

# GOVERNMENTAL AFFAIRS WEEKLY REPORT

## Weekly Highlights At-A-Glance

### FEDERAL – Legislative

**S. 4041 – Save American Vital Energy (SAVE) Jobs Act.** On June 23, Sen. John Cornyn (R-TX) was [joined by nine other senators from oil and gas producing states](#) to introduce the *Save American Vital Energy Jobs Act*, known as the *SAVE Jobs Act (S. 4041)*, to provide relief to America's energy industry during the coronavirus pandemic. The bill "aims to promote liquidity and flexibility for domestic energy companies so that they may maintain their workforce through the pandemic's economic downturn," says Sen. Cornyn. One of the bill co-sponsors, Sen. Kevin Cramer (R-ND), has also provided a useful [bill summary which you may access here](#). The bill contains provisions such as streamlining existing authority to grant lease extensions, suspensions of production, and suspensions of operations during the pandemic; simplifying the existing process for royalty rate reductions to provide more timely relief during the pandemic; and delaying the deadline for recalculation of royalty payments under the 2016 Office of Natural Resources Revenue Valuation Rule until July 1, 2022. The bill also suspends certain capitalization rules to immediately expense certain direct and indirect costs and would allow "taxpayers to expense 100 percent of the cost of intangible drilling costs in 2020." [Read more.](#)

### FEDERAL – Regulatory

**BLM; National Petroleum Reserve – Alaska.** On June 25, the Bureau of Land Management (BLM) announced its latest plans for oil and gas leasing in the National Petroleum Reserve – Alaska (NPR-A). The [Final Integrated Activity Plan/Environmental Impact Statement](#) allows 18.7 million acres of the approximately 23-million-acre area to be open to

leasing. This area is significantly greater than the 11.8 million acres of the NPR-A that is currently open for oil and gas leases. The BLM plan would also open drilling in the Teshekpuk Lake Special Area, which is currently protected and is home to a variety of animals like caribou and migratory birds. Proponents of the plan said that this would give the U.S. more access to valuable resources, while opponents expressed concern about its environmental impacts. "President Trump has committed to expand access to our Nation's great energy potential," said Interior Secretary David Bernhardt in a statement. "Today's action is one more significant step in the process of delivering on his promise." [Read more.](#)

### FEDERAL – Judicial

**Surface Use and Access – West Virginia.** On May 18, the U.S. District Court for the Northern District of West Virginia granted a preliminary injunction in favor of a natural gas operator. In *Arsenal Resources LLC v. Crim* (Case No. 1:20-cv-84), the natural gas operator, which had entered into a Surface Use and Compensation Agreement (SUCA) with the landowner, claimed their access road was unlawfully blocked from use. According to the Court, the agreements at issue, including a lease and extension of the lease as well as the SUCA, "expressly provide for Arsenal's right to use the access road and staging area for its oil and gas production. Crim has breached the contracts by preventing Arsenal from utilizing the access road and staging area. Arsenal has been damaged by this because it is prevented from exercising its contractual rights for which it has paid a considerable amount of money. For these reasons, Arsenal has made a clear showing that it is likely to succeed on the merits in its breach of contract claim." [Read more.](#)

## **STATE – Legislative**

**Oil and Gas Production – California.** (*Update to 2/10/20 Weekly Report*) On June 19, AB 1441 was referred to the Senate Rules Committee for consideration. The bill has not moved since passing the Assembly in January. The measure, sponsored by Asm. Marc Levine (D), would recast provisions “relating to the state’s declared policy on oil and gas leases and the removal of underground hydrocarbons.” The major provisions are: “(1) Deletes the section of law that promotes the recovery of underground hydrocarbons. (2) Deletes a codified finding that states ‘the people of the State of California have a direct and primary interest in assuring the production of optimum quantities of oil and gas from lands owned by the state.’ (3) Recasts the state’s policy from encouraging the wise development of oil and gas resources to ensuring the wise oversight of oil and gas development.” The California Independent Petroleum Association publicly opposes the bill, saying “the contents of which were vetoed by the governor last year ([AB 1440](#)), remains unnecessary considering the governor’s signing of [Assembly Bill 1057 \(Limon\)](#) last year, which already accomplished what your bill seeks to achieve.” [Read more.](#)

**Occupational Licensing – Colorado.** (*Update to 6/22/20 Weekly Report*) On June 25, bipartisan bill, HB20-1326, was signed into law by Gov. Jared Polis (D). The Act 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. The Act is effective January 1, 2021. [Read more.](#)

**Corporation Franchise Tax – Louisiana.** On June 23, SB 6 passed the House. This special session bill, sponsored by Sen. R.L. Bret Allain II (R), passed the Senate earlier in the month. This measure provides for a suspension of the corporation franchise tax on the first \$300,000 of taxable capital for small business corporations and defines a “small business

corporation” as an entity that is subject to the corporation franchise tax, and that has taxable capital of \$1,000,000 or less. The proposed law retains the present law tax rate of \$3 per \$1,000 of taxable capital above \$300,000 and retains the first bracket of the tax for all taxpayers with taxable capital above \$1,000,000. The proposed law suspends the initial franchise tax for small business corporations and applies only to taxable periods beginning between July 1, 2020, and June 30, 2021. [Read more.](#)

**Taxation – Louisiana.** On June 23, the Senate passed HB 1729. The bill, sponsored by Rep. John Thomas Lamar, III (R), passed the House in May. The measure makes certain amendments to tax credits. [Read more.](#)

**Severance Taxes– Louisiana.** (*Update to 6/8/20 Weekly Report*) On June 23, HB 1746 died in the Senate. The bill passed the House earlier in June. The bill, sponsored by Rep. John Lamar (R), would have temporarily reduced oil and gas severance taxes. [Read more.](#)

**Recording Fees – Mississippi.** (*Update to 6/22/20 Weekly Report*) On June 29, HB 1175 was signed into law by Gov. Tate Reeves (R). The Act, 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. The Act takes immediate effect. [Read more.](#)

**Notarial Acts – Mississippi.** (*Update to 6/22/20 Weekly Report*) On June 25, HB 1156 was signed into law by Gov. Tate Reeves (R). The Act, sponsored by Rep. Shane Aguirre (R), revises notarial law to define certain terms, set electronic documents provisions, and provides for the procedures and processes related to the performance of notarial acts. The Act is effective July 1, 2021. [Read more.](#)

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

to 6/22/20 Weekly Report) On June 22, HB 977 was signed into law by Gov. Tate Reeves (R). The Act, sponsored by Rep. Brent Powell (R), amends existing law to change the severance tax payment due date. This bill mirrored 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.](#)

**Special Session; Delayed Tax Payments – New Mexico.** On June 18, HB 6 was signed into law by Gov. Michelle Lujan Grisham (D). The Act waives penalties and interest for delayed tax payments, which includes corporate, personal, and gross receipts taxes among other measures. The Act states no penalty or interest will be assessed for tax payments or managed audits due primarily in the second quarter of 2020 as long as the failure to pay was not an intentional attempt to evade the tax. The Act also requires those payments to be made in full within one year. The special session Act is effective immediately. [Read more.](#)

**Special Session; Emergency Measures; Remote Notarial Acts; Wills – New Mexico.** On June 18, HB 3 was introduced by Rep. Antonio Maestas (D) in the special session. The bill would alter or suspend the in-person requirements relating to notarial acts, the execution of wills and the holding of shareholder meetings during the current public health emergency. [Read more.](#)

**Special Session; Remote Notarial Acts – New Mexico.** On June 18, HB 12 was introduced by Rep. Alonzo Baldonado (R) in the special session. The bill would permit the development of a remote platform to complete certain notarial acts. [Read more.](#)

**Partition Actions; Future Interests; Cotenants; Joint Tenants – North Carolina.** (*Update to 5/26/20 Weekly Report*) On June 19, bipartisan bill SB 729 was signed into law by Gov. Roy Cooper (D). The Act 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. The Act is effective October 1, 2020. [Read more.](#)

**Hydraulic Fracturing – Pennsylvania.** On June 22, SB 1217 was introduced by Sen. Daylin Leach (D). The bill would create a constitutional amendment banning hydraulic fracturing in Pennsylvania. The bill is not expected to move in the Republican-controlled chamber. [Read more.](#)

**Hydraulic Fracturing – Pennsylvania.** On June 22, SB 1218 was introduced by Sen. Daylin Leach (D). The measure is a Joint Resolution calling for a constitutional amendment banning hydraulic fracturing in Pennsylvania. The Joint Resolution is not expected to move in either chamber of the Republican-controlled General Assembly. [Read more.](#)

## **[STATE – Regulatory](#)**

**COGCC Conservation (Mill) Levy Rulemaking – Colorado.** On June 30, the Colorado Oil and Gas Conservation Commission (COGCC) submitted to the Secretary of State notice of the COGCC's Conservation Levy rulemaking. This rulemaking proposes setting the mill levy at \$0.0017. To access the rulemaking proposals and related documents [read more here](#). For more information on attending upcoming public hearings related to this rulemaking, [read more](#) from the COGCC. For more on the conservation mill levy on the market value of oil and natural gas produced at the well, [Read more.](#)

**COGCC Appointments – Colorado.** On June 22, the Colorado Oil and Gas Conservation Commission (COGCC) announced that Gov. Jared Polis (D) chose new appointments to the COGCC as mandated by SB19-181, which the governor signed into law last year. ([Read more about SB19-181 here](#)) The new law

transitions the COGCC leadership from 9 appointees to a professional 5-member commission. Among those appointed are a land manager from OXY who holds a law degree from the University of Texas School of Law as well as various public officials and past and present COGCC staff. [Read more.](#)

**Public Lands – New Mexico.** On June 25, the New Mexico State Land Office (NMSLO) announced a case study conducted in partnership with satellite imagery company, Planet, to “identify trespass and protect public lands.” For the study, the NMSLO Oil, Gas, and Minerals Division leveraged PlanetScope Monitoring to observe leased and to-be leased lands in the Permian Basin, located in the southeast region of the state. The high frequency and broad-area coverage provided by PlanetScope helped the Division achieve greater compliance of leased land and proactively identify activities that fell outside of the lease terms, which generated revenue for the state. Mineral analysts were better able to identify trespassing violations, illegal removal of material from mining sites, and/or improper waste disposal that otherwise might have gone unseen because there were not enough boots on the ground, or other imagery sources were outdated. [Read more.](#)

**Oklahoma Corporation Commission Permanent Rulemaking – Oklahoma.** On June 25, Gov. Kevin Stitt (R) issued a [Governor’s Declaration Regarding Submitted Agency Rules](#) which declares that all rules submitted for consideration for the period beginning April 2, 2019 through April 1, 2020 are approved and finally adopted. According to the Oklahoma Corporation Commission (OCC), all permanent rules submitted for consideration by the OCC are approved and finally adopted. “The approved OCC rules are: Chapters 5, 10, 15, 20, 25, 26, 27, 29, and 35. The approved rules in each chapter will become effective on October 1st. Updated versions of each proposed chapter will be posted to the OCC website following October 1st.” [Read more.](#)

**Oklahoma Corporation Commission Appointment – Oklahoma.** On June 17, the Oklahoma Corporation Commission (OCC) announced that OCC

Commissioner Bob Anthony has been named to serve his sixth straight term on the National Petroleum Council (NPC) by U.S. Secretary of Energy Dan Brouillete. Created in 1946 by President Truman, the Council provides essential advice, information, and recommendations to the Secretary of Energy on matters related to U.S. oil and natural gas policy. Anthony was first appointed to the NPC in 2010. [Read more.](#)

**Railroad Commission Webinars – Texas.** The Texas Railroad Commission (RRC) has announced it will host a “series of free oil and gas regulatory webinars to inform and train energy industry representatives on the applicable laws, rules and procedures for hydrocarbon production in Texas.” The RRC program will begin July 7 and includes a variety of topics including completions filings for oil, gas and underground injection control; drilling permits and online filings; field transfers; groundwater protection determinations; inactive wells; oil storage – surface and underground; oil and gas waste stream management requirements; production reporting and commingle permit applications; production sharing agreement and allocation wells; Public GIS Viewer new tools; severance tax incentive certification application; transportation and storage reporting; and underground injection control permitting, testing and monitoring requirements. [Read more.](#)

## **STATE – Judicial**

**Climate Change Lawsuit – Minnesota.** On June 24, Minnesota Attorney General Keith Ellison (D) [filed a climate change lawsuit](#) in state court against the American Petroleum Institute, ExxonMobil, Koch Industries, Inc., Flint Hills Resources LP, and Flint Hills Resources Pine Bend, alleging consumer fraud and deceptive trade practices by alleging the defendants deceived and defrauded Minnesotans about climate change. *(Please see a similar case brought by the Washington, DC Attorney General below)* In the case, [Minnesota v. American Petroleum Institute, et al.](#) (Case No. not yet publicly available), the defendants are accused of making inaccurate

statements that were “part of a conspiracy to defraud consumers and the general public, including consumers and the public in Minnesota, about climate change and the role of fossil-fuel products in climate change.” This suit comes in the wake of numerous other federal and state climate change lawsuits AAPL has covered over the past few years – none of which have yet to prove fruitful against the industry other than allowing for a change of court venue in certain instances. [Read more.](#)

**Climate Change Lawsuit – Washington, DC.**

On June 25, the Attorney General for Washington, DC sued ExxonMobil, BP, Chevron, and Shell in DC Superior Court for allegedly misleading consumers about the role fossil fuels play in climate change. In [District of Columbia v. ExxonMobil Corp., et al.](#) (Case No. not yet publicly available), DC Attorney General Karl Racine, alleges that the companies “systematically and intentionally misled consumers in Washington, DC ... about the central role their products play in causing climate change.” Specifically, the suit accuses the companies of knowing about the impact carbon emissions would have on climate change since as early as the 1950s and promoting disinformation about fossil fuel products. “For decades, these oil and gas companies spent millions to mislead consumers and discredit climate science in pursuit of profits,” said Racine in a statement. “The defendants violated the District’s consumer protection law by concealing the fact that using fossil fuels threatens the health of District residents and the environment.” ExxonMobil spokesman Casey Norton told The Hill in an email that the suit’s claims are “baseless and without merit.” According to Norton, “This lawsuit is part of a coordinated, politically motivated campaign against energy companies [...] Legal proceedings like this waste millions of dollars of taxpayer money and do nothing to advance meaningful actions that reduce the risks of climate change.” [Read more.](#)

