

GOVERNMENTAL AFFAIRS WEEKLY REPORT

Weekly Highlights At-A-Glance

FEDERAL – Legislative

President-Elect Joe Biden (D) Begins Selecting Cabinet and Agency Leadership Nominees.

President-Elect Joe Biden (D) has begun selecting his nominees to head up agencies and Cabinet-level posts, and specifically those affecting the oil and gas industry and the landman profession. For the U.S. Department of Interior – which oversees the Bureau of Land Management, Bureau of Indian Affairs, Bureau of Ocean Energy Management, and the U.S. Fish and Wildlife Service – Biden will nominate Rep. Deb Haaland (D-NM) to lead the agency. If confirmed by the Senate, Haaland will be the first Native American Cabinet head in U.S. history. ([Read more.](#)) For the U.S. Environmental Protection Agency (EPA), Biden plans to name Michael Regan (D) as EPA Administrator. Regan is currently Secretary of the North Carolina Department of Environmental Quality and has previously served at the EPA under both the Clinton and Bush administrations. ([Read more.](#)) Biden has also selected former Obama EPA Administrator, Gina McCarthy (D), to coordinate his administration's domestic climate agenda as the nation's first ever "national climate adviser" – a senior administration Czar-like post not requiring Senate confirmation. McCarthy is currently President of the Natural Resources Defense Council. ([Read more.](#)) For the U.S. Department of Energy, Biden has chosen former Michigan Gov. Jennifer Granholm (D) for "the agency that would play a key role in helping develop the technologies needed to fulfill [Biden's] pledge to move the country off fossil fuels." ([Read more.](#)) Biden also nominated former union head and current Boston mayor Marty Walsh (D) as Secretary of the U.S. Department of Labor ([Read more](#)) and Rhode Island Gov. Gina Raimondo (D) for Secretary of the U.S. Department of Commerce. ([Read more](#)) The nominees are expected

to have easy Senate confirmations since Democrats regained control of the U.S. Senate after Rev. Raphael Warnock (D) and Jon Ossoff (D) defeated incumbent Republicans in the recent Georgia runoff elections to take back the majority. This will be the first time since 2011 that Democrats have controlled both the U.S. Congress and the White House.

[Read more.](#)

Coronavirus Stimulus Legislation. On December 27, 2020, President Trump signed into law a \$900 billion coronavirus stimulus package, known as CARES Act II. Among the many provisions, the nearly 6,000-page consolidated bill ([H.R. 133](#)) includes \$600 direct payment checks for those earning up to \$75,000 annually with payment phase-outs for higher earners; rental assistance and eviction moratoriums; extension of the Paycheck Protection Program loan program to cover employee wages and which now applies to 501(c)6 non-profit organizations such as AAPL; certain tax deductibility benefits; funding for COVID-19 vaccinations; and extension of unemployment assistance not only for employees but also for independent contractors and other self-employed individuals for 11 weeks by extending CARES Act unemployment provisions until March 14, 2021 through the [pandemic unemployment assistance \(PUA\) program](#). (Access a section-by-section [bill summary fact sheet here.](#)) Extension of the PUA program has been of particular interest to many independent contractor AAPL members. According to law firm, Locke Lord, "the original CARES Act provided PUA benefits for up to \$600 a week for as many as 39 weeks, retroactive to January 27, 2020. The new stimulus bill, CARES Act II, halves that amount and limits PUA to \$300/week. Those eligible for PUA also will receive an additional \$300/week through the end of the extension period, whereas CARES Act I had added \$600/week in

federal stimulus payments. Finally, the new stimulus bill provides independent contractors with paid sick and paid family leave benefits through March 14, 2021." [Read more.](#)

FEDERAL – Regulatory

BLM National Petroleum Reserve – Alaska. On January 4, the Bureau of Land Management (BLM) published its [Record of Decision](#) which “finalized plans to open more than 80 percent of Alaska’s National Petroleum Reserve (NPR-A) to oil drilling, pushing ahead over objections from environmentalists who have already challenged the plans in court. The decision from the Bureau of Land Management (BLM) opens more than 18 million acres to oil and gas drilling, including scaling back protected areas designed to be off-limits to development.” This completes the [BLM Integrated Activity Plan decision process](#) which began with a Notice of Intent on November 21, 2018, “to begin the development of a new Integrated Activity Plan (IAP) and associated Environmental Impact Statement (EIS) for the National Petroleum Reserve in Alaska (NPR-A). The new IAP/EIS will include consideration of a range of leasing alternatives that open new areas to leasing, examination of current special area boundaries, and consideration of new or revised lease stipulations and best management practices.” [Read more.](#)

