production payment to be provided prior to a judicial demand for damages. This new 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. The Act is effective August 1, 2020. [Read more.](#)

**Corporation Franchise Tax – Louisiana.** On June 4, HCR 66 was passed by both chambers of the legislature. The bill, sponsored by Rep. Stuart J. Bishop (R), suspends the lower tier of the corporation franchise tax levied on domestic and foreign corporations and the initial tax levied on certain business entities subject to the franchise tax. [Read more.](#)

**Recording Fees – Mississippi.** *(Update to 3/16/20 Weekly Report)* On June 22, HB 1175 was enrolled after passage and concurrence by the House and Senate. The measure, 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.](#)

**Severance Tax Payments – Mississippi.** *(Update to 5/26/20 Weekly Report)* On June 16, HB 977 was transmitted to Gov. Tate Reeves (R) after passing both chambers of the legislature. The bill, sponsored by Rep. Brent Powell (R), amends existing law to change the severance tax payment due date. This bill mirrors Senate companion bill [SB 2761](#), which was introduced in February by Sen. Joel Carter, Jr. (R) and died in committee in favor of the House version. [Read more.](#)

**Notarial Acts – Mississippi.** *(Update to 5/26/20*

*Weekly Report*) On June 12, HB 1156 passed the Senate. The bill passed the House in March. The measure, sponsored by Rep. Shane Aguirre (R), will revise notarial law to define certain terms, set electronic documents provisions, and provides for the procedures and processes related to the performance of notarial acts. [Read more.](#)

**Severance Tax Payments – Mississippi.** (*Update to 5/26/20 Weekly Report*) On June 9, [SB 2761](#) died in committee. Companion bill, HB 977, is still active in the Senate. The bill, sponsored by Rep. Brent Powell (R), would amend existing law to change the severance tax payment due date. [Read more.](#)

**Electronic Instrument Execution – Ohio.** On June 8, Rep. D.J. Swearingen (R) introduced HB 692. The bill allows for the electronic execution of wills, health care directives, and other testator-related documents. [Read more.](#)

**State House Speaker Resigns – Pennsylvania.** On June 10, Pennsylvania House Speaker Mike Turzai (R) resigned from his leadership position and as a representative in the State House. His last day was June 15. An advocate for the natural gas industry, Turzai's resignation comes two weeks after Rep. Brian Sims (D) said Pennsylvania's House Republicans intentionally withheld information about a GOP representative's coronavirus diagnosis, putting other members and staff at risk. There had been growing pressure on Turzai since then. [Read more.](#)

## **STATE – Regulatory**

**Local Regulations – California.** On June 3, the California Independent Petroleum Association (CIPA) [sent a letter to the Culver City city attorney](#) in response to a recent city report "where it concludes that it may have the authority to shut down wells within city limits as early as this year." The report, [Capital Investment Amortization Study for the City of Culver City Portion of the Inglewood Oil Field](#), provided an analysis of the amortization of capital investment in existing oil and gas production

facilities within the 78-acre portion of the Inglewood Oil Field (IOF) and includes the collection and validation of technical and commercial data used as the basis for determining capital expenditures, revenues, royalties, operating costs, and reasonable returns on capital investment for oil and gas operations in the IOF. In response to the report, CIPA CEO Rock Zierman made the argument that the city "is facing a massive budget shortfall due to the economic fallout of COVID-19. Now is not the time to jeopardize the hundreds of thousands of dollars the Inglewood Oil Field pays in taxes and fees to fund critical local programs, such as schools and firefighters. There are also questions about whether this plan would expose the city to expensive litigation." [Read more.](#)

**COGCC Mission Change Rulemaking – Colorado.** (*Update to 6/8/20 Weekly Report*) On June 10, the [Colorado Oil and Gas Conservation Commission \(COGCC\)](#) [announced their adoption of new Wellbore Integrity regulations](#). According to the COGCC, Commissioners adopted new protective Wellbore Integrity rules during its June 10 hearing. "Improving Wellbore Integrity rules, throughout the entire lifecycle of the well, will increase the protections of Colorado's critical groundwater resources. The COGCC's Wellbore Integrity rulemaking, as part of the SB 19-181 rulemaking process, focuses on protecting Colorado's groundwater from potential contamination from oil and gas activity." ([Read more about SB 19-181 Mission Change rulemaking here](#)) Gov. Jared Polis (D) also offered his support for the new rules. "I am proud of the rules adopted by the Colorado Oil and Gas Conservation Commission for two reasons. First, these advances protect the environment in a manner that is achievable and are the most protective standards in the nation in terms of protecting groundwater in the development of oil and gas. Second, these rules reflect what we can accomplish when we engage with people of different viewpoints," said Polis. "The consensus reached by state agencies, oil and gas operators, citizen and environmental organizations has helped to create an oil and gas regulatory environment that protects health, safety, welfare and the environment." Lynn