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

On May 11, in [Cain v. Horn](#) (Case No. 2020 Ohio 3171) the Ohio Court of Appeals, Fifth Circuit, addressed whether the more specific provisions of the Dormant

Mineral Act (DMA) control over the general provisions of the Marketable Title Act (MTA) with regard to claims concerning the abandonment and extinguishment of a previously severed mineral interest. Here, the Court held that “the MTA and DMA are separate and distinct and the two statutes do not irreconcilably conflict.” As such, the Court found that a claim for quiet title involved the extinguishment of a mineral reservation and although parties to the action had previously filed an action to quiet title under the DMA, “such did not prohibit them from filing an action under the MTA.” [Read more.](#)

**INDUSTRY NEWS FLASH**

► **Fossil fuels still supply 84% of world energy.**

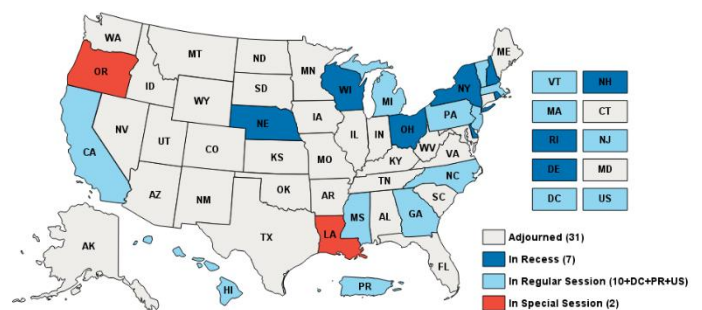
According to the BP’s just-released [Statistical Review of World Energy 2020](#), fossil fuels still accounted for 84% of the world’s primary energy consumption in 2019. The Review provides a comprehensive picture of supply and demand for major energy sources on a country-level basis. [Read more.](#)

► **Petroleum demand begins recovery.**

According to the American Petroleum Institute’s latest monthly statistical report, petroleum demand, as measured by total domestic petroleum deliveries, was 16.2 million b/d in May. This was 20% below the May 2019 level but reflected an increase of 14% (2 million b/d) from April—the largest percentage increase for any month since December 1975. [Read more.](#)

**LEGISLATIVE SESSION OVERVIEW**

**States in Session**



**Session Notes:** California, Georgia, Hawaii, Massachusetts, Michigan, Mississippi, New Jersey, North Carolina, Pennsylvania, and Vermont are in regular session. The U.S. Congress is in recess until July 20.

The following legislatures had postponed their 2020 legislative sessions due to COVID-19 until the dates provided: **Nebraska** (July 20) and **Wisconsin** (TBD).

The following states adjourned on the dates provided: **Tennessee** (June 22), **Delaware** and **Rhode Island** (June 30).

**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.

**Oregon** convened a special session on June 24, which will focus on police accountability and coronavirus related legislation, reports [The Oregonian](#).

**Utah** ended its special session on June 19 after passing a series of bills relating to the ending of knee-to-neck police chokeholds and novel state programs aimed to lessen the impacts of COVID-19 on small businesses in the state, reports [Deseret News](#).

**Minnesota** ended its special session on June 20. Although ambitious bill packages were discussed, the session ended without passing any major bills, reports [KARE 11](#).

**New Mexico** ended its special session on June 22 after approval of police camera and pandemic relief bills. These bills would require all police officers to wear body cameras and authorize up to \$400 million in low interest loans to help small business survive, reports the [Albuquerque Journal](#).

**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** is expected to meet for a two-week special session starting September 15, reports [The News & Observer](#).

**Signing Deadlines** (by date): **Iowa** Republican Gov. Kim Reynolds has until July 14 to act on legislation or it will be pocket vetoed. **Missouri** Republican Gov. Mike Parson has until July 14 to act on legislation or it becomes law without signature. **Colorado** Democratic Gov. Jared Polis has until July 15 to act on legislation or it becomes law without signature. **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. **Louisiana** Democratic Gov. John Bel Edwards has 20 days from presentment to sign or veto legislation or it will become 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. **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. **Tennessee** Republican Gov. Bill Lee has 10 days starting the day after

presentment, Sundays excepted, to sign or veto legislation or it becomes law without signature.

**Interim Committee Hearings:** The following states are currently holding 2020 interim committee hearings: [Alaska](#), [Arizona](#), [Arkansas](#), [Colorado](#), [Connecticut](#), [Idaho](#), [Indiana](#), [Kansas](#), [Kentucky](#), [Maine](#), [Maryland](#), [Minnesota](#), [Missouri House](#) and [Senate](#), [Montana](#), [Nevada](#), [New Mexico](#), [New York Assembly](#) and [Senate](#), [North Dakota](#), [Oregon](#), [South Carolina House](#) and [Senate](#), [South Dakota](#), [Tennessee](#), [Utah](#), [Virginia](#), [Washington](#) and [Wyoming](#).

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

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**PLEASE NOTE:** Due to legislative session breaks and summer scheduling, there is no report on July 20. The next report will be published July 27. In the interim, please keep an eye on the AAPLConnect member forums and Landnews e-newsletters for breaking information.

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## Weekly Highlights At-A-Glance

### FEDERAL – Legislative

**S. 4223 – Leasing Market Efficiency Act.** On July 20, Sen. Jon Tester (D-MT) introduced [S. 4223](#), known as the *Leasing Market Efficiency Act*. The bill would amend the Mineral Leasing Act to ensure market competition in onshore oil and gas leasing by requiring the Bureau of Land Management (BLM) to issue all oil and gas leases through competitive auction, ending noncompetitive leasing. “BLM’s noncompetitive leasing program is about as efficient as a steering wheel on a blindfolded mule at night, and taxpayers are left pulling the plow,” said Sen. Tester. “My legislation will cut down on government waste by increasing transparency, growing revenues, and—most importantly—saving taxpayer dollars. It’s time to end this broken system, which is spending critical resources on bureaucratic red tape that doesn’t benefit the public or our public lands.” [Read more.](#)

**H.R. 7400 – Protecting American Energy Production Act.** On July 1, Rep. Jeff Duncan (R-SC) introduced [H.R. 7400](#), known as the *Protecting American Energy Production Act*. The bill would prohibit future U.S. presidents from using their executive powers to declare a moratorium on the use of hydraulic fracturing, unless authorized by an Act of Congress. The bill further expresses that states have the authority to regulate hydraulic fracturing for oil and natural gas production on state and privately-owned lands. [Read more.](#)

### FEDERAL – Regulatory

**BLM; New State Director – Utah.** On July 21, the Bureau of Land Management (BLM) announced the appointment of Greg Sheehan as the BLM’s new State Director for Utah. Sheehan served as the

U.S. Fish and Wildlife Service Principal Deputy Director from 2017 to 2018. A career conservation professional, Sheehan served for 25 years in the Utah Department of Natural Resources and the Utah Division of Wildlife Resources – the last five years as the agency’s director. [Read more.](#)

**BLM Oil and Gas Lease Sale – Nevada.** On July 20, the BLM announced the release of an Environmental Assessment for the December 2020 oil and gas lease sale covering 14 parcels within the Battle Mountain District. The public comment period runs through August 20. The lease sale will be held on December 8. [Read more.](#)

**BLM; National Petroleum Reserve – Alaska.** On July 13, the BLM announced the opening of a public scoping period for input on 33 parcels (6,442.36 acres) of federal minerals proposed for the January 2021 competitive oil and gas lease sale. The public scoping period runs through July 31, 2020. The lease sale is tentatively scheduled for January 14, 2021. The proposed parcels were identified as available for possible oil and gas leasing under current BLM land-use plans. The parcels in New Mexico include six in Eddy County and 26 in Lea County. There is also one parcel in Wise County, Texas. [Read more.](#)

### FEDERAL – Judicial

**Methane Regulations – California.** On July 15, the U.S. District Court for the Northern District of California overturned the Trump administration’s 2018 rescission of the 2016 Obama-era Waste Prevention Rule. This decision arises from consolidated cases, [California v. Bernhardt and Sierra Club v. Bernhardt \(Case No. 4:18-cv-05712-YGR\)](#), involving industry groups and the states of Wyoming and Montana, and later joined by North



Dakota and Texas. The states of California and New Mexico also intervened along with environmental activists to uphold the Obama-era rule. Calling the BLM's rulemaking process "wholly inadequate," the Court found the BLM failed to properly repeal the rule. "In its haste, BLM ignored its statutory mandate under the Mineral Leasing Act, repeatedly failed to justify numerous reversals in policy positions previously taken, and failed to consider scientific findings and institutions relied upon by both prior Republican and Democratic administrations," wrote U.S. District Court Judge Yvonne Gonzalez Rogers in her opinion. According to reports, if this case is upheld it "will effectively reinstate stricter pollution controls aimed at reducing the flaring, venting and leaking of natural gas." The Interior Department is expected to appeal the decision. [Read more.](#)

#### **Climate Change Lawsuit – Tenth Circuit**

**(Colorado).** On July 7, the U.S. Court of Appeals for the Tenth Circuit, on appeal from the U.S. District Court for the District of Colorado, affirmed the lower court's ruling that a suit brought by the City of Boulder, and Boulder and San Miguel counties, seeking climate change-related infrastructure damages for what the local governments say are the effects of climate change will stay in state court, rather than a federal court venue preferred by the defendant companies. In the case, [Board of County Commissioners of Boulder County v. Suncor Energy \(U.S.A.\) Inc.](#) (Case No. 19-1330), the Court denied the appeal by ExxonMobil and Suncor Energy to send the case back to federal court in this lawsuit dating back to 2018. ([For background on the case, read more here](#)) Attorneys for the defendants argued that the case belonged in federal court because under the Clean Air Act, as well as precedents set in some other climate cases, federal law preempts state law when it comes to greenhouse gas emissions. Following the ruling, an ExxonMobil spokesman said the company is reviewing the decision and "evaluating next steps." [Read more.](#)

**Tribal Lands – Oklahoma.** On July 9, in [McGirt v. Oklahoma](#) (Case No. 18-9526), the U.S. Supreme Court held that "lands reserved for the Creek Nation

in northeastern Oklahoma remain a reservation for purposes of the Major Crimes Act, which gives the federal government exclusive jurisdiction to try certain enumerated offenses committed by "any Indian [. . .] against the person or property of another Indian or any other person" within "Indian country." "Although the case centered on the Oklahoma state court's conviction of a Creek tribal member for crimes committed on lands that the Supreme Court determined in *McGirt* were within the boundaries of the reservation, the Supreme Court's confirmation of the existence of the Creek reservation has significant potential consequences for oil and gas development in eastern Oklahoma." According to law firm, Haynes Boone, "prior to *McGirt*, the State of Oklahoma had maintained that the reservations of the Five Tribes had been disestablished by a variety of congressional actions or Oklahoma statehood. However, the *McGirt* decision confirms the existence of the reservations of the Five Tribes, which encompasses 19 million acres and comprises the entire eastern half of Oklahoma." As Haynes Boone attorneys note, "the *McGirt* decision will impact existing oil and gas interests in Oklahoma as it creates regulatory and jurisdictional uncertainty that likely will take years to resolve. Although the Oklahoma Corporation Commission has concurrent jurisdiction over lands of the Five Tribes for certain purposes related to oil and gas development (e.g., spacing and unitization orders), it is unclear whether the Five Tribes will exercise taxing or regulatory authority over non-tribal oil and gas interests within the exterior boundaries of their respective reservations such as private and state oil and gas leases, royalties and liens. In the coming months and years, producers, royalty owners and other stakeholders with oil and gas interests in eastern Oklahoma may encounter a patchwork of tribal, state and federal regulations, licensing and zoning requirements, and taxes." [Read more.](#)

**Pipeline Permitting – Washington, DC.** On July 6, the U.S. Supreme Court reinstated the use of a permit that is utilized to fast-track pipeline construction, except in the case of the Keystone XL pipeline. A lower court [ruled in April](#) that the

U.S. Army Corps of Engineers did not follow environmental requirements when it reissued the permit, known as Nationwide Permit 12, preventing it from being used across the country. But in its July 6 Order, the Supreme Court [allowed the permit](#) to go back into effect for most pipelines. However, it refused to renew the use of the permit for the Keystone XL pipeline, which was the subject of the original case, [Northern Plains Resource Council v. U.S. Army Corps of Engineers](#) (Case No. CV-19-44-GF-BMM). [Read more.](#)

**Dakota Access Pipeline – Washington, DC.** On July 6, the U.S. District Court for the District of Columbia issued a ruling ordering the Dakota Access Pipeline (DAPL) to be shut down and emptied by August 5, 2020. In [Standing Rock Sioux Tribe v. U.S. Army Corps of Engineers](#) (Case No. 16-1534), the Court held that the U.S. Army Corps of Engineers violated the National Environmental Policy Act (NEPA) when it granted the easement to construct the pipeline under Lake Oahe (which is a large reservoir lying behind a dam on the Missouri River and stretching between North and South Dakota). The Court held that NEPA required the Army Corps of Engineers to produce an Environmental Impact Statement (EIS) for the easement application, rather than only the Environmental Assessment that was completed. Judge James Boasberg ruled that the pipeline, which has been in operation since 2017, should be turned off until the Corps completes an EIS. This process is expected to take 13 months. In sum, the Court held that “given the seriousness of the Corps’ NEPA error, the impossibility of a simple fix, the fact that Dakota Access did assume much of its economic risk knowingly, and the potential harm each day the pipeline operates, the Court is forced to conclude that the flow of oil must cease. Not wishing to micromanage the shutdown, it will not prescribe the method by which DAPL must achieve this. The Court will nonetheless require the oil to stop flowing and the pipeline to be emptied within 30 days from the date of this Opinion and accompanying Order.” According to Bloomberg News, “If the ruling survives appeal, it would be the first time a major pipeline in service was ordered shut because of environmental

concerns.” Industry players and analysts also weighed in on the decision. “This court ruling will create major obstacles for producers in North Dakota, who’ve been struggling to rebound,” said Sandy Fielden, director of research for Morningstar Inc. The buyers of Bakken crude, he said, will simply turn elsewhere for supplies once the pipeline dries up. Phillips 66, which owns a stake in the pipeline, said it was disappointed in the court ruling. “The negative impacts resulting from this court’s decision to markets, customers, and jobs up and down the energy value chain will inflict more damage on an already struggling economy and jeopardize our national security,” said spokesman Dennis Nuss. Continental Resources, however, said the bulk of its oil is shipped on other pipelines. “That being said, we believe that today’s DAPL court decision is harmful to royalty owners, the state of North Dakota and the American consumer,” said spokeswoman Kristin Thomas. “This decision will serve to drive the price of crude higher.” Following the July 6 decision, the Court declined a request from Dakota Access LLC to immediately stay the decision, but added that the Court will “set a status hearing on the matter when it receives certain documents from the company.” In a filing after the decision, Dakota Access argued that the Court’s order should be halted because “the Court’s decision requires Dakota Access to begin shutting down a major interstate pipeline” and “As a result, Dakota Access would need to undertake a number of expensive steps before it is likely to have a ruling on the forthcoming stay motion,” the company said. However, Native American tribes challenging the pipeline disagreed, stating in their own filing that the company did not do enough to show that the stay was necessary or try to work with the challengers to reach an agreement. [Read more.](#)

