

GOVERNMENTAL AFFAIRS WEEKLY REPORT

Weekly Highlights At-A-Glance

Note: Due to the upcoming AAPL Board Meeting in Louisville, KY there is no report next Monday. The next report will be published on March 16, 2020.

FEDERAL – Legislative

American Public Lands and Waters Climate Solution Act of 2019 - H.R. 5435. On February 26, [H.R. 5435](#), known as the *American Public Lands and Waters Climate Solution Act of 2019*, was subject to a [hearing](#) in the House Natural Resources Committee. The bill, sponsored by Rep. Raul Grijalva (D-AZ), would “require the Secretary of the Interior and the Chief of the United States Forest Service to meet certain targets for the reduction of the emission of greenhouse gases, and for other purposes.” The measure would set public lands energy leasing policy to effectuate the Department of the Interior (DOI) and the United States Forest Service (USFS) achieving net-zero greenhouse gas emissions from public lands and waters by 2040. In part, the measure would pause federal mineral lease sales for one year and the “DOI and USFS must meet climate pollution reduction targets at specific intervals starting in 2025 and publish strategic plans every four years that detail how the agencies will meet the pollution reduction targets established by the legislation.” The bill also increases federal royalties on fossil fuel extraction and seeks a transition away from fossil fuel production. [Read more.](#)

California’s Land Preservation and Protection Act - H.R. 5936. On February 21, [H.R. 5936](#), known as *California’s Land Preservation and Protection Act*, was introduced by Rep. Salud Carbajal (D-CA). The bill prohibits the Bureau of Land Management (BLM) from authorizing future federal oil and gas leasing

in California until the department publishes a comprehensive environmental impact statement to assess potential effects on climate change, air quality, water, wildlife, emissions, and impacted communities. Carbajal called the bill a “direct pushback on the Trump administration’s decision allowing the Bureau of Land Management to pursue oil and gas leasing on over 1.2 million acres of California land, including San Luis Obispo, Santa Barbara, and Ventura counties.” [Read more.](#)

FEDERAL – Regulatory

BLM Greater Sage-Grouse Planning. On February 21, the Bureau of Land Management (BLM) published its multiple revised greater sage-grouse Draft Supplemental Environmental Impact Statement (Draft EIS) planning documents for the Western states. Casey Hammond, acting assistant Interior Secretary for Land and Minerals Management, said the revised plans emphasize the “hard looks” the agency took in a March 2019 planning process, which changed the approach taken in a 2015 land use effort by the Obama administration. Hammond acknowledged that the plans do not include amendments to either the 2019 or 2015 efforts. Additional details would have to wait until after the public comment process closes on April 6, 2020, he said. The BLM said 143 alternatives were considered in 18 different environmental impact statements, with 48,023 pages of analysis, 54 public meetings attended by 2,313 people, in an effort costing a total of \$16.9 million. It referenced \$294 million in habitat investment from 2013-2019 across the bird’s range, with another \$37 million planned for 2020. These efforts arise from a lawsuit brought against the BLM by environmental activists after the 2019 changes

“swept away safeguards designed to protect remaining sagebrush ecosystems.” An Idaho federal judge blocked the 2019 plans in October, ruling in [Western Watersheds Project v. Schneider](#) (Case No. 1:16-CV-83-BLW) that the BLM had failed to analyze how greater sage-grouse would be harmed by the planning. Kathleen Sgamma, president of the Western Energy Alliance, an oil and gas group in Denver, said her group was glad the Interior Department was moving quickly to respond to the judge’s ruling and that the ruling is on appeal. “The judge was insinuating his personal policy preferences into the plans rather than deferring to the wildlife experts at Interior and the legitimate policy direction of the current administration,” she said. The six Federal Register notices of availability for the Draft EIS planning may be accessed here: [85 Fed. Reg. 10185](#) (Idaho); [85 Fed. Reg. 10184](#) (Utah); [85 Fed. Reg. 10184](#) (Nevada; Northeastern California); [85 Fed. Reg. 10186](#) (Oregon); [85 Fed. Reg. 10183](#) (Colorado); and [85 Fed. Reg. 10188](#) (Wyoming). [Read more.](#)

