

GOVERNMENTAL AFFAIRS WEEKLY REPORT

Weekly Highlights At-A-Glance

COVID-19 UPDATE: AAPL members have been reaching out with questions about the COVID-19 stimulus bill enacted last week and the benefits it provides for landmen. We have posted an information FAQ on Landnews detailing the provisions that affect landmen, which include small business loans, one-time cash payments to Americans, and unemployment benefits for employees, independent contractors, and the self-employed. We have also detailed the stimulus package provisions below and will continue to update members on any further guidance we receive from federal and state officials. We understand this is a difficult time for our industry and we want to assure you that AAPL governmental affairs is doing its part to advocate for our industry to support our valued members.

FEDERAL – Legislative

H.R. 748 – Coronavirus Aid, Relief, and Economic Security Act. Last week, President Trump signed into law the historic [\\$2 trillion coronavirus relief stimulus package](#) which includes one-time direct payments to individuals, stronger unemployment insurance, loans and grants to businesses, various tax credits, and many other provisions related to shoring up the public health system. H.R. 748, known as the “Coronavirus Aid, Relief, and Economic Security Act” or the “CARES Act” also [provides unemployment benefits for freelancers, the self-employed and independent contractors](#). According to the *Independent Contractor Misclassification and Compliance Newsletter*, published by Locke Lord law firm partner Richard Reibstein, “It contains unemployment assistance provisions that expand coverage to individuals not ordinarily covered by unemployment insurance laws: self-employed individuals, also known as independent contractors, freelancers, sole proprietors, or gig workers.” ([read more](#)) The bill does not include the \$3 billion Trump

sought to fulfill his promise of filling the country's Strategic Petroleum Reserve stockpile by purchasing millions of barrels of domestic oil in part to aid U.S. drillers amid a price decline. Senate Minority Leader Charles Schumer (D-NY) told his colleagues that the deal struck with Republicans would not include a “bailout for big oil.” Democrats also failed to clinch language extending tax breaks for renewable energy industries. To view the 880-page bill in its entirety, [read more here](#). For a section-by-section analysis of the provisions: [Read more](#).

S. 3533 – Securing and Enabling Commerce Using Remote and Electronic (SECURE) Notarization Act of 2020. On March 18, Sen. Kevin Cramer (R-ND) and Sen. Mark Warner (D-VA) introduced bi-partisan legislation, [S. 3533](#), known as the “Securing and Enabling Commerce Using Remote and Electronic (SECURE) Notarization Act of 2020.” The bill permits immediate nationwide use of Remote Online Notarizations, a type of electronic notarization where the notary and signer are in different physical locations. “The SECURE Notarization Act brings the notary process into the 21st century, allowing people to securely complete documents while still following recommended health and social practices amid the coronavirus pandemic,” said Sen. Kramer. [Read more](#).

FEDERAL – Regulatory

BLM Information Collection. On March 24, the Bureau of Land Management (BLM) published its notice, *Agency Information Collection Activities; Submission to the Office of Management and Budget for Review and Approval; Land Use Application and Permit* ([85 Fed. Reg. 16652](#)), which solicits comments on their proposed information collection policy as it relates to the issuance of leases, permits,

and easements for a variety of uses of public lands that is described as follows: (1) Is the collection necessary to the proper functions of the BLM; (2) will this information be processed and used in a timely manner; (3) is the estimate of burden accurate; (4) how might the BLM enhance the quality, utility, and clarity of the information to be collected; and (5) how might the BLM minimize the burden of this collection on the respondents, including through the use of information technology. The public comment period is open through April 23, 2020. [Read more.](#)

BLM Oil and Gas Lease Sale – New Mexico.

On March 19, the BLM announced its proposal to offer 95 parcels totaling 45,445.76 acres at its May 2020 quarterly oil and gas lease sale. The proposed parcels are located in Chaves, Eddy and Lea counties in New Mexico; and Wise County in Texas. The lease sale is scheduled to occur online on May 20-21, 2020. The protest period is open through April 1, 2020. The announcement is in keeping with BLM's stated commitment to continue oil and gas lease sales during the coronavirus outbreak. [Read more.](#)

BLM Office Closed Until Further Notice – Utah.