**BLM Leasing – Washington, DC.** On June 16, in *Solenex LLC v. Bernhardt* (Case Nos. 18-543; 18-5345), the U.S. Court of Appeals for the D.C. Circuit addressed a case where Solenex LLC held a federal oil and gas lease over a portion of the Badger-Two Medicine Area of Montana. In 2016, the Secretary of the Interior cancelled the lease because of the area’s “multi-faceted significance and Interior’s failure to

conduct the proper pre-lease analyses required” under the National Environmental Policy Act and the National Historic Preservation Act. When Solenex challenged that cancellation decision, the district court ruled in its favor. The Court held that the amount of time which had elapsed between the lease's issuance and its cancellation violated the Administrative Procedure Act and that “the Secretary failed to consider Solenex's reliance interests before cancelling the lease.” According to the appellate court, however, “Each of those determinations was erroneous. First, delay by itself is not enough to render the Lease cancellation arbitrary or capricious. Second, the Secretary did consider, and in fact compensated, Solenex's identified reliance interests.” For those reasons, the appellate court vacated the district court's ruling. [Read more.](#)

## **STATE – Legislative**

**Setbacks – California.** *(Update to 2/10/20 Weekly Report)* On July 1, [AB 345](#) was referred to the Senate after passing the Assembly in January. The bill, sponsored by Asm. Al Muratsuchi (D), amends current law to set July 1, 2022 as the date for state regulators to adopt regulations protecting public health and safety near oil and gas extraction facilities. The setback language has been amended to read: “The regulations shall include safety requirements and the establishment of a minimum setback distance between oil and gas activities and sensitive receptors such as schools, childcare facilities, playgrounds, residences, hospitals, and health clinics based on health, scientific, and other data. The department shall consider a setback distance of 2,500 feet at schools, playgrounds, and public facilities where children are present.” The amended version relaxes the “mandatory” setback requirements of the original bill to instead allow for discretion by state regulators. At present, the state has a patchwork of local/state requirements for setbacks ranging from 300 to 1,500 feet depending on use location. [Read more.](#)

**Well Records – California.** *(Update to 3/2/20 Weekly Report)* On July 1, AB 3214 was referred to

Senate committee after passing the Assembly in June. The bill, sponsored by Asm. Monique Limón (D), would amend existing law regarding discharges of oil into waters and damage costs related to oil spills to additionally require the owner or operator to keep, or cause to be kept, a history of the maintenance and repair of the well. Because a violation of this requirement would be a crime, the bill would impose a state-mandated implementing program. [Read more.](#)

**Employee Classification – California.** *(Update to 2/24/20 Weekly Report)* On July 1, [AB 1850](#) was referred to Senate committee after passing the Assembly in June. The bill, sponsored by Asm. Lorena Gonzalez (D), although not specific to landmen is one of many bills seeking to amend [AB 5](#), which has been roundly criticized since its enactment last year for limiting Californians' ability to work as independent contractors. This bill would exempt freelance and independent contractor writers and photographers from the presumption disfavoring non-employee work relationships and the burdens imposed on one's right to work. [Read more.](#)

**Corporation Franchise Tax – Louisiana.** *(Update to 7/6/20 Weekly Report)* On July 13, Gov. John Bel Edwards (D) signed SB 6 into law. This special session bill, sponsored by Sen. R.L. Bret Allain II (R), provides for a suspension of the corporation franchise tax on the first \$300,000 of taxable capital for small business corporations and defines a "small business corporation" as an entity that is subject to the corporation franchise tax, and that has taxable capital of \$1,000,000 or less. The Act retains the present law tax rate of \$3 per \$1,000 of taxable capital above \$300,000 and retains the first bracket of the tax for all taxpayers with taxable capital above \$1,000,000. The Act suspends the initial franchise tax for small business corporations and applies only to taxable periods beginning between July 1, 2020 and June 30, 2021. The Act was effective upon signing. [Read more.](#)

**Taxation – Mississippi.** On July 7, HB 1729 was signed into law by Gov. Tate Reeves (R). The bill,

sponsored by Rep. John Lamar (R), revises existing statutory provisions regarding certain income tax credits, sales tax, ad valorem tax exemptions, and franchise tax credits. The Act has multiple effective dates per section. [Read more.](#)

**Minerals Taxation – Nevada.** On July 18, AB 4 passed the Senate after passing the Assembly. This special session Committee of the Whole sponsored bill including all members revises the formula for determining the measure of the tax on the net proceeds of minerals; eliminates the temporary requirement for the payment in advance of a portion of the tax upon the net proceeds of minerals; and eliminates the temporary requirement for persons who extract minerals to pay a portion of the tax on the net proceeds of the estimated royalties that will be paid for certain years. [Read more.](#)

**Injection Wells – Ohio.** On July 21, SB 336 was referred to committee following its introduction by Sen. Frank Hoagland (R) in the Senate. The bill would revise the permitting, fee structure, and penalties for brine injection wells and imposes certain notice requirements. [Read more.](#)

**Limited Liability Company Act – Ohio.** On July 21, SB 276 passed the Senate. The bill, sponsored by Sen. Kristina Roegner (R), revises the Ohio Limited Liability Company Act (OLLCA) and replaces it with the Ohio Revised Limited Liability Company Act (ORLLCA). According to the [Ohio Legislative Service Commission bill analysis](#), “Under current law, a limited liability company (LLC) may be managed by its members or by managers, and the OLLCA spells out the authority members and managers have in each scenario. The ORLLCA does away with this distinction and instead provides that a person’s authority to bind the LLC must be determined by referencing the operating agreement, decisions of the members in accordance with the operating agreement, or the ORLLCA’s default rules. Also, under the current OLLCA, there are no statutory penalties for an LLC that fails to maintain a statutory agent, although there may be other legal consequences. The ORLLCA requires the Secretary

of State to cancel an LLC that fails to maintain a statutory agent, but allows the company to be reinstated upon appointment of a new agent. Lastly, in contrast to the current OLLCA, the ORLLCA allows an LLC to establish one or more designated series of assets that are associated with at least one member and that have separate rights, powers, duties, liabilities, purposes, or investment objectives.” [Read more.](#)

**Natural Gas Tax Credit – Pennsylvania.** On July 23, Gov. Tom Wolf (D) signed [HB 732](#) into law. The bipartisan legislation establishes, among other unrelated provisions, a local resource manufacturing tax credit that provides Pennsylvania manufacturers using dry natural gas to make petrochemicals and fertilizers with eligibility for nearly \$667 million in tax breaks over 25 years. According to Bloomberg Government, “the measure, a compromise version forged after Wolf vetoed a similar measure in March, is aimed at encouraging industries that use dry natural gas in manufacturing to locate in the state.” To take advantage of the tax incentives, applicants would have to invest at least \$400 million in a project facility using dry natural gas, create a minimum of 800 jobs, and make good faith efforts to hire locally. The Act is effective 60 days from signature. [Read more.](#)

**Minerals Taxation – Pennsylvania.** On July 17, Rep. Daniel Miller (D) pre-filed HB 2712 for introduction. The bill would require natural gas companies to disclose what chemicals are used in the hydraulic fracturing process. Specifically, the bill would amend the Oil and Gas Act to remove the current exceptions to disclosure and require disclosure of chemicals 14 days prior to use at any stage of the hydraulic fracturing process, including drilling. [Read more.](#)

## **[STATE – Regulatory](#)**

### **Hydraulic Fracturing Report – Pennsylvania.**

On June 25, Pennsylvania Attorney General Josh Shapiro released a [Grand Jury report](#) on the hydraulic fracturing industry and regulatory oversight of the industry within the state. According

to Shapiro, “This 2 year investigation uncovered how our state agencies failed to protect the people of PA against oil and gas titans.” The report included [eight recommendations](#) to better protect the public and regulate the industry in the state, including distance requirements from residences, more transparency in the chemicals used, and transportation regulation for waste created by the drilling. Shapiro said the grand jury found that state environmental regulators had failed to file violations against the industry, failed to tell the public when violations were filed and could be a risk to their health and regularly failed to refer those violations for criminal investigation. The grand jury also criticized the Department of Health for not collecting data of past issues. However, a July 9 *Forbes* magazine article ([PA’s Gas Producers Become A Political Football in New AG Report](#)) points out the many flaws in the report. In fact, David Spigelmyer, President of the Marcellus Shale Coalition, was so taken aback by the factual errors in the Attorney General’s report that [in his letter addressed to every member of the state’s General Assembly](#), he wrote that, “The sheer breadth of factual inaccuracies, misrepresentations, legal omissions and unsubstantiated allegations compel my response on behalf of the tens of thousands of Pennsylvanians – your constituents – who take great pride in working to safely and responsibly develop the Commonwealth’s natural gas resources for the benefit of us all.” It remains to be seen if, or how, any of the recommendations may be implemented but AAPL will continue to closely monitor the situation for any developments. [Read more.](#)

## **STATE – Judicial**

**Dormant Mineral Act; Deeds; Leasing – Ohio.** On June 1, in [Fonzi v. Brown](#) (Case No. 2020-Ohio-3631), the Ohio Court of Appeals, Seventh District, addressed a Dormant Mineral Act (DMA) case challenging whether reasonable due diligence was exercised in locating potential heirs before serving notice of abandonment by publication. In reversing the trial court’s finding of reasonable due diligence, the Court held that the surface owner’s failure to search for holders outside of Ohio when the

severance deed indicated the grantors’ specific township and county there, *per se* did not meet the reasonable due diligence standard under the Ohio DMA. According to law firm, Frost Brown Todd LLC, “the takeaway from *Fonzi* is that Ohio courts require surface owners to take reasonable steps to provide holders with actual notice of the intent to abandon their severed mineral interest. Thus, where the severance deed provides specific information that a holder resided outside of the county in which the property is located, the surface owner *per se* violates the Ohio DMA’s reasonableness standard by not searching there.” [Read more.](#)

**Unknown Owners; Royalties – Texas.** On June 26, in *CKD Homes Direct, Ltd. v. Hegar* (Case No. 03-19-0076-CV), the Texas Court of Appeals, Third District (Austin), addressed a dispute over nearly \$300,000 in unclaimed royalty payments that had been sent to the state Comptroller by Enterprise Crude Oil, Ltd., the operator of mineral producing property in Andrews County, Texas. The Court held that the property tax sale purchaser was not entitled to the mineral estate’s unclaimed royalty payments. The purchaser had filed a Texas Unclaimed Property Business Owner Claim Form with the Comptroller of Public Accounts asserting a claim to the royalties that were delivered to the Comptroller after the owners were unable to be located. The purchaser filed suit in district court, which granted the Comptroller’s motion for summary judgment, holding that the purchaser did not acquire ownership to the unclaimed property. The purchaser then appealed and this Court held that the unclaimed royalty payments were attributable to oil production that took place before the date the purchaser acquired its royalty interest and additionally that the tax lien did not attach to the unclaimed royalty payments. Agreeing with the lower court ruling, the appellate court affirmed the decision. [Read more.](#)

## **INDUSTRY NEWS FLASH**

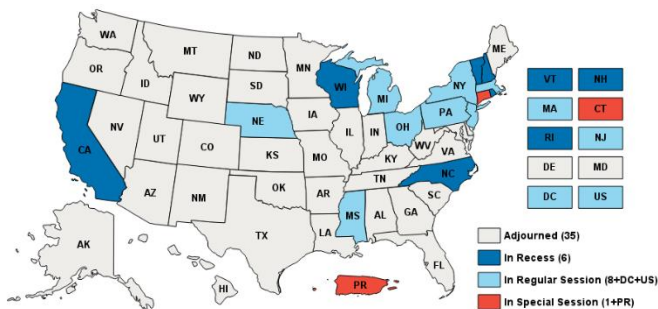
► **Well counts rising again in Permian.** On July 23, industry analyst Rystad Energy reported new well operations rising in July with the recovery especially

evident in the Permian Basin. “We therefore estimate that the final July [fracturing] count might surpass 400 wells, and will return to levels last seen in April 2020,” said Rystad Energy’s head of shale research, Artem Abramov. [Read more.](#)

► **U.S. EIA raises oil price forecasts.** The U.S. Energy Information Administration (EIA) has raised its West Texas Intermediate (WTI) oil price forecast as seen in the latest EIA July Short Term Energy Outlook report. The WTI spot price is expected to average \$37.55 per barrel this year and \$45.70 per barrel next year. “Oil prices rose in June as numerous regions worldwide began to lift stay at home orders and as global oil supply fell as a result of production cuts by the Organization of the Petroleum Exporting Countries (OPEC) and partner countries (OPEC+),” according to the EIA report. [Read more.](#)

## LEGISLATIVE SESSION OVERVIEW

### States in Session



**Session Notes:** Massachusetts, Michigan, Mississippi, Nebraska, New Jersey, New York, Ohio, and Pennsylvania are in regular session. The District of Columbia Council and 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: California (July 27), Vermont (August 25), North Carolina (September 2) and Rhode Island and Wisconsin (TBD).

**Massachusetts** is scheduled to adjourn their regular session on July 31.

**Minnesota** adjourned its special session in the early hours of July 21, reports [MPRNews](#).

**Missouri** Republican Gov. Mike Parson announced a special session to begin July 27 to address current crime rates within the state, reports [KY3](#).