BLM Onshore Oil and Gas Operations Annual Civil Penalties Adjustment. On February 25, the BLM published its final rule, *Onshore Oil and Gas Operations-Annual Civil Penalties Inflation Adjustments* ([85 Fed. Reg. 10617](#)), which adjusts for inflation the existing level of civil monetary penalties contained in the BLM regulations governing onshore oil and gas operations as required by the Federal Civil Penalties Inflation Adjustment Act Improvements Act of 2015 (see [43 CFR 3160](#)) and consistent with applicable Office of Management and Budget guidance. The adjustments made by this final rule constitute the 2020 annual inflation adjustments to civil penalties regulations, accounting for one year of inflation spanning the period from October 2018 through October 2019. [Read more.](#)

BLM Oil and Gas Lease Sale – Utah. On February 25, the BLM announced its proposal to offer four parcels, totaling approximately 4,376.5 acres, at the June oil and gas lease sale. The parcels are located in Grand and San Juan counties on public lands managed by the BLM’s Moab Field Office. The BLM

has initiated a 30-day public comment period on the environmental assessment that ends on March 26, 2020. [Read more.](#)

FEDERAL – Judicial

Greater Sage-Grouse – Idaho. (*Update to 7/29/19 Weekly Report*) In the ongoing legal battles over BLM resource management plans in greater sage-grouse areas, on February 27 the U.S. District Court for the District of Idaho ruled against the Trump administration. In *Western Watersheds Project v. Zinke* (Case No. 1:18-cv-00187-REB), the Court held the BLM did not go through required rulemaking procedures before issuing a 2018 “instruction memorandum” aimed at speeding up timelines for federal leases under the National Environmental Policy Act. Chief Magistrate Judge Ronald E. Bush first issued a preliminary injunction in 2018 that barred the BLM from implementing its policy on lands that are home to the greater sage-grouse. The decision extends that order, barring the agency from using the streamlined approach until it completes a full public notice-and-comment process and must instead revert to Obama-era review processes. The decision also invalidates five BLM oil and gas leases in Nevada, Utah and Wyoming and applies to lease sales in habitat areas across more than 104,000 square miles. Future leases sales in the habitat area must allow a 30-day public comment and administrative protest period, per the court order. The BLM is expected to appeal the decision. [Read more.](#)

Hydraulic Fracturing Ban – Second Circuit (New York). 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 New York State hydraulic fracturing moratorium in place since 2014. 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.](#)

Independent Contractors – Fifth Circuit (Texas).

On February 14, the U.S. Court of Appeals for the Fifth Circuit, on appeal from the U.S. District Court for the Southern District of Texas, addressed an independent contractor dispute involving a consultant performing legal work for an oil and gas company. In [Faludi v. U.S. Shale Solutions, L.L.C.](#) (Case No. 17-20808), a former practicing attorney, took a consulting job at an oil and gas services company. The defendant paid him on a day rate basis, required him to sign a non-compete, and treated him as an independent contractor. Once the plaintiff left the company, he filed a Fair Labor Standards Act (FLSA) lawsuit claiming he had been an employee who was misclassified and was entitled to unpaid overtime wages. The Court found the facts showed Faludi was an independent contractor, thus, the FLSA did not apply. The Court also noted that the presence of a non-compete clause does not automatically negate independent contractor status, as was argued by the plaintiff. [Read more.](#)

Greenhouse Gas Pollution Pricing Act – Canada.

On February 24, an Alberta court struck a blow to one of Prime Minister Justin Trudeau's signature policy initiatives when it ruled the Greenhouse Gas Pollution Pricing Act is unconstitutional. In the 273-page ruling, [In the Matter of the Greenhouse Gas Pollution Pricing Act, SC 2018, c. 12](#) (Docket 1903-0157-AC), the Court stated the national levy represents "a constitutional Trojan horse," and noted, "Buried within it are wide ranging

discretionary powers the federal government has reserved unto itself. Their final shape, substance and outer limits have not yet been revealed." The Act imposes a federal carbon tax on provinces that haven't introduced their own plans to meet certain greenhouse gas requirements. The system includes a levy on fuels and rebates to households as well as some exemptions for trade-exposed emitters. Alberta's attorney general argued the carbon tax infringes on the provinces' jurisdiction over the development and management of their natural resources and sets a precedent that would allow the federal government to exert further control over the provinces. Last year, a Saskatchewan appeals court ruled the Act constitutional, setting up a review by the Supreme Court of Canada, which has already agreed to hear the Saskatchewan ruling. [Read more.](#)