On March 20, the BLM Utah State Office (Salt Lake City) announced the office is closed until further notice following a 5.7 magnitude earthquake that hit the area on March 19. "The Utah State Office will remain closed until assessments, cleanup, and repairs are complete. The safety of our employees and the public is our top priority." [Read more.](#)

Crude Oil Tariff Opposition – Pennsylvania. On March 25, the [Marcellus Shale Coalition](#) (MSC) sent a letter to U.S. Department of Commerce Secretary Wilbur Ross urging him not to impose tariffs on imported crude oil as some oil producers have requested. Tariffs on crude imports may "do harm to natural gas producers" already "in serious difficulty" because of inadequate access to capital, the Marcellus Shale Coalition warned. "Flooded markets for gas would become even more untenable, inflicting harm on our Marcellus gas production," said MSC president David Spigelmyer. [Read more.](#)

Oil Pricing – Washington, DC. On March 20, a group of U.S. senators sent a letter to U.S. Department of Commerce Secretary Wilbur Ross urging him "to investigate the excessive dumping of crude oil" by Saudi Arabia and Russia and "develop a swift reply." The letter comes in response to the deep dive in crude oil prices and the economic ripple effects it is having on the domestic oil and gas industry. The undersigned stressed that the market manipulations "has roiled the economy, causing severe trauma to the American energy industry." [Read more.](#)

Offshore Royalties – Washington, DC. On March 20, a bipartisan group of lawmakers [sent a letter to Interior Secretary David Bernhardt](#) asking the agency to reduce or waive royalties for oil and gas leases in the Gulf of Mexico amid a decline in oil prices linked to international disputes and the coronavirus pandemic. "[W]e urge you to examine the viability of a temporary reduction in royalties as domestic energy producers weather this combination of an OPEC-driven price war and an epidemic that is driving millions of people around the world into quarantines of one kind or another," the legislators wrote. "Such an action in the short term will help mitigate a price war that is sinking prices and decreasing production." [Read more.](#)

EPA Rule Waivers – Washington, DC. On March 20, the American Petroleum Institute (API) [sent a letter to EPA Administrator Andrew Wheeler](#) requesting the agency temporarily waive non-essential compliance requirements, including some environmental permitting requirements, amidst the coronavirus epidemic. In his letter, API President and CEO Mike Sommers noted "the COVID-19 pandemic represents a significant and historic threat to our nation. We thank the Administration for its continued efforts in combating this threat, and we look forward to partnering with you to help ensure that critical fuels are available, so that we as a nation can continue to respond to this crisis." [Read more.](#)

FEDERAL – Judicial

Forced Pooling – Colorado. On March 18, a federal court dismissed an activist group's lawsuit that alleged Colorado is allowing natural gas drilling over the objections of resource owners. The issue in *Wildgrass Oil and Gas Cmte. v. Colorado* (Case No. 19-cv-00190) centered on Colorado Oil and Gas Conservation Commission's forced pooling order. Wildgrass alleged various constitutional arguments, but the Court rejected those. Wildgrass claimed forced pooling required non-consenting owners to "associate" with oil and gas companies and subsidize private speech for those companies in violation of their First Amendment rights. The Court disagreed, saying there's no evidence that the money drillers could collect from a non-consenting owner's operating costs would be used for "expressive purposes." As to the group's argument that forced pooling violates the contracts clause, the Court said there is no clear contract between operators and non-consenting owners. Because the substance of the case centers on state law and jurisdiction of the agency applying that law, the Court also held that the federal court was "not the appropriate forum to resolve these questions." Most notably, the case was dismissed with prejudice, which means the activist group may not bring the case again in this venue. [Read more.](#)

Wayne National Forest – Ohio. On March 13, in *Center for Biological Diversity v. U.S. Forest Service* (Case No. 17-cv-00372), the U.S. District Court for the Southern District of Ohio ruled in favor of environmentalists by holding that the U.S. Forest Service (USFS) and Bureau of Land Management (BLM) failed to take into account all necessary environmental impacts pursuant to the National Environmental Policy Act procedural requirements when approving oil and gas permitting and drilling by hydraulic fracturing in the Wayne National Forest. The Court held that the "USFS and BLM demonstrated a disregard of the different types of impacts caused by fracking in the Forest. The agencies made decisions premised on a faulty foundation: that the 2006 Forest Plan's and 2006

