

GOVERNMENTAL AFFAIRS WEEKLY REPORT

Weekly Highlights At-A-Glance

FEDERAL – Legislative

H.R. 3225 - Restoring Community Input and Public Protection in Oil and Gas Leasing Act.

On September 30, [H.R. 3225, known as the Restoring Community Input and Public Protection in Oil and Gas Leasing Act](#), was subject to a [hearing in the House Natural Resources Committee](#) and would amend the Mineral Leasing Act to make certain adjustments in leasing on federal lands for oil and gas drilling. Specifically, the bill first introduced in 2019 by Rep. Mike Levin (D-CA), would, according to the sponsoring memo, “Protect taxpayers and ends giveaways for oil and gas companies by eliminating noncompetitive oil and gas leasing, requiring companies to pay a fee to nominate lands for leasing, and raising the onshore oil and gas royalty rate, rental fee, and the minimum bid amount; Increase transparency by requiring companies that nominate lands for oil and gas leasing and bid on leases disclose their identities, and protects landowners by requiring the Secretary of the Interior to notify them and the broader public about oil and gas lease sales; Restore community input by eliminating actions taken by the Trump administration that cut public participation in oil and gas leasing decisions and shortened public comment periods; Safeguard environmental resources by enhancing reviews under the National Environmental Policy Act, and reinstate the use of master leasing plans to better protect lands where drilling interests conflict with other uses.” Even if H.R. 3225 should pass the House, the bill has little to no chance of consideration in the Republican-led Senate. [Read more.](#)

FEDERAL – Regulatory

Office of Natural Resources Revenue Valuation

Reform Proposed Rule. (Update to 9/21/20 Weekly Report) On October 1, the Interior Department Office of Natural Resources Revenue (ONRR) published a proposed rule, *ONRR 2020 Valuation Reform and Civil Penalty Rule (85 Fed. Reg. 62054)*, “to seek comment on measures to amend portions of ONRR’s regulations for valuing oil and gas produced from Federal leases for royalty purposes, valuing coal produced from Federal and Indian leases, and assessing civil penalties for violations of certain statutes, regulations, leases, and orders associated with mineral leases.” The proposed rule will amend those promulgated under the Obama administration to among other issues, “update ONRR’s regulations to simplify certain processes, provide early clarity regarding royalties owed, and better explain ONRR’s civil penalty practices.” In short, the rulemaking will change how lease royalties for minerals such as oil and gas on federal lands are calculated and reduce the burden on industry and reverse Obama-era rulemaking. The comment period is open through November 30, 2020. [Read more.](#)

Office of Natural Resources Revenue Valuation Final Rule. On October 1, the Interior Department Office of Natural Resources Revenue (ONRR) published a notice of Final Rule, *Consolidated Federal Oil and Gas and Federal and Indian Coal Valuation Reform (85 Fed. Reg. 62016)*, “re-issuing certain regulations associated with the valuation of Federal oil and gas and Federal and Indian coal to implement a March 29, 2019 Court order that vacated ONRR’s 2017 repeal of those regulations. These republished regulations implement the court’s order by recodifying the regulations that were in effect prior to the vacated rulemaking.” The regulations govern royalty valuation and reporting practices for federal oil, gas, and coal. According to the ONRR, “This rule is effective on September 7, 2017 because a Court

vacated the rule that became effective on that date ([82 FR 36934](#)). The vacated rule repealed the original publication of this rule ([81 FR 43338](#)). The attempted postponement of the effectiveness of the original publication ([82 FR 11823](#)) was also vacated by Court order. The combined effect of the original publication, vacated postponement, and vacated repeal rule is that industry must comply with these regulations for production occurring from and after January 1, 2017.”
[Read more.](#)

Offshore Leasing – North Carolina; Virginia.

(Update to 9/21/20 Weekly Report) On September 25, President Trump by [Presidential Memorandum](#) extended his offshore oil drilling moratorium to include waters off North Carolina. “About a month ago, I signed an order prohibiting offshore drilling off the Florida, Georgia and South Carolina coasts – because I happen to like this state a lot, I said ‘What about Virginia, what about North Carolina?’ Somebody said, ‘I don’t know if they’ll like it’ and I said ‘I know they’d like it,’” said Trump. “So I am extending the moratorium for North Carolina and Virginia. If you want oil rigs out there, just let me know, I’ll take it off. I can understand that too.” Trump has not yet issued a directive encompassing the Virginia territory. The memorandum will withdraw the North Carolina area from oil leasing from July 1, 2022 until June 30, 2032, which is supported by Republican North Carolina Senator Thom Tillis. Notably, the memorandum also bans offshore wind farms. This decision follows an earlier [Presidential Memorandum](#) issued September 8 which bans offshore oil development on Florida’s Gulf Coast and expands it to the state’s Atlantic coast as well as the coasts of Georgia and South Carolina until mid-2032. [Read more.](#)

Independent Contractors; U.S. Department of Labor – Washington, DC. On September 25, the [U.S. Department of Labor published a notice of proposed rulemaking, Independent Contractor Status Under the Fair Labor Standards Act \(85 Fed. Reg. 60600\)](#), which “is revising its interpretation of independent contractor status

under the Fair Labor Standards Act (FLSA or Act) in order to promote certainty for stakeholders, reduce litigation, and encourage innovation in the economy.” The rule is expected to clarify how independent contractor status is determined and may allow employers greater protections in employee misclassification cases. “Once finalized, it will make it easier to identify employees covered by the Act, while respecting the decision other workers make to pursue the freedom and entrepreneurialism associated with being an independent contractor,” said Secretary of Labor Eugene Scalia. The public comment period will be open through October 26, 2020. This proposed rulemaking is at an early stage in the federal process and it historically takes seven months to a year for a final rule to be issued by the Labor Department. [Read more.](#)

BLM Oil and Gas Lease Sale – New Mexico;

Oklahoma. On September 28, the Bureau of Land Management (BLM) announced its solicitation of public input on six parcels (535.72 acres) of federal minerals proposed for the April 14, 2021, competitive oil and gas lease sale. The public scoping period runs through October 19, 2020. “This scoping process is intended to solicit public input on relevant issues, potential impacts, and alternatives that the BLM should address in an environmental assessment to be prepared in compliance with the National Environmental Policy Act. The BLM will consider all substantive comments received during the public scoping period to ensure that the potential environmental consequences are analyzed in a manner that allows the BLM to make an informed decision about the proposed competitive lease sale. The proposed parcels were identified as available for possible oil and gas leasing under current BLM land-use plans.” The available parcels in New Mexico include four in Lea County and one in Chaves County. There is also one parcel in Dewey County, Oklahoma. [Read more.](#)

Annual Inflation Adjustments for BLM Permits.

On September 28, the BLM announced that it is “adjusting for inflation the fee required by law to process oil and gas drilling permits on public

and Indian lands,” which is effective October 1, 2020. These adjustments occur every fiscal year. “The adjustment reflects the percentage change in the Bureau of Labor Statistics’ seasonally adjusted Consumer Price Index. That adjustment will increase the fee from \$10,230, to \$10,360.” [Read more.](#)

FEDERAL – Judicial

Climate Change Suit – U.S. Supreme Court. (Update to 3/16/20 Weekly Report) On October 2, the [U.S. Supreme Court granted review](#) “to hear an appeal by energy companies including BP PLC, Chevron Corp, Exxon Mobil Corp and Royal Dutch Shell PLC contesting a lawsuit by the city of Baltimore seeking damages for the impact of global climate change.” For background, in [Baltimore v. BP P.L.C. et al](#) (Case No. 19-1644), the U.S. Court of Appeals for the Fourth Circuit, on appeal from the United States District Court for the District of Maryland, affirmed that Baltimore’s pending lawsuit seeking to hold multiple oil and gas companies liable for climate change harms belongs in state court. The lawsuit, which seeks monetary damages to help pay for climate impacts, was originally filed in Maryland state court last year but the oil and gas company defendants successfully moved the case to federal court. We will keep members updated as the cases progresses in the U.S. Supreme Court. [Read more.](#)

Bi-State Sage-Grouse – California. On September 29, environmental groups filed a lawsuit against the U.S. Fish and Wildlife Service “for failing to protect the imperiled bi-state sage grouse under the Endangered Species Act despite ongoing population declines.” The suit, in [Desert Survivors v. U.S. Dept. of Interior](#) (Case No. 3:20-cv-6787), arises from the U.S. Fish and Wildlife Service decision not to designate the bird as threatened as originally proposed during the Obama administration. In 2018, a [federal court required the agency to re-evaluate the bird’s designation](#). Among other claims, the litigants allege the agency failed to consider the “magnitude of the impact on the species that the

measures can be expected to achieve,” and the “estimated length of time that it will take for a formalized conservation effort to produce a positive effect on the species.” The Interior Department has yet to respond to the complaint. [Read more.](#)

BLM Acting Director Ousted – Montana (Update to 9/8/20 Weekly Report) On September 25, a [Montana federal district court judge ousted William Perry Pendley as the top official at the Bureau of Land Management \(BLM\)](#) noting that Pendley had effectively been serving as Acting BLM Director unlawfully for 424 days without Senate confirmation. “Pendley has served and continues to serve unlawfully as the Acting B.L.M. director,” wrote the court. The judge in the case added that Pendley’s authority, “did not follow any of the permissible paths set forth by the U.S. Constitution.” In June, President Trump nominated Pendley to permanently lead the BLM, but his name was withdrawn in August. Certain decisions made by Pendley may reportedly be invalidated as a result of the court’s finding, but to date none have been affected. For background, this ruling arises from a lawsuit filed by Montana Democratic Governor Steve Bullock in July seeking removal of Pendley as Acting BLM Director. In the suit, [Bullock v. Bureau of Land Management](#) (Case No. 4:20-cv-00062), the governor claimed Pendley’s current appointment “directly contravenes the Federal Vacancies Reform Act, which prohibits acting officers from running agencies while their nominations are pending before the Senate.” The suit had been deemed politically motivated as Bullock is currently running to unseat first-term Republican Montana Senator Steve Daines. In response to the latest ruling, BLM staff were notified that Interior Secretary David Bernhardt would be leading the BLM and Pendley would remain in his prior position. “I understand there may be some questions about the ruling on Friday regarding William Perry Pendley’s leadership role at the Bureau of Land Management,” Principal Deputy Assistant Secretary Land and Minerals Management Casey Hammond wrote in an email to BLM staff. “Secretary Bernhardt leads the bureau and relies on the BLM’s management team to carry out the mission. Deputy Director for Programs and

Policy, William Perry Pendley, will continue to serve in his leadership role.” [Read more.](#)

Methane Regulations – California. (*Update to 7/27/20 Weekly Report*) On September 14, in [Extraction Oil & Gas, Inc. v. City and County of Broomfield](#) (Case No. 1:20-cv-02779), Extraction filed suit against the city and county of Broomfield, claiming that government officials “are infringing on the company’s existing operating rights in an attempt to shut down its operations.” In the complaint filed in the U.S. District Court of Colorado, “Extraction claims the Broomfield City Council was bowing to the demands of local residents that oppose all oil and gas operations in the area by using its regulatory powers to target the company. Specifically, it claims a recently-passed municipal noise ordinance that caps nighttime noise at 40 decibels targets the company because it made clear in years of public outreach that it couldn’t shut down its operations at night and remain economically viable.” AAPL will continue to track this case as it progresses. [Read more.](#)

Exploration Agreements; Covenants; Bankruptcy Proceedings – North Dakota. On July 20, the U.S. Court of Appeals for the Eighth Circuit (North Dakota) affirmed the lower court’s grant of summary judgment in *Slawson Exploration Co., Inc. v. Nine Point Energy, LLC* (Case No. 19-1945) in favor of Nine Point. According to the court, “Slawson and Nine Point’s predecessor-in-interest signed an oil and gas exploration agreement committing the predecessor-in-interest to make a 10% payment towards the cost of developing wells in which the predecessor-in-interest elected to participate; when Nine Point filed bankruptcy, Slawson filed a proof of claim for the 10% payments and argued they were not dischargeable because the agreement was a covenant running with the land.” The bankruptcy court reserved on the question and permitted Slawson to commence litigation to resolve that issue. Here, the court affirmed that “the obligation did not run with the land under North Dakota law, as the obligation to make the payment did not directly benefit the land; nor was the obligation enforceable

as an equitable servitude or a real property interest.” [Read more.](#)

STATE – Legislative

Well Notifications; Oil Discharge – California. (*Update to 9/21/20 Weekly Report*) On September 24, AB 3214 was signed into law by Gov. Gavin Newsom (D). Prior to enactment, it was 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, prior law made “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 [and made] 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 Act, sponsored by Asm. Monique Limón (D), will “double the minimum and maximum amounts of the fines described above.” The Act also authorizes “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.” Since the bill provided no effective date, under California law the Act is effective January 1, 2021. [Read more.](#)

Severance Taxes; Stripper Wells – Louisiana. As part of the legislature’s [30-day Special Session](#), on September 28, Rep. Phillip DeVillier (R) introduced HB 8. “Current law imposes a severance tax on the production from stripper wells (no more than 10 barrels of oil per producing day) of 3.125% of the value of the oil when severed. This tax is exempted

in any month when the average value is less than \$20 per barrel. Proposed law will exempt the tax on oil produced from stripper wells and stripper fields in any month when the average value is less than \$75 per barrel." The Department of Revenue "shall determine the oil value quarterly based on the average New York Mercantile Exchange Price in the prior three months. This exemption is available for nine years, from January 1, 2021 through December 31, 2029." The bill also requires all production reports be filed timely with the Department of Revenue "verifying the average daily production during each month." [Read more.](#)

State Natural Resources and Lands – Michigan.

(Update to 5/26/20 Weekly Report) On September 23, HB 5777 passed the House. The bill, sponsored by Rep. Gary Howell (R), would amend existing law regarding the number of days required for certain procedures regarding surplus land transactions and changes some of the text regarding disposing of, leasing, acquiring, or developing lands more than 80 acres in size. [Read more.](#)

STATE – Regulatory

Executive Order – California. On September 23, Gov. Gavin Newsom (D) signed an [Executive Order](#) that will "curb in-state energy production and take additional actions related to climate change," according to the California Independent Petroleum Association (CIPA). ([See CIPA's response to the Executive Order.](#)) Among other environmental goals which includes a ban on the sale of new gasoline-powered cars by 2035, the order states: "To support the transition away from fossil fuels consistent with the goals established in this Order and California's goal to achieve carbon neutrality by no later than 2045, the California Environmental Protection Agency and the California Natural Resources Agency, in consultation with other State, local and federal agencies, shall expedite regulatory processes to repurpose and transition upstream and downstream oil production facilities, while supporting community participation, labor standards, and protection of public health, safety

and the environment. The agencies shall report on progress and provide an action plan, including necessary changes in regulations, laws or resources, by July 15, 2021." The order also states, "The Department of Conservation's Geologic Energy Management Division and other relevant State agencies shall strictly enforce bonding requirements and other regulations to ensure oil extraction operators are responsible for the proper closure and remediation of their sites" and "The Department of Conservation's Geologic Energy Management Division shall: a) Propose a significantly strengthened, stringent, science-based health and safety draft rule that protects communities and workers from the impacts of oil extraction activities by December 31, 2020. b) Post on its website for public review and consultation a draft rule at least 60 days before submitting to the Office of Administrative Law." [Read more.](#)

Ventura County Oil & Gas Activities – California.

