

GOVERNMENTAL AFFAIRS REPORT

Weekly Highlights At-A-Glance

FEDERAL – Legislative

S. 180 – Buffalo Tract Protection Act. On February 2, Sen. Martin Heinrich (D-NM) introduced S. 180, known as the “Buffalo Tract Protection Act.” The bill “withdraws specified Bureau of Land Management lands in Placitas, New Mexico, from (1) location, entry, and patent under the mining laws; and (2) disposition under the mineral leasing, mineral materials, and geothermal leasing laws.” Sen. Heinrich has “touted the conservation benefits of removing these Bureau of Land Management (BLM) parcels from mineral development” as they serve “as critical wildlife connections between the Sandia Mountains to the south and the Sangre de Cristo Mountains to the north.” [Read more.](#)

FEDERAL – Regulatory

BLM Willow Master Development Plan – Alaska. On February 7, the Bureau of Land Management (BLM) published a *Notice of Preparation of a Supplemental Environmental Impact Statement for the Willow Master Development Plan* ([87 Fed. Reg. 6890](#)). According to the notice, the BLM “is preparing a Supplemental Environmental Impact Statement (SEIS) to address deficiencies identified by the U.S. District Court for Alaska in the 2020 Willow Master Development Plan (MDP)/Final Environmental Impact Statement (EIS) and Record of Decision (ROD) issued in October 2020, and to ensure compliance with applicable law. The BLM will not be holding a formal scoping period but has begun outreach to stakeholders and will accept input and comments through informal scoping for up to 30 days following the date of publication.” The public comment period is open through March 9, 2022. [Read more.](#)

Resource Advisory Council Meetings – Colorado.

On February 7, the BLM published a *Notice of Colorado's Southwest District Resource Advisory Council Schedule of Quarterly Public Meetings* ([87 Fed. Reg. 6891](#)) to announce Colorado's Southwest Resource Advisory Council (RAC) 2022 schedule of public meetings. As noted by the BLM, “The 15-member RAC advises the Secretary of the Interior, through the BLM, on a variety of public land issues in the Southwest District, including the Uncompahgre, Tres Rios, and Gunnison Field Offices.” [Read more.](#)

Bears Ears and Grand Staircase-Escalante

National Monument Advisory Committees. On February 9, the BLM published a *National Call for Nominations for Site-Specific Advisory Committees* ([87 Fed. Reg. 7494](#)) which requests “public nominations for the Bureau of Land Management's (BLM) Bears Ears and Grand Staircase-Escalante National Monument Advisory Committees (MACs). The MACs provide advice and recommendations to the BLM on the development and implementation of management plans in accordance with the statutes under which the monuments were established.” Nominations must be received by March 11, 2022. [Read more.](#)

Interior Department Land and Mineral Management

Nominee. On February 8, the Senate Energy and Natural Resources Committee held a [second hearing](#) to consider President Biden's pick to be Assistant Secretary of the Interior, Land and Minerals Management. Nominee Laura Daniel-Davis previously answered questions from the panel in September 2021 and the “committee deadlocked on her nomination, voting 10-10 along party lines.” As in 2021, Republican lawmakers grilled Daniel-Davis on her past career opposing oil and gas and on the Biden administration's pause on new oil and gas leasing. During questioning, Daniel-Davis was non-committal in responding to

restarting stalled oil and gas leases on federal lands. [Read more.](#)

Federal Reserve Nomination. On February 3, President Biden’s pick for Vice Chairwoman of Supervision at the Federal Reserve, Sarah Bloom Raskin, told Senate lawmakers it was “inappropriate” for “the central bank to steer business away from fossil fuel companies — despite previously calling on financial regulators to take stronger action to fight climate-related risks in the financial system.” The nominee also told the Senate Banking Committee that the Federal Reserve should not “pick winners and losers” and “focus only on assessing climate-based risks facing banks.” However, Ms. Raskin has made multiple public statements prior to the hearing that indicate her advocacy for “debanking” the fossil fuel industry, and she was pushed hard by Republican senators on her positions. “You support driving the oil and gas industry into bankruptcy. Do you think that would be a proper role for the Federal Reserve?” asked Sen. John Kennedy (R-LA). In fact, AAPL recently joined 21 other trade associations – including the Independent Petroleum Association of America, the Texas Independent Producers and Royalty Owners Association, the U.S. Oil & Gas Association as well as numerous state groups – in opposing the nomination. [Read the letter here.](#) As AAPL and the other letter writers noted, “Ms. Bloom Raskin’s favored policies would wreak havoc with the economy, as financial systems would be reoriented around subjective, political factors rather than firm principles of maximizing returns and capitalizing productive human endeavors that create value in the marketplace.” [Read more.](#)