Easements; Property Valuation – Third Circuit

(Pennsylvania). On February 11, the U.S. Court of Appeals for the Third Circuit, on appeal from the U.S. District Court for the Middle District of Pennsylvania, issued a precedential opinion regarding consideration of expert testimony as it applied to property valuation in the case of easements. Here, in [UGI Sunbury LLC v. A Permanent Easement for 1,7575 Acres et al.](#) (Case Nos. 18-3126, 18-3127), the analysis applied to a dispute over compensation owed to landowners for a pipeline easement. Although the circumstances in this case involve a pipeline, the Court's analysis on property valuation and the weight given to expert testimony may be instructive in other easement contexts affecting the oil and gas industry in Pennsylvania. [Read more.](#)

Delaware River Basin Commission – Pennsylvania.

On January 31, in *Wayne Land and Mineral Group, LLC v. Delaware River Basin Commission* (Case No. 3:16-CV-00897), the U.S. District Court for the Middle District of Pennsylvania addressed a dispute over the disclosure of documents withheld by the commission and which were relevant to their decision prohibiting natural gas wells within the Delaware River Basin (DRB). Here, the Court rejected the Commission's argument that their qualified deliberative process privilege outweighed an interest

in nondisclosure and compelled the release of certain documents related to a hydraulic fracturing ban in the DRB area. [Read more.](#)

STATE – Legislative

Independent Contractors – California. On February 26, SB 806 advanced through the Senate Rules Committee. The bill would repeal [AB 5](#), signed into law last year and which created a presumption of employee status, to relax the test for independent contractor status recognition and more broadly allow for such status including recognizing work that is customarily engaged in as an independent contractor in trades, occupations or businesses of the nature of the work performed. [Read more.](#)

Franchise Tax – California. On February 24, Asm. Joaquin Arambula (D) introduced AB 2929. Existing income tax laws impose a minimum franchise tax on every corporation incorporated in this state, qualified to transact intrastate business in this state, or doing business in this state, and an annual tax in an amount equal to the minimum franchise tax on every limited partnership, limited liability partnership, and limited liability company registered, qualified to transact business, or doing business in this state. This bill, for taxable years beginning on or after January 1, 2021, would provide that a single-owner corporation or a single-member limited liability company is not subject to the minimum franchise tax or annual tax in the company's first taxable year. The tax reduction is available on a first-come-first-served basis until the \$100 million state cap is met. The bill would subject those entities to an annual increase in those taxes by \$200 commencing in the second taxable year, and every taxable year thereafter, until the entity is subject to 100% of those taxes. [Read more.](#)

Well Records – California. On February 21, Asm. Monique Limón (D) introduced AB 3214. Existing law requires the State Oil and Gas Supervisor to supervise the drilling, operation, maintenance, and abandonment of oil and gas wells. Existing law requires an owner or operator of a well to keep, or cause to be kept, a careful and accurate log, core

record, and history of the drilling of the well, and provides that a person who fails to comply with requirements relating to the regulation of oil or gas operations is guilty of a misdemeanor. This bill would additionally require the owner or operator to keep, or cause to be kept, a history of the maintenance and repair of the well. Because a violation of this requirement would be a crime, the bill would impose a state-mandated implementing program. [Read more.](#)

Abandoned Wells – California. On February 21, Asm. Laura Friedman (D) introduced AB 3230. Existing law requires the State Oil and Gas Supervisor to supervise the drilling, operation, maintenance, and abandonment of oil and gas wells, as provided. Existing law requires the supervisor, in cooperation with appropriate state and local agencies, to both (1) conduct a study of abandoned oil and gas wells located in those areas of the state with substantial potential for methane and other hazardous gas accumulations in order to determine the location, the extent of methane gas and other hazardous gas accumulations, and potential hazards from the abandoned wells, and (2) develop a strategy for extracting existing accumulations of methane gas and other hazardous gas from abandoned oil and gas wells in high-risk areas identified by the supervisor in order to protect the health and safety of the public. This bill would require the Geologic Energy Management Division to review the study and strategy and determine if any of the oil and gas wells identified continue to pose a hazard. [Read more.](#)

Independent Contractors – California. On February 21, Asm. William Brough (R) introduced AB 3281. The bill seeks to amend the effects of recently enacted [AB 5](#) (worker status/independent contractor test bill, 2019 session) to allow for independent contractor status under business-to-business contracting relationships relating to sole proprietors and limited partnerships. [Read more.](#)

Occupational Licensing – Colorado. On February 25, bipartisan bill, HB20-1326, was introduced. The legislation would create the "occupational credential portability program" to allow the recognition of out

of state occupational credentials “to reduce certification, registration and licensure barriers” and foster economic opportunities for workers.