On September 15, the Ventura County Board of Supervisors adopted an updated General Plan, referred to as the "2040 General Plan," with policies and plans that "will negatively impact current and future oil and gas activities in unincorporated areas of the County," according to law firm Day Carter & Murphy LLP. The Board also announced a public hearing date of November 10, 2020, "to consider changes to permitting requirements for oil and gas activities under the County's Non-Coastal Zoning Ordinance. [The] Board adopted the 2040 General Plan to establish new County-wide policies and plans related to land uses including oil and gas activities." Written comments are due by November 9, 2020, at 3:30 p.m. ([To submit comments and learn more about the upcoming hearing, click here.](#)) The plan includes a policy "to reduce dependency on petroleum-based energy sources." Among the policy changes, the plan establishes a 1,500-foot setback from residential dwellings and a 2,500-foot setback from schools for new wells. "The Board also considered requiring a larger setback from residential dwellings. Instead of imposing a larger setback at this time, the 2040 General Plan now requires the County to study a 2,500-foot setback

by 2022 for a potential future General Plan amendment.” Among other changes, the plan also “prohibits flaring or venting of natural gas on new wells, except for emergencies and testing purposes.” [Read more.](#)

Air Quality Control Commission – Colorado. On September 24, the [Colorado Air Quality Control Commission](#) approved rulemaking “requiring high-frequency emissions monitoring at oil and gas sites during the early stages of drilling.” According to Bloomberg Law, “Oil and gas industry representatives and environmentalists applauded the new rules ([Regulation 7](#)),” which the Commission unanimously approved. “We are grateful to Air Quality Control Commission staff for presenting largely feasible, practical improvements to Colorado’s air regulations, and to the Commission for ultimately adopting them as proposed,” said Lynn Granger, Executive Director of American Petroleum Institute – Colorado. The new rules will “require operators to monitor for gas leaks during pre-production, which starts with the drilling phase and ends with the return of flowback, as well as early production activities. Flowback is the liquid used in hydraulic fracturing that returns to the surface after being injected into tight shale formations deep underground. The rules will require monitoring for the first six months of drilling, the longest such requirement in the country. The new rules also require operators to report carbon dioxide and nitrous oxide emissions. They also set emissions standards for natural gas-fired engines at drilling sites at equal or greater to 1,000 horsepower. The monitoring rules will take effect May 1, 2021.” [Read more.](#)

Railroad Commission; COVID-19 Regulatory Extensions – Texas. On October 1, the Texas Railroad Commission (RRC) announced the extension of certain expirations and filing requirements due to the COVID-19 pandemic. This follows the April 3, 2020, RRC Notice to Operators titled [Extension of Certain Expirations and Filing Requirements Administered by the Administrative Compliance and Technical Permitting Sections](#)

(NTO). The NTO extended deadlines for certain expirations and filing requirements until September 30, 2020. The RRC is now extending the same deadlines for certain expirations and filing requirements until December 31, 2020. [Read more.](#)

Railroad Commission; Plugging – Texas. On September 24, the Texas Railroad Commission (RRC) announced it “has exceeded its performance target of plugging abandoned oil and gas wells throughout the state.” For the fiscal year ended on August 31, the RRC “plugged 1,477 orphan wells in Fiscal Year 2020, which exceeded the target of 1,400 set by the Legislature.” This comes as a result of the RRC’s focus on improving that program. “A few years ago, we took a hard look at improving our State Managed Plugging Program,” said RRC Director of Field Operations Clay Woodul. “We streamlined our internal processes, which, along with improved employee retention, has contributed to the success of the program. Our commitment continues even through limitations brought on by the COVID-19 pandemic.” [Read more.](#)

Railroad Commission; New Chairman – Texas. On September 22, the Texas Railroad Commission (RRC) announced that Commissioner Christi Craddick was unanimously elected RRC Chairman of the Railroad Commission during that day’s Commission conference. Craddick “was first elected statewide by the people of Texas in November 2012 to serve a six-year term as Texas Railroad Commissioner. A native of Midland, Christi is an attorney specializing in oil and gas, water, tax issues, electric deregulation and environmental policy.” [Read more.](#)

[INDUSTRY NEWS FLASH](#)

► **Non-profit launches platform to assist oil and gas companies with emissions.** “Boulder-based nonprofit Rocky Mountain Institute [launched its Climate Action Engine last week to help oil and gas companies](#) in [the] Permian Basin reduce greenhouse

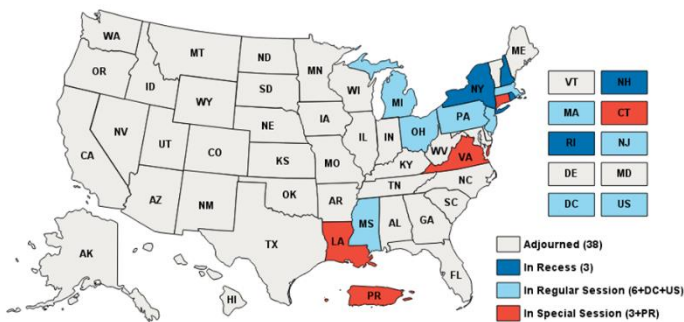
gas emissions by providing real-time data and climate intelligence to inform and evaluate decision-making,” according to the Permian Basin Petroleum Association. [Read more.](#)

► **Permian only major region to grow production in October.** “U.S. crude oil production from seven major shale formations is expected to decline by 68,000 barrels per day in October to 7.64 million b/d, according to the latest drilling productivity report” from U.S. Energy Information Administration (EIA). However, the EIA also reports that the Permian Basin in Texas and New Mexico “is expected to grow oil production by 23,000 b/d to 4.173 million b/d in October.” [Read more.](#)

► **Activity in the oil and gas sector declined modestly in third-quarter 2020, but contraction lessens.** According to the latest Dallas Fed Energy Survey, activity in the oil and gas sector declined modestly in third-quarter 2020, according to oil and gas executives surveyed, which included 166 energy firms, 112 who were exploration and production firms and 54 were oilfield services firms. However, the declines seen throughout 2020 have lessened and activity is back on the rise. [Read more.](#)

LEGISLATIVE SESSION OVERVIEW

States in Session



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

The **Pennsylvania** Senate is in recess until October 5. The **New Hampshire** Senate, **New York** and **Rhode Island** legislatures are in recess subject to the call of the chair.

Louisiana convened a special session on September 28 to discuss approaches to in-person education and the survival of the economy during the COVID-19 pandemic, reports [KLFY 10.](#)

South Dakota Republican Gov. Kristi Noem has called for a special session to begin on October 5 to address COVID-19 related spending and policy. It is not yet confirmed that this special session will begin on this date, as there is currently a disagreement between Governor Noem’s office and members of the legislature on who has authority over specific fund distribution, reports the [Argus Leader.](#)

Signing Deadlines (by date): **North Carolina** Democratic Gov. Roy Cooper had 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 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. **Vermont** Republican Gov. Phil Scott has five days from presentment, Sundays excepted, to act on legislation or it is pocket vetoed. **California** Democratic Gov. Gavin Newsom had a signing deadline on September 30.

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

Bill Pre-Files: [Alabama](#), [Florida](#), [Iowa](#), [Kentucky](#), [Montana](#), [Nebraska](#), [Nevada](#), [New Hampshire](#), [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. 8332 - Plugging Orphan Wells and Environmental Restoration Act of 2020. On October 1, Rep. Glenn Thompson (R-PA) introduced [H.R. 8332, known as the Plugging Orphan Wells and Environmental Restoration Act of 2020 or the POWER Act of 2020](#). According to the bill sponsor, the legislation “would reauthorize the federal orphan well remediation program under the Energy Policy Act of 2005 for five years at \$50 million per year. The POWER Act would also establish a new grant program for environmental restoration and reclamation of orphaned wells on state, as well as private and tribal lands, authorized at \$400 million per year for five years. It is estimated that Pennsylvania has more orphan wells than any other state.” According to Rep. Thompson, “We have both an economic and environmental responsibility to ensure abandoned wells are plugged. The POWER Act will ensure these legacy sites are appropriately handled in order to protect the environment while also stimulating jobs in the oil and gas sector. This will be a win-win for Pennsylvania.” [Read more.](#)

S. 4589 - Endangered Species Act Amendments of 2020. On October 5, official text for [S. 4589, known as the Endangered Species Act Amendments of 2020](#) was published. The bill, sponsored by Sen. John Barrasso (R-WY), would amend the Endangered Species Act (ESA), transferring more authority to state and local experts as well as delaying certain litigation challenging the delisting of species. “It is past time to modernize the Endangered Species Act. The status-quo is not acceptable,” said Sen. Barrasso. “Species that go on the endangered species list seem to stay there forever and never recover to the point of coming off the list. My bill

promotes the recovery of species and will allow local economies to thrive. State and local experts need to be leading efforts to protect local wildlife. This legislation will increase local input and improve transparency in the listing process. It protects endangered species and helps communities invest in more conservation and recovery activities.” The bill is also supported by Wyoming Governor Mark Gordon (R) who [testified before Congress](#) on September 23 and joins Sen. Barrasso in an effort to give Wyoming, and other states, more control over ESA policies. [Read more.](#)

FEDERAL – Regulatory

BLM Minerals Management Fees. On October 9, the Bureau of Land Management (BLM) published its final rule, *Minerals Management: Adjustment of Cost Recovery Fees* ([85 Fed. Reg. 64056](#)), which updates the annual fees set forth in the BLM “mineral resources regulations for the processing of certain minerals program-related actions. It also adjusts certain filing fees for minerals-related documents. These updated fees include those for actions such as lease renewals and mineral patent adjudications.” These fees are adjusted every fiscal year and this year’s rule is effective as of October 9, 2020. [Read more.](#)

National Energy Awareness Month. On October 6, Presidential Proclamation No. 10089 was published in the Federal Register ([85 Fed. Reg. 62929](#)) wherein President Trump declared October National Energy Awareness Month. “This month, we recommit to supporting our Nation’s workers who produce, transport, and refine our energy. We recognize the vital role they play in creating opportunities, developing technologies, and advancing our country toward an even more

prosperous future,” wrote President Trump. “My Administration will always support these hardworking men and women, and together, we will sustain our energy dominance and independence for years to come.” [Read more.](#)

BLM Resource Advisory Council – Alaska. On October 5, the BLM announced the Alaska Resource Advisory Council (RAC), Subcommittee on Public Lands, will hold virtual meetings on November 17 and 18, 2020, and again on February 9 and 10, 2021, with public comment periods being held each day. According to the BLM, “The 15-member Alaska RAC serves in an advisory capacity concerning issues relating to land use planning or the management of the public land resources located within the State of Alaska. The 8-member Subcommittee on Public Lands was established to gather information, conduct research, and analyze relevant issues and facts on selected topics for future consideration by the RAC.” [Read more.](#)

BLM Oil and Gas Lease Sale – California.

On October 8, the BLM Bakersfield Field Office announced it will offer seven parcels for lease, totaling approximately 4,133 acres of federal minerals, at its December 7, 2020, oil and gas lease sale. All parcels are located in or adjacent to existing oilfields in Kern County. The Bakersfield Field Office will conduct additional environmental review and may issue site-specific conditions when considering an application for permit to drill, in addition to the stipulations already attached to the lease at the time of sale. The protest and comment period closes on November 9, 2020. [Read more.](#)

BLM Oil and Gas Lease Sale – Montana; North Dakota. On October 6, the BLM announced the opening of a 15-day public scoping period for nominated oil and gas lease parcels located in Montana and North Dakota. The scoping period runs through October 21, 2020, and is intended to solicit public input on nominated lease parcels for the March 23, 2021, lease sale including the preliminary recommendations and stipulations. Parcels nominated for inclusion in the March sale are located

in Carbon, Fallon, Powder River, Richland, and Roosevelt counties in Montana, and McKenzie and Williams counties in North Dakota. This scoping process is intended to solicit public input on relevant issues, potential impacts, and alternatives that the BLM should address in an environmental assessment to be prepared in compliance with the National Environmental Policy Act. [Read more.](#)

BLM Oil and Gas Lease Sale – Nevada. On October 9, the BLM Nevada State Office announced it proposes to offer 20 parcels for lease totaling 24,940.037 acres at its December 8, 2020, oil and gas lease sale. The proposed parcels are located in Nye county. The protest and comment period ends on November 8, 2020. [Read more.](#)

BLM Resource Advisory Council – Utah. On October 6, the BLM announced the Utah Resource Advisory Council (RAC) is scheduled to meet on November 9-10, 2020. The meeting is scheduled to take place in-person but according to the BLM, a virtual meeting platform and/or teleconference may substitute for an in-person meeting. “The Utah RAC provides recommendations to the Secretary of the Interior, through the BLM, on a variety of public lands issues.” The meeting is open to the public. [Read more.](#)

U.S. Department of Energy Report. On October 6, the U.S. Department of Energy (DOE) issued a new report, “[U.S. Oil and Natural Gas: Providing Energy Security and Supporting our Quality of Life.](#)” that “acknowledges the critical role of advanced energy technology innovation in maintaining U.S. economic success and providing a sustainable domestic energy supply for the future, while recognizing the important benefits the oil and natural gas sector provides in our daily lives.” The DOE report primarily provides public-facing media information for outlets and educators to inform Americans of the value oil and natural gas plays in our economy, its role in manufactured products, and its importance in domestic energy security. [Read more.](#)

EPA State Regulatory Authority – Oklahoma.

On October 1, the head of the U.S. Environmental Protection Agency (EPA) [sent a letter to Oklahoma Governor Kevin Stitt \(R\)](#) turning its oversight of a number of environmental issues on tribal lands over to the state of Oklahoma. The move “will give the state more oversight over environmental issues for Oklahoma’s 38 federally recognized tribes” and “grants Oklahoma’s request to administer the State’s EPA-approved environmental regulatory programs in certain areas of Indian country. EPA’s letter resolves ambiguity and essentially preserves the regulatory status quo in Oklahoma,” said EPA spokesman James Hewitt, “adding that existing exemptions would still stand and that the agency would implement federal environmental programs.” [Read more.](#)

FEDERAL – Judicial

New York Hydraulic Fracturing Ban – U.S.

Supreme Court. *(Update to 3/2/20 Weekly Report)*

On October 5, the U.S. Supreme Court [denied a petition for review](#) from a New York landowner who has long fought New York’s ban on hydraulic fracturing in both state and federal court. New York first blocked “high-volume fracking” in 2014, “citing uncertain health impacts of the oil and gas extraction technique, and it cemented the ban into state law earlier this year.” The Supreme Court provided no explanation for its denial. For background, on February 25, the U.S. Court of Appeals for the Second Circuit, on appeal from the U.S. District Court for the Western District of New York, rejected a landowner’s bid to overturn the state’s hydraulic fracturing moratorium. In [Morabito v. New York](#) (Case No. 18-2499), the plaintiff landowner first challenged the policy in state court in 2015. He and his wife own 400 acres in Allegany County in the Marcellus Shale region. The lawsuit accused the state government of denying them due process. Morabito says he negotiated with dozens of drillers in 2013, hoping to tap into the same resources after the state’s then-short-term moratorium lifted. The Morabitos were the only ones to challenge New York’s ban in court. Morabito lost at three different

levels in state court and then took the case to federal court. Here, the Court concluded, “The New York courts held that David Morabito lacked standing to challenge the constitutionality of the regulation because he did not demonstrate his own actual or imminent injury-in-fact,” the Court wrote. “The standing issue was fully and fairly litigated in the state courts and was necessary to the courts’ decisions.” [Read more.](#)

BLM Waste Prevention Rule – Wyoming. *(Update to 5/14/18 Weekly Report)*

On October 8, in *Wyoming v. U.S. Department of Interior* (Case No. 2:16-cv-00285), the U.S. District Court for the District of Wyoming struck down an Obama-era methane emissions rule, saying the Bureau of Land Management (BLM) “exceeded its statutory authority and acted arbitrarily in promulgating the new regulations.” The 2016 Waste Prevention Rule ([81 Fed. Reg. 83008](#)) was intended “to reduce waste of natural gas from venting, flaring, and leaks during oil and natural gas production activities” on federal and tribal lands and to clarify “when produced gas lost through venting, flaring, or leaks is subject to royalties.” In 2019, the U.S. District Court for the District of Wyoming stayed the proceedings in this case which challenged the Waste Prevention Rule while a related challenge to the Trump administration’s repeal of this rule was pending in the U.S. District Court for the Northern District of California. After that court vacated the repeal in July 2020, the Wyoming federal court lifted the stay. In its order vacating all but two provisions of the Waste Prevention Rule, the court concluded that “a principal purpose and intent” of the rule was to “curb air emissions” and that the Mineral Leasing Act did not delegate authority to the Secretary of Interior to promulgate rules “justified primarily upon the ancillary benefit of a reduction in air pollution, particularly when considered in light of historical context and the comprehensive regulatory structure under the Clean Air Act.” The Court also found that the BLM acted “arbitrarily and capriciously” by failing to consider the rule’s impacts on marginal wells, failing to explain and identify support for the rule’s capture requirements,

and failing to separately consider the rule's domestic costs and benefits. [Read more.](#)

STATE – Legislative

Independent Contractors – Louisiana. As part of the legislature's [30-day Special Session](#), on October 6, SB 68 was introduced by Sen. Jay Luneau (D). The bill provides a definition of "employee" and provides an exemption from the definition of "employment" for those acting as independent contractors under the description provided. [Read more.](#)

Employee Misclassification – Louisiana. As part of the legislature's [30-day Special Session](#), on September 28, HB 34 was introduced by Rep. Mandie Landry (D). Under current law, if an employer fails to properly classify employees and does not pay unemployment insurance contributions, they receive a written warning and progressive fines for subsequent offenses, including the possibility of imprisonment after multiple offenses. This bill would remove the written warning and increases the misclassification fines. The bill also provides that in addition to any penalties assessed for a second or subsequent offense, an employer is ineligible to receive any state tax rebates to which they are otherwise entitled. [Read more.](#)

Tax Credits; Carryforward – Louisiana. As part of the legislature's [30-day Special Session](#), on October 14, SB 1 passed both houses of the legislature. The bill, sponsored by Sen. Rick Ward, III (R), extends the carryforward period for the inventory tax credit for certain businesses. Per the sponsoring bill analysis, "Current law provides a state tax credit against income and franchise taxes for ad valorem taxes paid to local governments on inventory held by manufacturers, distributors, retailers, and on natural gas used in storage facilities. The credit is refundable or nonrefundable depending on various factors applicable to each taxpayer. To the extent a portion of the credit is nonrefundable, a taxpayer has a five-year carryforward period within which to utilize unused credit amounts against tax liabilities.