FEDERAL – Judicial

Overriding Royalties; Assignments; Leasing – Ohio. On January 28, in *Talmage v. Northwood Energy Corp.* (Case No. Case No. 2:17-cv-544), the U.S. District Court for the Southern District of Ohio (Eastern Division) addressed a dispute over the validity of overriding royalties arising from multiple assignments in the chain of title. The court first held that “The Bradley Override was not filed for record in

Noble County. Accordingly, it is not valid in Noble County unless one of the statutory exceptions—‘actual and open possession’ or enforcement ‘between the parties thereto’—applies. The ‘actual and open possession’ exception does not apply. The question becomes whether, as to the Bradley Override, Northwood may be considered a ‘party thereto.’ It cannot.” The court also addressed allegations that opposing parties tortiously interfered with their business relationships and contracts, but the court disagreed, and “is persuaded by the evidence presented at trial that both the Northwood Parties and the Bradley Parties acted with a good faith belief that their rightful interests were being ignored or impeded.” The court also rejected allegations of conversion and unjust enrichment. In sum, the Bradley overriding royalty was deemed “not enforceable.” [Read more.](#)

STATE – Legislative

Hydraulic Fracturing – Arizona. On February 7, HB 2829 was introduced by Rep. Myron Tsoie (D). The bill would prohibit hydraulic fracturing in the state. This piece of legislation is introduced every session and they always fail to advance in the Republican-led legislature. [Read more.](#)

Operator Monitoring; Seismic Activity – California. As an update to our 2021 reporting, on February 1, 2022, SB 25 died in committee. Sponsored by Sen. Melissa Hurtado (D), the bill would have required “the operator of a well, from the commencement of hydraulic fracturing until 30 days after the end of the hydraulic fracturing on the well, to monitor the California Integrated Seismic Network for indication of an earthquake of magnitude 2.7 or greater occurring within a radius of 5 times the axial dimensional stimulation area. If an earthquake of magnitude 2.7 or greater is identified, the bill would require the operator to immediately notify the division and inform the division when the earthquake occurred relative to the hydraulic fracturing operations, and would prohibit any further hydraulic fracturing to be done within the radius until the division has completed a certain evaluation and is satisfied that hydraulic fracturing within that radius does not create a heightened risk of seismic

activity. Within 72 hours of the occurrence of an unauthorized release of certain fluids, the bill would require the operator of the well to provide the division a written report containing certain information related to the release. Because a violation of these requirements would be a crime, the bill would impose a state-mandated local program.” The bill had support from various business and industry groups but was opposed by certain environmental groups who believed the bill didn’t go far enough. [Read more.](#)

Land Exchanges – Idaho. On February 1, SB 1251 was introduced by the Senate Resources and Environment Committee. “This legislation clarifies existing authority for Idaho’s State Board of Land Commissioners (Land Board) to receive lands with pre-existing encumbrances in land exchanges. It further clarifies responsibilities of the Land Board when contemplating land exchanges with the federal government, and it provides for continuation of existing land uses subsequent to exchanges as approved by the Land Board.” [Read more.](#)