**Nevada** adjourned its special session on July 19.

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

**Virginia** Democratic Gov. Ralph Northam called for a special session to begin August 18 to address police reform, reports the [Richmond Times-Dispatch](#).

**Signing Deadlines** (by date): **Nevada** Democratic Gov. Steve Sisolak has until July 30 to act on legislation presented on or after July 14 or it becomes law without signature. **Georgia** Republican Gov. Brian Kemp has until August 5 to act on legislation or it becomes law without signature. **Oregon** Democratic Gov. Kate Brown has until August 7 to act on legislation or it becomes law without signature. **Hawaii** Democratic Gov. David Ige has until September 11 to act on legislation presented on or after June 26 or it becomes law without signature. **Delaware** Democratic Gov. John Carney has 30 days after the final adjournment, which typically occurs immediately prior to the beginning of the next session, to act or it is pocket vetoed. **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 14 days from presentment to act on bills presented on or after July 19 or they are pocket vetoed. **North Carolina** Democratic Gov. Roy Cooper has 10 days from presentment to sign or veto legislation or it will become law without signature. **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.

**Alaska** Republican Gov. Mike Dunleavy, **Arkansas** Republican Gov. Asa Hutchinson, **Connecticut** Democratic Gov. Ned Lamont, **Kansas** Democratic Gov. Laura Kelly, **Kentucky** Democratic Gov. Andy Beshear, **Louisiana** Democratic Gov. John Bel Edwards and **Tennessee** Republican Gov. Bill Lee have acted on all legislation as of June 10. **Florida** Republican Gov. Ron DeSantis has acted on all legislation as of July 8. **Iowa** Republican Gov. Kim Reynolds and **Missouri** Republican Gov. Mike Parson had a signing deadline on July 14. **Colorado** Democratic Gov. Jared Polis had a signing deadline on July 15.

**Interim Committee Hearings:** The following states are currently holding 2020 interim committee hearings: [Alabama](#), [Alaska](#), [Arizona](#), [Arkansas](#), [Colorado](#), [Connecticut](#), [Idaho](#), [Indiana](#), [Kansas](#), [Kentucky](#), [Louisiana](#), [Maine](#), [Maryland](#), [Minnesota](#), [Missouri House](#) and [Senate](#), [Montana](#), [Nevada](#), [New Mexico](#), [New York Assembly](#) and [Senate](#), [North Dakota](#), [Oregon](#), [South Carolina House](#) and [Senate](#), [South Dakota](#), [Tennessee](#), [Utah](#), [Virginia](#), [Washington](#) and [Wyoming](#).

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

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# GOVERNMENTAL AFFAIRS WEEKLY REPORT

## Weekly Highlights At-A-Glance

### FEDERAL – Legislative

**H.R. 1957 – Great American Outdoors Act.** On August 4, President Trump signed into law a major piece of conservation legislation, [H.R. 1957](#), known as the *Great American Outdoors Act*. The bipartisan bill provides \$900 million annually in collected federal oil and gas revenues for the Land and Water Conservation Fund (LWCF), which helps secure land for trails and parks. The legislation would also provide billions of dollars over five years to address a maintenance backlog at national parks. “The National Park Service accounts for 84 million acres of land at 400 different sites, but as of 2019, they were due for \$11.9 billion in deferred maintenance and repairs. The bill will direct up to \$6.65 billion to priority fixes and up to \$3 billion for agencies” such as the [Bureau of Land Management, Forest Service, and Fish and Wildlife Service](#). Additionally, the new law makes LWCF funding permanent and allows Congress to provide for alternate allocations using specified procedures. “President Trump has just enacted the most consequential dedicated funding for national parks, wildlife refuges, public recreation facilities and American Indian school infrastructure in U.S. history,” said Interior Secretary David Bernhardt in a statement. “I’ve designated August 4th as Great American Outdoors Day and waived entrance fees to celebrate the passage of this historic conservation law.” The Act is effective as of the 2021 federal fiscal year. [Read more.](#)

**S. 4288 – Badger-Two Medicine Protection Act.** On July 22, Sen. Jon Tester (D-MT) introduced [S. 4288](#), known as the *Badger-Two Medicine Protection Act*. The bill would permanently protect 130,000 acres of the Badger-Two Medicine region as a “cultural heritage area.” This comes following the Interior Department’s 2017 cancellation of all oil

and gas leases in the Badger-Two Medicine area. However, one lease remained in litigation and on June 16, [the U.S. Court of Appeals for the D.C. Circuit canceled that final lease](#), which opened “a window for the Blackfeet Nation to focus on permanently protecting all that remains of the ceded strip.” [According to a statement by Sen. Tester](#), “A few weeks ago, the Blackfeet Tribe and the people of Montana won a huge victory for our public lands when the last oil and gas lease in the Badger-Two Medicine was remanded to a lower court,” said Tester. “Now it’s time we build on this momentum and continue the fight to safeguard this sacred area, which is why I am introducing legislation that honors the will of the Blackfeet Tribe and of public lands owners across our state by permanently protecting the Badger-Two Medicine for future generations.” [Read more.](#)

**Coronavirus Stimulus Legislation.** Congressional lawmakers continue negotiations on the next coronavirus stimulus package and are expected to return to Washington, DC this week to work towards a consensus agreement even though lawmakers were originally scheduled to be on August recess and still remain far apart on any agreement. Congress failed to pass a bill before the federal \$600 weekly unemployment supplemental benefit expired on July 31. [According to a CNBC report](#), “A subset of workers — such as part-timers, low-wage workers, and some freelancers and [independent] contractors — will feel that cut more acutely than others.” The Trump administration and congressional leaders have yet to reach an agreement on this provision either. “Democrats and Republicans are still negotiating what to do, including whether to extend or replace the \$600-a-week supplement.” However, [in late-breaking news on Saturday afternoon](#), President Trump announced he



was signing four executive orders amidst the legislative stalemate. According to a report by *Politico*, "Trump laid out four actions that he said would cut taxes for workers through the end of the year, extend boosted unemployment benefits but at a reduced rate, renew a moratorium on evictions during the pandemic, and defer student loan payments and interest until further notice." [According to Fox News](#), one order provides \$400 in weekly unemployment supplemental benefits, rather than the \$600 weekly federal benefit which expired on July 31. In signing the orders, Trump blamed Democrats for the coronavirus deal stalemate in Congress and said he was taking matters into his own hands. "Democrats are obstructing all of it," said President Trump. "Therefore, I'm taking executive action...and we're going to save American jobs and provide relief to the American workers." [Read more.](#)

## **FEDERAL – Regulatory**

**LNG Exports; Pipelines – Washington, DC.** On July 29, President Trump announced that export authorizations for liquefied natural gas (LNG) will now run through 2050 and he also signed four permits for pipeline and rail transport of fossil fuels. The administration had already proposed extending LNG export terms through 2050 but this move finalizes that policy. The LNG export terms previously lasted only 20 years. "The United States is now the No. 1 producer of oil and natural gas on the face of the earth," said President Trump during a speech in Midland, Texas. As for pipelines and rail transport, The Hill reports "the permits allow for the construction and maintenance of pipeline facilities between the U.S. and Mexico and also for the construction of railway facilities at the U.S.-Mexico border. His action also allows for the maintenance of an existing pipeline at the U.S.-Canada border." [Read more.](#)

**BLM Rulemaking – Washington, DC.** On July 29, the [Bureau of Land Management \(BLM\) announced proposed rulemaking](#) that would streamline requirements for measuring and reporting oil and

gas produced from federal lands. The proposed rule, [Revisions to the Oil and Gas Site Security, Oil Measurement, and Gas Measurement Regulations](#), is designed to reduce burdensome bureaucracy, redundant recordkeeping and measurement requirements, while ensuring that taxpayers receive accurate royalties from oil and gas produced on Federal and Tribal lands, according to the BLM. "These proposed enhancements streamline regulations to ensure that our oversight of energy production on America's public lands is consistent and fair," said Deputy Secretary of the Interior Kate MacGregor. "Administration officials and industry representatives said the latest changes are meant to reduce the bureaucratic workload faced by smaller oil and gas producers. Many smaller companies have struggled to stay in business amid a drop in demand due to the coronavirus and a recent international dispute that drove down oil prices. The 438-page proposal will be subject to public comment after being published in the Federal Register." A publication date has not yet been set, said BLM spokesman Chris Tollefson. "As prices come back up and we start ramping up production, anything that can streamline and modernize the way we do things would definitely be helpful," said Petroleum Association of Wyoming spokesman Ryan McConnaughey. [Read more.](#)

**BLM Oil and Gas Lease Sale – Montana; North Dakota.** On August 3, the BLM released the September 2020 Notice of Competitive Oil and Gas Lease Sale List, which includes 38 parcels totaling about 17,302.43 acres. The sale is scheduled to occur online starting on September 22. The proposed parcels are located in Dawson, Sheridan and Richland counties in Montana, and Burke, McKenzie, Williams, Billings and Slope counties in North Dakota. [Read more.](#)

**Resource Management Plan – North Dakota.** On July 28, the BLM published a *Notice of Intent To Prepare a Resource Management Plan and Associated Environmental Impact Statement for the North Dakota Field Office, North Dakota (85 Fed. Reg. 45438)* which begins a public comment period that

runs through August 27. According to the notice, "The North Dakota planning area comprises approximately 58,900 acres of BLM-managed surface lands and approximately 4.6 million acres of BLM-administered Federal minerals. The bulk of the Federal mineral estate is coal. Additional acres are Federal oil and gas reserves only. The remaining acres are comprised of all minerals, coal and oil and gas only, and other reservations. The focus of the North Dakota Field Office has been mineral management on split estate lands (private surface and Federal minerals)." [Read more.](#)

**Oil and Gas Project – Wyoming.** On July 30, the [BLM Casper Field Office published a final Environmental Impact Statement \(EIS\) and proposed Resource Management Plan \(RMP\)](#) amendment for an oil and gas project in Converse County. The Converse County EIS evaluates a proposal submitted by five exploration and production companies to develop oil and gas resources in the county. According to the BLM, "the operator group proposes to drill approximately 5,000 oil and natural gas wells in Converse County in an area encompassing approximately 1.5 million acres over a 10-year period. The BLM's proposed resource management plan amendment would modify the Casper RMP to allow for timing limitation relief in the project area in a manner that balances regulatory certainty for year-round drilling with the conservation of non-eagle raptor species." The publication of the BLM notice in the Federal Register ([85 Fed. Reg. 46171](#)) began a 30-day protest period that ends August 31, 2020. [Read more.](#)

**ONRR Valuation Rule Extensions.** As a reminder, the U.S. Department of the Interior's Office of Natural Resources Revenue (ONRR) has extended the reporting and payment deadline for lessees to comply with the federal oil and gas provisions of the Consolidated Federal Oil & Gas and Federal & Indian Coal Valuation Reform Rule (2016 Valuation Rule) from July 1, 2020, to October 1, 2020 due to the ongoing COVID-19 pandemic. ([You may read more about the rule published at 81 Fed. Reg. 43337 here](#)) According to the ONRR announcement, "Lessees are

responsible for submitting amended reports and additional payments, if applicable, under the 2016 Valuation Rule for production and sales of federal oil and gas occurring on and after January 1, 2017. Payors will remain liable for late payment interest for any underpayment from the month the royalty payment was due until paid. The Department of the Interior has received feedback from industry stating that because this reinstatement requires system changes and re-reporting for the period January 1, 2017, through the present, additional time is necessary for industry to comply with the requirements of the 2016 Valuation Rule. Since ONRR set the July 1, 2020, deadline, the global crisis arising from the COVID-19 pandemic and resulting National Emergency has impacted many sectors of the economy, including the energy sector." To review the applicable ONRR letter detailing the extension, [read more here.](#)

**Lending Discrimination Against the Oil and Gas Industry.** (*Update to 6/22/20 Weekly Report*) On July 24, [Brian P. Brooks, Acting Comptroller of the Currency for the U.S. Office of the Comptroller of the Currency \(OCC\) responded](#) to U.S. Senator Dan Sullivan (R-AK) regarding a growing number of banks refusing to lend capital for Arctic drilling projects. For background, federal lawmakers, led by Sullivan, had been pushing Trump administration officials to punish banks for limiting fossil fuel lending. [On June 16, the Alaska delegation sent a letter](#) to Federal Reserve Chairman Jerome Powell and Vice Chair Randy Quarles, Acting U.S. Comptroller of the Currency Brian P. Brooks, and Chairwoman Jelena McWilliams of the Federal Deposit Insurance Corporation, urging these officials to consider regulatory action and oversight of large American financial institutions that are "openly discriminating against some of the most economically disadvantaged regions of America" by refusing financing of domestic energy projects, particularly in Alaska and the Arctic. The Alaska delegation argued that the banks are harming a foundation of the U.S. economy at a time when businesses, workers, and families are already reeling from the economic fall-out of the COVID-19

pandemic. “It is clear that these policies are overtly political and actually meant to appease extreme activists’ calls for fossil fuel divestment and to discriminate against certain sectors of the energy industry and projects in specific geographical areas,” said the legislators. Since November 2019, Citigroup, Goldman Sachs, JP Morgan, Morgan Stanley, and Wells Fargo have announced policies to stop lending to new oil and gas projects in the Arctic, including the 1002 Area of the Arctic National Wildlife Refuge. The letter writers question whether these policies violate multiple federal laws. In his response, Brooks wrote, “Oil is the most actively traded commodity in the world. Given the industry’s importance and ubiquity in our daily lives, I am skeptical of claims that the sector poses a ‘reputational risk’ to the banks that serve it.” Brooks said the OCC would analyze whether certain decisions on oil and gas lending “violate any duty or obligation under federal laws.” He specifically cited the Dodd-Frank Act mandate that the OCC ensure “fair access to financial services,” adding that “the OCC will examine the possibility of issuing regulations defining fair access to provide clarity to banks and customers alike.”