Proposed law changes the carryforward period from five years to ten years, and provides that the ten-year carryforward period only applies to applicable taxes paid on or after January 1, 2020." [Read more.](#)

Severance Taxes – Louisiana. As part of the legislature's [30-day Special Session](#), on September 28, Rep. Phillip DeVillier (R) introduced HB 28 which reduces the rate of severance tax on oil produced from incapable wells under certain conditions. "Current law imposes a severance tax on the production from incapable wells (no more than 25 barrels of oil and at least 50% salt water per producing day) of 6.25% of the value of the oil when severed. Proposed law reduces the tax rate to 3.125% in any month when the average value is less than \$75 per barrel. The Dept. of Revenue shall determine the oil value quarterly based on the average New York Mercantile Exchange Price in the prior three months. This exemption is available for nine years, from January 1, 2021, through December 31, 2029." [Read more.](#)

Severance Taxes – Louisiana. As part of the legislature's [30-day Special Session](#), on September 28, Rep. Phillip DeVillier (R) introduced HB 29 which suspends severance taxes on production from certain oil wells. The bill, which passed the House on October 5, would exempt oil produced from any newly drilled or from a completed well undergoing well enhancements that require a Department of Natural Resources permit such as re-entries, workovers or plug backs from the severance tax. The exemption would apply to production on or after October 1 and before December 31, 2025. The exemption would expire after 24 months or until the payout of the well cost is achieved, whichever occurs first. [Read more.](#)

Electronic Execution of Documents – Michigan. On October 8, HB 6294 as introduced by Rep. Sarah Lightner (R). The bill allows for the electronic execution of certain documents. Specifically, the bill text notes, "the act of signing or witnessing the execution of a will under article II, a funeral representative designation, a parental appointment

of a guardian of a minor under section 5202, an appointment of a guardian of a legally incapacitated individual under section 5301, a durable power of attorney under section 5501, or a patient advocate designation is satisfied by use of a 2-way real-time audiovisual technology." A similar bill, [SB 1189](#), was also introduced in the Senate on October 8 by Sen. Peter MacGregor (R). [Read more.](#)

Notaries Public – Michigan. On October 8, HB 6297 was introduced by Rep. Sarah Lightner (R). The bill allows for electronic notarization of documents under the criteria as provided. A similar bill, [SB 1187](#), was also introduced in the Senate on October 8 by Sen. Peter MacGregor (R). [Read more.](#)

STATE – Regulatory

Mission Change Rulemaking – Colorado. On October 10, the Colorado Oil and Gas Conservation Commission (COGCC) released [draft Mission Change rulemaking](#) for the 1200 Series rules (protection of wildlife). The COGCC rulemaking would require proposed oil and gas operations on new or amended oil and gas locations to submit certain filings and provide wildlife protection and/or mitigation plans, among other regulations. No date has been provided by COGCC for final rulemaking at this stage. On October 21-23, the COGCC will hold virtual hearings on the rule. For more information [click here](#). You may also email the COGCC at dnr.ogcc@state.co.us or call them at (303) 894-2100 with any questions. [Read more.](#)

Employee Misclassification – Missouri. On September 11, Missouri Gov. Mike Parson (R) signed [Executive Order 20-15](#) creating the Interagency Task Force on Worker Classification between the Department of Labor and Industrial Relations, Department of Revenue, Department of Commerce and Insurance, and the Attorney General to promote the proper classification of Missouri workers and create a more prosperous economy. According to the governor's office, "In coordination with other Missouri state agencies, the task force will work collaboratively with business, labor, and community

groups to assess the effectiveness of existing investigative and enforcement mechanisms for identifying and preventing worker misclassification. The task force will also engage in community outreach campaigns designed to inform and educate stakeholders on the legal difference between independent contractors and employees and the harms caused by worker misclassification." [Read more.](#)

STATE – Judicial

Dormant Mineral Act; Marketable Title Act – Ohio. (*Update to 6/8/20 Weekly Report*) On September 29, the Ohio Supreme Court granted review in two cases AAPL has covered addressing application of the Ohio Dormant Mineral Act and Ohio Marketable Title Act in *Peppertree Farms, L.L.C. v. Thonen* (consolidated cases) and *Fonzi v. Miller*. In the *Peppertree Farms* cases, the Court will address whether the Ohio Dormant Mineral Act supersedes and controls over the Ohio Marketable Title Act as to the termination of severed oil and gas interests. The *Fonzi* case will address several issues related to the application of the Ohio Dormant Mineral Act, "including the level of due diligence required before serving a notice of abandonment by publication." For background, in the consolidated cases [Peppertree Farms, LLC v. Thonen](#) (Case Nos. [2020-Ohio-3042](#); and [2020-Ohio-3043](#)), the Court of Appeals, Fifth District, addressed a dispute over mineral rights purportedly reserved by deed and whether those reservations terminated upon the grantor's death. The Court held that they did terminate because the grantors failed to include words of inheritance in their reservation clauses. As a result, each grantor's reserved oil and gas interest did not transfer to his heirs and assigns. The Court noted that each of the deeds created "reservations" which included fee oil and gas interests. In making their finding, the Court relied, in part, on prior related Ohio Supreme Court case precedent "to find that whenever minerals are severed from the surface, two new and separate estates are created – a surface estate and a mineral estate. Thus, although the grantor had title to the oil

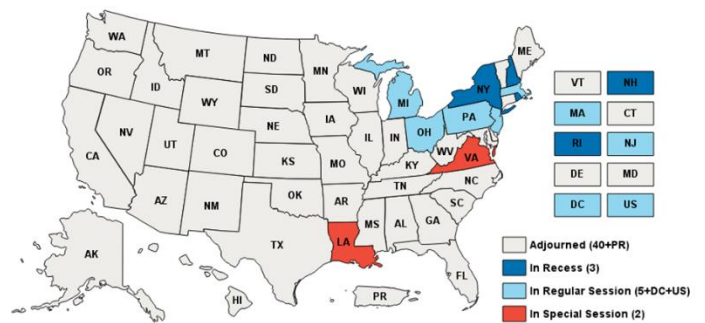
and gas at the time he executed the subject deed, his reservation was deemed to be a 'reservation' because the severance created a new oil and gas estate." ([See further coverage from law firm Vorys, Sater, Seymour and Pease LLP.](#)) In [Fonzi v. Brown](#) (Case No. 2020-Ohio-3631), the Ohio Court of 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." We will continue to keep AAPL members informed of these cases as they progress. [Read more.](#)

INDUSTRY NEWS FLASH

► **JPMorgan Chase to shift away from fossil fuels.** On October 6, the nation's largest bank announced it is "shifting its financing portfolio away from fossil fuels after facing years of pressure from shareholders and environmental activists." The banking giant is also calling for "its clients in the oil and gas, electric power and automotive sectors to reduce emissions by 2030 and vowed to cut its exposure to companies that do not align their operations with the Paris climate accord." [Read more.](#)

LEGISLATIVE SESSION OVERVIEW

States in Session



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

The New Hampshire Senate, New York and Rhode Island are in recess subject to the call of the chair.

Louisiana convened a special session on September 28 to discuss approaches to in-person education and the survival of the economy during the COVID-19 pandemic, reports [KLFY 10](#). This special session is expected to adjourn no later than October 27.

Minnesota adjourned its special session on October 16 after voting on a public works bill, [MPR News](#) reports.

Signing Deadlines (by date): South Dakota Republican Gov. Kristi Noem has until October 20 to sign or veto legislation from the most recent special session or it becomes law without signature. 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. Connecticut Democratic Gov. Ned Lamont has 15 days from presentment to sign or veto legislation or it becomes law without signature. 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 after the next meeting of the same legislature. **Minnesota** Democratic Gov. Tim Walz has 14 days from presentment to act on legislation or it is pocket vetoed. **Mississippi** Republican Gov. Tate Reeves has 15 days from presentment, Sundays excepted, to act on the legislation or the bill 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. **Vermont** Republican Gov. Phil Scott has five days from presentment, Sundays excepted, to act on legislation or it will become law without signature.

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

Bill Pre-Files: [Alabama](#), [Florida](#), [Iowa](#), [Kentucky](#), [Montana](#), [Nebraska](#), [Nevada](#), [New Hampshire](#), [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

S. 4641 - Public Engagement Opportunity on Public Land Exploration Act of 2020. On October 20, official bill text was made available for [S. 4641](#), known as the *Public Engagement Opportunity on Public Land Exploration Act of 2020* or the *PEOPLE Act of 2020*. The measure, sponsored by Sen. Michael Bennet (D-CO), would “amend the Mineral Leasing Act to provide for transparency and landowner protections in the conduct of lease sales.” Specifically, the legislation would: (1) Increase Transparency for Lease Nominations and Bids; (2) Establish Straightforward Notice and Public Comment Periods; (3) Improve Coordination with Local Governments and Other Federal Agencies; and (4) Minimize Conflict in Split-Estates. [Read more.](#)

S. 4642 - Oil and Gas Bonding Reform and Orphaned Well Remediation Act. On October 20, official bill text was made available for [S. 4642](#), known as the *Oil and Gas Bonding Reform and Orphaned Well Remediation Act*. The bill, sponsored by Sen. Michael Bennet (D-CO), would “amend the Mineral Leasing Act to ensure sufficient bonding and complete and timely reclamation of land and water disturbed by Federal and Indian oil and gas production.” According to Sen. Bennet, the bill’s purpose is “to clean up abandoned, or orphaned, oil and gas wells while strengthening bonding requirements and expanding opportunities for local input in lease sales on public lands [while ensuring taxpayers] are not left on the hook for future cleanup and remediation costs.” [Read more.](#)

Congressional Energy Export Caucus. On October 22, a bipartisan group of Congressional lawmakers launched the [Congressional Energy Export Caucus](#), which will “reestablish U.S. leadership with a pro-

energy trade agenda that creates jobs, rebuilds the economy, modernizes American energy infrastructure, strengthens U.S. security, and maintains global trade competitiveness.” One of the group’s leaders, Rep. Carol Miller (R-WV) noted, “American energy is a significant competitive advantage that we must embrace, and the Congressional Energy Export Caucus will champion the growth of American energy exports with our allies and into the developing world. This work will create new jobs, build up our infrastructure, and solidify our national security. I look forward to working with Congressmen Cuellar, Arrington, and Correa to advance our shared goals.” Industry leaders and stakeholders offered praise for the initiative. “Texas oil and gas producers applaud the formation of the Energy Export Caucus in the House that will work to expand markets for American energy,” said Cye Wagner, Chairman of the Texas Alliance of Energy Producers. “We are encouraged by the bipartisan efforts to launch the Congressional Energy Export Caucus, and applaud their mission to encourage American energy exports and further trade relationships with emerging markets,” said Dustin Meyer, American Petroleum Institute Director of Market Development. [Read more.](#)

FEDERAL – Regulatory

BLM Lease Stipulations. On October 23, the Bureau of Land Management (BLM) Oklahoma Field Office announced a comment period for recently revised conditions, or stipulations, that will be placed on Federal mineral lease parcels previously sold by the BLM in New Mexico, Oklahoma, Texas and Kansas. “The revised stipulations cover competitive oil and gas lease sales held in June 2019, September 2019, November 2019 and February 2020. Since these leases were sold, the BLM Oklahoma Field Office has

finalized the Oklahoma, Texas, Kansas Resource Management Plan, which provides direction on how the lands within the Field Office's jurisdiction are used. The Resource Management Plan Record of Decision was approved on March 9, 2020. Under current regulations, all actions approved or authorized by the BLM must conform to the existing land use plan where one exists. Therefore, the BLM must ensure that when a lease is issued, that the newly developed oil and gas lease stipulations and notices are used." The public comment period is open through December 9, 2020. [Read more.](#)

BLM Resource Advisory Councils. On October 22, the BLM published a notice of meeting, *Notice of Public Meeting, Southern New Mexico Resource Advisory Council, New Mexico (85 Fed. Reg. 67370)*, to announce the Southern New Mexico Resource Advisory Council meeting scheduled for December 2 where a number of public land management topics will be discussed. The meeting is open to the public. [Read more.](#)

BLM Resource Advisory Councils. On October 14, the BLM published a notice to request public nominations for 11 of the BLM's statewide and regional Resource Advisory Councils (RAC) located in the West that have vacant positions and/or members whose terms are scheduled to expire. "These RACs provide advice and recommendations to the BLM on land use planning and management of the National System of Public Lands within their geographic areas." Nominations must be received no later than November 13, 2020. [Read more.](#)

BLM Advisory Committees – Utah. On October 14, the BLM published a notice requesting public nominations to BLM citizens' advisory committees affiliated with specific sites on the BLM's National Conservation Lands, specifically Bears Ears National Monument Advisory Committee and Grand Staircase-Escalante National Monument Advisory Committee. The "advisory committees provide advice and recommendations to the BLM on the development and implementation of management plans in accordance with the statutes under which

the sites were established." Nominations must be received no later than November 13, 2020. [Read more.](#)

Pipeline Corridor Initiative – Wyoming. On October 27, the BLM published its Notice of Availability for the [Environmental Impact Statement](#) (EIS) for the Wyoming Pipeline Corridor Initiative (WPCI). (See *Notice of Availability of the Final Environmental Impact Statement for the Wyoming Pipeline Corridor Initiative (WPCI) Resource Management Plan Amendments to 9 BLM-Wyoming Resource Management Plans; 85 Fed. Reg. 68087*) Wyoming Gov. Mark Gordon's (R) office said that the state has worked on plans for the pipeline corridor system "for almost a decade." The proposed WPCI plan would designate roughly 1,150 miles of BLM federal land in Wyoming for "a dedicated pipeline corridor system" that Gordon's office said would support carbon capture and utilization efforts. "Designated corridors under the WPCI would enable transportation of CO₂ from CO₂ capture units to where it could be sold, used for sequestration, or used in enhanced oil recovery," Gordon's office said in the release. "The State of Wyoming's proposal focuses pipeline development in existing federal energy corridors or adjacent to existing pipeline infrastructure for approximately 95 percent of the corridor network." The official BLM publication starts the mandated 60-day "Governor's Consistency Review" period to "ensure conformity with state and local plans, policies and programs." [Read more.](#)

Interior Department Offshore Rulemaking. On October 16, the Interior Department's Bureau of Ocean Energy Management (BOEM) and Bureau of Safety and Environmental Enforcement (BSEE) published a notice of proposed rulemaking, *Risk Management, Financial Assurance and Loss Prevention (85 Fed. Reg. 65904)*, which "proposes to streamline its evaluation criteria for determining whether oil, gas and sulfur lessees, right-of-use and easement (RUE) grant holders, and pipeline right-of-way grant holders may be required to provide bonds or other security above the prescribed amounts for base bonds to ensure compliance with their Outer

Continental Shelf (OCS) obligations. BOEM's portion of the proposed rule would also remove restrictive provisions for third-party guarantees and decommissioning accounts, and would add new criteria under which additional bonds and third-party guarantees may be cancelled. Based on the proposed framework, BOEM estimates its amount of financial assurance would decrease from \$3.3 billion to \$3.1 billion, although it would provide greater protection as the financial assurance would be focused on the riskiest properties. BSEE's portion of this proposed rule would establish the order in which BSEE could order predecessor lessees, owners of operating rights, or grant holders, who have accrued decommissioning obligations, to perform those obligations when the current owners of a lease or grant fail to do so. BSEE's proposed provisions would also clarify decommissioning responsibilities for RUE grant holders and require that any party appealing any final decommissioning order provide a surety bond to ensure that funding for decommissioning is available if the order is affirmed on appeal and the liable party subsequently defaults." The public comment period is open through December 15.

[Read more.](#)

ONRR Information Collection. On October 15, the Office of Natural Resources Revenue (ONRR) published the following notice: *Agency Information Collection Activities; Collection of Monies Due the Federal Government; and Processing Refund Requests Related to Overpayments Made to ONRR* ([85 Fed. Reg. 65395](#)). The ONRR notice proposes "to renew an information collection with revisions. Through this Information Collection Request (ICR), ONRR seeks authority to collect information related to the paperwork requirements covering cross-lease netting in the calculation of late-payment interest; a lessee's designation of designee for payment obligations; tribal permission for recoupment on Indian oil and gas leases; and refund requests for overpayments made to ONRR." The public comment period is open through December 14.

[Read more.](#)

FEDERAL – Judicial

Royalties; Leasing; Jurisdiction – Louisiana. On October 26, the Fifth Circuit Court of Appeals, on appeal from the U.S. District Court for the Western District of Louisiana, found that litigants bringing royalty claims against a group of oil and gas companies did not have jurisdiction to bring those claims in Louisiana despite lease negotiations taking place in the state and royalties being sent there over a 30 year period. In *Libersat v. Sundance Energy, Inc.* (Case No. 20-30121), the plaintiffs brought suit for royalties pursuant to a Texas lease. The plaintiffs alleged that the defendant companies negligently calculated royalty distributions and attempted to coerce them to sign an indemnity agreement when the error was brought to their attention. The Fifth Circuit affirmed the district court's dismissal of all claims against the companies for lack of personal jurisdiction. After addressing each defendant's contact with the state, the Court held that the district court correctly found that the defendants did not have "sufficient minimum contacts" with the state of Louisiana to support an exercise of "specific personal jurisdiction" to maintain this action in Louisiana and upheld case dismissal. [Read more.](#)

Endangered Species Act – Maryland. On October 21, a group of environmental activists filed suit in federal court against the Trump administration claiming it violated the Endangered Species Act with its assessment of the harm that offshore oil and gas drilling could do to wildlife in the Gulf of Mexico. In *Sierra Club v. National Marine Fisheries Service* (Case No. 8:20-cv-03060), the litigants claim the governing agency issued an "arbitrary and capricious programmatic biological opinion governing federally authorized oil and gas activities in the Gulf of Mexico." The groups are asking the court to strike down the related environmental assessment for the agency's failure to use the "best available science." The group is also asking the court to make the agency issue a new opinion that accurately accounts for the harms and requires the Interior Department to actively protect against them. [Read more.](#)

BLM Resource Management Plans – Montana.