[Read more.](#)

Independent Contractors – Kansas. *(Update to 2/24/20 Weekly Report)* On February 25, HB 2705 passed the House Committee on Commerce, Labor and Economic Development and has moved to the Appropriations Committee. The bill, introduced by that committee, would exempt contract landmen (i.e., independent contractors) from the relevant state law to codify the recognition of independent contractor status. The bill would also foreclose independent contractors from later bringing actions against oil and gas hiring companies claiming they were employees and due unemployment or other wage benefits. AAPL members on the ground have been instrumental in moving this bill forward.

[Read more.](#)

Notary Law – Kansas. *(Update to 2/24/20 Weekly Report)* On February 25, HB 2713 passed the House and has been transmitted to the Senate. The bill, introduced by that committee, updates existing notary law to add numerous sections, including those on electronic documents. [Read more.](#)

Production Payments – Louisiana. On February 26, HB 227 was pre-filed by Rep. Jean-Paul Coussan (R) for the legislative session beginning March 9. Present law requires written notice of the nonpayment of a production payment to be provided prior to a judicial demand for damages. Proposed law retains present law but eliminates the linguistic redundancy and clarifies the application of present law by stating explicitly that the interest at issue is one created out of a mineral lessee's interest. [Read more.](#)

Trusts – Louisiana. On February 20, HB 123 was pre-filed by Rep. Gregory Miller (R) for the legislative session beginning March 9. The bill provides for the allocation of receipts and expenses to income and principal in trusts, and specifically regarding mineral interests, current law provides for the allocation of proceeds of mineral interests and allocates the

royalty payments associated with oil and gas leases in the amount of 27.5% to principal and 72.5% to income. The bill changes current law by providing that royalty payments shall be allocated in accordance with what is reasonable and equitable. The proposed law further provides that allocation of 90% to principal and 10% to income is presumed to be reasonable and equitable but clarifies that other allocations are not necessarily unreasonable or inequitable. The proposed law also abolishes the open mines doctrine in a trust. [Read more.](#)

Notarial Acts – Louisiana. On February 20, HB 122 was pre-filed by Rep. Gregory Miller (R) for the legislative session beginning March 9. The bill would provide for the execution of electronic notarial acts and related procedures. [Read more.](#)

Recordation Fees – Mississippi. On February 17, HB 1488 was introduced by Rep. Charles Jim Beckett (R). The bill would reduce the clerk fee for recording each oil and gas assignment per assignee per each book and page listed from \$18 to \$2. [Read more.](#)

Severance Tax Payments – Mississippi. *(Update to 2/24/20 Weekly Report)* On February 27, Senate companion bill SB 2761 was introduced by Sen. Joel Carter, Jr. (R). This bill mirrors [HB 977](#), introduced in early February by Rep. Brent Powell (R), and which amends existing law to change the severance tax payment due date. [Read more.](#)

Notarial Acts – Missouri. On February 27, SB 587 advanced through committee after no action was taken since 2019. The bill, introduced by Sen. Sandy Crawford (R), modifies provisions relating to the certification of documents, including processes for the recorder of deeds and procedures for notaries public and provides provisions related to electronic notarial acts. [Read more.](#)

Legislative Session Roundup – New Mexico.

The New Mexico legislative session adjourned on February 20, 2020. Gov. Michelle Lujan Grisham (D) has until March 11 to act on any passed legislation or it is pocket vetoed, meaning a bill is considered

effectively vetoed by inaction. AAPL was tracking a number of legislative measures that failed to pass so they are dead for this year's session: [HB 28](#) (Republican bill creating an exception to the subdivision law for parcels divided for oil or gas operations); [HB 293](#) (Democrat bill making appropriations for evaluation of emissions trends and proposed policies to reduce carbon dioxide and other greenhouse gas emissions); [HB 318](#) (Republican bill allowed for severance tax reduction for enhanced recovery projects); [HM 219](#) (Democratic sponsored memorial requesting that support be expressed for establishing financial assurance amounts that are sufficient to cover remediation and reclamation costs and lease obligations and requests a review of New Mexico's statewide remediation and reclamation bonds related to energy production and infrastructure); and [SB 104](#) (Democrat bill that would have imposed a moratorium on new hydraulic fracturing permitting through 2024). [Read more.](#)