[Read more.](#)

### **U.S. Department of Energy Appointment –**

**Washington, DC.** On August 4, the U.S. Senate finally confirmed President Trump’s pick for Deputy Secretary of the U.S. Department of Energy, Mark Menezes. Originally nominated in March, Menezes has served as Undersecretary of Energy and “has advised the department on policy and technology since 2017. Before joining the Trump administration, he lobbied for Berkshire Hathaway Energy, which, through subsidiaries, produces energy from sources including coal, natural gas, wind, solar, nuclear and geothermal. Other former clients include Marathon Oil, ConocoPhillips, Koch Mineral Services and utility company Duke Energy.” [Read more.](#)

## **FEDERAL – Judicial**

**Dakota Access Pipeline – Washington, DC.** (*Update to 7/27/20 Weekly Report*) On August 5, the U.S. Court of Appeals for the District of Columbia gave a

reprieve to the court-ordered shutdown of the Dakota Access Pipeline (DAPL). The appeals court reversed a lower court’s determination that the DAPL should be temporarily shut down. In July, U.S. District Court Judge James Boasberg ordered the pipeline be shut down by August 5 while the Army Corps of Engineers prepared an environmental impact statement (EIS) for a rule relaxation that allowed it to cross the Missouri River. The three-judge appellate panel, however, ruled that the lower court did not have the “findings necessary” for such a move. [As reported by The Hill](#), “It’s now up to the Army Corps of Engineers to decide whether to shut down the pipeline and if it doesn’t do so, the matter will return to the lower court.” For background, on July 6, the U.S. District Court for the District of Columbia issued a ruling ordering the DAPL to be shut down and emptied by August 5. In [Standing Rock Sioux Tribe v. U.S. Army Corps of Engineers](#) (Case No. 16-1534), the Court held that the U.S. Army Corps of Engineers violated the National Environmental Policy Act (NEPA) when it granted the easement to construct the pipeline under Lake Oahe (which is a large reservoir lying behind a dam on the Missouri River and stretching between North and South Dakota). The Court held that NEPA required the Army Corps of Engineers to produce an Environmental Impact Statement (EIS) for the easement application, rather than only the Environmental Assessment that was completed. Judge James Boasberg ruled that the pipeline, which has been in operation since 2017, should be turned off until the Corps completes an EIS. This process is expected to take 13 months. In sum, the Court held that “given the seriousness of the Corps’ NEPA error, the impossibility of a simple fix, the fact that Dakota Access did assume much of its economic risk knowingly, and the potential harm each day the pipeline operates, the Court is forced to conclude that the flow of oil must cease. Not wishing to micromanage the shutdown, it will not prescribe the method by which DAPL must achieve this. The Court will nonetheless require the oil to stop flowing and the pipeline to be emptied within 30 days from the date of this Opinion and accompanying Order.” Industry players and analysts also weighed in on

the July decision. “This court ruling will create major obstacles for producers in North Dakota, who’ve been struggling to rebound,” said Sandy Fielden, director of research for Morningstar, Inc. The buyers of Bakken crude, he said, will simply turn elsewhere for supplies once the pipeline dries up. Phillips 66, which owns a stake in the pipeline, said it was disappointed in the court ruling. “The negative impacts resulting from this court’s decision to markets, customers, and jobs up and down the energy value chain will inflict more damage on an already struggling economy and jeopardize our national security,” said spokesman Dennis Nuss. [Read more.](#)

### **National Environmental Policy Act – California.**

On July 29, environmental activists filed a federal lawsuit against the Trump administration in the U.S. District Court for the Northern District of California. In [Alaska Community Action on Toxics v. Council on Environmental Quality](#) (Case No. not yet docketed) the plaintiffs challenge the Trump administration’s recently finalized changes to the National Environmental Policy Act (NEPA) which the plaintiffs say “gut a law designed to weigh environmental and community effects before roads, pipelines, oil and gas drilling and other major construction projects are permitted.” (See [NEPA Final Rule; 85 Fed. Reg. 43304](#)) The update to NEPA removes requirements to consider climate change before proceeding on a project. The NEPA changes also allow for more industry involvement in reviewing the environmental effects of their projects. The Trump administration has argued the NEPA changes were necessary to “modernize” a law that can delay projects with environmental reviews that can last as long as four years. The White House Council on Environmental Quality has yet to comment on the litigation. [Read more.](#)

## **STATE – Legislative**

**Well Setbacks – California.** (Update to 7/27/20 Weekly Report) In a victory for the oil and gas industry, on August 5, [AB 345](#) died in committee. The Democratic bill – which AAPL has been actively

monitoring for members since its introduction – would have amended existing law to direct the California Natural Resources Agency to create an environmental justice program, identify gaps in public safety, and establish minimum setback requirements, including considering a 2,500-foot buffer around sensitive areas around such places as schools, childcare facilities, playgrounds, residences, hospitals, and health clinics. Labor and industry groups said the bill would have been a job killer. “This is going to shed jobs at the worst time possible,” said Sen. Andreas Borgeas (R). Currently, the state has a patchwork of local/state requirements for setbacks ranging from 300 to 1,500 feet depending on use location. According to Bloomberg News, bill sponsor, Asm. Al Muratsuchi (D), “said it was unclear if the bill would be brought up again and declined further comment. Other oil and gas states like Colorado, Pennsylvania, and Wyoming have statewide buffer zones, but California has no such regulation.” [Read more.](#)

**Uniform Wills Recognition Act – Nebraska.** (Update to 1/20/20 Weekly Report) On July 27, LB 966 advanced out of committee. The bill was set to die in the session ending in May but due to COVID-19 the session was extended to August 13 and this bill is active again. The measure, sponsored by Sen. Wendy DeBoer, would adopt the Uniform Wills Recognition Act (1977). The Act implements an international convention calling for all countries and states to adopt a uniform formality for executing wills. The Act also allows probate courts of the enacting state to recognize any will meeting the Act’s requirements. As of this report, [19 states](#) have already adopted the Act. [Read more.](#)

**Legislative Interim Charges – Texas.** On July 29, the Texas House of Representatives published a Notice of Formal Request from the Ways & Means Committee which “requests written submissions from interested parties and the public in regards to the assigned Interim Charges below.” During off-year periods (the next Texas legislative session resumes in 2021), the Speaker of the House and the Lt. Governor issue Interim Charges, which are

“assignments for members of their respective chambers to hear public and invited testimony, conduct research and submit reports on issues deemed important by the leader of each chamber. These reports are then considered by lawmakers as they start to draft and consider legislation.” ([Read more](#)) Among the current Charges covering matters not related to AAPL, the Committee seeks input on “Charge 4: Evaluate the status of water recycling and reuse efforts in the oil and gas industry in Texas and elsewhere. Evaluate options for tax credits, deductions, or discounts to encourage recycling, treatment, or reuse of produced water from oil and gas production activities. Make recommendations on statutory or regulatory changes needed to promote recycling and reuse strategies for produced water. (Joint charge with the House Committee on Energy Resources).” Please click “Read more” below for instructions on submitting comments due by September 14, 2020. [Read more.](#)

## **STATE – Regulatory**

**Well Setbacks; Regulatory Update – Colorado; Pennsylvania.** On July 29, the Institute for Energy Research (IER) presented their latest podcast episode featuring Kathryn Klaber, founder and former CEO of the Marcellus Shale Coalition, who joined the show to discuss the regulatory landscape in Pennsylvania and steps that energy producers have proactively taken to ensure the safety of their communities and how these realities differ from the story presented in a recent report by the state’s attorney general. ([Listen to the podcast here](#)) IER also provided analysis of ballot initiatives in Colorado that once again seek to impose well setbacks in the state. [Read more.](#)

**Ban on New Oil and Gas Connections Invalidated – Massachusetts.** On July 21, the Massachusetts Attorney General ruled invalid a new general bylaw adopted by Brookline township “that would have broadly prohibited building permits for new construction and significant renovations to existing buildings if they included new natural gas or oil

connections. When Brookline passed this bylaw in November 2019, it became the first town in Massachusetts to seek through town regulation to reduce carbon emissions by requiring homeowners and developers to install electric heat, hot water and appliances. The city of Berkeley, CA, was the first in the United States to ban natural gas hookups in new buildings last July.” Although the Democratic Attorney General Maura Healy said she supported Brookline’s policy goals she was nevertheless compelled under state law to invalidate the bylaw. [Read more.](#)

**RRC Flaring/Venting Rule – Texas.** On August 4, the Railroad Commission of Texas (RRC) announced it is accepting public comment on proposed revisions to the Statewide Rule 32 Exception Data Sheet, *Application for Exception to Statewide Rule 32*. The Statewide Rule 32 Exception Data Sheet is filed when an operator requests authority to flare or vent gas. The proposal “will improve the effectiveness of the RRC’s Rule 32 exception program by: requiring operators to more thoroughly document the circumstances surrounding the need to flare gas; providing the RRC accurate information to assess compliance with the flare/vent authority; and encouraging transparency in understanding the broader needs and reasons for flaring and/or venting during oil and gas production operations in Texas.” Public comments will be accepted through September 4, 2020. To view the proposed revisions and submit a comment, visit the RRC website at <https://rrc.texas.gov/about-us/resource-center/forms/proposed-form-changes/>. For further information and details on Statewide Rule 32, [read more here.](#)

**State Trust Lands – Wyoming.** On July 30, the Wyoming Office of State Lands and Investments announced that they are seeking proposals for development on state trust lands in Teton County. State Lands and Investments say they are seeking proposals which “would maximize the value of the parcel to the greatest extent possible.” During their recent spring legislative session, the Wyoming Legislature enacted [HB 162](#), which requires the

Office of State Lands and Investments to seek development proposals for school and state trust lands in Teton County. ([Read more about HB 162 here](#)) The new law, which is effective as of August 1, 2020 for the solicitation of proposals, allows a number of development proposal types which includes both commercial and agricultural uses, among other uses. [Read more.](#)

## STATE – Judicial

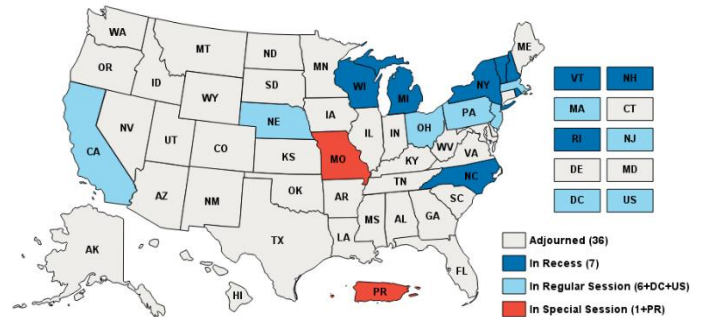
**Leasing; Surface Agreements; Location Damages – Texas.** On May 29, in *Evans Resources, L.P. v. Diamondback E&P, LLC* (Case No. No. 11-18-00128-CV.), the Texas Court of Appeals, Eleventh District (Eastland), addressed a dispute over a surface agreement and its various amendments and whether the terms of those contracts required certain location damages to be paid. Here, the Court held in construing the agreements that the trial court did not err when it determined that Diamondback was not required to pay location damages for an Approved Horizontal Well Pad (AHWP) until it utilized the land for the purpose of the construction of the AHWP. The Court addressed this among other issues raised on appeal including the timing required for location damages payments and whether surveying was construed as “utilization” of the lands. [Read more.](#)

## INDUSTRY NEWS FLASH

► **BP pledges to cut oil and gas production by 40%.** Last week, BP unveiled details of its strategy to slash carbon emissions and cut oil and gas production by 40 percent while ramping up low-carbon investments 10-fold by 2030 to reduce global emissions. The company also “plans to partner with up to 15 cities and three ‘core industries’ to help with their transition to net-zero emissions.” [Read more.](#)

## LEGISLATIVE SESSION OVERVIEW

### States in Session



**Session Notes (by date):** California, Massachusetts, Nebraska, New Jersey, Ohio, and Pennsylvania are in regular session. The District of Columbia Council is in regular session and the U.S. Congress was scheduled to be on August recess but remains available for return to Washington, DC for possible action on any coronavirus stimulus legislation.

The Nevada legislature adjourned their special session shortly after midnight on August 6 after passing COVID-19 liability bills, reports [8 News Now](#).

Oregon Democratic Gov. Kate Brown called for a [special session](#) to begin August 10 to deal with balancing the budget.

Tennessee Republican Gov. Bill Lee called for a special session to convene on August 10 to address COVID-19 liability, reports [News 4 Nashville](#).

Virginia Democratic Gov. Ralph Northam called for a special session to begin August 18 to address police reform, reports the [Richmond Times-Dispatch](#).

Idaho Republican Gov. Brad Little called for a [special session](#) to begin the week of August 24. Topics for the session have not been decided at this time, but they could include the November general election and liability reform during emergencies.

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

The following legislatures are postponing their 2020 legislative sessions due to COVID-19 until the dates provided: **Michigan** (cancelled week of August 3 after legislator tested positive for COVID-19; no date provided for reconvening), **North Carolina** (September 2) and **Rhode Island**, and **Wisconsin** (TBD).

**Signing Deadlines** (by date): **Nevada** Democratic Gov. Steve Sisolak has until August 17 to act on legislation or it becomes law without signature. **Hawaii** Democratic Gov. David Ige has until September 11 to act on legislation presented on or after June 26 or it becomes law without signature. **New York** Democratic Gov. Andrew Cuomo has until February 5, 2021 to act on legislation or it is pocket vetoed. **Connecticut** Democratic Gov. Ned Lamont has 15 days from presentment to act on legislation or it becomes law without signature. **Delaware** Democratic Gov. John Carney has 30 days after the final adjournment, which typically occurs immediately prior to the beginning of the next session, to act or it is pocket vetoed. **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 14 days from presentment to act on bills presented on or after July 19 or they are pocket vetoed. **Mississippi** Republican Gov. Tate Reeves has 15 days from presentment to act on legislation or the bill becomes law. **North Carolina** Democratic Gov. Roy Cooper has 10 days from presentment to sign or veto legislation or it will become law without signature. **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.

**Nevada** Democratic Gov. Steve Sisolak had a signing deadline on July 30. **Georgia** Republican Gov. Brian Kemp had a signing deadline on August 5. **Oregon**

Democratic Gov. Kate Brown had until August 7 to act on legislation in the regular session or it becomes law without signature.