(Update to 10/5/20 Weekly Report) On October 16, a Montana federal district judge “unraveled the work of former Bureau of Land Management (BLM) acting Director William Perry Pendley, throwing out land management plans in Montana in a case that could jeopardize the agency’s work elsewhere across the country.” Judge Brian Morris’s latest decision in [Bullock v. U.S. Bureau of Land Management](#) (Case No. 4:20-cv-00062-BMM), “invalidates three land management plans Pendley supervised in Montana, including one that would open 95 percent of 650,000 acres of BLM land to resource extraction like mining and drilling.” But the Court “stopped short of applying the ruling to any of Pendley’s other decisions, despite devoting much of the decision to castigating the Interior Department for failing to comply with his order to supply a list of actions that he may have taken illegally.” According to the opinion, “it remains probable that additional actions taken by Pendley” should be set aside as unlawful. For background, on September 25, the [same court ousted William Perry Pendley as the top official at the BLM](#) noting that Pendley had effectively been serving as acting BLM Director unlawfully for 424 days without Senate confirmation. The judge in the case added that Pendley’s authority, “did not follow any of the permissible paths set forth by the U.S. Constitution.” In June, President Trump nominated Pendley to permanently lead the BLM, but his name was withdrawn in August. Other decisions made by Pendley may also reportedly be invalidated as a result of the court’s finding, but to date no others have been affected. These rulings arise from the original lawsuit brought by Montana Democratic Governor Steve Bullock in July seeking removal of Pendley as acting BLM Director. In the suit, [Bullock v. Bureau of Land Management](#) (Case No. 4:20-cv-00062), the governor claimed Pendley’s appointment “directly contravenes the Federal Vacancies Reform Act, which prohibits acting officers from running agencies while their nominations are pending before the Senate.” The suit had been deemed politically motivated as Bullock is currently running to unseat first-term Republican Montana Senator Steve Daines. In

response to the October 16 ruling, BLM spokesman Derrick Henry called Morris’s order “erroneous” and the Interior Department “is reviewing all legal options to fight this outrageous decision.” [Read more.](#)

STATE – Legislative

Tax Credits; Carryforward – Louisiana. As part of the legislature’s [30-day Special Session](#), on October 21, SB 1 was transmitted to Gov. John Bel Edwards (D) after passing both houses of the legislature. The bill, sponsored by Sen. Rick Ward, III (R), extends the carryforward period for the inventory tax credit for certain businesses. Per the sponsoring bill analysis, “Current law provides a state tax credit against income and franchise taxes for ad valorem taxes paid to local governments on inventory held by manufacturers, distributors, retailers, and on natural gas used in storage facilities. The credit is refundable or nonrefundable depending on various factors applicable to each taxpayer. To the extent a portion of the credit is nonrefundable, a taxpayer has a five-year carryforward period within which to utilize unused credit amounts against tax liabilities. Proposed law changes the carryforward period from five years to ten years, and provides that the ten-year carryforward period only applies to applicable taxes paid on or after January 1, 2020.” [Read more.](#)

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Electronic Execution of Documents – Michigan. *(Update to 10/19/20 Weekly Report)* On October

26, HB 6294 was transmitted to Gov. Gretchen Whitmer (D) after passing both houses of the legislature. The bill, introduced by Rep. Sarah Lightner (R), would “amend the Estates and Protected Individuals Code (EPIC) to allow certain documents to be signed or witnessed using two-way real-time audiovisual technology and to allow certain visits required under EPIC to be conducted using that technology.” [Read more.](#)

Register of Deeds – Michigan. On October 13, HB 6296 passed the House and has been transmitted to the Senate. The bill, introduced by Rep. Sarah Lightner (R), would “amend the Uniform Real Property Electronic Recording Act to provide that all of the following apply beginning April 30, 2020, through December 31, 2020: A register of deeds must accept electronic documents for recording. (If a register of deeds did not have the equipment to accept an electronic document, the register of deeds would have to accept for recording a tangible of an electronic document properly notarized under the Michigan Law on Notarial Acts.); A register of deeds need only act in substantial compliance with the act and any standards established by the Electronic Recording Commission; A register of deeds must deem all financial institutions and all title insurance companies or their employed or contracted settlement agents as covered by an agreement establishing a verified transactional relationship as required under the act. The register of deeds can ask the financial institution or title insurance company for verification of a notary’s employment or contractual association; and a financial instrument must accept a document or electronic document recorded by a register of deeds as provided above.” According to the legislature, this bill is tied to HB 6297 (*see below*) which means that HB 6297 must be enacted in order for HB 6296 to be given effect under the law. [Read more.](#)

Notaries Public – Michigan. (*Update to 10/19/20 Weekly Report*) On October 26, HB 6297 was transmitted to Gov. Gretchen Whitmer (D) after passing both houses of the legislature. The bill,

introduced by Rep. Sarah Lightner (R), would “amend the Michigan Law on Notarial Acts to allow notaries public to use two-way real-time audiovisual technology to perform notarial acts electronically under certain circumstances.” [Read more.](#)

Notaries Public – Minnesota. On October 21, Gov. Tim Walz (D) signed HF 15 into law. The measure, sponsored by Rep. Mike Freiberg (D), allows video conferencing to fulfill the requirement to personally appear before a notarial officer for real estate document notarization in light of COVID-19. The Act is effective the day following final enactment and expires January 6, 2021. [Read more.](#)

Notarial Acts – Pennsylvania. On October 29, HB 2370 was signed into law by Gov. Tom Wolf (D) after unanimous passage in the House and Senate. The bi-partisan bill allows for certain remote, electronic notarial acts as a result of the COVID-19 pandemic. Specifically, the bill will “authorize the electronic notarization of documents where the signer appears before the notary by means of real-time audio-video communication.” The Act takes immediate effect. [Read more.](#)

Employee Misclassification Task Force – Pennsylvania. (*Update to 11/4/19 Weekly Report*) On October 29, HB 716 was signed into law by Gov. Tom Wolf (D) after unanimous passage in the House and Senate. The bi-partisan bill creates a joint agency task force on employee misclassification. According to the [sponsor’s memorandum](#), “The task force will investigate the practice and develop and implement a comprehensive plan to reduce misclassification in Pennsylvania. With this task force in place, we will be able to properly identify the scope of the problem and create a plan to solve it.” Members of the bi-partisan task force include the Attorney General, the Secretary of Labor and Industry, the Secretary of Revenue, and appointees by the President Pro Tempore, the Minority Leader of the Senate, the Speaker of the House of Representatives, and the Minority Leader of the House of Representatives. The first Task Force report will not be issued before March 2022. The Act is effective 60 days after signed. [Read more.](#)

Public Natural Resources Trust Fund – Pennsylvania. On October 19, HB 2934 was introduced by Rep. Jennifer O'Mara (D). The bill would “create a Public Natural Resources Trust Fund, which would receive money from oil and gas developed on the over 385,000 acres of Pennsylvania land leased for such development. The money would be put into a trust fund and used for various conservation projects carried out by the Pennsylvania Departments of Conservation and Natural Resources, Environmental Protection, and Agriculture.” [Read more.](#)

STATE – Regulatory

Production Tax Ballot Measure – Alaska. On election day November 3, Alaska voters will weigh in on [Ballot Measure 1](#), known as the Fair Share Act, which seeks to overhaul Alaska’s formula for claiming revenue from crude oil extracted from the Alpine, Kuparuk, and Prudhoe Bay fields. The ballot measure group, Vote Yes for Alaska’s Fair Share, says passing the measure would bring in new state revenue and help prevent the state from cutting the annual Permanent Fund dividend to pay for state services. For their part, oil companies have invested millions in campaigns to urge voters to vote “no” on the initiative to rewrite existing Alaska tax law. ConocoPhillips Alaska might retreat from drilling on the North Slope if the ballot proposal is approved in the election, according to company president Joe Marushack. “This is an increase of the severance taxes by 150% to 300% depending on oil prices,” said Marushack during a recent Alaska Chamber [presentation](#). “That’s in addition to the income taxes we pay, the royalties we pay, the operating costs we pay. This is a huge increase on industry.” [Read more.](#)

Oil and Gas Tax Assessments – Louisiana. On election day November 3, Louisiana voters will weigh in on a ballot initiative to determine the way the state values oil and gas wells for property tax purposes. The passage of [Amendment 2](#) would allow local tax assessors to account for the presence or production of oil or gas to be included in the methodology

used to determine the fair market value of a well. Currently, assessments do not account for the presence or production of oil or gas and instead relies on other criteria such as the cost of a replacement well and the type of equipment used. This means wells using the same equipment have identical tax bills even if one of the wells is not producing. The Republican backed amendment has the support of the Louisiana Oil and Gas Association, the Louisiana Mid-Continent Oil and Gas Association, and the Louisiana Assessor’s Association. [Read more.](#)

Proposed Methane Emissions Rulemaking – New Mexico. As recently reported by *Forbes*, following up on the [2019 New Mexico Climate Strategy Initial Recommendations and Status Update](#) released last year by the administration of Gov. Michelle Lujan Grisham (D), “New Mexico regulators are developing what could become the strictest standards in the nation to regulate the volumes of methane released into the environment by oil and gas operators. Two state regulatory agencies are crafting complementary regulations to address emissions, one from the standpoint of waste of resource and the other looking to curtail environmental pollution.” In October, “the New Mexico Oil Conservation Division (OCD) and its parent agency the Energy, Minerals and Natural Resources Department (EMNRD), [released its final proposed waste-reduction rule](#), which would require oil and gas operators to capture 98% of the natural gas they produced by 2026.” OCD Deputy Director Tiffany Polak said the EMNRD rules “would be implemented in two main phases. In the first phase, which is scheduled to take place through the end of 2021, the agency will collect data related to each operator’s current emissions, in order to set baseline emission reduction targets. Then, at the end of next year or into early 2022, those baseline targets will be set.” [Read more.](#)

Oil and Gas Well Incentives – North Dakota. On October 23, the [North Dakota Special Emergency Commission approved a request](#) from the North Dakota Industrial Commission, Division of Oil

and Gas, to utilize federal funds provided by the Coronavirus Relief Fund created by the federal CARES Act for an oil and gas incentive program totaling \$16 million. The Drilled but Uncompleted (DUC) Well Completion Incentive Program will provide incentives for the completion of a number of DUC wells, provide employment opportunities, and provide 150-200 long-term production jobs to operate new wells within the state.

[Read more.](#)

STATE – Judicial

State Regulations; Horizontal Wells – New Mexico.

On September 23, in *Jalapeno Corp. v. New Mexico Oil Conservation Commission* (Case No. A-1-CA-37449), the New Mexico Court of Appeals addressed a challenge to the Commission's 2018 Rules governing horizontal wells. Jalapeno claimed that the 2018 Rules establishing guidelines for well spacing, infill horizontal wells, and transitional provisions are arbitrary and capricious and contrary to law. Specifically, Jalapeno claimed that concerning well spacing, the Commission's failure to specify acreage requirements for horizontal spacing units contravenes its purported legal duty to establish spacing units based on the area that can be efficiently and economically drained by one well, and abdicates to operators its statutory obligation to fix well spacing. This Court disagreed and affirmed the lower court ruling in favor of the Commission noting that the rule "delineates clear criteria that a standard horizontal spacing unit must satisfy: the minimum number and size of the tracts that must be included in the spacing unit; the maximum radius within which an operator may include certain subdivisions of sections; the form of the spacing unit; and the minimum size of the spacing unit if subject to a special pool order. The Commission found, to maximize recovery and minimize waste, the spacing regulations for horizontal wells should allow 'the drilling to follow geological stress patterns' which extend across relatively long distances, permitting those stress pattern to determine the required acreage, subject to the formula set forth in the rule. Jalapeno does not challenge the Commission's

findings. We conclude that Jalapeno has not demonstrated that the 2018 Rules misinterpret or misapply the law or that they are not reasonably related to the Commission's duty to prevent waste and protect correlative rights." Jalapeno also challenged the Commission's rules regarding infill wells. Specifically, Jalapeno contended that the effect of the adoption of the newly promulgated definition of "infill horizontal well" is arbitrary and capricious and is contrary to law because it violates the correlative rights of non-consenting owners bound by compulsory pooling orders. Second, Jalapeno contended that the Commission's imposition of a two hundred percent risk charge on multiple infill horizontal wells ignores the language of the statute authorizing those charges. Again, the Court disagreed and upheld the rulemaking.

[Read more.](#)

Deeds; Reservations – Ohio. On September 30, in *Richards v. Hillgas* (Case No. 2020-Ohio-4717), the Ohio Court of Appeals, Seventh District, addressed disputes over oil and gas rights in multiple deed reservations. As to one of the deeds the Court found that while the deed clearly intended to convey the surface, "there is no specific exception or reservation language regarding the oil and gas rights" and accordingly, "Oil and gas rights must be excepted or reserved in a title transaction otherwise those rights transfer with the surface." The Court also found a genuine issue of material fact in the interpretation of another deed which excepted coal, as well as making determinations about successors in interest. [Read more.](#)

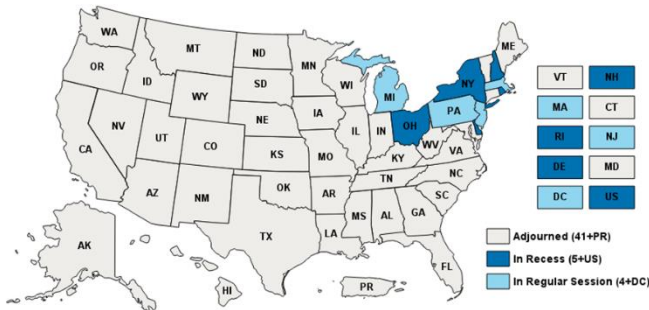
INDUSTRY NEWS FLASH

► **ConocoPhillips announces net-zero emissions goal by 2050.** On October 19, ConocoPhillips reportedly "surprised investors and analysts" by outlining plans to reduce its operational emissions by as much as 45% by 2030 and then wind that down to nothing by 2055. "We're the first U.S. based oil and gas company to take this step," said Chief Executive Officer Ryan Lance during a conference

call intended to discuss the company's \$9.7 billion deal to acquire Concho Resources. [Read more.](#)

LEGISLATIVE SESSION OVERVIEW

States in Session



Session Notes (by date): Massachusetts, the Michigan House, New Jersey, and Pennsylvania are in regular session. The District of Columbia Council is also in session. The following are in recess until the dates provided: Michigan Senate (November 4), U.S. Senate (November 9) and Ohio (November 10).

Delaware, the New Hampshire Senate, New York, and Rhode Island are in recess subject to the call of the chair. The U.S. House is in recess subject to the call of the chair until November 16.

Louisiana adjourned its special session on October 23 after discussing approaches to in-person education and the survival of the economy during the COVID-19 pandemic, reports [KATC 3](#).

Missouri Republican Gov. Mike Parson has called for a special session to convene on November 5 to discuss CARES Act spending, reports [ABC 17](#).

Signing Deadlines (by date): Virginia Democratic Gov. Ralph Northam has until November 15 to act on legislation from the most recent special session 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. Louisiana Democratic Gov. John Bel Edwards has 20 days from presentment to sign or veto legislation or it becomes law without signature. Maine Democratic

Gov. Janet Mills must act on legislation presented within 10 days of adjournment or it becomes law unless returned within three days after the next meeting of the same legislature. 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. Vermont Republican Gov. Phil Scott has five days from presentment, Sundays excepted, to act on legislation or it will become law without signature.

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

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

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GOVERNMENTAL AFFAIRS WEEKLY REPORT



Following are key election results in the race for President and the U.S. Congress, as well as relevant governors' races, state legislature results, and ballot measures called at the time of this report.

Race for President: Former Vice-President Joseph R. Biden (D) is the projected winner of the presidential election, although ballot canvassing and legal challenges are still ongoing and the Electoral College does not meet until December 14, 2020, to officially certify the winner. Among legal challenges brought by incumbent President Trump (R) in Michigan, Wisconsin, Arizona, Nevada, and Pennsylvania, last week, Georgia Secretary of State Brad Raffensperger (R) said the state would begin a county-by-county hand audit of ballots in the presidential race to be completed by November 20. Biden holds a slim margin of roughly 14,000 votes out of the nearly 5 million cast. While Georgia does not have an automatic recount law, a losing candidate may request a recount if the margin is less than or equal to 0.5%. [Read more.](#)

Governors Races: One key race of interest for AAPL was in Montana where Republicans flipped a Democratic governor's seat with Rep. Greg Gianforte (R) beating Mike Cooney (D). Gianforte is currently the sole congressman representing Montana in the U.S. House of Representatives. His seat was won by Matt Rosendale (R) by nearly 13 percentage points. Steve Daines (D), the current governor, was term-limited from running again and led an unsuccessful bid to win a U.S. Senate seat

in this election. In North Dakota, incumbent Gov. Doug Burgum (R) prevailed over his challenger, Shelley Lenz (D) to hold the seat. In West Virginia, incumbent Gov. Jim Justice (R) defeated his opponent Ben Salango (D). Indiana incumbent Gov. Eric Holcomb (R) defeated Woody Myers (D). For more, see the AAPL Governor Races Report: [click here.](#)

U.S. Senate Races: At the time of this report, election results show Republicans holding 50 seats and Democrats with 48 seats after the Alaska race was called between incumbent first-term Sen. Dan Sullivan (R) and challenger Dr. Al Gross (I) in which Sullivan held his seat. In another late call, incumbent first-term Sen. Thom Tillis (R-NC) defeated challenger, Cal Cunningham (D). With Alaska and North Carolina wins, Republicans would maintain control of the Senate if they win one of the two uncalled races in Georgia, as both of those are headed to a runoff on January 5, 2021, after no candidate hit the required 50% threshold to avoid a runoff under state law. Republican Senators David Perdue and Kelly Loeffler currently hold both seats. If Democrats flip both seats they would win the Senate majority at 50/50 since a Vice President Kamala Harris (D) would be the tie-breaking vote. In other significant races, incumbent Sen. John Cornyn (R-TX) defeated Air Force veteran MJ Hegar (D). In Montana, incumbent first-term Sen. Steve Daines (R) beat his challenger, current Gov. Steve Bullock (D), by roughly 10 percentage points in a hard-fought race that was projected as a possible Democratic flip. In Colorado, former Gov. John Hickenlooper (D) flipped a Republican seat by defeating incumbent Sen. Cory Gardner (R). In Arizona, Democrats flipped a Republican seat with former NASA astronaut Mark Kelly (D) defeating incumbent first-term Sen. Martha McSally (R), who has yet to concede the race. [Read more.](#)