Dormant Mineral Interests – New Jersey. On February 25, A3223 was introduced by Asm. Ronald Dancer (R). The bill would create a process by which an owner of a surface estate may terminate a dormant mineral interest tied to their property if unused for a period of 20 or more years and has not been preserved. [Read more.](#)

Independent Contractors – New Jersey. On February 25, A3303 was introduced by Asm. Andrew Zwicker (D). The bill regards the payment of independent contractors and sets certain payment requirements, prohibition on retaliatory actions, recordkeeping, criminal penalties, and defines both "client" and "independent contractor." [Read more.](#)

Hydraulic Fracturing – New York. On February 25, AB 101 was introduced by Asm. David Buchwald (D). The bill would prohibit the deposit of hydraulic fracturing waste from oil or natural gas extraction into solid waste or wastewater treatment facilities. [Read more.](#)

Hydraulic Fracturing – New York. On February 25,

AB 9678 was reported favorably out of committee following its introduction. The bill, introduced by Asm. Steven Englebright (D), would prohibit horizontal drilling and high-volume hydraulic fracturing in the state. [Read more.](#)

Attorney Dues – Oklahoma. On February 25, SB 1404 passed the Senate Judiciary Committee. The bill, sponsored by Sen. Nathan Dahm (R), would change the fees associated with membership in the Oklahoma Bar Association from mandatory to voluntary. [Read more.](#)

Business Entities – South Dakota. (*Update to 2/24/20 Weekly Report*) On February 24, HB 1114 passed both chambers. The bill, sponsored by Rep. Tim Rounds (R), would authorize additional abbreviations in naming corporations, limited liability companies, and limited liability partnerships. [Read more.](#)

Oil and Gas Bonding; Penalties – Utah. (*Update to 2/24/20 Weekly Report*) On February 25, SB 148 passed the Senate and has been introduced in the House. The bill, sponsored by Sen. Ralph Okerlund (R), amends current law regarding the regulation of oil and gas activities, including oversight, bonding requirements, and administrative penalties. [Read more.](#)

Employee Misclassification – Virginia. (*Update to 2/10/20 Weekly Report*) On February 25, HB 1199 passed both chambers. The bill, sponsored by Del. Kathy Tran (D), prohibits an employer from discharging, disciplining, threatening, discriminating against, or penalizing an employee or independent contractor because the employee or independent contractor reported or plans to report that an employer or any officer or agent has failed to properly classify an individual as an employee and failed to pay required benefits or other contributions. The measure also prohibits such actions against an employee or independent contractor who is requested or subpoenaed by an appropriate authority to participate in an investigation, hearing, or inquiry by an appropriate authority or in a court

action. These prohibitions apply only if an employee or independent contractor acts in good faith and upon a reasonable belief that the information is accurate. The measure authorizes the Commissioner of Labor and Industry to institute proceedings against an employer who has taken such prohibited retaliatory action. Available remedies include reinstatement of the employee and recovery of lost wages. An employer that violates these provisions is subject to a civil penalty equal to the employee's lost wages. [Read more.](#)

Employee Misclassification – Virginia. *(Update to 2/10/20 Weekly Report)* On February 26, [SB 744](#) passed both chambers. The bill, introduced by Sen. Jeremy McPike (D), provides “that, if an individual performs services for an employer for remuneration, that individual shall be considered an employee of the party that pays that remuneration unless such individual or his employer demonstrates to the satisfaction of the Department of Taxation (‘the Department’) that such individual is an independent contractor.” If signed into law, the bill has an effective date of January 1, 2021. [Read more.](#)

Employee Misclassification – Virginia. *(Update to 2/10/20 Weekly Report)* On February 24, HB 1407 passed both legislative chambers. The bill, sponsored by Del. Jeion Ward (D), provides that if an individual performs services for an employer for remuneration, that individual shall be considered an employee of the party that pays that remuneration unless such individual or his employer demonstrates that such individual is an independent contractor. The bill allows for misclassification civil penalties against employers. If signed into law, the bill would be effective January 1, 2021. [Read more.](#)