**Interim Committee Hearings:** The following states are currently holding 2020 interim committee hearings: [Alabama](#), [Alaska](#), [Arizona](#), [Arkansas](#), [Colorado](#), [Connecticut](#), [Delaware](#), [Idaho](#), [Indiana](#), [Kansas](#), [Kentucky](#), [Louisiana](#), [Maine](#), [Maryland](#), [Minnesota](#), [Missouri House](#) and [Senate](#), [Montana](#), [Nevada](#), [New Mexico](#), [New York Assembly](#) and [Senate](#), [North Dakota](#), [Oregon](#), [South Carolina House](#) and [Senate](#), [South Dakota](#), [Tennessee](#), [Utah](#), [Virginia](#), [Washington](#) and [Wyoming](#).

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

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# GOVERNMENTAL AFFAIRS WEEKLY REPORT

## Weekly Highlights At-A-Glance

### FEDERAL – Legislative

**Congressional Recess; Coronavirus Stimulus – Washington, DC.** With Democratic and Republican legislators remaining far apart on any future agreement regarding coronavirus stimulus, the U.S. House of Representatives and U.S. Senate have left Capitol Hill for their August recess. No coronavirus stimulus bill is expected to advance during the recess, but should a late-breaking agreement materialize, legislators will be given 24-hour notice to return for votes. Otherwise, lawmakers are expected to return to Washington, DC for legislative work beginning September 14. [Read more.](#)

### FEDERAL – Regulatory

**EPA Methane Rule – Washington, DC.** On August 13, the U.S. Environmental Protection Agency (EPA) “finalized a three-year effort to revise, amend, or repeal the 2012 and 2016 new source performance standards regulating volatile organic compound and methane emissions from the oil and gas production, processing, and transmission and storage segments. EPA has issued two rules that make sweeping changes to these Obama-era regulations.” [\(Read more here\)](#) The 2012 and 2016 New Source Performance Standards (NSPS) for the Oil and Natural Gas Industry, also referred to as the “Methane Rule,” imposed both compliance and regulatory costs on the oil and gas industry. The rollback fulfills President Trump’s 2017 Executive Order, [Presidential Executive Order on Promoting Energy Independence and Economic Growth](#), which directed that “it is essential that agencies use estimates of costs and benefits in their regulatory analyses that are based on the best available science and economics.” The EPA had estimated “that the

two new rules it put forward would have combined net benefits worth \$750 million to \$850 million dollars from 2021 to 2030.” According to law firm, Jackson Walker, [the final rules](#) “redefine the types of sources covered under the NSPS, rescind methane limits for the remaining sources, reduce monitoring requirements, allow operators to follow state-issued regulations in lieu of EPA requirements and alters the schedule for repairing leaks.” The final rules await publishing in the Federal Register to effectuate rule implementation. [Read more.](#)

**BLM Headquarters Move – Colorado.** *(Update to 11/18/19 Weekly Report)* As of August 10, Grand Junction, Colorado officially became the headquarters for the Bureau of Land Management (BLM), according to an order signed by Interior Secretary David Bernhardt ([Order No. 3382](#)) which “completes the process of relocating the federal agency headquarters closer to both the land it administers and to its employees.” According to The Hill, “The [BLM] move to the new headquarters leaves just 61 of the agency’s 10,000 employees in D.C. as part of a plan to move about 25 employees to the Colorado office while scattering roughly 200 at existing offices across the West.” [Read more.](#)

**BLM Director Appointment.** *(Update to 5/11/20 Weekly Report)* President Trump is withdrawing the nomination of William Perry Pendley to head up the BLM. Unable to receive a Senate vote on his nomination for more than a year, Pendley has been serving as BLM Acting Director at the appointment of Interior Secretary David Bernhardt. Pendley’s nomination has not been without controversy given some of his land use positions. While it was to be expected that Democrats and environmental groups would assail his leadership, an increasing number of Republicans also refused to support his nomination.



Pendley has decades of experience in public lands and as an attorney he was the president of the Mountain States Legal Foundation for nearly three decades fighting environmental extremism on behalf of ranchers, mining companies, and the oil and gas industry. [Read more](#)

**BLM Oil and Gas Lease Sale – Utah.** On August 11, the BLM Utah State Office announced it will offer 23 parcels, totaling approximately 27,387.86 acres, at the oil and gas lease sale during the week of September 28. The parcels are located in Juab, Sanpete, Sevier, Emery, Duchesne, and Uintah counties on lands managed by the BLM's Richfield, Vernal, Price and Fillmore Field Offices. At this time, the BLM will not offer parcels for sale located within Grand or San Juan counties managed by the Moab Field Office. The cancellation of those parcels comes after the Moab City Council and Grand County Council [sent letters to the BLM asking them to cancel the sale](#) due to a lack of cooperation with local leaders, according to the councils. [Read more.](#)

**ANWR Oil and Gas Plan – Washington, DC.** On August 17, the Trump administration finalized plans that would open up 1.5 million acres of the Arctic National Wildlife Refuge (ANWR) to oil and gas drilling. The plan, to be implemented by Interior Secretary David Bernhardt, would open up the entire 1.56 million-acre area of the refuge's Coastal Plain. (See [85 Fed. Reg. 51754](#)) "Over the course of this oil and gas program, it could create thousands of new jobs and generate tens of billions of dollars," said Interior Secretary David Bernhardt during the announcement. The 2017 federal tax bill passed by the Republican-led Congress and enacted by President Trump opened ANWR to drilling. That law now requires the Interior Department to hold at least two lease sales of at least 400,000 acres each over the next few years. Those sales are expected to take place before December 22, 2021 and December 22, 2024 respectively, but Bernhardt said he is not laying out the specific dates of the sales at this time. [Read more.](#)

**ONRR Indian Gas Production Payments.** On August

11, the U.S. Department of the Interior's Office of Natural Resources Revenue (ONRR) published a correction notice, *Major Portion Prices and Due Date for Additional Royalty Payments on Indian Gas Production in Designated Areas Not Associated With an Index Zone; Correction* ([85 Fed. Reg. 48561](#)) which states that on August 4, the ONRR published in the Federal Register a document (see [85 Fed. Reg. 47240](#)) that announced calendar year 2018's major portion prices for Indian leases and the due date for industry to pay additional royalties based on major portion prices. The document incorrectly stated in the dates section that the due date to pay additional royalties is October 5, 2020 when it should have stated that the due date is October 31, 2020. [Read more.](#)

## **FEDERAL – Judicial**

**BLM Oil and Gas Leasing; National Environmental Policy Act – New Mexico.** (Update to 6/10/19 Weekly Report) On August 18, a federal court dealt a blow to environmental activists in the long-running case against the Bureau of Land Management (BLM). In [WildEarth Guardians v. Bernhardt](#) (Case No. 1:2019-cv-00505), the U.S. District Court for the District of Mexico rejected WildEarth's claim that the BLM "failed to properly take into consideration a sufficient analysis of how the oil and gas leases across more than 68,232 acres of public land in New Mexico would affect the local and regional environments." In his opinion, Judge Robert C. Brack wrote, "BLM sufficiently analyzed how these leases affect the local and regional environment, and its conclusion that the impact was not significant was not arbitrary and capricious." The only count in which the Court ruled partially in favor of the litigants was allowing for the halting of future leases that do not allow for public participation (which they all do), but the Court refused WildEarth's request to stop future leasing authorizations in the region. Judge Brack also denied WildEarth's request for attorney's fees. [Read more.](#)

**Climate Change – Ninth Circuit (California).** (Update to 6/8/20 Weekly Report) On August 4,

the U.S. Court of Appeals for the Ninth Circuit [denied a request by oil and gas company defendants](#) for a full panel rehearing of the court's May decision that allowed California state/county climate change claims to remain in state court. For background, on May 26, a three-judge panel of the U.S. Court of Appeals for the Ninth Circuit 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, [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.](#)

**Coastal Damages Lawsuits – Louisiana.** On August 10, in [The Parish of Plaquemines v. Chevron USA, Inc.](#) (Case No. 19-30492), the U.S. Court of Appeals for the Fifth Circuit (Louisiana) upheld a lower court decision keeping coastal damages lawsuits against oil and gas companies in state court, where the six coastal parishes want them tried. "The lawsuits, some of them dating to 2013, charge that oil and gas firms failed to follow state law when they drilled wells, built canals, disposed of waste and carried out other activities that contributed to coastal wetlands loss." In the cases, a group of Louisiana parishes filed suit in state court seeking relief from various oil

companies under the Louisiana State and Local Coastal Resources Management Act of 1978 alleging that the oil companies were liable for acts they committed during World War II. For a second time, the oil companies sought to remove all forty-two cases to federal court, contending that an expert report makes clear for the first time that they are being sued for activities they took during World War II while acting under the authority of a federal wartime agency and making the case removable under the federal officer removal statute. The oil companies also contended that the report demonstrates that the parishes' claims implicate federal question jurisdiction and thus belong in federal, not state court. The Court disagreed and held that the information disclosed in the expert report did not provide new information previously unavailable to the companies, warranting removal to federal court. The Court found, rather, that the report simply repeated information from a 1980 Louisiana Coastal Resources Program Final Environmental Impact Statement (FEIS) that the parishes filed before the oil companies' first removal attempt in 2013; the FEIS discusses many of the specific wells involved in this litigation by referring to their unique serial numbers; and those serial numbers refer to wells the companies drilled before or during World War II. In response to the decision, the Louisiana Oil and Gas Association and Mid-Continent Oil and Gas Association [issued a joint statement](#) which read in part, "To be clear, the Fifth Circuit's decision issued today has no bearing on the facts of the case nor the merits of the issues raised by the defendants in the litigation. Whether these cases move forward in federal court or state court, we will continue to defend against the meritless cases and show why the lawsuits do nothing for Louisiana's coast." [Read more.](#)

**Migratory Birds; Interior Department – New York.** On August 11, the U.S. District Court for the Southern District of New York struck down a 2017 Interior Department legal opinion that the Trump administration relied upon for an easing of regulations under the Migratory Bird Treaty Act. That opinion would have held companies – such as those

in the oil and gas industry – liable for the killing of migratory birds only if the acts were “intentional” rather than “incidental.” In consolidated cases, [Natural Resources Defense Council v. U.S. Dept. of the Interior](#) (Case No. 1:18-cv-04596-VEC), the Court held that the Migratory Bird Treaty Act makes it unlawful to kill birds “by any means whatever or in any manner” and thus the administration’s interpretation and relaxing of the meaning could not be squared with the plain language of the statute. The Interior Department criticized the court’s decision, saying it “undermines a common sense interpretation of the law and runs contrary to recent efforts, shared across the political spectrum, to de-criminalize unintentional conduct.” The Interior Department has not yet indicated whether it will appeal the decision. [Read more.](#)

### **National Environmental Policy Act – New York.**

On August 6, environmental activists filed a 97-page federal complaint against the Trump Administration in [Environmental Justice Health Alliance v. Council on Environmental Quality](#) (Case No. 1:20-cv-06143) in which they challenge the recent update to the National Environmental Policy Act (NEPA) which requires certain environmental reviews prior to the approval of major infrastructure projects and which the administration has relaxed. “The new rule attempts to speed up project approvals by restricting the definition of what environmental ‘effects’ must be considered in project applications by excluding the terms ‘direct,’ ‘indirect,’ and ‘cumulative,’ which the agency claimed were confusing and fodder for litigation. The proposed rule would define ‘effect’ as only affecting the ‘human environment,’ being ‘reasonably foreseeable’ and having a ‘reasonably close causal relationship to the proposed action.’” The litigants claim the changes “will eliminate environmental reviews for entire classes of projects, which could have devastating impacts on people and the environment.” The administration has yet to respond to the suit. [Read more.](#)

## **STATE – Legislative**

**Ballot Initiatives – Colorado.** (Update to 6/8/20

*Weekly Report*) In a win for the industry, Gov. Jared Polis (D) announced his opposition to anti-industry well setback ballot initiatives and that various stakeholders have agreed to remove those initiatives from the November ballot. “In recent years, those conflicts resulted in expensive, divisive fights at the ballot box and the courtroom, which did not satisfy homeowners, environmentalists, or the oil and gas industry. There are no real winners in these fights, and for most of this election season it looked like we might see another round of the oil and gas ballot wars in 2020,” said Gov. Polis. “But today, I’m very proud to report that we have a path before us to make those divisive oil and gas ballot fights a thing of the past. In conversations I’ve had with industry and environmental groups, both have committed to me a willingness to let Senate Bill 181 (SB181), the landmark oil and gas legislation enacted in 2019, work through the regulatory process. These groups have committed to withdraw current ballot measures filed for 2020 and have expressed a willingness to work together to prevent future ballot measures through 2022.” Gov. Polis continued, “SB19-181 requires Colorado to put health and safety first when it comes to oil and gas extraction activities, and gave local communities a major say over residential drilling in their area. And SB181 established a full-time, professional Colorado Oil and Gas Conservation Commission (COGCC) — the state regulatory body charged with overseeing oil and gas drilling in the state — to implement new rules to protect Colorado’s environment and public safety. These were key changes — the most consequential reform to oil and gas drilling in the state in decades — and ones which are well-suited for our state. Therefore, as governor, I will actively oppose ballot initiatives related to oil and gas extraction in 2020 and 2022 from both sides. I have also asked legislative leadership in the General Assembly to join in this effort, and to allow for SB181 to be fully and effectively implemented as envisioned by the sponsors and the administration before pursuing additional significant regulatory legislative actions for oil and gas extraction so we can together to determine how the new law is working for Colorado.” [Read more.](#)

### **Uniform Wills Recognition Act – Nebraska.**

*(Update to 8/10/20 Weekly Report)* On August 15, Gov. Pete Ricketts (R) signed LB 966 into law. The Act, sponsored by Sen. Wendy DeBoer, would adopt the Uniform Wills Recognition Act (1977). The Act implements an international convention calling for all countries and states to adopt a uniform formality for executing wills. As of this report, [19 states](#) have already adopted the Act. The bill provided no effective date so under Nebraska law it would become effective three months after the legislative session ended on August 13, 2020. [Read more.](#)

### **Unconventional Gas Well Funds – Pennsylvania.**

On August 10, H.B. 2780 was filed for introduction by Rep. Christopher Quinn (R). The bill would amend state [Act 13](#) to allow Unconventional Gas Well Funds to be allocated by the Office of the State Fire Commissioner to address gas pipeline related emergencies. [Read more.](#)