U.S. House of Representatives Races:

Democrats are projected to maintain their majority in the House, although they failed to unseat any incumbent Republican representatives and now only hold a slim lead over Republicans in the chamber. For their part, Republicans picked up as many as six seats at the time of this report and are projected to retake the House in 2022. [Read more.](#)

State Races: On the state level, only two legislative chambers flipped party control, specifically, the New Hampshire Senate and House moved from Democratic to Republican control, after both went the other way in 2018. At present, Democrats could still win control of the Arizona House for the first time since 1966 or the Arizona Senate for the first time since 1992 as votes are still being counted. However, many eyes were on Texas as Democrats believed they could flip the state House, needing just nine seats to tip the balance of power in their favor. In the end, [the balance in the House was projected to remain the same](#) after the election with Republicans holding their 83-67 majority. In the Texas Senate, Republicans maintained their pre-election 19-12 majority. Overall, according to the National Conference of State Legislatures, “this appears to be a remarkably status quo election in the U.S. states. With just two chamber flips so far, it looks like 2020 will see the least party control changes on Election Day since at least 1944 when only four chambers changed hands. In the 1926 and 1928 elections, only one chamber changed hands.” [Read more.](#)

Ballot Measures: Please see below under “State-Regulatory” for the outcomes of ballot measures AAPL has been tracking this election season. For a deeper state-by-state look at all ballot initiatives, see the AAPL Ballot Measures Report: [click here.](#)

For more election data, see the AAPL Legislative Election Results Report: [click here.](#)

FEDERAL – Legislative

H.R. 8521 - Landowner Easement Rights Act. On November 13, official bill text was made available for [H.R. 8521](#), known as the *Landowner Easement Rights Act*. The bi-partisan measure, sponsored by Rep. Collin C. Peterson (D-MN) and Rep. Kelly Armstrong (R-ND), “would place a 50 year limit on conservation easements under the Department of Interior and give owners of existing easements the option to renegotiate, renew, or buy out of the easement.” According to Rep. Peterson, “This bill would allow long-term conservation projects to continue, while offering landowners a once-in-a-generation opportunity to reevaluate the terms of the agreement.” [Read more.](#)

H.R. 8411 - End Oil and Gas Tax Subsidies Act of 2020. On November 2, official bill text was made available for [H.R. 8411](#), known as the *End Oil and Gas Tax Subsidies Act of 2020*. The measure, sponsored by Rep. Earl Blumenauer (D-OR), would eliminate federal tax provisions that purportedly unfairly benefit oil and gas companies. “The oil and gas sectors are some of the world’s most profitable industries, claiming billions of dollars in earnings each year,” says Rep. Blumenauer. “Despite this success, these fossil fuel companies receive billions in tax breaks and subsidies annually, undermining the nation’s ability to invest in renewable energy sources and damaging our environment.” Should the bill pass the House, it has little to no chance of consideration in a Republican-led Senate. [Read more.](#)

FEDERAL – Regulatory

BLM Office Operations – New Mexico; Oklahoma; Texas. On November 6, the Bureau of Land Management (BLM) published a notice explaining that, “Due to the increasing cases of COVID-19 in New Mexico, Oklahoma and Texas, the Bureau of Land Management will be adjusting services at its offices, effective Monday, November 9. This decision was made to protect the safety and health of BLM employees and the public. Continuing our service to

the public while doing our part to address COVID-19 is very important. Following guidance from the CDC and recommendations from state and local public health authorities, some BLM offices are temporarily restricting in-person access to public rooms or offering limited services by appointment only." The BLM asks that before you visit offices in those states to confirm services and availability of staff. [Read more.](#)

Presidential Memorandum. On October 31, President Trump issued a *Memorandum on Protecting Jobs, Economic Opportunities, and National Security for All Americans*, in which the President notes that "[a]ccess to dependable, inexpensive sources of energy is a cornerstone of our well-being, of our economic strength and global competitiveness, and of our national security." To that end, the Memorandum directs that within 70 days, "the Secretary of Energy, in consultation with the United States Trade Representative, shall submit a report to the President, through the Assistant to the President for Economic Policy (who shall act in coordination with the Assistant to the President for National Security Affairs)" that will assess the "economic impacts of prohibiting, or sharply restricting, the use of hydraulic fracturing and other technologies" as well as related impacts on employment, energy prices, and national security. [Read more.](#)

FEDERAL – Judicial

EPA Consent Decree – California. On October 22, the Environmental Protection Agency (EPA) agreed to settle [ongoing air pollution litigation with environmental groups](#) regarding plans for limiting air pollution from oil and gas sources in eight states. The EPA has entered into a consent decree settlement, approved by the U.S. District Court for the Northern District Court of California, where the case, [Center for Biological Diversity v. Wheeler](#) (Case No. 3:20-cv-00448-VC), was being litigated. Under the consent decree agreement, the EPA will issue a notice that California, Connecticut, New York, Pennsylvania, and Texas have failed to submit state implementation

plans or plan revisions for addressing pollution control technology for oil and gas sources. The plans apply either to certain areas within the state or entire states in an ozone transport region. The EPA also agreed to either approve or reject oil and gas plan submissions from certain other regions, including Kern County, California by December 18, 2020. EPA approvals for Colorado areas are due to the EPA by no later than October 31, 2021, according to the settlement. [Read more.](#)

Leasing; Rights of Way; Pipelines – Pennsylvania. On September 11, in *Walls v. Repsol Oil and Gas USA, LLC* (Case No. No. 4:20-CV-00782), the U.S. District Court for the Middle District of Pennsylvania addressed a contract dispute between three Pennsylvanian landowners and one Texas oil and gas company over an oil and gas lease governing the use of land located in Tioga County. In 2002, Plaintiffs entered into the lease with Repsol's predecessor-in-interest, Victory Energy Corporation. Repsol now operates the Chicken Hawk Unit, a designated natural gas production unit, of which plaintiffs' property is a part. Repsol entered into negotiations for a pipeline right of way but the landowners rejected any agreement. Regardless, Repsol continued its pipeline installation. The plaintiffs claimed that the pipeline transports natural gas from production units that "do not unitize any of the Lease's leasehold acreage" and from other production units that do not neighbor the Lease's leasehold. The plaintiffs also alleged that the construction and installation of the pipeline was not authorized by the lease, and that they never granted Repsol the right to construct the pipeline. Here, the Court found the terms of the lease authorized such pipeline and it was not subject to a restriction as claimed. The Court also denied the landowners money damages because those were made "Without alleging facts to support their conclusory request for compensation." [Read more.](#)

STATE – Legislative

Tax Credits; Carryforward – Louisiana. (*Update to 11/2/20 Weekly Report*) As part of the legislature's

[30-day Special Session](#), on November 5, SB 1 was signed into law by Gov. John Bel Edwards (D). The Act, sponsored by Sen. Rick Ward, III (R), extends the carryforward period for the inventory tax credit for certain businesses. Per the sponsoring bill analysis, “Current law provides a state tax credit against income and franchise taxes for ad valorem taxes paid to local governments on inventory held by manufacturers, distributors, retailers, and on natural gas used in storage facilities. The credit is refundable or nonrefundable depending on various factors applicable to each taxpayer. To the extent a portion of the credit is nonrefundable, a taxpayer has a five-year carryforward period within which to utilize unused credit amounts against tax liabilities. Proposed law changes the carryforward period from five years to ten years, and provides that the ten-year carryforward period only applies to applicable taxes paid on or after January 1, 2020.” The Act is effective January 1, 2021. [Read more.](#)

Marketable Record Title – Michigan. On November 12, Rep. Brandt Iden (R) introduced HB 6332, which amends existing law regarding marketable title, notice requirements, and provides definition updates regarding mineral interests. The bill synopsis states this legislation is “An act to define a marketable record title to an interest in land; to require the filing of notices of claim of interest in such land in certain cases within a definite period of time and to require the recording thereof; to make invalid and of no force or effect all claims with respect to the land affected thereby where no such notices of claim of interest are filed within the required period; to provide for certain penalties for filing slanderous notices of claim of interest, and to provide certain exceptions to the applicability and operation thereof.” [Read more.](#)

Notaries Public – Michigan. (*Update to 11/2/20 Weekly Report*) On November 5, HB 6297 was signed into law by Gov. Gretchen Whitmer (D). The Act, sponsored by Rep. Sarah Lightner (R), “amend[s] the Michigan Law on Notarial Acts to allow notaries public to use two-way real-time audiovisual technology to perform notarial acts electronically

under certain circumstances.” The Act takes immediate effect. [Read more.](#)

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87th Legislative Session – Texas. Although the Texas Legislature’s [140-day session will not begin until January 12, 2021](#), state lawmakers have already begun pre-filing bills. On the first filing day, more than 530 bills had already been filed in the House and Senate. According to the *Texas Tribune*, “Thousands of bills are expected to be filed throughout the legislative session, though only a fraction of them will make it through both chambers and end up on Gov. Greg Abbott’s desk.” For reference, during [the last biennial session in 2019](#), 10,877 legislative measures were filed, 4,581 passed, and 1,323 were [signed into law by the governor](#) – an enactment rate just over 12%, although joint, concurrent, and other resolutions of the legislature do not require the signature of the governor to become effective. As always, AAPL will track and report on all relevant Texas legislation for our members, so please keep an eye on these reports for bill details come January 2021. [Read more.](#)

STATE – Regulatory

Production Tax Ballot Measure – Alaska. (*Update to 11/2/20 Weekly Report*) On Election Day, Alaskans voted against [Ballot Measure 1](#) (Increase Fuel Production Tax) defeating the measure known as the Fair Share Act, which would have overhauled Alaska’s formula for claiming revenue from crude oil extracted from the Alpine, Kuparuk, and Prudhoe Bay fields. The ballot measure group, Vote Yes for

Alaska's Fair Share, said passing the measure would have brought in new state revenue and helped prevent the state from cutting the annual Permanent Fund dividend to pay for state services. For their part, oil companies were successful in their campaign to urge Alaskans to vote "no" on this initiative to rewrite existing Alaska tax law. ConocoPhillips Alaska signaled possible retreat from drilling on the North Slope if the ballot proposal was approved in the election, according to company president Joe Marushack. "This is an increase of the severance taxes by 150% to 300% depending on oil prices," said Marushack during a recent Alaska Chamber [presentation](#). "That's in addition to the income taxes we pay, the royalties we pay, the operating costs we pay. This is a huge increase on industry." [Read more.](#)

Natural Gas Building Ban – California. Last week, the San Francisco Board of Supervisors approved a ban on natural gas in new buildings starting in June 2021. The [county and city ordinance](#) requires new building construction to only utilize electric power. However, "The city will still allow some new mixed-fuel buildings if the building inspector finds that constructing an all-electric building is physically and technically infeasible." [Read more.](#)

Environmental Impact Report – California. On October 30, the Kern County Planning and Natural Resources Department released a new updated Draft Supplemental Recirculated Environmental Impact Report (SREIR) for Revisions to Title 19, *Draft Supplemental Recirculated Environmental Impact Report (August 2020 and October 2020) for Revisions to Title 19 – Kern County Zoning Ordinance (2020-A) Focused on Oil and Gas Local Permitting*. The full document is available [here](#). Title 19 revisions contain "extensive new protective measures for health and safety of communities and residents while providing for a clear and certain process for permitting." According to the California Independent Petroleum Association, the Kern County Board of Supervisors approved changes to Title 19 of the Kern County Zoning Ordinance in 2015 to implement local permitting of oil and gas activities and after

numerous legal proceedings resulted in two draft SREIRs that have been prepared and circulated for public comment. The first draft SREIR was completed in August 2020 and is referred to as the SREIR (August 2020), and this second draft SREIR released in October 2020 is referred to as the SREIR (October 2020). This SREIR (October 2020) shows all text changes from the earlier SREIR. The public comment period for this document closes on December 14, 2020. [Read more.](#)

Oil and Gas Tax Assessments – Louisiana.

(Update to 11/2/20 Weekly Report) On Election Day November 3, Louisiana voters approved a ballot initiative to determine the way the state values oil and gas wells for property tax purposes. The approval of [Amendment 2](#) allows local tax assessors to account for the presence or production of oil or gas to be included in the methodology used to determine the fair market value of a well. Previously, assessments did not account for the presence or production of oil or gas and instead relied on other criteria such as the cost of a replacement well and the type of equipment used. The amendment, which came about as the result of [HB 360](#), sponsored by Rep. Mike Huval (R), had the backing of the Louisiana Oil and Gas Association, the Louisiana Mid-Continent Oil and Gas Association and the Louisiana Assessor's Association. [Read more.](#)

RRC Flaring/Venting Rule – Texas. *(Update to 8/24/20 Weekly Report)* On November 4, the Railroad Commission of Texas (RRC) announced it approved revisions to Form R-32, [Application for Exception to Statewide Rule 32](#) (formerly, the *Statewide Rule 32 Data Sheet*). Per the RRC, "As part of the RRC's efforts to reduce flaring of natural gas in Texas, RRC staff proposed changes to Form R-32 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. [Proposed form revisions were presented at \[the\]](#)

[RRC conference on August 4, 2020, and the revisions were posted on the agency's website for public comment.](#) The RRC received comments from 26 individuals, operating companies, trade associations and non-governmental organizations. Some of the comments were not relevant or were beyond the scope of the proposed changes to the form. Staff considered all the comments that were determined to be germane to the proposal and modified the form accordingly. The new form greatly enhances collection of critical data points and in some cases significantly reduces flare duration. In addition, to support the Rule 32 program RRC staff is currently developing an online form for submission via the RRC Online System. The first phase of the implementation is currently planned to go live by the end of March 2021. Form R-32 goes into effect immediately, but operators have the choice to file either the new Form R-32 or the existing data sheet until April 1, 2021 when an online exception filing system is implemented. Once the online system is implemented, the current Rule 32 Data Sheet will be phased out and discontinued." [Read more.](#)

Railroad Commission Race – Texas. In the November 3rd election, Republican Jim Wright defeated Democrat Chrysta Castañeda in the race for Texas Railroad Commissioner. Wright ousted sitting Railroad Commissioner, Ryan Sitton, in the March primary. A lifelong South Texan, Wright's family have been ranchers in Texas for five generations. Wright turned his first job at a hazardous waste facility into a group of four oil field services companies that offer services ranging from consulting and transportation to industrial recycling. Wright "believes that the Railroad Commission should continue to engage with the industry and the public to find solutions to problems that will make a difference not only for Texans but in Washington and across the world." [Read more.](#)

Oil and Gas Industry Support – Wyoming. On November 10, [Gov. Mark Gordon \(R\) announced that Wyoming will allocate federal COVID-19 funds to aid the oil and gas industry in the state.](#) This follows on the heels of a similar move in North Dakota which

AAPL reported on a few weeks ago. "These funds will have a direct impact on Wyoming's employment rate and put people back to work in our oil and gas sector," said Gov. Gordon, announcing up to \$15 million in assistance through a new Energy Rebound Program. The Program will utilize federal CARES Act funding "to provide business relief targeted towards drilled, but uncompleted oil and gas wells, wells that were unable to be re-completed, and plugging and abandonment projects which could not be finished due to the impacts of the COVID-19 pandemic."

[Read more.](#)

STATE – Judicial

Dormant Mineral Act – Ohio. On October 26, in [Crum v. Yoder](#) (Case No. 2020-Ohio-5046), the Ohio Court of Appeals, Seventh District, addressed a Dormant Mineral Act (DMA) case where the plaintiffs asked the trial court to deem their mineral interest not abandoned under the 2006 version of the DMA. Specifically, under the facts of the case, certain heirs argued the mineral interest was not abandoned because the 2011 notice of abandonment was invalidly served by publication and/or there was a savings event in a 1994 deed. The trial court ruled against the plaintiffs and the appellate court reaffirmed the trial court judgment "that the lack of an internet search alone is not necessarily fatal to a DMA abandonment." In the case, the surface owners searched the public records of Monroe County (where the property is located) and Belmont County, but found nothing identifying the heirs of the grantors who reserved the minerals in the 1990 deed. The heirs offered a title examiner's 2016 affidavit that a Google search located obituaries and gave the names and potential locations of the children into evidence, "but the Seventh District was not persuaded that an internet search was required." The Court also touched on issues of delivering notice of abandonment to one's own address and the distinction between the language of exceptions and reservations in the context of the DMA issue. [Read more.](#)

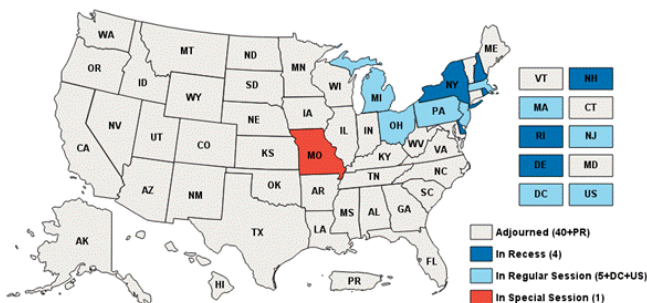
INDUSTRY NEWS FLASH

► **Texas oil and gas industry employment begins rebound in latest reporting.** The Texas Oil and Gas Association (TXOGA) has reported that “oil exploration, drilling and production companies employed 170,500 workers in the state in September. That’s an increase of 700 oil and gas extraction jobs for the month – the first increase since the pandemic started in March.” Todd Staples, TXOGA President said, “This small but positive job growth is an indicator of better days ahead.” [Read more.](#)

► **Major pipeline executive sees demand leading to higher oil prices in 2021.** “The recovery in demand coupled with the retrenchment in the U.S. shale sector could lead to higher oil prices as soon as in the second half of 2021,” according to Jim Teague, co-CEO of Enterprise Products Partners L.P., one of the largest pipeline companies in the country. [Read more.](#)

LEGISLATIVE SESSION OVERVIEW

States in Session



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

Delaware, the New Hampshire Senate, New York, and Rhode Island are in recess subject to the call of the chair. The U.S. House is in recess subject to the

call of the chair or November 16, whichever comes first.