BLM Converse County Oil and Gas Project – Wyoming. On December 23, 2020, the BLM “issued a decision that could generate billions of dollars for the American public and will strengthen domestic energy production and independence. The [Record of Decision for the Converse County Oil and Gas Project](#) allows the development of up to 5,000 new oil and natural gas wells within a 1.5 million-acre project area in Converse County, Wyoming, over the life of the project.” The development approval has been lauded by federal, state, and local leaders. “This Record of Decision (ROD) is the culmination of years of work between the Bureau of Land Management, the State of Wyoming and the oil and gas industry. This decision establishes what has been my goal from the

beginning– to provide actual year-round drilling opportunities,” said Wyoming Gov. Mark Gordon (R). “It sets the framework for hundreds of jobs for Wyoming and ensures proper safeguards for the protection of our wildlife in the project area. I look forward to seeing this project and year-round drilling come to fruition in Wyoming.” [Read more.](#)

BLM Information Collection. On December 21, the BLM published a notice proposing to renew an information collection, *Agency Information Collection Activities; Oil and Gas, or Geothermal Resources: Transfers and Assignments* ([85 Fed. Reg. 83102](#)), which seeks public comment regarding the collection of information that “enables the BLM to process assignments of record title interest and transfers of operating rights in a lease for oil and gas or geothermal resources.” The public comment period is open through February 19, 2021. [Read more.](#)

BLM Eastern States New Filing Address. On December 15, 2020, the BLM published a final rule which “amends the regulations pertaining to execution and filing of forms in order to reflect the new address of the BLM-Eastern States Office.” According to this final rule, *Application Procedures, Execution and Filing of Forms: Correction of State Office Address for Filings and Recordings, Including Proper Offices for Recording of Mining Claims; Eastern States* ([85 Fed. Reg. 81141](#)), “[a]ll filings and other documents relating to public lands in the 31 States east of and bordering the Mississippi River must be filed at the new address of the BLM-Eastern States Office beginning on January 14, 2021.” [Read more.](#)

EPA Science Transparency Rule. On January 6, the Trump administration’s Environmental Protection Agency (EPA) published a final rule, *Strengthening Transparency in Pivotal Science Underlying Significant Regulatory Actions and Influential Scientific Information* ([86 Fed. Reg. 469](#)), which will require science researchers to disclose the raw data involved in their public health studies before the EPA can rely upon their conclusions. The rule will apply a new set of standards for “dose-response studies”

which evaluate how much a person's exposure to a substance increases the risk of harm. The rule has been lauded by manufacturing industries and energy producers who claimed environmental activists push "junk science" to set the regulatory agenda. [According to EPA Administrator Andrew Wheeler](#), "the work of the Environmental Protection Agency—to protect human health and the environment—shouldn't be exempt from public scrutiny. This is why we are promulgating a rule to make the agency's scientific processes more transparent. Too often Congress shirks its responsibility and defers important decisions to regulatory agencies. These regulators then invoke science to justify their actions, often without letting the public study the underlying data. Part of transparency is making sure the public knows what the agency bases its decisions on. When agencies defer to experts in private without review from citizens, distinctions get flattened and the testing and deliberation of science is precluded." [Read more](#). The rule focuses on "dose-response studies" that "show how increasing levels of exposure to pollution, chemicals and other substances impact human health and the environment rather than all studies. It would allow the administrator to make an exception for any study they deem important." [Read more](#).

EPA Cost/Benefit Rule. On December 23, 2020, the Trump administration finalized an Environmental Protection Agency (EPA) rule "to improve the rulemaking process under the Clean Air Act by establishing requirements to ensure that high-quality analyses of benefits and costs are developed for all significant Clean Air Act rules, and considered to the extent allowed by law. This rule will help ensure that Clean Air Act rules are analyzed consistently, transparently, and appropriately. It also outlines best-practice procedures for assessing benefits and costs when developing regulatory actions." ([Read more](#).) The final rule, *Increasing Consistency and Transparency in Considering Benefits and Costs in the Clean Air Act Rulemaking Process* ([85 Fed. Reg. 84130](#)), changes how the federal government justifies its own air pollution regulations, which will limit how the EPA "weighs carbon pollution that

impacts climate change as well as the benefits of tackling multiple air pollutants at once." In short, the "rule dictates how the agency must compile its cost-benefit analysis for future air rules — a lengthy, technical pro-con list defending a rule that is most often scrutinized by staffers and those who plan to sue over their regulations." Moreover, this rule applies to any new regulation proposed under the Clean Air Act and will bind the incoming Biden administration unless the EPA, under new leadership, is able to overturn it. [Read more](#).