EIS's consideration of vertical drilling sufficiently accounted for the impacts of fracking." The Court, however, has declined for now to vacate the leases of dozens of parcels in the forest offered by the agencies in late 2016 and early 2017, and ordered briefings be filed by the parties on the appropriate remedy. We will continue to report on this case as it progresses. [Read more.](#)

STATE – Legislative

Independent Contractors – California. On March 16, AB 2075 was referred to committee. The bill, sponsored by Rep. Kevin Kiley (R), would repeal the three-prong "ABC test" enacted last year under [AB 5](#), and which created a presumption of employee status, and instead revert back to the pre-AB 5 multifactor test to relax the standard 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.](#)

Production Payments – Louisiana. (*Update to 3/2/20 Weekly Report*) On March 12, HB 227 passed the House and has been referred to the Senate. The bill, sponsored by Rep. Jean-Paul Coussan (R), sets forth that present law requires written notice of the nonpayment of a production payment to be provided prior to a judicial demand for damages. The 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.](#)

Notarial Acts – Mississippi. (*Update to 2/17/20 Weekly Report*) On March 25, SB 2394 was referred to the House Judiciary Committee after passing the Senate. The bill, introduced by Sen. Tyler McCaughn (R), would amend existing notary law regarding electronic signatures and affidavits, among other technical changes. [Read more.](#)

Injection Wells – Oklahoma. *(Update to 2/10/20 Weekly Report)* On March 5, SB 1615 passed the Senate and has been referred to the House. The bill, sponsored by Sen. Darcy Jech (R), creates the Task Force on Injection Well Stability. The Task Force is comprised of nine members. Members of the Task Force shall not be reimbursed for travel expenses or receive compensation. The Task Force is authorized to issue any reports it deems necessary and appropriate and may make any legislative recommendations available to the Governor and the Legislature. The sunset date for the Task Force is December 1, 2023. [Read more.](#)

Produced Water; Wells – Oklahoma. *(Update to 2/10/20 Weekly Report)* On March 12, SB 1875 passed the Senate and has been referred to the House. The bill, sponsored by Sen. Dave Rader (R), creates the Oil and Gas Water Recycling and Reuse Act. The measure declares that the operator and nonoperators of the well are the sole owners of the produced water and waste as it relates to oil and gas production. Owners of the produced water shall be entitled to proceeds for any of the uses of the produced water and waste. Owners are also responsible for storing, transporting, and handling produced water. If the owners transfer the water to a person or entity to process the water, such water will be the property of the transferee until such time as the water is disposed of or transferred to another person. Current owners of the water are not liable in tort for consequences of subsequent use of recycled water or treated constituents if they follow procedures outlined in the measure.

[Read more.](#)

Notarial Acts – Pennsylvania. On March 23, SB 1097 was introduced by Sen. Doug Mastriano (R). The bill allows for electronic notarial acts that may be performed remotely. [Read more.](#)

State Trust Lands – Utah. *(Update to 2/24/20 Weekly Report)* On March 20, HB 335 passed both legislative chambers. The bill, sponsored by Rep. Michael McKell (R), amends existing law to address penalties for illegal and unauthorized activities on

state institutional trust lands, including mineral resources. [Read more.](#)

Employee Misclassification – Virginia. *(Update to 3/16/20 Weekly Report)* On March 18, SB 894 was signed into law by Gov. Ralph Northam (D). The House version, [HB 984](#), was signed into law on March 10. Both bills are effective July 1, 2020. These Democrat sponsored bills, which are reported by the legislature as identical, authorize an individual who has not been properly classified as an employee to bring a civil action for damages against his employer for failing to properly classify the employee if the employer had knowledge of the individual's misclassification. The court may award damages in the amount of any wages, salary, employment benefits, including expenses incurred by the employee that would otherwise have been covered by insurance, or other compensation lost to the individual, a reasonable attorney fee, and the costs incurred by the employee in bringing the action. The measure provides that an individual who performs services for a person for remuneration shall be presumed to be an employee unless it is shown that the individual is an independent contractor as determined under the Internal Revenue Service guidelines. [Read more.](#)