Employee Misclassification – Virginia. *(Update to 2/17/20 Weekly Report)* On February 24, SB 662 passed the House of Delegates after passing the Senate in January. The bill, sponsored by Sen. Jennifer Boysko (D), prohibits an employer from discharging, disciplining, threatening, discriminating against, or penalizing an employee or independent

contractor because the employee or independent contractor reported or plans to report that an employer or any officer or agent has failed to properly classify an individual as an employee and failed to pay required benefits or other contributions. The measure also prohibits such actions against an employee or independent contractor who is requested or subpoenaed by an appropriate authority to participate in an investigation, hearing, or inquiry by an appropriate authority or in a court action. These prohibitions apply only if an employee or independent contractor acts in good faith and upon a reasonable belief that the information is accurate. The measure authorizes the Commissioner of Labor and Industry to institute proceedings against an employer who has taken such prohibited retaliatory action. Available remedies include reinstatement of the employee and recovery of lost wages. An employer that violates these provisions is subject to a civil penalty equal to the employee's lost wages. If signed into law, the bill would be effective July 1, 2020. [Read more.](#)

Partition of Heirs Property – Virginia. *(Update to 2/24/20 Weekly Report)* On February 18, HB 1605 was transmitted to Gov. Ralph Northam (D). The governor has until March 3 to sign or veto the measure. The bill, sponsored 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.](#)

Leasing – West Virginia. *(Update to 2/17/20 Weekly Report)* On February 28, SB 554 passed

the House of Delegates. If signed into law, the bill would take effect 90 days after passage. The measure, sponsored by Sen. Randy Smith (R), passed the Senate on February 14. "The purpose of this bill is to provide a requirement for a lessee to execute and deliver to the lessor, within a specified time and without cost, a recordable release for terminated, expired, or cancelled oil or natural gas leases; provide for a procedure by which a lessor may serve notice to a lessee, if a lessee fails to timely provide the release; require a lessee to timely notify the lessor in writing of a dispute; provide for a recordable affidavit of termination, expiration, or cancellation with specified contents; provide that with proper notification in the absence of a dispute, a recorded affidavit creates a rebuttable presumption of termination and cancellation for the oil or natural gas lease." [Read more.](#)

Well Plugging; Bonds – West Virginia. *(Update to 1/13/20 Weekly Report)* On February 26, SB 120 passed the Senate and has been transmitted to the House of Delegates. The purpose of the bill, sponsored by Sen. Mike Romano (D), "is to require money that results from the forfeiture of an oil and gas operator's bond as a result of the operator's failure to plug a well or otherwise comply with state statutes and rules to first be applied to correct or mitigate an immediate threat to the environment or hindrance or impediment to the development of mineral resources of this state that caused the forfeiture of the bond." [Read more.](#)

Well Permit Modifications – West Virginia. On February 26, SB 840 passed the Senate and has been transmitted to the House of Delegates. The bill, sponsored by Sen. Randy Smith (R), allows for modifications of well work permits issued by the Department of Environmental Protection's Office of Oil and Gas. [Read more.](#)

Partition of Real Property – West Virginia. On February 20, HB 4956 passed the House of Delegates and was introduced in the Senate. The purpose of the bill, introduced by Del. John Shott (R), "is to enact partition reform by providing for

allotment or sale of real property; providing for appointment, duties, and requirements for commissioners, appraisers, and real estate brokers for partitions; providing factors to be considered in determining whether partition in kind is appropriate; providing procedures to be followed in determining the fair market value of property being partitioned; providing for open-market sales, sealed bids, or public auctions of property being partitioned; providing reporting requirements; and providing protections from sale for certain specified interests." [Read more.](#)

Independent Contractors – West Virginia.

On February 24, SB 528 passed the Senate. The purpose of the bill, introduced 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 Road Damage – West Virginia.

(Update to 2/24/20 Weekly Report) On February 20, SB 827 passed the Transportation and Infrastructure Committee. The purpose of the bill, introduced by Sen. Glenn Jeffries (D), "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.](#)

Corporate Taxation – Wisconsin. On February 20, AB 753, introduced by Rep. John Macco (R), passed the House and has been transmitted to the Senate. 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 introduced in January. [Read more.](#)