Independent Contractors; U.S. Department of Labor – Washington, DC. (*Update to 10/5/20 Weekly Report*) On January 7, the Trump administration's U.S. Department of Labor (DOL) issued its long-awaited employer and independent contractor-friendly final rule, *Independent Contractor Status Under the Fair Labor Standards Act* ([86 Fed. Reg. 1168](#)), which, according to Bloomberg Law, "makes it easier for businesses to classify workers as independent contractors" and "adopt[s] a simpler, shorter test for when a worker may be legally classified as an independent contractor rather than an employee." ([Read a detailed analysis of the rule here](#)) According to the rule release, the DOL "is revising its interpretation of independent contractor status under the Fair Labor Standards Act (FLSA or the Act) to promote certainty for stakeholders, reduce litigation, and encourage innovation in the economy." The rule is expected to clarify how independent contractor status is determined and may allow employers greater protections in employee misclassification cases. "Once finalized, it will make it easier to identify employees covered by the Act, while respecting the decision other workers make to pursue the freedom and entrepreneurialism associated with being an independent contractor," said outgoing Labor Secretary Eugene Scalia. The rule is effective on March 8, 2021. [Read more](#).

Taking of Migratory Birds; U.S. Fish and Wildlife Service. (*Update to 12/14/20 Weekly Report*) On January 7, the U.S. Fish and Wildlife Service published its final rule, *Regulations Governing Take of Migratory Birds* ([86 Fed. Reg. 1134](#)), which

specifies that the prohibitions on harm to migratory birds under the Migratory Bird Treaty Act will only apply to deliberate, rather than incidental, harm. The push for this rule by the Trump administration has been lauded by industry groups and long-awaited. According to the *Oil and Gas Journal*, “The rule will at least temporarily reduce the risk of litigation for oil companies whose oil waste pits can kill birds.” The final rule is intended to clarify that the U.S. Fish and Wildlife Service “will not prosecute landowners, industry and other individuals for accidentally killing a migratory bird. This opinion has been adopted by several courts, including the US Court of Appeals for the Fifth Circuit,” said Interior Secretary David Bernhardt in an announcement of the rule. [Read more](#). For background, on November 27, 2020, the U.S. Fish and Wildlife Service published its [Notice of Availability of its Final Environmental Impact Statement regarding Migratory Birds](#) as a result of legal challenges and which “provides responses to substantive comments.” (See also [85 Fed. Reg. 76077](#).) This came after the U.S. District Court for the Southern District of New York struck down a 2017 Interior Department legal opinion that the Trump administration relied upon for an easing of regulations under the Migratory Bird Treaty Act in an August 11, 2020 ruling. That ruling would have held companies – such as those in the oil and gas industry – liable for the killing of migratory birds only if the acts were “intentional” rather than “incidental.” In consolidated cases, [Natural Resources Defense Council v. U.S. Dept. of the Interior](#) (Case No. 1:18-cv-04596-VEC), the Court held that the Migratory Bird Treaty Act makes it unlawful to kill birds “by any means whatever or in any manner” and thus the administration’s interpretation and relaxing of the meaning could not be squared with the plain language of the statute. The Interior Department criticized the court’s ruling, saying it “undermines a commonsense interpretation of the law and runs contrary to recent efforts, shared across the political spectrum, to de-criminalize unintentional conduct.” [Read more](#). The final rule published last week is an outgrowth of that court opinion and a victory for the outgoing Trump administration. [Read more](#).

U.S. Fish and Wildlife Service Habitat Protection.

On December 17, 2020, the U.S. Fish and Wildlife Service, as well as other related agencies, published a final rule, *Endangered and Threatened Wildlife and Plants; Regulations for Listing Endangered and Threatened Species and Designating Critical Habitat* ([85 Fed. Reg. 81411](#)), which will narrow habitat protections for endangered species by only allowing habitat that “currently or periodically” house a species. The agency said the new rule would “bring greater clarity and consistency to how the Service designates critical habitat.” The rule change had garnered wide support from the oil and gas industry, ranchers, and farmers who argued that the Endangered Species Act had been too restrictive and applied too broadly which inhibited land use. The final rule is effective January 15, 2021. [Read more](#).