Missouri convened a special session to discuss CARES Act spending on November 5, reports [Ozarks First](#).

Virginia adjourned its special session on November 9 after finishing the state budget and considering a handful of bills relating to criminal justice and the coronavirus, reports [The Washington Post](#).

Minnesota adjourned a one-day special session on November 12 as Democratic Gov. Tim Walz extended his peacetime emergency powers to combat COVID-19, reports [KSTP 5](#).

Signing Deadlines (by date): **Virginia** Democratic Gov. Ralph Northam has until December 9 to act on legislation from the most recent special session 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. **Louisiana** Democratic Gov. John Bel Edwards has 20 days from presentment to sign or veto legislation or it becomes law without signature. **Maine** Democratic Gov. Janet Mills must act on legislation presented within 10 days of adjournment or it becomes law unless returned within three days after the next meeting of the same legislature. **South Carolina** Republican Gov. Henry McMaster has until two days after the next meeting of the legislature to act on legislation or it becomes law.

Interim Committee Hearings: The following states are currently holding 2020 interim committee hearings: [Alabama](#), [Alaska](#), [Arizona](#), [Arkansas](#), [California Assembly](#) and [Senate](#), [Colorado](#), [Connecticut](#), [Delaware](#), [Georgia House](#) and [Senate](#), [Hawaii](#), [Idaho](#), [Illinois](#), [Indiana](#), [Iowa](#), [Kansas](#), [Kentucky](#), [Louisiana](#), [Maine](#), [Maryland](#), [Minnesota](#), [Mississippi House](#) and [Senate](#), [Missouri House](#) and [Senate](#), [Montana](#), [Nebraska](#), [Nevada](#), [New Mexico](#), [New York Assembly](#) and [Senate](#), [North Carolina](#), [North Dakota](#), [Oklahoma House](#) and [Senate](#), [Oregon](#), [Rhode Island](#), [South Carolina House](#) and

[Senate, South Dakota, Tennessee, Texas Senate, Utah, Vermont, Virginia, Washington, West Virginia, Wisconsin](#) and [Wyoming](#).

Bill Pre-Files: [Alabama, Florida, Iowa, Kentucky, Montana, Nebraska, Nevada, New Hampshire, Oklahoma, Tennessee, Texas, 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 – Regulatory

Arctic National Wildlife Refuge – Alaska. On November 17, the Bureau of Land Management (BLM) Alaska State Office published a notice, *Call for Nominations and Comments for the Coastal Plain Alaska Oil and Gas Lease Sale* ([85 Fed. Reg. 73292](#)), to call for nominations and public comments on Arctic National Wildlife Refuge (ANWR) lease tracts considered for the upcoming Coastal Plain oil and gas lease sale. The notice represents the official step taken by the Trump administration towards an auction of drilling rights in ANWR's 1.56-million-acre Coastal Plain, possibly before the inauguration of President-elect Joe Biden, who vowed to permanently protect the refuge area. According to Interior Department officials, the Coastal Plain is estimated to hold up to 11.8 billion barrels of technically recoverable oil. In 2017, Congress mandated that two ANWR oil and gas lease sales be held by December 22, 2024, although no date has been provided in this notice for the first sale. The BLM Alaska State Office must receive all nominations and comments on the available tracts on or before December 17, 2020. [Read more.](#)

BLM Oil Shale Management. On November 20, the BLM published a notice, *Agency Information Collection Activities; Oil Shale Management* ([85 Fed. Reg. 74378](#)), proposing to renew an information collection related "to the exploration, development, and utilization of oil shale resources on the BLM-managed public lands." Per the notice, "As part of our continuing effort to reduce paperwork and respondent burdens, we invite the public and other Federal agencies to comment on new, proposed, revised, and continuing collections of information. This helps us assess the impact of our information collection requirements and minimize the public's

reporting burden." Public comments for the proposed information collection are open through January 19, 2021. [Read more.](#)

Greater Sage-Grouse; BLM Environmental Assessments. On November 20, the BLM formally published notice of its "final Supplemental Environmental Impact Statement (EIS) for the management of Greater Sage-Grouse habitat, and by this notice is announcing its availability." The EIS and planning covers the Western states: Idaho ([85 Fed. Reg. 74380](#)), Wyoming ([85 Fed. Reg. 74380](#)), Colorado ([85 Fed. Reg. 74378](#)), Utah ([85 Fed. Reg. 74379](#)), Nevada/Northeastern California ([85 Fed. Reg. 74381](#)), and Oregon ([85 Fed. Reg. 74381](#)). The BLM plans are set to take effect while President Trump is still in office and will reportedly loosen rules on mining, drilling and grazing across millions of acres that the agency says reflect the needs of Western communities and the habitat areas, and that will ease restrictions. The plans "better align the BLM's management of Sage-Grouse habitat while addressing the circumstances and needs of each individual state," said Casey Hammond, BLM principal deputy assistant secretary for land and minerals management. According to Bloomberg Government, "Under former President Barack Obama, the Interior Department delayed lease sales on millions of acres of public land largely because of worries that intensive development could harm sage grouse. In 2015, it adopted a set of wide-ranging plans meant to protect the best grouse habitat and keep the bird off the threatened and endangered species list. After Trump took office in 2017, the agency modified those plans to ease restrictions on development, which meant officials no longer had to prioritize development outside grouse habitat." [Read more.](#)

Offshore Lease Sale. On November 17, the Bureau of Ocean Energy Management (BOEM) announced the *Gulf of Mexico Outer Continental Shelf Region-wide Oil and Gas Lease Sale 257*, which provides notice that on March 17, 2021 the BOEM “proposes to open and publicly announce bids received for blocks offered in the Gulf of Mexico (GOM) Outer Continental Shelf (OCS) Region-wide Oil and Gas Lease Sale 257 (GOM Region-wide Sale 257).” The “BOEM must receive all sealed bids prior to the Bid Submission Deadline of 10:00 a.m. on Tuesday, March 16, 2021, the day before the lease sale.”

[Read more.](#)

FEDERAL – Judicial

Pooling Orders; Leasing – Colorado. On October 27, in *Wolverine Energy Holdings, LLC v. Noble Energy, Inc.* (Case No. 1:20-cv-00905-DDD-STV), the U.S. District Court for the District of Colorado addressed a case where a lessor claimed that Colorado Oil and Gas Conservation Commission pooling orders exceeded the 640-acre maximum permitted by the lease, and so their minerals were effectively unleased. According to the Court, “The crux of this case is whether Wolverine should be deemed a consenting, non-leased working-interest owner, as Wolverine contends it is.” While the Court did acknowledge that “the pooling orders go beyond the approximate-acreage limit in the Lease. And Wolverine cites persuasive authority that supports the common-sense notion that such limits are of financial value and a lessee that wants to pool beyond them ought generally to have to pay to do so[,]” the Court also noted that “just because pooling orders went beyond the Lease’s limits does not mean that a federal court can essentially rewrite the Commission’s orders and require that Wolverine be treated differently under state law and regulation than the state agency has ordered. Wolverine admits it received notice of the proposed pooling orders, and at that time did not object to Noble or the Commission.” The Court concluded that “The orders specify that they include Wolverine’s interest and that that interest was subject to a lease [...] Wolverine now asks this court to declare that that

characterization was incorrect. More to the point, it asks this court to declare that despite the Commission’s orders, Wolverine must be treated as an unleased interest under state law. That the court cannot do. If Wolverine wished to challenge its inclusion as a leased interest under state law it should have objected during the process authorized by state law. To the extent Wolverine is challenging the way its interest is classified under the 2018 pooling orders, that is an action for violation of Article 60 of Title 34 of the Colorado Revised Statutes and is thus barred by the one-year statute of limitations in Colo. Rev. Stat. § 34-60-115. If Wolverine wished to sue Noble for breach of contract, that might be an alternative, but it has not done so either.” As such, the Court dismissed the case in favor of Noble Energy. [Read more.](#)

BLM Leasing – Washington, DC. On November 13, the U.S. District Court for the District of Columbia ruled against the Trump administration and the BLM in *WildEarth Guardians v. Bernhardt* (Case No. 1:16-cv-01724-RC). According to the Court, the agency conducted a “sloppy and rushed” environmental analysis on federal lands at issue in the case. The Court found the BLM’s “supplemental assessment does not comply with federal law and does not adequately consider the climate change impacts of the oil and gas leasing decisions in accordance with this Court’s prior opinion.” According to law firm, Spencer Fane LLP, “The Court concluded that the BLM failed to look closely enough at climate change impacts from oil and gas development. The ruling maintained the prohibition on issuing permits for drilling on over 500 square miles in Wyoming and forces the agency to more accurately consider cumulative greenhouse gas emissions from oil and gas operations on public lands in Wyoming, as well as Colorado and Utah. [Read more.](#)

STATE – Legislative

Severance Taxes; Stripper Wells – Louisiana. (*Update to 10/5/20 Weekly Report*) As part of the legislature’s [30-day Special Session](#), known as the Second Extraordinary Session, HB 8 was

introduced by Rep. Phillip DeVillier (R). The bill died in committee at the end of that session which adjourned October 23, 2020 and has passed the period for the governor to act. "Current law imposes a severance tax on the production from stripper wells (no more than 10 barrels of oil per producing day) of 3.125% of the value of the oil when severed. This tax is exempted in any month when the average value is less than \$20 per barrel. Proposed law will exempt the tax on oil produced from stripper wells and stripper fields in any month when the average value is less than \$75 per barrel." The Department of Revenue "shall determine the oil value quarterly based on the average New York Mercantile Exchange Price in the prior three months. This exemption is available for nine years, from January 1, 2021 through December 31, 2029." The bill would have also required all production reports be filed timely with the Department of Revenue "verifying the average daily production during each month." [Read more.](#)

Severance Taxes – Louisiana. *(Update to 10/19/20 Weekly Report)* As part of the legislature's [30-day Special Session](#), known as the Second Extraordinary Session, HB 28 was introduced by Rep. Phillip DeVillier (R). The bill died in committee at the end of that session which adjourned October 23, 2020 and has passed the period for the governor to act. The bill would have reduced the rate of severance tax on oil produced from incapable wells under certain conditions. "Current law imposes a severance tax on the production from incapable wells (no more than 25 barrels of oil and at least 50% salt water per producing day) of 6.25% of the value of the oil when severed. Proposed law reduces the tax rate to 3.125% in any month when the average value is less than \$75 per barrel. The Dept. of Revenue shall determine the oil value quarterly based on the average New York Mercantile Exchange Price in the prior three months. This exemption is available for nine years, from January 1, 2021, through December 31, 2029." [Read more.](#)

Severance Taxes – Louisiana. *(Update to 10/19/20 Weekly Report)* As part of the legislature's [30-day](#)

[Special Session](#), known as the Second Extraordinary Session, HB 29 was introduced by Rep. Phillip DeVillier (R). Although the bill, which would have suspended severance taxes on production from certain oil wells, passed the legislature it was vetoed by Gov. John Bel Edwards (D) on November 11, 2020. Specifically, the legislation would have exempted oil produced from any newly drilled or from a completed well undergoing well enhancements that require a Department of Natural Resources permit such as re-entries, workovers or plug backs from the severance tax. The exemption would have applied to production on or after October 1 and before December 31, 2025. The exemption would have expired after 24 months or until the payout of the well cost was achieved, whichever occurred first. [Read more.](#)

Employee Misclassification – Louisiana.

(Update to 10/19/20 Weekly Report) As part of the legislature's [30-day Special Session](#), known as the Second Extraordinary Session, HB 34 was introduced by Rep. Mandie Landry (D). The bill died in committee at the end of that session which adjourned October 23, 2020 and has passed the period for the governor to act. Under current law, if an employer fails to properly classify employees and does not pay unemployment insurance contributions, they receive a written warning and progressive fines for subsequent offenses, including the possibility of imprisonment after multiple offenses. This bill would have removed the written warning and increase the misclassification fines. The bill also provided that in addition to any penalties assessed for a second or subsequent offense, an employer would be ineligible to receive any state tax rebates to which they are otherwise entitled. [Read more.](#)

Independent Contractors – Louisiana. *(Update to 10/19/20 Weekly Report)* As part of the legislature's [30-day Special Session](#), known as the Second Extraordinary Session, SB 68 was introduced by Sen. Jay Luneau (D). The bill died in committee at the end of that session which adjourned October 23, 2020 and has passed the period for the governor to act. The bill would have provided a definition of

“employee” under state law and provided an exemption from the definition of “employment” for those acting as independent contractors under the description provided. [Read more.](#)

Conventional Wells – Pennsylvania. (*Update to 6/8/20 Weekly Report*) On November 25, [SB 790](#) was vetoed by Gov. Tom Wolf (D). The bill, sponsored by Sen. Joseph Scarnati (R), would have established the Conventional Oil and Gas Well Act “providing for standards for protections, plugging of wells, and imposing power and duties on the Department of Environmental Protection (DEP) as it relates to conventional wells and well sites only.” According to the sponsoring memo, the bill “will provide a legislative framework for regulations specific to conventional oil and gas drillers in a way that protects the environment while preserving this valuable industry.” Specifically, the bill would have required a permit to be obtained to drill or alter a well and to operate an abandoned or orphaned well; addressed DEP enforcement and remedies; and provided for funding and other miscellaneous provisions. [Read more.](#)

STATE – Regulatory

Ventura County Permitting and Zoning Amendments – California. On November 16, the California Independent Petroleum Association (CIPA) reported that the [Ventura County Board of Supervisors](#) approved “amendments to the coastal and non-coastal zoning ordinances to require discretionary approval of conditional use permits (CUPs). ([See supporting documents here.](#))” The Board stated that this would not violate vested rights of existing permittees. They claimed operators do not have vested rights for new production. This would create a single uniform review process for all new oil and gas operations.” CIPA opposed the amendments, “citing the economic contributions from industry in the County, as well as the risk of potential litigation.” [Read more.](#)

Mission Change Rulemaking – Colorado. (*Update to 10/19/20 Weekly Report*) On November 23,

the Colorado Oil & Gas Conservation Commission (COGCC) announced they have unanimously adopted [SB 19-181](#) new Mission Change Rules, Alternative Location Analysis and Cumulative Impacts which will become effective January 15, 2021. (See all the [rulemakings here](#) and [COGCC Rulemaking Fact Sheet detailing the changes here.](#)) As AAPL has previously reported, the rulemaking includes changes to the practice of flaring and venting, increasing well setbacks, and environmental considerations. According to the COGCC, this “concludes four months of comprehensive oil and gas rulemakings that increase protections for Colorado’s public health, safety, welfare, wildlife and environmental resources.” The COGCC noted, “The rulemakings were required to implement the change to the COGCC’s mission from ‘fostering’ to ‘regulating’ oil and gas development in a manner that protects public health, safety, welfare, the environment and wildlife resources.” COGCC Chair Jeff Robbins said, “Over the past months, the Commission took public comment on all the rules, heard testimony from over 90 parties and diverse stakeholders, conducted hundreds of hours of discussion and deliberation during the rulemaking hearings. The rules not only meet the spirit and mandates of SB 19-181, but they were done so with a unanimous vote and largely with consensus from all sides.” For its part, the Colorado Oil and Gas Association (COGA) said it will take the COGCC at its word that application for permits to drill “will be issued accordingly to keep our industry thriving under the highest global standards.” According to Dan Haley, COGA President and CEO, “Three months of non-stop rulemaking for Colorado’s energy workers and regulators is not common practice, so what’s being done at the COGCC is nothing less than transformative. We have a long way to go to finalize and understand all of the implementation hurdles that lie ahead.” The COGCC also announced it will take up additional rulemakings at future hearings, including Financial Assurances around oil and gas development, Worker Safety, and the enactment of Permit Fees in 2021. [Read more.](#)

Oil and Gas Lease Accountability and Enforcement Program – New Mexico.