Severance Tax – Wyoming. *(Update to 2/24/20 Weekly Report)* On February 28, HB 243 passed the House. The bill, sponsored by Rep. Donald Burkhart, Jr. (R), amends existing law to provide for certain severance tax rates under defined circumstances and sets forth certain exemptions, specifically crude oil and natural gas produced from wells drilled on or after January 1, 2020 would be exempt from 2% of the total 6% severance tax rate for the first 6 months and exempt from 1% of the total 6% severance tax for the next 6 months, but the exemption does not apply when the WTI spot price of sweet crude oil is \$60/barrel or more at the time of production. The bill also specifies increases on the severance tax rate by 2% on crude oil production from wells drilled on or after July 1, 2020 when the 12-month rolling average of the WTI spot price of sweet crude oil is \$80/barrel or more at the time of production, among other related provisions. [Read more.](#)

Mineral Exploration Tax Incentives – Wyoming. *(Update to 2/10/20 Weekly Report)* On February 27, HB 91 passed the House. The bill, sponsored by Rep. David Miller (R), provides a severance tax credit for certain mineral exploration, including oil and gas. The credit for oil and gas exploration is provided under an amendment provided in the bill to Wyoming statute [Sec. 39-14-209\(d\)](#). [Read more.](#)

Ad Valorem Taxes – Wyoming. *(Update to 2/24/20 Weekly Report)* On February 27, HB 159 passed the House. The bill, sponsored by the Select Committee on Coal/Mineral Bankruptcies (R), 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.](#)

State Tax Revenue – Wyoming. *(Update to 2/24/20 Weekly Report)* On February 27, SF 110 passed the Senate. The bill, sponsored by Sen. Cheri Steinmetz (R), 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.](#)

Tax Liens on Mineral Production – Wyoming. *(Update to 2/24/20 Weekly Report)* On February 27, SF 139 passed the Senate. 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 House companion bill, [HB 182](#), did not move in favor of the Senate version. [Read more.](#)

Sage Grouse Mitigation Credits – Wyoming. *(Update to 1/13/20 Weekly Report)* On February 25 HB 13 passed the House and has been introduced in the Senate. The bill, sponsored by the Joint Minerals, Business & Economic Development Committee, would establish a program for compensatory mitigation credits for conservation of the greater sage-grouse. The bill recognizes that industry, including energy development, must be considered when managing the bird habitat and in some cases where adverse species impacts occur, a system of compensatory mitigation would offset impacts to the species. [Read more.](#)

State Mineral Royalties – Wyoming. *(Update to 2/24/20 Weekly Report)* On February 20, House Joint Resolution HJ0001 was recalled from the House Appropriations Committee and brought to a floor vote. As of February 25, the bill is awaiting its third reading vote in the House. The Joint Resolution, introduced by Rep. Tim Hallinan (R),

would authorize 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.](#)

Water Disposal Rules – Wyoming. (*Update to 2/24/20 Weekly Report*) On February 14, HB 219 was received for introduction by Rep. Aaron Clausen (R), but the bill was never considered by the House for introduction and will die by the March 6, 2020 legislative session adjournment date. The bill would have amended existing law regarding rules providing for the disposal of produced and fresh water in connection with oil and gas leases. [Read more.](#)

Well Notice Requirements – Wyoming. On February 12, HB 221 was received for introduction by Rep. Dan Zwonitzer (R), but the bill was never considered by the House for introduction and will die by the March 6, 2020 legislative session adjournment date. The bill would have provided for regulatory provisions establishing notice requirements to persons located within certain well distances, but would not have applied to more than ½ mile from a well. [Read more.](#)

[STATE – Regulatory](#)

COGCC Draft Rulemaking – Colorado. As an update to our ongoing reporting of Colorado Oil & Gas Conservation Commission (COGCC) draft rulemaking to effectuate the state's oil and gas regulatory overhaul legislation ([SB 19-181](#)), which was signed into law last year, on February 24, the COGCC released additional portions of [Draft 300 \(Operating and Reporting\)](#) and [900 \(Environmental Impact Prevention\) Rules](#). For background, the COGCC is considering amendments to the Commission Rules of Practice and Procedure to implement SB 19-181. On April 16, 2019, Governor Polis signed SB 19-181 into law, which changed the mandate of the COGCC from fostering oil and gas

development to regulating oil and gas development “in a reasonable manner to protect and minimize adverse impacts to public health, safety, and welfare, the environment and wildlife resources.” These draft rulemakings represent the early stages of regulatory changes to the rules and regulations governing the mandate of the COGCC. To [submit a public comment](#) please visit the COGCC website. [Read more.](#)

Railroad Commission Oil and Gas Notice – Texas.