BLM Lease Settlement – Colorado. (*Update to 4/30/18 Weekly Report*) On January 6, the BLM agreed to halt development on 53 oil and gas leases covering more than 45,000 acres of public lands in western Colorado as part of a [settlement agreement](#) reached with environmentalist litigants stemming from a 2018 lawsuit. For background, on April 26, 2018, multiple environmental groups sued the BLM charging that federal approvals of the 53 lease sales in western Colorado violated the law by failing to include site-specific environmental analyses. In [Wilderness Workshop et al. v. U.S. Bureau of Land Management et al.](#) (Case No. 1:18-cv-00987), the plaintiffs claimed the lease auctions held during both the Obama and Trump administrations violated the National Environmental Policy Act and that analyses of environmental and human health impacts should have been considered. The January 6 settlement requires the BLM to complete a supplementary environmental impact statement for the Colorado River Valley and Grand Junction Field Office resource-management plans before the leases can be reconsidered. [Read more](#).

BLM Northern New Mexico Resource Advisory Council Meeting. On December 15, 2020, the BLM announced that the Northern New Mexico Resource Advisory Council (RAC) will hold a virtual meeting on

January 19, 2021. According to the BLM, “The 12-member Northern New Mexico RAC advises the Secretary of the Interior, through the BLM, on a variety of planning and management issues associated with public land management in the RAC’s area of jurisdiction.” The virtual RAC meeting will be open to the public and written comments will be accepted in advance of the meeting. [Read more.](#)

FEDERAL – Judicial

ANWR Leasing – Alaska. On January 5, a federal judge gave the green light to the Trump administration’s leasing of oil and gas rights in the Arctic National Wildlife Refuge (ANWR) when the court rejected a request by environmentalists to block the auction. In the consolidated cases, [*Gwich’in Steering Committee v. Bernhardt* \(Case No. 3:20-cv-00204\)](#) and [*National Audubon Society v. Bernhardt* \(Case No. 3:20-cv-00205\)](#), Judge Sharon Gleason – an Obama appointee – denied the motion for preliminary injunction to stop the lease sale and rejected arguments by environmental groups and Native Alaskans claiming the auction would cause “irreparable damage.” In her opinion, Judge Gleason stated, “The Court concludes that Plaintiffs have not established a likelihood of immediate and near-term irreparable harm absent a preliminary injunction before the Court renders a decision on the merits. Because showing the likelihood of an irreparable injury is mandatory, the Court does not consider the remaining elements for a preliminary injunction. Thus, Plaintiffs’ motions will be denied. Plaintiffs may be correct that, over time, they may be significantly injured as a result of the planned lease sales on the Coastal Plain. But these future and cumulative potential effects do not demonstrate the irreparable harm necessary for preliminary injunctive relief at this time. However, should BLM approve ground-disturbing activities at the Coastal Plain before the Court determines the merits of Plaintiffs’ challenges, Plaintiffs may seek preliminary injunctive relief related to those activities.” [Read more.](#)

UPDATE: The January 6 sale resulted in lackluster results netting less revenue and fewer bids than anticipated. According to local reports, the “sale was

a bad start to the revenues the federal government had hoped to gain from the refuge. It had estimated the lease sales would bring in \$1.8 billion over a decade, to be split between the Alaska and federal governments. The money raised on Wednesday fell far short. The government sold only 11 tracts of 22 it was offering in the refuge’s coastal plain, or about 550,000 acres out of about 1 million offered. Most of the tracts totaled about 50,000 acres, and went for a bit over \$1 million. None of Alaska’s three top oil producers — ConocoPhillips, ExxonMobil and Hilcorp, the owners of the large Prudhoe Bay oil field west of the refuge — submitted bids.” [Read more.](#)

STATE – Legislative

Orphan, Idle, and Abandoned Wells – California. On December 15, Sen. Melissa Hurtado (D) introduced SB 84 for the 2021 legislative session. The bill would amend existing law regarding orphan, idle, and abandoned wells to require the State Oil and Gas Supervisor “to make reasonable efforts to cover the cost of plugging and abandoning the well or decommissioning deserted production facilities from the current operator before seeking to cover the cost of plugging and abandoning the well or decommissioning deserted production facilities from a previous operator.” Regarding state agency reporting of idle wells, the bill would also “require that each report identify idle wells by the American Petroleum Institute identification number that are registered to an operator and that have met the definition of an idle well for 3 years where neither the required annual fee has been paid or the well is part of a valid idle well management plan on file with the supervisor.” Finally, as to hazardous wells, idle-deserted wells, deserted facilities, and hazardous facilities remaining, the estimated costs of abandoning or decommissioning those wells and facilities, and a timeline for future abandonment and decommissioning of those wells and facilities with a specific schedule of goals, the bill “would require the report and the update to identify the location of the applicable wells and facilities, including the county where they are located.” [Read more.](#)