Natural Gas Infrastructure – Illinois. On January 31, HB 5202 was introduced by Rep. Sonya Harper (D). The bill provides that “no land or personal property of any landowner shall be taken or infringed upon by eminent domain, easement, or other mechanism for the installation of any infrastructure for the distribution of natural gas that was approved without the express and written consent of the landowner or property owner. Provides that the Illinois Commerce Commission shall cancel any agreement or contract entered into in furtherance of any project if it determines that corrupt or fraudulent practices were engaged in by any individual in creation of the agreement, and the Commission has the authority to inspect and audit accounts and records of any entity relating to the execution and performance of any agreement entered into in furtherance of any project.” [Read more.](#)

Income Taxes – Illinois. On January 31, HB 5228 was introduced by Rep. Natalie Manley (D). The bill provides that “when calculating the taxpayer’s base

income, the taxpayer’s federal adjusted gross income shall be modified to exclude the portion of the income or loss received from a trade or business conducted within and without Illinois or from a pass-through entity conducting business within and without Illinois that is not derived from or connected with Illinois sources.” [Read more.](#)

Taxation – Indiana. On January 20, HB 1002 passed the House and has been introduced in the Senate. ([See a detailed provision summary in the Fiscal Note Statement](#)) Sponsored by Rep. Tim Brown (R), the bill contains various tax provisions including exemptions and credits related to the business personal property tax; sales tax exemption; and individual income tax, among other related provisions. [Read more.](#)

Probate and Trust Matters – Indiana. On January 20, HB 1208 passed the House and has been introduced in the Senate. Sponsored by Rep. John Young (R), the bill involves various probate and trust matters, specifically, “it resolves inconsistencies in two sections of the chapter on dispensing with administration so that those sections authorize a fiduciary to distribute and disburse the estate assets before filing a closing statement. It authorizes the appointment of a special administrator under certain circumstances and establishes a procedure for the appointment of a special administrator for the purpose of pursuing a claim for a decedent’s wrongful death. In a section concerning the filing of an electronic will, it replaces an incorrect reference with a reference to the Rules on Access to Court Records. It provides that a video or audio recording of a principal who executes a power of attorney may be admissible as evidence of matters relevant to the validity or enforceability of the power of attorney. It provides that any objection to a final account and petition for distribution of a decedent’s estate must be filed at least 14 days before the hearing date. It eliminates references to a trustee ‘docketing’ a trust and identifies permissible methods for the filing of a copy of a trust instrument with a court. It amends two definitions of ‘electronic power of attorney’ to provide that an electronic power of attorney may be signed in the presence of witnesses instead of being notarized.” [Read more.](#)

Land Management Procedures – Michigan. On February 1, Gov. Gretchen Whitmer (D) signed HB 4363 into law. Sponsored by Rep. Gary Howell (R), the bill amends the Exchange of State Lands statute to extend the time period for the Department of Natural Resources (DNR) to approve or deny an application for a proposed exchange of surplus state land for land owned by a private individual from 180 days to 210 days. The bill also amends the Land Exchange Facilitation Fund law to extend the time period for the DNR to approve or deny an application for a proposed negotiated sale of surplus state land from 180 days to 210 days. Finally, the bill requires the DNR to provide public notice at least 30 days before acquiring or making a decision to dispose of, lease, or develop land of more than 80 acres in size. [Read more.](#)

Recording Fees – Mississippi. *(Update to 1/31/22 Report)* On February 2, HB 719 passed the House. Introduced by Rep. Manly Barton (R), the bill amends certain filing fees charged by Chancery clerks for the recording of documents. [Read more.](#)

Independent Contractors – Mississippi. *(Update to 1/31/22 Report)* On February 2, HB 876 passed the House. Introduced by Rep. Charles Beckett (R), the bill would exempt from the definition of employee “Landwork performed by a petroleum landman on a contractual basis” and provides definitions of minerals, landwork and the conditions under which such landwork would be exempt. [Read more.](#)

Severance Taxes – Mississippi. *(Update to 1/17/22 Report)* On February 1, both HB 500 and HB 401 died in committee. For background, on January 6, HB 500 was introduced by Rep. Randy Boyd (R). The bill would amend current law to provide that interest owners are responsible for payment of severance taxes; provides for exemption from ad valorem taxes as noted; and provides that the “tax collector shall also transmit to the clerk of the chancery court of the county separate lists of any nonproducing oil, gas or other mineral interests in real estate which are sold to persons for nonpayment of taxes or which are offered for sale and, because no person bids the whole amount of taxes and costs incident to the sale of such

interest, revert to the owners of the surface estate under which such mineral interests are located,” among other related tax provisions. Similar House bill, [HB 401](#), was introduced by Rep. Donnie Bell (R) on January 5, 2022. [Read more.](#)