Granger, Executive Director of the American Petroleum Institute-Colorado, said wellbore integrity is a highly technical and complex issue. The rulemaking process “benefited tremendously from the willingness of industry, staff, and nongovernmental organizations to collaboratively come to the table and craft sound rules,” she said. Dan Haley, President and CEO of the Colorado Oil and Gas Association in Denver, said most companies are already doing what the rules call for, and this will make it consistent for everybody. Beefing up the rules “is the right thing to do,” he added. Adam Peltz, a senior attorney for the Environmental Defense Fund said the rules will “prevent air and water pollution while protecting the communities who live and work in the oil field.” The rules fulfill essentially all of the [136 elements](#) that a multi-stakeholder group provided for COGCC regulators to consider in the pursuit of ensuring well integrity. The new rules take effect November 2, 2020. [Read more.](#)

**COGCC Mission Change Rulemaking; Series 800 and 900 Regulations – Colorado.** (*Update to 6/8/20 Weekly Report*) On June 16, the Colorado Oil and Gas Conservation Commission (COGCC) released draft rulemaking for the 800 (Underground Injection for Disposal and Enhanced Recovery Projects) and 900 (Environmental Impact Prevention) Series Mission Change regulations to implement the ongoing SB19-181 mandated COGCC Mission Changes which AAPL has been reporting on over the past few months. ([Read more about SB19-181 here](#)) The COGCC also expects to release their draft 1200 Series (Protection of Wildlife Resources) rulemaking shortly. [Read more.](#)

**Regulatory Amendments – Texas.** On June 17, the Texas Railroad Commission announced that at its open meeting on June 16, the agency adopted amendments to [16 TAC §3.30](#) regarding the Memorandum of Understanding (MOU) between the Railroad Commission and the Texas Commission on Environmental Quality as it relates to produced water, discharges and other waste materials “that result from or are related to activities associated with the exploration for and the development,

production, and refining of oil and gas.” The adopted amendments will be published in the July 3, 2020, issue of the Texas Register, with an effective date of July 15, 2020. The adopted amendments are [available here](#).

**Flaring – Texas.** Last week, after listening to environmental groups, industry organizations and shale producers on ways the state’s flaring issue should be addressed, Wayne Christian, Chairman of the Texas Railroad Commission, said he directed staff to consider whether measures could be implemented this fall. “I am very concerned by the rate of flaring in Texas,” Christian said during the webcast meeting. “We cannot continue to waste this much natural gas and allow the practice of flaring to tarnish the reputation of our state’s thriving energy sector to the general public and investors on Wall Street.” Christian said he has been told that Wall Street is less willing to invest in oil and gas companies because of the volumes of natural gas that they’re flaring. He said he wants Wall Street and “the market” to understand that the industry is working toward addressing the problem. [Read more.](#)

**Drilling Permits – Texas.** The Texas Railroad Commission posted a notice to oil and gas operators regarding an update to the drilling permits (W-1) online filing system, as follows: “Effective June 1, 2020, the Railroad Commission of Texas’ (RRC) Drilling Permits (W-1) online filing system will determine if horizontal wells proposed in regulatory fields with special rules require an exception. The RRC’s online filing system will make this determination for oil and gas operators submitting drilling permit applications online. This change in the RRC’s filing system was made because the system could not determine if applications for certain locations met applicable field requirements relating to lease line or well spacing.” [Read more.](#)

**Forced Pooling Rules – Utah.** Effective June 1, 2020, the Utah Board of Oil, Gas & Mining approved significant [revisions to the state’s forced pooling rules](#). According to law firm Holland & Hart, “The prior rules gave an operator little certainty and

direction on how to force pool interests in Utah. The new rules include procedures for handling disputes over the governing terms of the imposed operating agreement, treatment of unidentifiable or unlocatable owners, and application of the initial force pooling order to subsequently drilled wells.” [Read more.](#)