On November 18, the New Mexico State Land Office announced that it “has launched an historic, agency-wide programmatic approach to accountability and enforcement with regard to oil and gas operations on state trust land to ensure lease holders honor their contractual promise to operate and close out responsibly. Oil and gas leases on state trust land are set by state statute and require compliance with State Land Office rules, including remediating spills and restoring the land to its original condition once a lease has expired (19.2.100.66 – 67 of the New Mexico Administrative Code).” The notice states that “The leases under enhanced review are those which pose an immediate environmental threat to the long-term health of state trust land—state land held in trust for New Mexico’s public schools, hospitals, and universities. The specific accountability measures under scrutiny by the Accountability and Enforcement Program, led by the State Land Office Legal Division, include: spill clean-up of oil, gas, produced water, and other extraction by-products; surface reclamation, specifically of site infrastructure including wells, pads, pits, tanks, pipelines, and roads; and recovering royalty payments for oil and gas production in trespass. The Program is also auditing business leases, saltwater disposal leases, and other non-oil and gas related leases for compliance. Work on these efforts has been underway since early 2020, and the successes to-date represent only the tip of the iceberg expected to come of the Accountability and Enforcement Program.” [Read more.](#)

Regional Greenhouse Gas Initiative – Pennsylvania. The Pennsylvania Environmental Quality Board has opened a public comment period on its proposed rulemaking entitled “CO₂ Budget Trading Program,” which would establish Pennsylvania as the newest member of the Regional Greenhouse Gas Initiative (RGGI). The “RGGI is an intergovernmental organization consisting of ten member-states (CT, DE, ME, MD, MA, NH, NJ, NY, RI, VT) that has established a market-based cap-and-trade program for CO₂

emissions.” According to the proposed rulemaking, “The purpose of this proposed rulemaking is to reduce anthropogenic emissions of CO₂, a greenhouse gas (GHG) and major contributor to climate change impacts, in a manner that is protective of public health, welfare and the environment in this Commonwealth. This proposed rulemaking would reduce CO₂ emissions from sources within this Commonwealth and establish the Commonwealth's participation in the Regional Greenhouse Gas Initiative (RGGI), a regional CO₂ Budget Trading Program. This proposed rulemaking would establish a CO₂ Budget Trading Program for this Commonwealth which is capable of linking with similar regulations in states participating in RGGI (participating states). These independently promulgated and implemented CO₂ Budget Trading Program regulations together make up the regional CO₂ Budget Trading Program or RGGI.” The initiative includes an approach to reducing CO₂ emissions from fossil fuel-fired electric generating units in the state. According to law firm, Manko, Gold, Katcher & Fox, LLP, “Based on an analysis conducted by a consultant retained by [Pennsylvania Department of Environmental Protection] PADEP, most emission reductions are expected to come from reductions in coal use, while a smaller percentage would come from natural gas.” ([Read more for information on submitting comments and attending hearings.](#)) The public comment period is open through January 14, 2021 with public hearings scheduled for December. [Read more.](#)

STATE – Judicial

Takings – Ohio. On September 23, in *State ex rel. AWMS Water Solutions, LLC v. Mertz* (Case No. 020-OHIO-4509), the Ohio Supreme Court addressed a takings issue related to a saltwater injection well. In the case, AWMS, a disposer of waste from oil and gas production and drilling sites, obtained permits to drill and inject saltwater in wells on its property. After an earthquake occurred, AWMS was ordered to suspend its operations at one of its wells. In its petition for a “writ of mandamus” to compel the Ohio Department of Natural Resources and its Division of

Oil and Gas Resources Management to initiate property-appropriation proceedings, AWMS alleged that it had suffered a taking of its property when the Division suspended AWMS's operation of one of its two saltwater-injection wells. The Division suspended the operation of the well because of concerns that the well had induced a pair of earthquakes in its vicinity. AWMS alleged that the suspension order was a governmental taking of its property requiring the state to pay just compensation. The Court of Appeals granted summary judgment in favor of the State and denied the petition. However, here, the Ohio Supreme Court reversed, holding that AWMS was justified in pursuing compensation through a takings action and that its claim was ripe at the time it instituted its action; and there was a genuine issue of material fact concerning whether the state's suspension of operations at the well deprived AWMS of all economically beneficial use of its leasehold. To that end, the case has been sent back to the Court of Appeals for further determinations. [Read more.](#)

Leasing; Drainage – Texas. On October 1, in *Martin v. Rosetta Resources Operating, LP* (Case No. No. 13-19-00431-CV), the Texas Court of Appeals, 13th District (Corpus Christi), was "called on to interpret and apply 'opaquely worded' 'cryptic language' in an oil and gas lease." On appeal, the lessors argued that the subject leases required Rosetta to protect their undrilled property against drainage; the lease unambiguously required Rosetta to "either spud an offset w[e]ll or release the acreage within 12 months of drainage" and there is no fact issue as to Rosetta's obligations under the lease. This action began in 2014 when the lessors filed the underlying suit claiming in part that the defendants breached their contractual duties under a certain addendum to the subject leases to protect the leases from drainage. The trial court dismissed the lessors' suit, but here, the appellate court held that under the plain language of the lease, "Rosetta was obligated to either (1) spud an offset well within twelve months of drainage or (2) release the undrilled acreage." In the end, the Court of Appeals "conclude[d] that Rosetta's obligations to protect the undrilled Martin acreage from drainage and to spud an offset well

or release the acreage were triggered." The case has been sent back to the trial court for further proceedings in light of this holding. [Read more.](#)

Top Leases – West Virginia. On November 12, in *EQT Production Co. v. Antero Resources Corp.* (Case No. 19-0572), the West Virginia Supreme Court addressed an issue involving a top lease and its validity. In the case, the mineral owners held a base lease with the successor in interest, EQT. The same owners subsequently entered into a top lease with Antero. The top lease was made effective immediately upon expiration of the primary term of the base lease. The mineral owners and EQT subsequently entered into a base lease amendment agreeing to extend the primary term of the base lease. Antero filed a complaint asserting claims for, among other issues, breach of contract and declaratory judgment. The trial court awarded summary judgment in favor of Antero on its declaratory judgment claim, determining that the base lease and its amendment were subject to the Antero top lease. Here, the Supreme Court affirmed, holding that the court did not err in declaring that the top lease was the valid and existing oil and gas lease covering the subject property. [Read more.](#)

Overriding Royalties – West Virginia. On November 10, in *Bison Interests, LLC v. Antero Resources Corp.* (No. 19-0527), the West Virginia Supreme Court reversed a trial court grant of summary judgment for Antero in a dispute involving an overriding royalty interest (ORRI). The trial court ruled against Bison finding it was not entitled to an ORRI in the Marcellus shale formation underlying certain gas wells at issue. Specifically, the court found that the issue of Bison's entitlement to an ORRI had not been finally adjudicated, as claimed, in prior litigation and therefore Antero's action was neither barred by the legal theories of res judicata or collateral estoppel, nor was Antero judicially estopped from advancing its claim. Accordingly, the trial court granted declaratory relief to Antero, "finding that 'Turnkey Drilling Agreements' were incorporated by reference into certain warranty deeds of assignment, which agreements created a depth limitation to Bison's

interests. Therefore, it declared that Bison had no entitlement to an overriding royalty interest in the Marcellus shale production underlying the subject leaseholds.” Here, however, the Supreme Court reversed, concluding “that the declaratory judgment sought by Antero in this matter is barred by the doctrines of res judicata and judicial estoppel. We therefore reverse the circuit court’s award of summary judgment to Antero and its declaration finding Bison is entitled to no overriding royalty interest.” The Supreme Court explained that “res judicata will serve to bar matters which *could have been raised and determined.*” And here, Antero could have brought claims in prior litigation. As to judicial estoppel, which bars a party from re-litigating an issue, the Supreme Court found Antero was barred due to prior opportunities to raise the ORRI dispute. [Read more.](#)

INDUSTRY NEWS FLASH

► U.S. petroleum demand continues rebound.

On November 24, the American Petroleum Institute reported that U.S. petroleum demand was up 5.5% for the latest monthly statistical report. While still showing a year-over-year 9% decrease in demand due to the COVID-19 pandemic, the past few months have shown a steady rebound in demand.

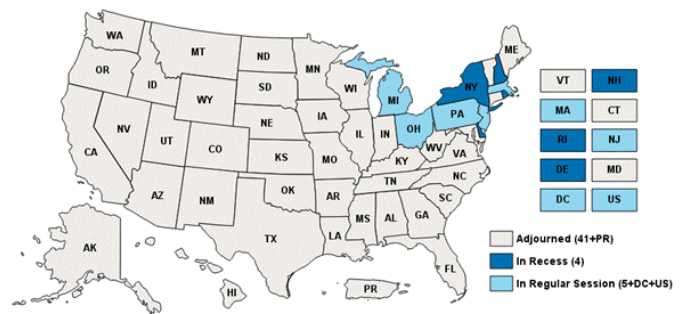
[Read more.](#)

► BOEM Offshore lease sale draws \$135 million in bids.

On November 18, the Bureau of Ocean Energy Management reported that oil and gas companies entered 105 bids totaling \$135 million for exploration leases in the Gulf of Mexico during their latest Lease Sale 256. “The past year has been tough, but the noted increase in winning bids and number of bids on tracts demonstrates the continued resilience of the US Gulf of Mexico,” said Erik Milito, President of the National Ocean Industries Association. [Read more.](#)

LEGISLATIVE SESSION OVERVIEW

States in Session



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

Delaware, the New Hampshire Senate, New York, and Rhode Island are in recess subject to the call of the chair.

Missouri convened a special session to discuss CARES Act spending on November 5. On November 16, this special session was adjourned amidst a COVID-19 outbreak in the legislature, reports [KMOV 4](#). This special session is expected to return after the Thanksgiving break.

Florida met for an organizational session on November 17, reports the [Orlando Sentinel](#).

New Mexico Democratic Governor Michelle Lujan Grisham called for a special session to convene on November 24 to provide COVID-19 relief to citizens and businesses, reports [KRQE](#). This special session was expected to last one day.

Colorado Democratic Gov. Jared Polis called for a special session to convene on November 30 to discuss a state stimulus package, reports [The Denver Post](#).

Signing Deadlines (by date): Virginia Democratic Gov. Ralph Northam has until December 9 to act on legislation from the most recent special session 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. **Louisiana** Democratic Gov. John Bel Edwards has 20 days from presentment to sign or veto legislation or it becomes law without signature. **Maine** Democratic Gov. Janet Mills must act on legislation presented within 10 days of adjournment or it becomes law unless returned within three days after the next meeting of the same legislature. **South Carolina** Republican Gov. Henry McMaster has until two days after the next meeting of the legislature to act on legislation or it becomes law.

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

Bill Pre-Files: [Alabama](#), [Arkansas](#), [Florida](#), [Iowa](#), [Kentucky](#), [Montana](#), [Nebraska](#), [Nevada](#), [New Hampshire](#), [Oklahoma](#), [Tennessee](#), [Texas](#), [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



Please Note: Governmental Affairs Reports are not published during the holidays and will resume with the January 11, 2021 issue. Wishing you a safe, merry, and joyous holiday season and a very happy new year.

FEDERAL – Legislative

Congressional Holiday Recess. The U.S. Congress is scheduled to be in holiday recess beginning December 18 – with the exception of any action on emergency COVID-19 legislation – and will reconvene for the 117th Congress on January 3, 2021 with the swearing in of new members. [Read more.](#)

FEDERAL – Regulatory

Arctic National Wildlife Refuge – Alaska. (Update to 11/30/20 Weekly Report) On December 3, the Bureau of Land Management (BLM) [announced it will hold its first Arctic National Wildlife Refuge \(ANWR\) oil and gas lease auction on January 6, 2021.](#) On December 7, the BLM published its *Notice of Sale* ([85 Fed. Reg. 78865](#)) providing lease sale details and sets December 31, 2020 as the deadline for lease bids for the January sale. The move provides the Trump administration with an accelerated timetable which will ensure the oil and gas leases are formally issued before President-elect Joe Biden is sworn in on January 20, 2021. As reported, Biden has vowed to permanently protect the ANWR refuge, but once formalized, these leases would be difficult to cancel by a new administration. For background, on November 17, the BLM Alaska State Office published a notice, *Call for Nominations and Comments for the Coastal Plain Alaska Oil and Gas Lease Sale* ([85 Fed. Reg. 73292](#)), seeking nominations and public comments on ANWR lease tracts considered for the upcoming Coastal Plain oil and gas lease sale. The

notice represented the official step taken by the Trump administration towards an auction of drilling rights in ANWR's 1.56-million-acre Coastal Plain before Biden's inauguration. According to Interior Department officials, the Coastal Plain is estimated to hold up to 11.8 billion barrels of technically recoverable oil. In 2017, Congress mandated that two ANWR oil and gas lease sales be held by December 22, 2024. The BLM Alaska State Office must receive all nominations and comments on the available tracts on or before December 17, 2020. [Read more.](#)

Arctic Outer Continental Shelf Rule Revisions.

On December 9, the Interior Department, Bureau of Safety and Environmental Enforcement (BSEE) and Bureau of Ocean Energy Management (BOEM) published a proposed rule, *Oil and Gas and Sulfur Operations on the Outer Continental Shelf-Revisions to the Requirements for Exploratory Drilling on the Arctic Outer Continental Shelf* ([85 Fed. Reg. 79266](#)), which states that "acting through BOEM and BSEE, [it] has reviewed and is proposing to revise its existing regulations for exploratory drilling and related operations on the Arctic Outer Continental Shelf (OCS), to reduce unnecessary burdens on stakeholders while ensuring that energy exploration on the Arctic OCS is safe and environmentally responsible." In particular, this proposed rule would revise certain requirements promulgated through the ["2016 Arctic Exploratory Drilling Rule."](#) This proposed rule would also add new provisions to BSEE's regulations pertaining to suspensions of operations, and BOEM's Exploration Plan and Development and Production Plan regulations. The public comment period is open through February 8, 2021. [Read more.](#)

BLM Central Yukon Draft Resource Management Plan/Environmental Impact Statement – Alaska.

On December 11, the BLM published a *Notice of*

Availability for the Central Yukon Draft Resource Management Plan/Environmental Impact Statement, Alaska ([85 Fed. Reg. 80143](#)). The Central Yukon Draft Resource Management Plan (RMP) and Environmental Impact statement (EIS) “is a comprehensive framework for future public land management actions in the Central Yukon region of Alaska. The planning area consists of about 55.7 million acres of land, including approximately 13.3 million acres of public lands managed by the BLM Central Yukon Field Office. The Record of Decision for the Central Yukon RMP/EIS will guide management of these public lands for the next 15 to 20 years for the benefit of current and future generations as part of BLM’s multiple-use mission. This planning effort is updating management decisions for public land uses and resources, including subsistence resources, mineral exploration and development, and recreation. When complete, the updated Central Yukon RMP will replace the Utility Corridor RMP (1991), the original Central Yukon RMP (1986), and portions of the Southwest Management Framework Plan (1981), as well as provide RMP-level decisions for unplanned lands west of Fairbanks.” The BLM will make future announcements on virtual public hearings for the RMP/EIS. [Read more.](#)

BLM Resource Advisory Council – Utah.

On December 8, the BLM published a notice ([85 Fed. Reg. 79031](#)) requesting public nominations to the BLM Utah Resource Advisory Council (RAC). According to the BLM, “Individuals may nominate themselves or others. Nominees must be residents of the State in which the RAC has jurisdiction. The BLM will evaluate nominees based on their education, training, experience, and knowledge of the geographic area of the RAC. Nominees should demonstrate a commitment to collaborative resource decision-making.” The deadline is January 7, 2021. [Read more.](#)

Office of Natural Resources Revenue Notice.

On December 11, the Office of Natural Resources Revenue (ONRR) published a notice, *States’ Decisions on Participating in Accounting and Auditing*

Relief for Federal Oil and Gas Marginal Properties ([85 Fed. Reg. 80147](#)), which details that ONRR regulations provide two types of accounting and auditing relief for Federal onshore or Outer Continental Shelf lease production from marginal properties. “Each year, ONRR provides a list of qualifying marginal Federal oil and gas properties to States that receive a portion of Federal royalties from those properties. Each State then decides whether to participate in relief, and if so, whether to allow one or both relief options. For calendar year 2020, ONRR provides this notice of the affected States’ decision regarding whether relief should be allowed and, if so, which type of relief will be allowed.” The notice contains a table that lists the States with qualifying marginal properties and each State’s decision as to the relief options it will allow in calendar year 2021. [Read more.](#)

Tar Sands Leasing – Utah. On December 9, the BLM released an [Environmental Assessment \(EA\)](#) “to disclose and analyze the environmental consequences of offering for lease one tar sand parcel totaling 2,115.90 acres located in the Asphalt Ridge portion of the Asphalt Ridge-Whiterocks and Vicinity Designated Special Tar Sand Area (STSA).” According to Bloomberg Government, “A federal tar sands program that kept the Asphalt Ridge parcel available for future development was finalized in 2013 under the Obama administration. It’s unclear what the Biden administration may do with it. President-elect Joe Biden has pledged to curtail fossil fuels development on federal lands as part of his climate plan.” In 2013, the BLM closed all Greater Sage-Grouse habitat in Utah to tar sands development, except the 2,100 acres the BLM is now proposing to lease. The public comment period on the EA is open through December 24, 2020. [Read more.](#)

Taking of Migratory Birds. (*Update to 8/24/20 Weekly Report*) On November 27, the Interior Department’s U.S. Fish and Wildlife Service published its [Notice of Availability of its Final Environmental Impact Statement regarding Migratory Birds](#) which “provides responses to

substantive comments.” (See also [85 Fed. Reg. 76077](#).) Following a 30-day public review process the Fish and Wildlife Service will [release its Record of Decision](#). For background, 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 commonsense interpretation of the law and runs contrary to recent efforts, shared across the political spectrum, to de-criminalize unintentional conduct.” [Read more](#). The Final Environmental Impact Statement is an outgrowth of that court decision. [Read more](#).

FEDERAL – Judicial

Non-Operator Costs – Montana. On November 13, in *Continental Resources, Inc. v. Wyotex Oil Company* (Case No. CV 17-148-BLG-TJC), the U.S. District Court for the District of Montana addressed a case in which Continental sought to recover costs associated with two oil and gas wells that Continental drilled in Richland County, Montana in 2014 and to foreclose against its oil and gas well lien. In the matter, Continental drilled certain wells and billed Wyotex for its proportionate share of the actual cost of developing, drilling, completing, maintaining, and repairing the wells. Continental sent joint interest billing statements to Wyotex, which reflected Wyotex’s proportionate share of costs of the materials and services provided by Continental. According to the Court, “Wyotex refused and

continues to refuse to pay its share of the joint interest billing statements.” Among other findings, the Court noted “that when Wyotex was participating in this litigation, it did not dispute that Continental’s Lien was valid” and thus finds Continental’s Lien is valid and enforceable. In sum, the Court upheld a default judgment in favor of Continental for breach of contract, as well as other costs. [Read more](#).