Employee Misclassification – Indiana. On January 7, Rep. Pat Boy (D) introduced HB 1132. The bill “requires the department of state revenue, the state department of labor, the worker’s compensation board of Indiana, and the department of workforce development to report before September 1 in 2021 through 2024 to the interim study committee on employment and labor for the immediately preceding state fiscal year: (1) the number of employers that each department or the board determined during the immediately preceding state fiscal year improperly classified at least one worker as an independent contractor; (2) the total number of improperly classified workers employed by those employers; (3) the department’s or board’s calculation of the revenue not collected or the additional costs to the state that the department or board attributes to the improperly classified workers; and (4) the amount of the penalties and interest assessed against those employers by each department or the board, and the amount of the penalties and interest assessed that has been collected. Excludes residential contractors from the term ‘employer’ for purposes of the reporting requirements.” [Read more.](#)

Abandoned Wells; Plugging – Kansas. On December 31, 2020, Rep. Troy Waymaster (R) pre-filed HB 2022 for the session commencing January 11, 2021. The bill updates “the state corporation commission’s authority to regulate and determine responsibility for abandoned oil and gas wells and abolishing the well plugging assurance fund and transferring all assets and liabilities to the abandoned oil and gas well fund.” [Read more.](#)

Electronic Notarization – Kentucky. On January 7, Rep. Joe Fischer (R) introduced HB 197. The bill updates existing law regarding electronic notarizations including definitions and remote notarization processes. [Read more.](#)

Notaries Public – Michigan. (*Update to 12/14/20 Weekly Report*) On December 29, 2020, SB 1187 was signed into law by Gov. Gretchen Whitmer (D) and takes immediate effect. ([See full bill summary](#)) The legislation, sponsored by Sen. Peter MacGregor (R),

amends the Michigan Law on Notarial Acts to allow for remote procedures (such as signing, witnessing, notarizing, or recording) for certain records through June 30, 2021. Specifically, the Act allows “notaries public to use two-way real-time audiovisual technology to perform notarial acts electronically rather than in person under certain circumstances; allow signing in counterparts.” [Read more.](#)

Electronic Execution of Documents – Michigan. (*Update to 12/14/20 Weekly Report*) On December 29, 2020, SB 1189 was signed into law by Gov. Gretchen Whitmer (D) and takes immediate effect. ([See full bill summary](#)) The legislation, sponsored by Sen. Peter MacGregor (R), would amend the Estates and Protected Individuals Code (EPIC) to “allow certain documents (including a will, a disclaimer under section 2903 of EPIC, a funeral representative designation, a parental appointment of a guardian of a minor, an appointment of a guardian of a legally incapacitated individual, a durable power of attorney, or a patient advocate designation) to be signed or witnessed using two-way real-time audiovisual technology; and allow certain visits required under EPIC (such as between a guardian and a legally incapacitated ward) to be conducted using that technology. amends existing notarial laws to allow for remote procedures (such as signing, witnessing, notarizing, or recording) for certain records through June 30, 2021.” [Read more.](#)

Independent Contractors – Missouri. On January 6, Rep. Justin Hill (R) introduced HB 214. The bill would establish the criteria of a worker to be considered as an independent contractor. According to the official legislation notes, “The bill states that independent contractors shall have a written contract that states the person is an independent contractor, not an employee, and that the person is responsible for all costs, fees, and taxes as an independent contractor. In addition, the person must have the right to control the manner and means by which the work is accomplished, and satisfies at least five out of nine listed requirements of an independent contractor. This bill also changes the definition of ‘employee’ by removing the reference to the factors in [IRS Rev.](#)

[Rule 87-41, 1987-1 C.B.296](#) and stating that an individual who meets the requirements for an independent contractor as specified in this bill is not an employee.” [Read more.](#)

Independent Contractors – Missouri. On January 6, Sen. Bob Onder (R) introduced SB 148. The bill “provides that any person who performs work for an employer and satisfies all of the following criteria shall be considered an independent contractor” and provides the criteria for consideration. [Read more.](#)