Mineral Estates Reversion – Mississippi. *(Update to 1/17/22 Report)* On February 1, HB 501 died in committee. For background, on January 6, HB 501 was introduced by Rep. Randy Boyd (R). The bill provides that “mineral estates separated from the surface estate shall revert to the owner of the surface estate after twenty years of nonproduction” and defines nonproduction. [Read more.](#)

Mineral Estates – Mississippi. *(Update to 1/17/22 Report)* On February 1, HB 721 and HB 973 died in committee. For background, on January 17, HB 721 was introduced by Rep. Donnie Bell (R). The bill provides “that mineral estates separated from the surface estate shall revert to the owner of the surface estate after ten years of nonproduction” and defines nonproduction. A Democrat version of the bill, [HB 973](#), was introduced by Rep. Bob Evans (D) on January 17. [Read more.](#)

Notaries Public – Mississippi. *(Update to 1/17/22 Report)* On February 1, SB 2035 died in committee. For background, on January 6, SB 2035 was introduced by Sen. Tyler McCaughn (R). The bill would amend existing law to revise the maximum fee permitted to be charged for notarial services and also revises the residency requirements to permit a nonresident who works or practices in the state to apply to be commissioned as a notary public. [Read more.](#)

Notarial Acts – Mississippi. *(Update to 1/31/22 Report)* On February 1, SB 2622 died in committee. For background, on January 17, SB 2622 was introduced by Sen. Jeremy England (R). The bill would’ve created the Remote Online Notarization Act, providing defined terms; provides for remote notarization using communication technology; provides certain restrictions; provides a procedure for a certificate of the notarial act; provides for the retention

of records; and authorizes the Secretary of State to promulgate rules. [Read more.](#)

Independent Contractor Status – Missouri. On January 27, SB 863 advanced to a second reading following its introduction by Sen. Bob Onder (R). The bill would provide for the recognition of independent contractor status based upon the provided criteria. [Read more.](#)

Clean Future Act – New Mexico. On January 13, HB 6, known as the Clean Future Act, was introduced by Rep. Siah Hemphill (D). The bill would impose certain emissions reductions and requirements as detailed. A [committee substitute](#) was filed on January 31 with further specific goals and benchmarks. [Read more.](#)

Oil and Gas Industry – New Mexico. On February 2, HB 200 was introduced by Rep. Larry Scott (R). The bill would require “certain state agencies to conduct a cost assessment for rules that impose new mandates on the oil and gas industry; requiring the development of recommendations to reduce costs to industry and a study of the impacts to consumers; [and] requiring reporting.” [Read more.](#)

Carbon Sequestration – New Mexico. On February 2, HB 205 was introduced by Rep. James Strickler (R). The bill would enact the Geologic Carbon Dioxide Sequestration Act, which provides “for the unitization of formations for subsurface sequestration of carbon dioxide; limiting liability of owners of sequestration facilities following transfer to state ownership; [and] establishing fees;” among other related provisions. [Read more.](#)

Gross Receipts Tax – New Mexico. On February 2, HB 207 was introduced by Rep. Jason Harper (R). The bill would provide “deductions to the gross receipts tax (GRT) for certain business-to-business transactions. HB207 allows for GRT deductions on accounting services, engineering services, financial management services, information technology services, human resources services, legal services, and temporary services, provided these sales are made to a sole proprietorship, a limited liability company, a

partnership, or a corporation; an entity with a New Mexico tax identification number or equivalent identification number from another state; or the purchaser presents to the seller a nontaxable transaction certificate or alternative evidence entitling a person to a deduction pursuant to [Section 7-9-43 NMSA 1978](#). Any such deduction must be reported as required by the taxation department.” [Read more.](#)

