

GOVERNMENTAL AFFAIRS WEEKLY REPORT

Weekly Highlights At-A-Glance

FEDERAL – Legislative

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

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

FEDERAL – Regulatory

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

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

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

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

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

FEDERAL – Judicial

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

STATE – Legislative

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

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

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

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

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

Independent Contractors; Unemployment Benefits

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

STATE – Regulatory

Railroad Commission Flaring Report – Texas.

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

Railroad Commission Regulatory Update – Texas.

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

Energy Commercialization Program – Wyoming.

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

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

STATE – Judicial

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

INDUSTRY NEWS FLASH

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

LEGISLATIVE SESSION OVERVIEW

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

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

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

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

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

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

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

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