Employee Misclassification – Pennsylvania. On November 3, in [Larsen v. Edgemarc Energy Holdings, LLC](#) (Case No. 2:18-cv-1221), the U.S. District Court for the Western District of Pennsylvania approved a settlement in a 2018 class action lawsuit aimed at recovering unpaid overtime compensation under the Fair Labor Standards Act (FLSA) and wage and hour laws of Pennsylvania and Ohio “that the plaintiff claims is due because he and the other oil field workers were classified as independent contractors and not employees.” As reported by law firm Locke Lord, LLP, the Court [“granted final approval of a \\$1.2 million settlement between 50 oilfield workers and Edgemarc Energy Holdings, Inc.”](#) Although not a case specifically about landmen, but other oilfield workers, “The named plaintiff alleged that the company misclassified him and other oilfield workers because the company controlled all significant aspects of the job duties he performed; afforded him no opportunity for profit or risk of loss; did not require him to incur a substantial investment or to possess or use a specialized skillset; determined the hours and locations worked, tools used, and rates of pay received; and restricted his ability to work for other companies. He further asserted that the daily and weekly activities of the proposed class members were routine and largely governed by standardized plans, procedures, and checklists created by the company or its clients, that virtually every job function was pre-determined by the company or its clients, including the tools to use at job sites, the data to compile, the schedule of work, and related work duties, and that the company constricted the proposed class members to job duties outside of pre-determined parameters.” The workers claimed they were misclassified as independent contractors and were paid a daily rate with no overtime and were

due unpaid wages and other damages as a result of the misclassification. [Read more.](#)

STATE – Legislative

Independent Contractors – California. Once again, Republican lawmakers are attempting to repeal the rigid ABC test for determining if a worker is an employee or independent contractor in California. On December 7, Rep. Kevin Kiley (R) introduced AB 25. The bill would generally repeal provisions relating to the more limiting ABC test and would, instead, require the determination of whether a person is an employee or an independent contractor to be based on the specific multifactor test set forth under the formerly long-standing *Borello* standard, including whether the person to whom service is rendered has the right to control the manner and means of accomplishing the result desired, and other identified factors. The *Borello* standard generally provides greater latitude for recognition of a worker as an independent contractor. [Read more.](#)

Well Stimulation Treatment Projects – California. On December 7, Sen. Melissa Hurtado (D) introduced SB 25. “Existing law authorizes the Geologic Energy Management Division in the Department of Conservation to regulate the drilling, operation, maintenance, and abandonment of oil and gas wells in the state. Existing law requires an operator proposing to perform a well stimulation treatment to apply to the State Oil and Gas Supervisor or a district deputy for a permit to perform the well stimulation treatment and imposes other requirements and conditions on the use of well stimulation treatments. Under existing law, a person who fails to comply with this and other requirements relating to the regulation of oil or gas operations is guilty of a misdemeanor. This bill would express the intent of the Legislature to enact subsequent legislation to (1) strengthen the regulatory review process for well stimulation treatment projects to protect public health and safety, and the environment, while protecting the livelihoods of essential workers in the San Joaquin Valley, and (2) ensure that any jobs or economic activity affected by the strengthening of the

regulatory review process for well stimulation treatment projects are fully compensated for, and retained, in order to ensure the employees and communities affected by these actions are not adversely affected.” [Read more.](#)

Orphaned Wells – California. On December 7, Sen. Senator Monique Limón (D) introduced SB 47. “Existing law authorizes the State Oil and Gas Supervisor to order certain operations to be carried out on any property in the vicinity of which, or on which, is located any well or facility that the supervisor determines to be a hazardous well, an idle-deserted well, a hazardous facility, or a deserted facility, as specified. Existing law establishes the Oil and Gas Environmental Remediation Account in the Oil, Gas, and Geothermal Administrative Fund to be administered and managed by the Geologic Energy Management Division, and requires that the moneys in the account be used, upon appropriation by the Legislature, to plug and abandon oil and gas wells, decommission attendant facilities, or otherwise remediate sites that the supervisor determines could pose a danger to life, health, water quality, wildlife, or natural resources if there is no operator determined by the supervisor to be responsible for remediation or who is able to respond.” This bill would “express the intent of the Legislature to enact legislation relating to orphaned oil and gas wells” but offers no further legislative direction. [Read more.](#)

Notaries Public – Michigan. (*Update to 10/19/20 Weekly Report*) On December 4, SB 1187 passed the Senate. The bill, sponsored by Sen. Peter MacGregor (R), allows for electronic notarization of documents under the criteria as provided. Specifically, the bill “would amend the Michigan Law on Notarial Acts to do the following: Extend a sunset date, from December 31, 2020, to June 30, 2021, for a period of time during which a notary public’s commission that expired after March 1, 2020, would remain valid” and “Extend a sunset date, from January 1, 2021, to July 1, 2021, before which a record signed under the Act could be signed in counterparts” and “State that legislative intent with respect to use of electronic records and signatures and notarial acts performed

electronically would apply until after June 30, 2020.”
[Read more.](#)

Electronic Execution of Documents – Michigan.

(Update to 10/19/20 Weekly Report) On December 3, SB 1189 passed the Senate. The bill, sponsored by Sen. Peter MacGregor (R), allows for the electronic execution of certain documents. Specifically, the bill amends the Estates and Protected Individuals Code to do the following: “Extend a sunset date, from January 1, 2020, to July 1, 2020, before which the act of signing or witnessing the execution of a will, a funeral representative designation, a parental appointment of a guardian of a minor, an appointment of a guardian of a legally incapacitated individual, a durable power of attorney, or a patient advocate designation is satisfied by use of a two-way real-time audiovisual technology if the prescribed requirements are met” and “Extend a sunset date, from December 31, 2020, to June 30, 2021, before which a guardian, guardian ad litem, or visitor may satisfy any requirement concerning a visit with an individual by instead conferring with the individual via two-way real-time audiovisual technology.”

[Read more.](#)

Coronavirus Relief – New Mexico. A single-day special session ended November 24 with “New Mexico lawmakers approving a \$330 million package intended to provide financial relief to workers and businesses harmed by the coronavirus pandemic.” The bipartisan bill, [HB 1](#), passed with broad support and Gov. Michelle Lujan Grisham (D) signed the measure into law on November 25. The Act includes: a one-time \$1,200 benefit for New Mexicans who are currently on an unemployment benefit program; grants to businesses with less than 100 employees; and assistance to low-income residents, up to \$750 per household, that did not receive a stimulus payment from the federal government, among other relief. The Act takes immediate effect.

[Read more.](#)

STATE – Regulatory

Oil and Gas Industry Support – Wyoming. *(Update*

to 11/16/20 Weekly Report) The [oil and gas stimulus program launched in Wyoming last month](#) may be accomplishing what it intended, according to follow-up reports. “Though applications were only open for about one week, the Wyoming Business Council received 65 eligible applications, with demand for the government relief far outstripping available funding.” According to Josh Dorrell, CEO of the Wyoming Business Council, “The results of this program show the willingness of the oil and gas industry to put people to work in Wyoming, once they get some capital to get them going.” For background, on November 10, [Gov. Mark Gordon \(R\) announced that Wyoming would allocate federal COVID-19 funds to aid the oil and gas industry in the state.](#) “These funds will have a direct impact on Wyoming’s employment rate and put people back to work in our oil and gas sector,” said Gov. Gordon, announcing up to \$15 million in assistance through a new Energy Rebound Program. The Program will utilize federal CARES Act funding “to provide business relief targeted towards drilled, but uncompleted oil and gas wells, wells that were unable to be re-completed, and plugging and abandonment projects which could not be finished due to the impacts of the COVID-19 pandemic.”

[Read more.](#)

Railroad Commission Form Notice – Texas. On December 8, the Railroad Commission of Texas (RRC) published a notice that it is accepting public comments on proposed revisions to the instructions to Form PR *Monthly Production Report*. “The proposed revisions will support the RRC’s regulation of flaring and venting of produced natural gas. The proposed revisions are to the Form PR Instructions, how operators need to complete the form, not to the structure of the form itself.” The proposed revisions include three changes to the Form PR Instructions: (1) “Disposition Code 4”, which is currently used to report the volume of gas that was vented or flared, will be discontinued; (2) Two new disposition codes will be implemented to allow operators to allocate gas. For gas that was flared “Disposition Code 10” will be used. For gas that was vented “Disposition Code 11” will be used. This change will allow the RRC to quantify the legal disposition of gas that was flared

and vented; and (3) When an operator allocates gas to Disposition Codes 10 or 11, the operator will be required to enter one or more two-letter codes to the existing "REMARKS" field on the form. Those two letter codes correspond to the authority under which the gas was flared or vented and include the following: AR – Authorized by Rule; AE – Authorized by Exception; EP – Exception Pending; and EX – Exempt. Additionally, "The current Form PR Instructions require an operator to 'Indicate why the gas was vented or flared in REMARKS on Form PR'. The proposed revision make[s] these remarks uniform by requiring categorization of the authorization for the release." Public comments will be accepted through January 8, 2021. [Read more.](#)

Interstate Oil and Gas Compact Commission.

The [Interstate Oil and Gas Compact Commission](#) (IOGCC) has announced that Wayne Christian, one of three commissioners of Railroad Commission of Texas (RRC), was named vice chairman of the IOGCC. The "IOGCC, one of the nation's oldest and largest interstate compacts, is a multi-state government group that promotes efficient recovery of U.S. oil and natural gas resources while protecting health, safety and environment." Christian was elected to the RRC in 2016 and was appointed by Gov. Greg Abbott (R) as Texas' representative to the IOGCC. [Read more.](#)

Oil and Gas Annual Survey. On December 4, Steptoe & Johnson PLLC announced that once again it has partnered with the University of Oklahoma College of Law for its [Annual Survey of Developments in Oil and Gas Law in the online energy journal, ONE J](#). This year marks "the fifth year of the survey partnership that examines case developments in the oil and gas industry as well as legislative developments in 25 producing states and sovereign lands." According to Steptoe & Johnson PLLC, "ONE J is a student managed publication, issued six times per year by students at the University of Oklahoma College of Law. The Journal is devoted exclusively to promoting scholarship in the oil, gas, energy and natural resources legal fields and providing helpful case

summaries for practitioners." [Read more.](#)

STATE – Judicial

Severed Oil and Gas Interests; Marketable Title Act; Dormant Mineral Act – Ohio. (*Update to 1/27/20 Weekly Report*) On December 2, the Ohio Supreme Court finally issued its long-awaited opinion in [West v. Bode](#) (Case No. 2020-Ohio-5473), a widely-watched case AAPL has been reporting on and tracking for members since 2019. The Ohio Supreme Court held that either the Marketable Title Act (MTA) or the Dormant Mineral Act (DMA) "may be used to reunite a severed mineral interest with the surface property subject to that interest." ([See full case analysis.](#)) For background, the issue accepted for review was whether the DMA, being the specific statute, supersedes and controls over the MTA, being the general statute, as to the termination of severed oil and gas interests. Prior to the opinion, law firm Vorys, Sater, Seymour and Pease LLP noted, "The Court's decision should provide some clarity to operators in Ohio regarding the ownership of severed oil and gas interests." In affirming the appellate court holding, the Ohio Supreme Court "held that there is no irreconcilable conflict between the general provisions of the MTA as applied to severed mineral interests, and the DMA and, as such, both acts retain effect." According to Steptoe & Johnson PLLC, "The Court stated that it was reasonable to believe that the legislature intended for the DMA to provide surface owners an *additional* mechanism to accomplish reunification of dormant mineral interests with the surface estate in order to promote the use of natural resources when those interests could not be extinguished under the MTA." [Read more.](#)

Arbitration; Leasing – Ohio. On September 30, in *French v. Ascent Resources-Utica, L.L.C.*, (Case No. 2020-Ohio-4719), the Ohio Court of Appeals, Seventh District, addressed a case where Ascent argued that because the arbitration provision in their leases required all issues regarding the leases or performance under the leases to be submitted to arbitration, the trial court should have stayed this

action pending arbitration, which it had not. The Court first addressed whether the exception to mandatory arbitration under the state code in certain instances affecting real estate applies to the oil and gas leases in this case. Here, the Court held that “even though oil and gas leases create an interest in real estate, they are not issues concerning title to or possession of real estate.” The Court further noted that, “Because the oil and gas leases in this case do not grant appellant title to or possession of real property and only permit appellant to use the Sutherland Farm to produce oil and gas, the exception to mandatory arbitration under R.C. 2711.01(B)(1) does not apply.” The second issue was whether Ascent waived its right to arbitrate. On that issue, the Court remanded the case back to the trial court for further determinations since that court had not ruled on the issue. Here, the Court held, “If the trial court determines appellant did not waive the rights to arbitrate, it shall stay the matter pending arbitration.” [Read more.](#)

Railroad Commission Orders – Texas. On December 10, the Travis County District Court halted the Texas Railroad Commission (RRC) from enforcing a series of emergency orders it issued that suspend certain RRC rules arising from the COVID-19 pandemic. In the pending case, [Public Citizen, Inc. V. Railroad Commission of Texas](#) (Case No. D-1-GN-20-003795), litigants claim “The RRC emergency orders were not preceded with proper notice under the Texas Open Meetings Act, did not comply with the Administrative Procedure Act emergency rule making requirements, exceeded the RRC’s statutory authority, and violated the Texas Constitution. The orders allow abandoned wells to go unplugged, waste pits to go un-remediated, and oil and gas to be injected and stored underground in a formation other than a salt dome. The orders also waive fees and surcharges on multiple activities regulated by the RRC.” [Under the judge’s decision](#), the RRC will not be able to enforce the emergency rule-waivers announced in May 2020. District Court Judge Jan Soifer faulted the agency for failing to give the public adequate forewarning, according to the ruling.

Soifer’s order will remain in effect until a suit by accountability watchdog group Public Citizen is heard, or the regulator posts proper notice, the judge said. The Public Citizen case is set to be heard on May 10, 2021. For background, on May 5, 2020 the RRC approved emergency rules that waived fees, extended deadlines for environmental clean-ups and expanded the types of locations where companies could store crude oil. Chairman Wayne Christian said at the May meeting that the regulatory relief was designed to help operators through an unprecedented collapse in oil prices. In response to the latest court ruling, the RRC said in a statement that it “does not agree with the court’s order and has filed a notice of appeal.” The RRC claims that all actions taken at the May 5, 2020 meeting “were approved in accordance with the Open Meetings Act, state and federal law, and Commission rules.” [Read more.](#)

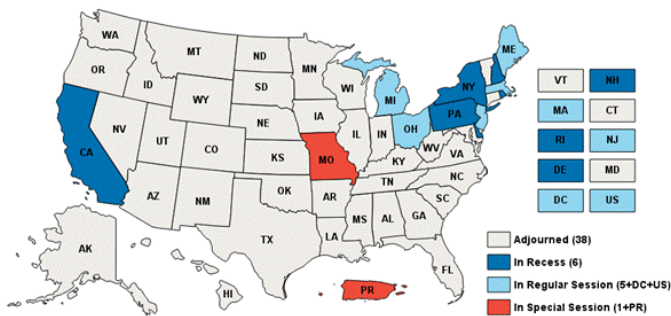
[INDUSTRY NEWS FLASH](#)

► **U.S. Energy Information Administration forecasts higher crude prices.** On December 8, the U.S. Energy Information Administration (EIA) forecast higher crude oil prices next year in its latest Short-Term Energy Outlook. This “reflects EIA’s expectation that while inventories will remain high, they will decline with rising global oil demand and restrained OPEC+ oil production.” [Read more.](#)

► **Bank of America is latest bank refusing to finance oil and gas exploration in Alaska’s Arctic National Wildlife Refuge.** On December 1, Bank of America joined other major U.S. banks refusing to finance oil and gas drilling in the Arctic National Wildlife Refuge. In a statement, the bank said, “that the company had not provided finance for natural resource concerns in the protected region historically, but that public perception prompted executives to ‘codify our existing practice’ against financing drilling in Alaska’s Arctic National Wildlife Refuge.” [Read more.](#)

LEGISLATIVE SESSION OVERVIEW

States in Session



Session Notes (by date): Massachusetts, Michigan, New Jersey, and Ohio are in regular session.

Delaware, the New Hampshire Senate, New York, Pennsylvania, and the Rhode Island Senate are in recess subject to the call of the chair.

The Rhode Island House is scheduled to meet on December 16, according to the [House schedule](#).

California convened its 2021 session with an organizational session on December 7. The legislature will formally reconvene on January 4, 2021 reports the [Desert Sun](#).

The Missouri Senate adjourned its special session focused on COVID-19 priority bills on December 10. The House is still in special session, reports the [News Tribune](#).

Minnesota will meet for a special session beginning on December 14 to extend the COVID-19 peacetime emergency, reports [KSTP 5](#).

Signing Deadlines (by date): New Mexico Democratic Gov. Michelle Lujan Grisham had until December 14 to sign or veto legislation from the most recent special session 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. 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. Virginia Democratic Gov. Ralph Northam had a signing deadline on December 9.

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

Bill Pre-Files: [Alabama](#), [Arkansas](#), [California](#), [Delaware](#), [Florida](#), [Georgia](#), [Indiana](#), [Iowa](#), [Kansas House](#), [Kentucky](#), [Missouri House](#) and [Senate](#), [Montana](#), [Nebraska](#), [Nevada](#), [New Hampshire](#), [Oklahoma](#), [Tennessee](#), [Texas](#), [Utah](#) and [Virginia](#) are currently posting 2021 bill drafts, pre-files, and interim studies. ■

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