Oil Production – Utah. On January 31, SB 146 was introduced by Sen. Ronald Winterton (R). The bill amends definitions related to oil production, specifically the definitions of “crude oil” and “oil” to clarify regulatory authority over tar sands production; clarifies that tar sands are exempt from state severance tax; and makes technical and conforming changes with the amendments. [Read more.](#)

Eminent Domain Modifications – Utah. On February 2, HB 304 was introduced by Rep. Casey Snider (R). The bill would modify eminent domain provisions to provide that “A county may not exercise eminent domain for the public use of a highway, street, or road on private property if the county has previously commenced any action in a court of competent jurisdiction to claim an [R.S. 2477](#) right-of-way, as that term is defined in Section [72-5-301](#), on the highway, street, or road, unless and until the county has prevailed and the court has granted the county an R.S. 2477 right-of-way for the highway, street, or road.” [Read more.](#)

Carbon Sequestration – Wyoming. On February 7, SF 47 was introduced by the Joint Committee on Minerals, Business and Economic Development. The bill relates “to geologic sequestration of carbon dioxide; clarifying ownership of carbon dioxide injected into geologic sequestration sites; specifying the transfer of title and liability of injected carbon dioxide; providing definitions; renumbering current statutes; making conforming amendments; specifying applicability; requiring rulemaking; and providing for effective dates.” [Read more.](#)

STATE – Regulatory

State Land Office – New Mexico. On February 10, the New Mexico State Land Office announced that the state Senate “confirmed all of Commissioner Stephanie Garcia Richard’s nominees to the New Mexico State Land Advisory Board and unanimously confirmed the State Land Office’s Director of Renewable Energy, Jeremy Lewis, to serve on the Renewable Energy Transmission Authority Board.” In December 2021, “three members’ terms expired, requiring Commissioner Garcia Richard to appoint three new members to the advisory board.”

[Read more.](#)

STATE – Judicial

Climate Change – Alaska. On February 28, the Alaska Supreme Court affirmed the dismissal of a lawsuit brought against the state Department of Natural Resources (DNR) by “young Alaskans” alleging that development of state natural resources contributed to climate change and is a “violation of the Alaska Constitution’s natural resources provisions as well as their individual constitutional rights.” In *Sagoonick v. State* (Case No. S-17297), the court first “found that the Superior Court had not erred by considering the requested relief as part of its political question analysis.” The court then followed its “sound precedent” to conclude that it could not make “the legislative policy judgments necessary to grant the requested injunctive relief.” The court also upheld the “Department of Environmental Conservation’s denial of the plaintiffs’ rulemaking petition, finding that the Department reasonably could conclude that the regulation sought ‘was inconsistent with the legislature’s statutory policies and thus outside its delegated authority.’” [Read more.](#)

Leasing – Texas. On January 26, the Texas Fourth Court of Appeals addressed a dispute regarding the most-favored-nations clause in three identical oil & gas leases in *EP Energy E&P Co. v. Storey Minerals, Ltd.* (Case No. 04-19-00534-CV). As reported by the Texas Civil Justice League, the appellate court “affirmed a \$41 million judgment against an operator for failing to

pay bonuses owed under a Most Favored Nation (MFN) clause. In a 2-1 decision, the court of appeals held that the plain meaning of the MFN clause required the operator to pay the bonus differential retroactively to the effective date of the primary lease, not prospectively from the effective date of the leases that triggered the MFN obligation.” Here, the court rejected the argument that EP “only had to make payments beginning on the acquired lease’s effective date *if* there were bonuses it decided were payable from that date from that date forward on acreage subject to the A leases.” As noted by the Texas Civil Justice League, “This decision should certainly be of interest to producers and land and royalty owners all over the Eagleford if their MFN clauses are similar to the one at issue here.” [Read more.](#)