Unknown/Unlocatable Owners – West Virginia. *(Update to 3/16/20 Weekly Report)* On March 25, HB 4088 was signed into law by Gov. Jim Justice (R). The Act, sponsored by Del. William Anderson (R), "provides that proceeds from certain oil and gas wells that are due to persons whose name or address are unknown are to be kept in a special fund and if unclaimed within seven years the proceeds shall be transferred to the Oil and Gas Reclamation Fund. The Act provides that if there is a surface disturbance those named surface owners of a leased interest subject to pooling for a horizontal well are the only surface owners insofar as the well permit is concerned. The Act provides that if another surface owner should become known his or her name shall be added as a surface owner on the permit. The Act provides that if proceeds from other mineral tracts in a unit or pool of a horizontal well are not

claimed by an unknown, missing or abandoned owner within seven years the proceeds shall be transferred to the Oil and Gas Reclamation Fund. The Act is effective July 1, 2020. [Read more.](#)

Abandoned Wells – West Virginia. *(Update to 3/16/20 Weekly Report)* On March 23, HB 4090 was signed into law by Gov. Jim Justice (R). The Act, sponsored by Del. William Anderson (R), provides for an exemption from the severance tax under enumerated conditions and also establishes the Oil and Gas Abandoned Well Plugging Fund. The Act is effective 90 days after March 3, 2020. [Read more.](#)

Notaries Public – West Virginia. *(Update to 2/17/20 Weekly Report)* On March 25, HB 4748 was signed into law by Gov. Jim Justice (R). The purpose of Act, sponsored by Del. Gary Howell (R), is to “increase the fees that private nongovernment notary publics may charge for notarial acts, and clarifies that notary publics may advertise for services so long as a clear disclaimer that the notary is not permitted to provide legal services including document drafting, document review, or legal advice as a non-attorney is provided either at the place of the notarial act or in the actual advertisement.” The Act is effective 90 days after March 7, 2020. [Read more.](#)

Well Plugging; Bonds – West Virginia. *(Update to 3/2/20 Weekly Report)* On March 25, SB 120 was signed into law by Gov. Jim Justice (R). The purpose of the Act, 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.” The Act is effective 90 days after March 7, 2020. [Read more.](#)

Leasing – West Virginia. *(Update to 3/2/20 Weekly Report)* On March 25, SB 554 was signed into law by Gov. Jim Justice (R). The Act, sponsored by Sen. Randy Smith (R), provides relating to the

termination, expiration, or cancellation of oil or natural gas leases 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 canceled oil or natural gas leases; provides for a procedure by which a lessor may serve notice to a lessee if a lessee fails to timely provide the release; provides requirements for the content of the notice; requires a lessee to timely notify the lessor in writing of a dispute regarding the termination, expiration, or cancellation of the oil and natural gas lease; provides for an affidavit of termination, expiration, or cancellation with specified contents; and provides a requirement that county clerks accept and record said affidavit. The Act is effective 90 days after March 2, 2020. [Read more.](#)

Sage Grouse Mitigation Credits – Wyoming. *(Update to 3/2/20 Weekly Report)* On March 17, HB 13 was signed into law by Gov. Mark Gordon (R). The Act, sponsored by the Joint Minerals, Business & Economic Development Committee, establishes a program for compensatory mitigation credits for conservation of the greater sage-grouse. The Act 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. The Act is effective October 1, 2020. [Read more.](#)

STATE – Regulatory

Surface and Mineral Rights Purchase – Wyoming. Gov. Mark Gordon (R) [announced the state is considering purchasing the surface and mineral rights](#) along the Union Pacific Railroad corridor, which stretches across southern Wyoming to northeastern Utah and parts of northern Colorado. The rail corridor runs near Interstate 80. In total, the deal encompasses approximately 4 million acres of mineral rights and 1 million acres of surface rights. The surface and mineral rights currently belong to Occidental Petroleum Corporation (OXY) which acquired the parcels in August 2019 after merging with Anadarko. At this point, Wyoming is

“only interested in what it would take” for the state to buy the OXY interests, according to Gov. Gordon. [Read more.](#)