On February 25, the Railroad Commission of Texas (RRC) announced “Geologic Formation Information and County Formation Lists Updates.” According to the RRC notice, “The geologic formation information is provided to oil and gas operators as a guideline for compliance with 16 Texas Administrative Code §3.13 (Statewide Rule 13), relating to casing, cementing, drilling, well control and completion requirements. The geologic formation information will also be updated within the Drilling Permits (W-1) application in the RRC Online System.” The RRC also notes, “One change to geologic formation information is the removal of the formation depth (or “tops”) estimates from all the county formation lists. Most changes are to the county formation lists for districts 8 and 8A, where formations have been added.” [Read more.](#)

[STATE – Judicial](#)

Local Oil and Gas Ordinance – California. On February 25, California's Fifth Appellate District Court of Appeals held in [King and Gardiner Farms, LLC v. County of Kern](#) (Case No. F077656) that Kern County violated the California Environmental Quality Act (CEQA) when adopting the County's Oil and Gas Ordinance. The ordinance, adopted in 2015, “approved an ordinance to streamline the permitting process for new oil and gas wells.” The opinion addressed the inadequacy of an environmental impact report (EIR) and “CEQA violations involving water, agricultural land, and noise.” According to law firm, Day Carter & Murphy LLP, “The Court's decision sets aside the County's certification of the EIR for the Ordinance and invalidates the Ordinance as of 30 days from the date of the Court's decision. Oil and gas activities under existing permits may

continue as the Court recognized those permits issued before the invalidation will remain in effect. For further directives on how the decision affects permitting and operations, please see the Day Carter & Murphy LLP [California Oil & Gas Newsletter](#). [Read more.](#)

Impact Fees – Pennsylvania. On February 6, in *Snyder Brothers, Inc. v. Pennsylvania Public Utility Commission* (Case No. 1043 C.D. 2015), the Commonwealth Court of Pennsylvania addressed a dispute over the payment of well impact fees. The Public Utility Commission (PUC) claimed Snyder had not paid impact fees on certain vertical wells. Snyder argued the wells were stripper wells and thus not subject to the fee. In this case, the issues surrounded the imposition of penalties and interest and due process violations. Finding in favor of Snyder, the Court found PUC advice, representations and notice were inadequate and deficient in other respects and could not substantiate imposition of interest and penalties under the circumstances. [Read more.](#)

Easements – Texas. On February 28, the Texas Supreme Court decided the “hotly contested case,” [Southwestern Electric Power Company v. Lynch et al.](#) (Case No. 18-0768), regarding several general easements. The dispute centered on the width of several general easements that Southwestern Electric Power Company (SWEPCO) acquired from the respondent landowners’ predecessors-in-title in 1949. SWEPCO argued that the easements are general easements with no fixed width, while the landowners contended that the transmission line easements should have a fixed, 30-foot width. After conducting a bench trial, the trial court concluded that the easements are fixed at a thirty-foot width, and therefore the trial court rendered judgment for the landowners. The Court of Appeals affirmed the trial court’s judgment, concluding that because the original 1949 easements did not specify a width, the trial court was within its discretion to admit extrinsic evidence of past use to determine how much of the landowners’ land “was reasonably necessary” for the petitioner to utilize pursuant to the easements. The Texas Supreme Court disagreed with the Court of

appeals, however, and concluded that the easements have no fixed width, but SWEPCO’s use of the land under the easements nevertheless must be “reasonable and necessary.” In so doing, the Court held that “[t]he use of a general easement without a fixed width is a strategic decision that does not render an easement ambiguous or require a court to supply the missing term.” However, the Court also noted that its holding did not mean that the affected landowners “are without recourse as to SWEPCO’s future use of the easements. The holder of a general easement must utilize the land in a reasonable manner and only to an extent that is reasonably necessary.” According to Texas law firm, Jackson Walker, “[t]his is a significant decision, as general easements have historically been used widely by electric utilities, pipeline companies, and other entities as tools that allow flexibility to account for future growth, innovation, and development.” [Read more.](#)

INDUSTRY NEWS FLASH

► **BP to quit three energy trade groups over climate policies.** On February 26, [BP announced](#) the company will be leaving three energy trade associations “due to misalignment on climate policy, citing its support of the Paris Agreement goals and net zero ambition as reasons for withdrawing membership.” The three associations are Western Energy Alliance, Western States Petroleum Association, and American Fuel and Petrochemical Manufacturers. [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.

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 the 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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