Joint Operating Agreements – Texas. On December 29, 2021, in *1776 Energy Partners, LLC v. Freeport-McMoRan Oil & Gas LLC* (Case No. 04-20-00468-CV), the Texas Court of Appeals of Texas, Fourth District (San Antonio) addressed a case where 1776 Energy claimed the defendant “wrongfully withheld payments from oil and gas production and sought statutory interest on the withheld payments.” The trial court determined, as a matter of law, that the defendant “was entitled to withhold the payments under [subsection 91.402\(b\) of the Texas Natural Resources Code.](#)” While the case involved a complex procedural history, it essentially involved the alleged breach of joint operating agreements (JOAs). The court first found that the defendant failed to establish, as a matter of law, that a previous judgment “created a dispute concerning title that would affect distribution of payments subject to the JOAs.” The court then addressed statements that disputed the defendant’s assertion “that it had a reasonable doubt that 1776 Energy had clear title to the interests in the production proceeds. When viewing the evidence under the appropriate standard of review, we conclude 1776 Energy raised a genuine issue of material fact on whether” that “doubt was reasonable.” The court then held that because the defendant “failed to establish that it was entitled to judgment as a matter of law, and 1776 Energy presented evidence to the trial court that raised a genuine issue of material fact, we hold

summary judgment was improper.” As such, the court remanded the case back to the trial court on this issue. [Read more.](#)

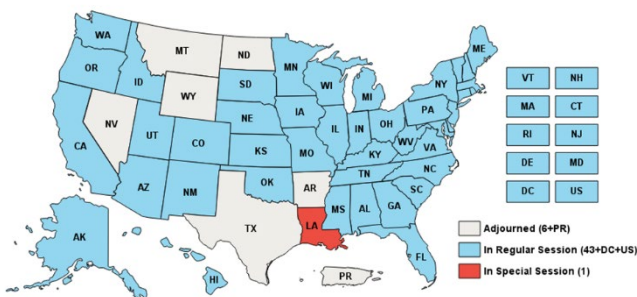
INDUSTRY NEWS FLASH

► **WTI Crude tops \$90 for the first time since 2014.** As reported by *Bloomberg News* on February 3, “oil shot across \$90 for the first time since 2014 as winter weather in the U.S. threatened to shut in some oil production while geopolitical tensions continued to keep investors on edge.” Crude oil “is heading for a seventh weekly gain, with banks including Goldman Sachs Group Inc. seeing oil moving toward \$100 a barrel.” [Read more.](#)

► **Chevron CEO to serve as Chairman of the American Petroleum Institute’s Board of Directors.** According to reporting by the *Oil & Gas Journal* on February 3, “Mike Wirth, chairman and chief executive officer of Chevron Corp., will serve as chairman of American Petroleum Institute’s (API) board of directors for a 2-year term. Wirth, who was elected chairman, effective Jan. 1, 2022, succeeds Greg Garland, chairman and chief executive officer of Phillips 66. Garland will remain a member of API’s executive committee.” [Read more.](#)

LEGISLATIVE SESSION OVERVIEW

States in Session



Session Notes: Alabama, Alaska, Arizona, California, Colorado, Connecticut, Delaware,

Florida, Georgia, Hawaii, Idaho, Illinois, Indiana, Iowa, Kansas, Kentucky, Maine, Maryland, Massachusetts, Michigan, Minnesota, Mississippi, Missouri, Nebraska, New Hampshire, New Jersey, New Mexico, New York, North Carolina, Ohio, Oklahoma, Oregon, Pennsylvania, Rhode Island, South Carolina, South Dakota, Tennessee, Utah, Vermont, Virginia, Washington, West Virginia, and Wisconsin are in regular session. The U.S. Congress is also in session.

The following states are scheduled to convene their 2022 legislative sessions on the dates provided: **Arkansas** and **Wyoming** (February 14) and **Louisiana** (March 14).

New Mexico is scheduled to adjourn on February 17.

Special Session Notes: The Louisiana legislature convened for a special session on redistricting on February 1, reports the [Louisiana Illuminator](#). The special session is expected to last until February 20.

The following states are currently holding 2022 interim committee hearings: [Arkansas](#), [Louisiana](#), [Montana](#), [Nevada](#), [North Dakota](#), and [Wyoming](#).

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

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