## **[STATE – Regulatory](#)**

**Production Taxes – Colorado.** On August 4, the Colorado Oil and Gas Conservation Commission (COGCC) “raised the tax it levies on oil and gas production in the state to fill a \$3.4 million hole created by declining commodity prices – with the support of both industry and environmental groups.” Industry stakeholders supported the move because the COGCC had decided to reduce the size of the new levy as a result of improving oil and gas prices. Scaling back the increase was “a move in the right direction,” and offered “breathing room for the industry,” said Rich Coolidge, director of regulatory affairs for the Colorado Oil and Gas Association. Gov. Jared Polis (D) said the additional funding will help speed up the permitting process by making sure COGCC is adequately staffed. “I don’t think this is viewed by the industry or by anybody else as adversarial. It’s viewed as a way to have the staff they need to process permitting quicker.” [Read more.](#)

**Oil and Gas Moratorium – Colorado.** The Boulder County Commissioners voted to extend their

moratorium on new oil and gas wells through the end of 2020. On July 15, the Commissioners unanimously approved the moratorium, “which prohibits new oil and gas well sites and seismic testing conducted for exploration purposes through December 31. No operator has drilled a new well in Boulder County since 2012, according to data by the Colorado Oil and Gas Conservation Commission.” [Read more.](#)

**State Land Office – New Mexico.** On August 18, the New Mexico State Land Office announced Fiscal Year 2020 revenue is on track to break \$1 billion. “Oil and gas exploration and the subsequent royalty paid on production remains the Land Office’s largest revenue source, totaling 90.4% of all receipts, down by 3% compared to 94% of all receipts in fiscal year 2019, according to the announcement. “The Land Office raises revenue from business lease payments, renewable energy project leases, oil and gas payments and earnings, right-of-way easements, livestock grazing leases, permits, interest, fees and royalties.” [Read more.](#)

**RRC Flaring/Venting Rule – Texas.** *(Update to 8/10/20 Weekly Report)* On August 12, the Railroad Commission of Texas (RRC) published a news release which notes, “Last week, RRC commissioners took actions to further address flaring with proposed revisions to the *Application for Exception to Statewide Rule 32*, while the Commission creates better reporting requirements to record for how much each flare releases and an integrated online system connecting the work of permit writers, operators, and agency field staff. The proposed changes to the application are within parameters of existing rules and are now in a 30-day public comment period. The proposed revisions can be found at <https://rrc.texas.gov/about-us/resource-center/forms/proposed-form-changes/>.” As previously reported on August 4, the RRC announced it is accepting public comment on the proposed revisions. The Statewide Rule 32 Exception Data Sheet is filed when an operator requests authority to flare or vent gas. The proposal “will improve the effectiveness of the RRC’s Rule 32 exception program by: requiring operators to

more thoroughly document the circumstances surrounding the need to flare gas; providing the RRC accurate information to assess compliance with the flare/vent authority; and encouraging transparency in understanding the broader needs and reasons for flaring and/or venting during oil and gas production operations in Texas.” Public comments will be accepted through September 4, 2020. For further information and details on Statewide Rule 32, [read more here.](#)

## **STATE – Judicial**

**Climate Change Lawsuit – Florida.** On June 10, a Florida state court dismissed a climate change lawsuit brought against the state filed on behalf of eight children, now between the ages of 12 and 22, who claimed that Florida officials “are endangering their constitutional right to life, liberty and the pursuit of happiness by supporting industries built on fossil fuel emissions, which scientists say worsen global warming.” In [Reynolds v. State of Florida](#) (Case No. 2018-CA-819), Tallahassee Judge Kevin Carroll tossed the suit saying, “I still believe in my heart of hearts that the people through their elected representatives will eventually get this climate thing right.” But Carroll dismissed the suit because he said it delved into matters better left for the legislature. “We can’t rely on judges to be dictators of public policy because, at the end of the day, a dictator in a black robe isn’t any better than a dictator in a suit or in a military uniform.” The sentiment was echoed by Karen Ann Brodeen, a lawyer in the Florida Attorney General’s office, who said “even if the case went to trial and the children’s lawyers revealed the harm of man-made climate change through expert testimony, ‘legislation is the role of the legislative branch, not the judiciary.’” [Read more.](#)

## **INDUSTRY NEWS FLASH**

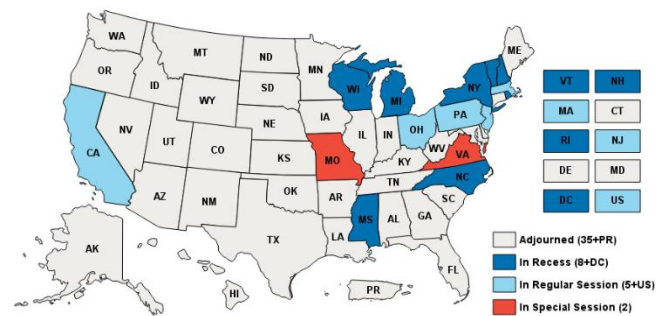
► **Natural gas is fastest growing source of electrical power.** On August 12, the U.S. Energy Information Administration (EIA) reported that natural gas used in domestic electrical power

production surged during the first half of the year while coal consumption plunged 30 percent. Gas was the fastest-growing source of electricity as of the latest reporting in June, topping the same period last year by 9 percent and even outpacing the growth in renewables production. [Read more.](#)

► **U.S. EIA revises energy outlook for higher crude prices.** On August 11, the EIA released its August Short-Term Energy Outlook which forecasts West Texas Intermediate spot prices will average \$39/bbl in 2020 and then rise to \$46/bbl in 2021. This comes as July demand showed an increase which is expected to push prices higher in 2021. [Read more.](#)

## **LEGISLATIVE SESSION OVERVIEW**

### **States in Session**



**Session Notes (by date):** California Senate, Massachusetts, New Jersey, Ohio, and Pennsylvania are in regular session. The U.S. Congress is in August recess.

The following legislatures are postponing their 2020 legislative sessions due to COVID-19 until the dates provided: Vermont (August 25), North Carolina (September 2), and Rhode Island and Wisconsin (TBD).

The following states are in recess until the following dates provided: California Assembly (August 24), Michigan (September 1), and the District of Columbia (September 7).

**Mississippi, New Hampshire, and New York** are in recess subject to the call of the chair.

**Nebraska** adjourned their regular session on August 13.

The **Massachusetts** House approved a resolution on July 29 to extend the formal session past July 31 to address unresolved policy issues that had been postponed due to the pandemic, reports [MassLive](#).

**Missouri** convened a special session on July 27 to address current crime rates within the state, reports [KY3](#).

**Virginia** convened a special session special on August 18 to address police reform, reports the [Richmond Times-Dispatch](#).

**Puerto Rico** adjourned their special session on August 9.

**Utah** adjourned their special session on August 20, according to the [Senate Journal](#).

**Idaho** Republican Gov. Brad Little called for a [special session](#) to begin the week of August 24.

**South Carolina** is expected to meet for a two-week special session starting September 15, reports [WLTX](#).

**Signing Deadlines** (by date): **Utah** Republican Gov. Gary Herbert has until September 9 to act on legislation or it becomes law without signature. **Hawaii** Democratic Gov. David Ige has until September 11 to act on legislation presented on or after June 26 or it becomes law without signature. **Oregon** Democratic Gov. Kate Brown has until September 21 to act on legislation or it becomes law without signature. **New York** Democratic Gov. Andrew Cuomo has until February 5, 2021 to act on legislation or it is pocket vetoed. **Delaware** Democratic Gov. John Carney has 30 days after the final adjournment, which typically occurs immediately prior to the beginning of the next session, to act or it is pocket vetoed. **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 14 days from presentment to act on bills presented on or after July 19 or they are pocket vetoed. **Nebraska** Republican Gov. Pete Ricketts has five days from presentment, Sundays excepted, or it becomes law without signature. **North Carolina** Democratic Gov. Roy Cooper has 10 days from presentment to sign or veto legislation or it will become law without signature. **Tennessee** Republican Gov. Bill Lee has 10 days from presentment to act on legislation or it becomes law without signature. **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.

**Connecticut** Democratic Gov. Ned Lamont has signed all legislation as of August 12. **Nevada** Democratic Gov. Steve Sisolak had a signing deadline on August 17.

**Interim Committee Hearings:** The following states are currently holding 2020 interim committee hearings: [Alabama](#), [Alaska](#), [Arizona](#), [Arkansas](#), [Colorado](#), [Connecticut](#), [Delaware](#), [Idaho](#), [Illinois](#), [Indiana](#), [Iowa](#), [Kansas](#), [Kentucky](#), [Louisiana](#), [Maine](#), [Maryland](#), [Minnesota](#), [Missouri House](#) and [Senate](#), [Montana](#), [Nevada](#), [New Mexico](#), [New York Assembly](#) and [Senate](#), [North Dakota](#), [Oklahoma House](#) and [Senate](#), [Oregon](#), [South Carolina House](#) and [Senate](#), [South Dakota](#), [Tennessee](#), [Utah](#), [Virginia](#), [Washington](#), [Wisconsin](#) and [Wyoming](#).

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

*PLEASE NOTE: Due to the Labor Day holiday, the next report will be published on Tuesday, September 8, 2020.*

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resources available to you. This report does not endorse nor advocate for any particular attorney or law firm, or other private entity, unless expressly stated. Any legal and/or tax information contained herein is neither legal nor tax advice. Links are provided for reference only and any cited outside source is derived solely from material published by its author for public use. Any copyrighted material remains the property of its respective owner and no use or distribution authorization is granted herein.

# GOVERNMENTAL AFFAIRS WEEKLY REPORT

## Weekly Highlights At-A-Glance

### FEDERAL – Legislative

**S. 180 – Oil and Gas Permitting.** (*Update to 2/11/19 Weekly Report*). After languishing in the Senate since early 2019, S. 180, an oil and gas permitting bill, was subject to a [U.S. Senate Committee on Energy and Natural Resources hearing on September 16](#), reviving its prospects for consideration. Originally introduced by Sen. John Hoeven (R-ND) on January 17, the bill would “streamline the oil and gas permitting process and to recognize fee ownership for certain oil and gas drilling or spacing units.” The legislation provides that a Bureau of Land Management drilling permit shall not be required under the Federal Oil and Gas Royalty Management Act of 1982 or related regulations for an action occurring within an oil and gas drilling or spacing unit if: (1) less than 50 percent of the minerals within the oil and gas drilling or spacing unit are minerals owned by the Federal Government; and (2) the Federal Government does not own or lease the surface estate within the boundaries of the oil and gas drilling or spacing unit. [Read more.](#)

**S. 4041 - Save American Vital Energy Jobs Act.** On September 9, official bill text was made available for [S. 4041, known as the Save American Vital Energy Jobs Act or the SAVE Jobs Act](#). The measure, originally released by Sen. John Cornyn (R-TX) in late June, “extends energy-related tax provisions and expands incentives for job creation in the energy sector during the COVID-19 (i.e., coronavirus disease 2019) emergency period.” According to Sen. Cornyn, the bill would allow more carbon capture projects to break ground by extending the commence construction window for the 45Q tax credit by one-year. It also allows energy companies to build liquidity by suspending certain capitalization rules, allowing immediate expensing of certain direct and

indirect costs, such as inventory, that would otherwise be required to be capitalized in 2020. The bill also reduces the required deposit of certain motor fuel excise taxes paid every two weeks from 95% to 25%, without reducing the total tax liability these companies owe the government; and allows oil and gas companies to expense 100% of the cost of intangible drilling costs in 2020. The bill also provides immediate relief to those with federal leases by streamlining “existing authority to grant lease extensions, suspensions of production, and suspensions of operations during the pandemic.” The bill also simplifies the existing process for royalty rate reductions “to provide more timely relief during the pandemic” and also “delays the deadline for recalculation of royalty payments” under the [2016 Office of Natural Resources Revenue Valuation Rule](#) until July 1, 2022. [Read more.](#)

### FEDERAL – Regulatory

**BLM Oil and Gas Site Security, Oil Measurement, and Gas Measurement Regulations.** On September 10, the Bureau of Land Management (BLM) published a proposed rule, *Oil and Gas Site Security, Oil Measurement, and Gas Measurement Regulations* ([85 Fed. Reg. 55940](#)) to begin the process of revising the trio of Obama-era onshore operations regulations: (1) *Onshore Oil and Gas Operations; Federal and Indian Oil and Gas Leases; Site Security* ([81 Fed. Reg. 81365](#)); (2) *Onshore Oil and Gas Operations; Federal and Indian Oil and Gas Leases; Measurement of Oil* ([81 Fed. Reg. 81462](#)); and (3) *Onshore Oil and Gas Operations; Federal and Indian Oil and Gas Leases; Measurement of Gas* ([81 Fed. Reg. 81516](#)). Collectively, the BLM refers to these three rules as the “2016 Final Rules.” With the *Oil and Gas Site Security, Oil Measurement, and Gas Measurement Regulations* proposed rule, “the BLM is



seeking to reduce the regulatory burdens associated with the 2016 Final Rules while maintaining appropriate safeguards to ensure production accountability. While the proposed revisions would streamline, reduce, or eliminate some of the burdens associated with the 2016 Final Rules, the BLM believes that the [...] revisions strike an appropriate balance and would not compromise the government's ability to ensure accurate and reliable royalty collection." The BLM public comment period runs through November 9, 2020. In addition, the BLM will host virtual public information meetings "where the agency will be available to answer clarifying questions regarding the regulations up to four hours per session." [Click here for more information and to register for one of the sessions](#) to be held on September 29 and 30, and October 1, 2020. [Read more.](#)

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

On September 14, the BLM New Mexico State Office announced a public comment period on the environmental analysis for its upcoming January 14, 2021 oil and gas lease sale. There are 33 parcels (6,442.36 acres) of federal minerals proposed for lease. The parcels in New Mexico include six in Eddy County and 26 in Lea County. There is one parcel in Wise County, Texas. The public comment period is open through September 25, 2020. [Read more.](#)

**BLM Oil and Gas Lease Sale – Wyoming.** (*Update to 6/22/20 Weekly Report*) On September 11, the BLM announced the cancellation of its upcoming September oil and gas lease sale for Wyoming, with the exception of eight parcels. This follows a cancellation of the June sale for which the BLM provided no public explanation except from Courtney Whiteman, a spokeswoman for BLM's Wyoming office, who originally confirmed the June delay and said those parcels would be wrapped into a September sale but Whiteman did not give a reason for the postponement. The September cancellation notice does reference that "BLM Wyoming is in the process of developing a strategy which will meet the leasing prioritization management requirement set

forth in the 2015 Greater Sage-Grouse land management plan revisions and amendments." A [follow-up BLM notice](#), released September 14, notes as to the June parcels, "The deferred parcels will be offered for sale on the first available quarterly lease sale following implementation of a new BLM WY leasing prioritization strategy." [Read more.](#)