## STATE – Judicial

**Leasing; Royalties; Termination – Kentucky.** On April 17, in [Crisp v. Blackridge Appalachian Land, LLC](#) (Case No. 2019-CA-000991-MR), the Kentucky Court of Appeals affirmed a lower court ruling that deemed a natural gas lease terminated for a lack of sufficient gas in paying quantities produced. There had been no maintenance on the well and no effort to market or sell gas from the well had occurred over a five-year period. During this time, no production royalty was ever tendered to the landowner. The well, however, continued to supply “free gas” to the three households and arguably this was sufficient to meet and satisfy the “production in paying quantities” standard. The Court disagreed, noting “that for an oil and gas lease to be ‘producing’ (and therefore transition beyond the primary term), the production must be ‘in paying quantities’”. This in turn means that there must be sufficient revenue to pay all operating costs including the payment of production royalties. Here, although there was sufficient production to supply the three households with ‘free gas’, no gas was ever sold on the open market and no production royalty was ever generated.” [Read more.](#)

## INDUSTRY NEWS FLASH

► **New Mexico State University and ExxonMobil to study produced water.** Last week, New Mexico State University Chancellor Dan Arvizu announced he has signed an agreement with ExxonMobil to coordinate research focused on wastewater produced during oil and gas operations. Monte Dobson of ExxonMobil said the project is designed

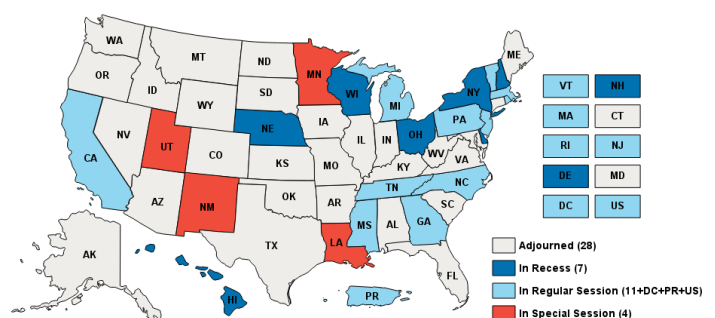
“to find beneficial ways to reuse produced water.” [Read more.](#)

► **Oil markets moving closer to balance.** The U.S. Energy Information Administration has reported in its June Short-Term Energy Outlook that a faster recovery of global oil demand and steeper declines in global oil production are bringing markets closer to balance sooner than forecasted a month ago. The report also saw increases in global consumption of oil from April to May. [Read more.](#)

► **Oil and gas industry wary of a “President Joe Biden.”** A recently released survey conducted by the University of Houston for the Texas Oil and Gas Association showed that 76 percent of oil and gas executives have a “great deal” or “good deal” of concern about their companies’ future economic growth prospects should former Vice President Biden win the White House in November. In contrast, the results showed that just 11 percent of those surveyed would see President Donald Trump’s re-election as a threat to their business. [Read more.](#)

## LEGISLATIVE SESSION OVERVIEW

### States in Session



**Session Notes:** California, Georgia, Massachusetts, Michigan, Mississippi, New Jersey, North Carolina, Pennsylvania, Rhode Island, Tennessee, and Vermont are in regular session. The District of Columbia Council, Puerto Rico and the U.S. Congress are also in regular session. New York is in recess subject to the call of the chair. Iowa



adjourned its session on June 14 and **Colorado** adjourned its session on June 15.

The following legislatures are postponing their 2020 legislative sessions due to COVID-19 until the dates provided: **Delaware** and **Hawaii** (June 22), **New Hampshire** House (June 30), **Nebraska** (July 20) and the **New Hampshire** Senate, **Ohio**, and **Wisconsin** (TBD).

**Special Sessions (by date):** **Louisiana** began a special session immediately after the adjournment of the regular session on June 1, reports [WBRZ](#). The legislature will discuss the spending of federal coronavirus aid and the expansion of tax break programs. This special session cannot last longer than June 30.

**Minnesota** began a special session on June 12 to address an ambitious package of police reform and economic recovery measures, reports the [Star Tribune](#). Senate Republicans plan to hold the special session to just one week and end on June 19.

**New Mexico** began a special session on June 18. The agenda includes issues ranging from balancing the budget to coronavirus relief stimulus funding, reports the [Albuquerque Journal](#).

**Utah** convened a virtual special session on June 18 to address several issues regarding the impact of the COVID-19 pandemic, reports [FOX 13](#). Legislators plan to consider a bill that will expand immunity for businesses that might expose someone to the virus.

**Oregon** Democratic Gov. Kate Brown will convene a special session beginning June 24. This special session will focus on police accountability and coronavirus related legislation, reports [The Oregonian](#).

**Nevada** Democratic Gov. Steve Sisolak will convene a special session before the end of the fiscal year, which is June 30, reports [The Center Square](#). The special session will focus on the state's budget shortfall as a result of COVID-19.

**South Carolina** adjourned on May 12 and is expected to meet for a two-week special session starting September 15, reports [The News & Observer](#).

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