STATE – Judicial

Local Oil and Gas Ordinance – California. (*Update to 3/2/20 Weekly Report*) On March 20, the California Fifth District Court of Appeal [denied petitions](#) submitted by Kern County and industry groups requesting a rehearing in response to its decision last month directing the county to rescind its oil and gas ordinance and associated Environmental Impact Report (EIR). The Court issued a modified opinion which further clarified that permits issued by the county are covered by the California Environmental Quality Act (CEQA) during the ordered 30-day window ending on March 26, 2020, at which point the ordinance is suspended. For background, on February 25, the Court held in [King and Gardiner Farms, LLC v. County of Kern](#) (Case No. F077656) that Kern County violated the 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.](#)

INDUSTRY NEWS FLASH

► **Energy industry touts commitment to energy delivery during coronavirus pandemic.** From

pipeline owners and operators to petrochemical manufacturers and gas companies, America’s energy industry expressed its commitment to supplying the energy needed during the coronavirus epidemic as cities and states adopt social distancing measures. The companies stressed in a March 18 briefing that while the situation is fluid, they have plans in place to ensure critical energy supplies remain available and companies are working in close coordination with federal agencies to ensure safe operations amidst containment and employee staffing disruptions. [Read more.](#)

► **API study warns of economic consequences under ban on federal leasing and hydraulic fracturing.** The American Petroleum Institute (API) released a [new economic analysis](#) outlining the “dire economic consequences of a ban on federal leasing and hydraulic fracturing (or fracking) for American families and businesses” being pushed by Democratic presidential candidates and other legislators. “If I told you about a technology that would help the environment, that would help American consumers, would reduce our trade deficit and increase American jobs, I think most politicians would jump on that, not try to ban it,” said API President and CEO Mike Sommers. [Read more.](#)

LEGISLATIVE SESSION OVERVIEW

Session Notes: Alaska, Kentucky, Massachusetts, Ohio, Pennsylvania and Vermont are in regular session. The District of Columbia Council and the U.S. Congress are also in regular session.

The following legislatures are postponing their 2020 legislative sessions due to COVID-19 until the dates provided: Colorado and Puerto Rico House (March 30), Louisiana and South Carolina Senate (March 31), Michigan and Mississippi (April 1), Rhode Island (April 3), Missouri and South Carolina House (April 6), New Hampshire (April 10), Arizona, California and Connecticut (April 13), Minnesota (April 14), Iowa (April 15), Kansas (April 27), New Jersey (May 4), Delaware (May 15), Tennessee (June 1) and

Georgia, Hawaii, Illinois, Nebraska, New York, Oklahoma and Wisconsin (TBD).

The following states are in a scheduled recess until the dates provided: **Alabama** (March 31) and **North Carolina** (April 28).

Idaho adjourned their 2020 session on March 20.

Arkansas is expected to convene its 2020 session on April 8.

The following states are expected to adjourn on the dates provided: **Georgia** (April 2) and **Kentucky** (April 15).

Signing Deadlines: **South Dakota** Republican Gov. Kristi Noem and **Wyoming** Republican Gov. Mark Gordon have until March 27 to act on legislation or it becomes law without signature. **Idaho** Republican Gov. Brad Little and **Utah** Republican Gov. Gary Herbert have until April 1 to act on legislation or it becomes law without signature. **Florida** Republican Gov. Ron DeSantis has until April 3 to act on legislation or it becomes law without signature. **Washington** Democratic Gov. Jay Inslee has until April 4 to act on legislation or it becomes law without signature. **Virginia** Democratic Gov. Ralph Northam has until April 11 to act on legislation or it becomes law without signature. **Oregon** Democratic Gov. Kate Brown has until April 16 to act on legislation or it becomes law without signature. **Indiana** bills must be presented within seven days of adjournment, from which time Republican Gov. Eric Holcomb has seven days to act or the legislation becomes law without signature. **Maine** Democratic Gov. Janet Mills must act on legislation presented within 10 days of adjournment or it becomes law unless returned within three days after the next meeting of the same legislature. **Maryland** Republican Gov. Larry Hogan has 30 days from presentment to act on legislation or it becomes law without signature.

Interim Committee Hearings: **North Dakota** is currently holding 2020 interim committee hearings. **Nevada** has postponed 2020 interim hearings until April 1.

Bill Pre-Files: **Arkansas** is currently posting 2020 bill drafts, pre-files and interim studies. ■

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