**BLM Cost Recovery Fees.** (*Update to 11/18/19 Weekly Report*) On September 15, the BLM published a notice which serves as a reminder that the cost recovery rule finalized in 2019 is effective October 1, 2020. The rule updates the cost recovery fees that the BLM charges for processing certain actions undertaken by its mineral programs. Per the notice, "Specifically, this final rule updates the fees charged to recover costs incurred in processing certain documents associated with oil, gas, coal, and solid mineral activities on public lands, including fees associated with mineral patent adjudications. Consistent with updates to the fee schedules in prior years, this final rule increases the fee schedule based on inflation." For background, on November 6, 2019, the BLM published its final rule, *Minerals Management: Adjustment of Cost Recovery Fees* ([84 Fed. Reg. 59730](#)), which details the annual adjustments to certain fees associated with BLM processing of minerals program-related actions, such as lease applications, assignments, and other oil and gas related documents and applications and notes fee increases are negligible and in some cases remain unchanged for Fiscal Year 2020. [Read more.](#)

**EPA Methane Regulations Amendments – Washington, DC.** On September 15, the U.S. Environmental Protection Agency (EPA) published its final rule, *Oil and Natural Gas Sector: Emission Standards for New, Reconstructed, and Modified Sources Reconsideration* ([85 Fed. Reg. 57398](#)), known as the "Inspection Rule," which amends Obama-era New Source Performance Standards (NSPS) unfavorable to the oil and gas industry. This EPA rule relaxes "requirements for oil and gas operators to monitor emissions leaks. This Rule excludes low production well sites (where the total combined oil and natural gas production for the well

site is at or below 15 barrels of oil equivalent per day') from fugitive emissions monitoring, as long as operators maintain records to demonstrate well production remains at or below the requisite threshold. Additionally, all fugitive emissions monitoring may stop when all major production and processing equipment is removed from the well site," according to law firm Reed Smith LLP. The day before, the EPA also published a second methane final rule, *Oil and Natural Gas Sector: Emission Standards for New, Reconstructed, and Modified Sources Review* ([85 Fed. Reg. 57018](#)), known as the "Methane Policy Rule," and which also rescinds Obama-era NSPS rulemaking. According to the EPA, "These amendments remove sources in the transmission and storage segment from the source category, rescind the NSPS (including both the volatile organic compounds (VOC) and methane requirements) applicable to those sources, and separately rescinds the methane-specific requirements of the NSPS applicable to sources in the production and processing segments." [Read more.](#)

**Offshore Leasing – Florida; Georgia; South Carolina.** On September 8, President Trump issued an [Executive Memorandum](#) to the Secretary of the Interior expanding a ban on offshore oil development on Florida's Gulf Coast, and expanding it to the state's Atlantic coast as well as the coasts of Georgia and South Carolina until mid-2032, which is a decade longer than drilling is currently delayed off Florida's Gulf Coast. "I will sign a presidential order extending the moratorium on offshore drilling on Florida's Gulf Coast and expanding it to Florida's Atlantic Coast as well as the coasts of Georgia and South Carolina," said Trump during an appearance in Florida. [According to reports](#), a "congressionally passed offshore drilling moratorium protects Florida's gulf waters from offshore drilling until mid-2022. The state's House delegation has tried to extend that, pushing through legislation that would permanently block drilling near the state, though it has yet to be considered by the Senate." [Read more.](#)

## **FEDERAL – Judicial**

### **EPA Methane Regulations – Washington, DC.**

On the same day the EPA published its final rule (see above), *Oil and Natural Gas Sector: Emission Standards for New, Reconstructed, and Modified Sources Review* ([85 Fed. Reg. 57018](#)), known as the "Methane Policy Rule," 19 states, the District of Columbia, and various localities filed a Petition for Review in the U.S. Court of Appeals for the District of Columbia seeking to block the final rulemaking which upends Obama-era methane regulations unfavorable to the oil and gas industry. In [State of California v. Wheeler](#) (Case No. 20-01357), the litigants allege among other claims "that EPA's new policy on methane emissions violates the federal Clean Air Act, saying they arbitrarily eliminate pollution controls from storage and transmission, and entirely abandon regulation of methane without any justification." On September 14, environmental activist groups also brought their own Petition for Review seeking to halt the newly finalized EPA regulations in [Environmental Defense Fund v. Wheeler](#) (Case No. 20-1359). In a late-breaking development, [a three-judge panel has temporarily paused the new EPA rulemaking](#), preventing the Obama-era rollback from taking effect for the time being. The judges issued a "procedural pause on the rule called an administrative stay while the court decides whether to halt it for a longer period of time." The pause comes as part of the above-mentioned litigation. The panel wrote, however, that the order "should not be construed in any way as a ruling on the merits" of whether to grant the longer pause. According to The Hill, an "EPA spokesperson declined to comment on the pause, saying the agency doesn't comment on pending litigation." [Read more.](#)

**ANWR Development Plan – Alaska.** On September 9, attorneys general representing 15 states filed suit against the Trump administration over its plan to open up nearly 1.6 million acres of the Coastal Plain area in the Arctic National Wildlife Refuge (ANWR) to oil and gas development. "This plan was rushed, it's incredibly flawed, there were more than 1 million

public comments against it, it fails to fully evaluate and consider the devastating environmental impacts of opening up the coastal plain and it will corrupt one of our nation's most pristine and uniquely important habitats," said Massachusetts Attorney General Maura Healey (D). According to the suit in [State of Washington v. Bernhardt](#) (Case No. 3:2020-cv-00224), the Trump administration conducted an "inadequate environmental review" and issued "an unlawful Record of Decision." The suit claims the deficient review "failed to take a hard look at impacts on greenhouse gas emissions and climate" and "failed to take a hard look at impacts on migratory birds," among other issues. The suit comes after the administration announced in August that it would open up the entire Coastal Plain area to oil and gas development. [Read more.](#)

**Methane Regulations – California.** *(Update to 7/27/20 Weekly Report)* On September 14, the Interior Department, Bureau of Land Management, and state of Wyoming, along with industry groups such as the American Petroleum Institute, Independent Petroleum Association of America, and Western Energy Alliance filed notice to the U.S. District Court for the Northern District of California that they were seeking review of the court's July 15 ruling before the U.S. Court of Appeals for the 9th Circuit. For background, on July 15, the U.S. District Court for the Northern District of California overturned the Trump administration's 2018 rescission of the 2016 Obama-era Waste Prevention Rule. This decision arises from consolidated cases, [California v. Bernhardt and Sierra Club v. Bernhardt](#) (Case No. 4:18-cv-05712-YGR), involving industry groups and the states of Wyoming and Montana, and later joined by North Dakota and Texas. The states of California and New Mexico also intervened along with environmental activists to uphold the Obama-era rule. Calling the BLM's rulemaking process "wholly inadequate," the Court found the BLM failed to properly repeal the rule. "In its haste, BLM ignored its statutory mandate under the Mineral Leasing Act, repeatedly failed to justify numerous reversals in policy positions previously taken, and failed to consider scientific findings and institutions relied

upon by both prior Republican and Democratic administrations," wrote U.S. District Court Judge Yvonne Gonzalez Rogers in her opinion. According to reports, if this case is upheld it "will effectively reinstate stricter pollution controls aimed at reducing the flaring, venting and leaking of natural gas." [Read more.](#)

## **STATE – Legislative**

### **Well Notifications; Oil Discharge – California.**

*(Update to 7/27/20 Weekly Report)* On September 15, AB 3214 was transmitted to Gov. Gavin Newsom (D) after passing the legislature for the session ended in August. Under existing law it is a felony to, "among other things, knowingly engage in or cause the discharge or spill of oil into waters of the state, or knowingly fail to begin cleanup, abatement, or removal of spilled oil, as specified" and "makes this crime punishable by a fine of not less than \$5,000 or more than \$500,000 for each day or partial day a violation occurs." Additionally, existing law "makes it a felony to, among other things, fail to notify the Office of Emergency Services regarding an oil spill or to knowingly fail to follow the material provisions of an applicable oil spill contingency plan. Existing law makes this crime punishable by a fine of not less than \$2,500 or more than \$250,000 for each day or partial day a violation occurs for a first conviction, and by a fine of not less than \$5,000 or more than \$500,000 for each day or partial day a violation occurs for a 2nd conviction." This bill, sponsored by Asm. Monique Limón (D), "would double the minimum and maximum amounts of the fines described above. The bill would authorize the court to also impose upon a person convicted of, among other things, knowingly engaging in or causing the discharge or spill of oil into waters of the state, or knowingly failing to begin cleanup, abatement, or removal of spilled oil, as specified, a fine of up to \$1,000 per gallon spilled in excess of 1,000 gallons of oil." The governor has until September 30 to sign or veto legislation in his possession or a bill becomes law without his signature. [Read more.](#)

**Marketable Title – Michigan.** (Update to 3/16/20 Weekly Report) On September 10, HB 5611 passed the House and has been transmitted to the Senate. The bill, sponsored by Rep. James Lower (R), would amend the Marketable Record Title Act to extend the amount of time under which a claim against a marketable record title could be filed by three years. According to the Michigan House bill report, “Marketable record title generally refers to an ownership interest in land that can be transferred to a new owner without the likelihood that another person can claim an interest in the property. Under the act, a person possesses a marketable record title to an interest in land if he or she has an unbroken chain of title to the interest for 40 years or, for mineral interests, 20 years. 2018 PA 5721 revised the deadline for filing a notice to preserve a claim to two years after that bill took effect, or until March 29, 2021. The bill would extend that deadline to March 29, 2024.” [Read more.](#)

## STATE – Regulatory

**RRC Drilling Permits – Texas.** On September 9, the Texas Railroad Commission (RRC) reported that it issued “a total of 451 original drilling permits in August 2020 compared to 960 in August 2019. The August 2020 total includes 377 permits to drill new oil or gas wells, seven to re-enter plugged well bores, and 51 for re-completions of existing well bores.” However, “total well completions processed for 2020 year to date for new drills, re-entries and re-completions are 10,804 compared to 6,327 recorded during the same period in 2019.”

[Read more.](#)

## INDUSTRY NEWS FLASH

► **Producers race to file permits on federal acreage before election.** Last week, Reuters reported that “producers in U.S. shale fields are stockpiling drilling permits on federal land ahead of the presidential election” on November 3 “concerned that a win by Democratic candidate Joe Biden could lead to a clamp-down on oilfield activity.” As of

August 24, federal permitting in the Permian Basin was up 80 percent in the last three months, which Reuters said “analysts attribute to a hedge against a win by Biden, who currently leads President Donald Trump by several points in national polling” and Biden’s “climate plan includes banning new oil and gas permits on public lands.” [Read more.](#)

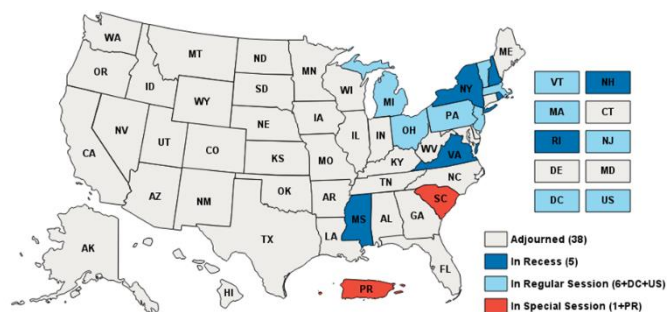
### ► U.S. petroleum demand increases in August.

On September 18, the American Petroleum Institute reported that U.S. petroleum demand increased in August, and supply decreased. “U.S. petroleum demand, as measured by total domestic petroleum deliveries, was 18.3 million b/d in August. This reflected a 0.2% increase from July but a decrease of 13.6% (2.9 million b/d) below August 2019 levels. The rebound since April has amounted to 3.6 million b/d so far with motor gasoline accounting for 82% of the recovery from the COVID-19 pandemic.”

[Read more.](#)

## LEGISLATIVE SESSION OVERVIEW

### States in Session



**Session Notes (by date):** Massachusetts, Michigan, New Jersey, Ohio, Pennsylvania and Vermont are in regular session. The District of Columbia and the U.S. Congress are also in session.

The following states are in recess until the following dates provided: The Virginia Senate is in recess until September 24. Mississippi, the New Hampshire Senate, New York, Rhode Island and the Virginia House are in recess subject to the call of the chair.

The **New Hampshire** House adjourned on September 16.

**Virginia** convened a special session special on August 18 to address police reform, reports the [Richmond Times-Dispatch](#). The special session is currently in recess.

**South Carolina** convened a special session to deal with the state budget on September 15, reports [ABC 4](#).

**Minnesota** adjourned a special session on September 11 after Democratic Gov. Tim Walz's emergency declaration and powers were extended for another 30 days, the [Star Tribune](#) reports.

**Missouri** adjourned a special session on September 16 without passing a number of Republican Gov. Mike Parson's proposals to reduce violent crime, the [News Tribune](#) reports. Governor Parson expects to call another special session relating to the budget in October.

**Signing Deadlines** (by date): **Oregon** Democratic Gov. Kate Brown has until September 21 to act on legislation or it becomes law without signature. **California** Democratic Gov. Gavin Newsom has until September 30 to act on legislation or it becomes law without signature. **North Carolina** Democratic Gov. Roy Cooper has until October 2 to act on legislation or it becomes law on October 12. **Missouri** Republican Gov. Mike Parson has until October 31 to act on legislation from the most recent special session or it becomes law. **New York** Democratic Gov. Andrew Cuomo has until February 5, 2021 to act on legislation or it is pocket vetoed. **Delaware** Democratic Gov. John Carney has 30 days after the final adjournment, which typically occurs immediately prior to the beginning of the next session, to act or it is pocket vetoed. **Idaho** Republican Gov. Brad Little has 10 days from presentment, Sundays excepted, to act on legislation or it becomes law without signature. **Maine** Democratic Gov. Janet Mills must act on legislation presented within 10 days of adjournment or it becomes law unless returned within three days

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

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