Federal Land Mineral Royalties – Missouri. On January 6, Rep. Chris Dinkins (R) introduced HB 564. The bill “specifies that all moneys paid to the state by the U.S. Secretary of the Treasury from mining royalties on federal land in the state must be deposited in the newly created ‘Federal Mineral Royalties Distribution Fund’ and within three months following the calendar quarters ending in March, June, September, and December, the Director of the Department of Revenue must certify to the State Treasurer the amount of moneys received for royalties. The State Treasurer must allocate the total money received among the counties in which the minerals were produced based on the proportion each county’s mineral royalty revenue bears to the total received by the state. Of the money received, 50% must be allocated and paid to the counties for planning, construction, and maintenance of county roads, public facilities, and public services. The remaining moneys received are to be allocated and paid to the school districts of the state in proportion to the area of federal mining lands in the district.” [Read more.](#)

Notaries Public – Missouri. On January 6, Rep. Ian Mackey (D) introduced HB 133. The bill would modify provisions relating to the content contained in a notary public’s journal. [Read more.](#)

Oil and Gas Production Tax; Nonoperating School Districts – Montana. On January 4, Sen. Daniel Salomon (R) introduced SB 24. The bill would allow a nonoperating school district to retain oil and gas revenue, specifically, “For a district

in nonoperating status under 20-9-505, the maximum amount of oil and natural gas production taxes that a school district may retain is 130% of the school district’s maximum budget in the district’s most recent operating year.” [Read more.](#)

Online Notarization – Nebraska. On January 7, the Government, Military and Veterans Affairs Committee introduced LB 94. The bill updates the Online Notary Public Act to update validity dates for online notarial acts. [Read more.](#)

Abandoned Wells; Bond Requirements – North Dakota. On January 4, the House Committee on Energy and Natural Resources (R) introduced HB 1054. The bill amends existing law regarding abandoned wells under [Section 38-08-04 of the North Dakota Century Code](#) by changing the following language from discretionary to mandatory: “The placing of wells in abandoned-well status which have not produced oil or natural gas in paying quantities for one year. A well in abandoned-well status must be promptly returned to production in paying quantities, approved by the commission for temporarily abandoned status, or plugged and reclaimed within six months. If none of the three preceding conditions are met, the industrial commission ~~may~~ [NEW: shall] require the well to be placed immediately on a single-well bond in an amount equal to the cost of plugging the well and reclaiming the well site. In setting the bond amount, the commission shall use information from recent plugging and reclamation operations.” [Read more.](#)

Royalty Payments – North Dakota. On January 4, Rep. Jason Dockter (R) introduced HB 1080. The bill would “amend and reenact North Dakota Century Code Sections [15-05-10](#) and [47-16-39.1](#) [by] amending language to reduce the maximum rate owed to the Board of University and School Lands by royalty payors for late oil and gas royalty payments.” [Read more.](#)

Unclaimed Property – North Dakota. On January 5, the Senate Committee on Industry, Business and Labor (R) introduced SB 2048. The bill amends

existing law regarding unclaimed and abandoned property relating to the Revised Uniform Unclaimed Property Act and provides new provisions for when a mineral interest is deemed to be used, among other related provisions. [Read more.](#)

Tax Deduction for High-Cost Gas – Texas. On December 18, Rep. Gina Hinojosa (D) pre-filed HB 878/HB 879 for the legislative session commencing January 12, 2021. The [bills](#) relate to the phasing out of the tax reduction for high-cost gas by amending existing law by adding a September 1, 2021 deadline for applications and related processes. [Read more.](#)

Drill Cuttings – Texas. On January 5, Rep. Drew Darby (R) pre-filed HB 964 for the legislative session commencing January 12, 2021. The bill amends existing law and relates to the “treatment, recycling for beneficial use, or disposal of drill cuttings.” The bill amends definitions regarding drill cuttings and adds disposal language regarding permit holders and responsibility in tort. [Read more.](#)

Mineral Definitions – Utah. On January 6, Rep. Walt Brooks (R) pre-filed HB 79 for the session commencing on January 19. The bill would modify definitions related to mineral deposits and rocks. [Read more.](#)

Migratory Birds – Utah. On January 6, Rep. Joel Ferry (R) pre-filed HB 83 for the session commencing on January 19. The bill would extend the time for creating a migratory bird production area; provides a process to add property to a migratory bird production area; provides for inclusion of easements; addresses limitations on local ordinances; addresses use by a guest of a migratory bird production area under provisions related to limiting landowner liability under certain circumstances; and prohibits exercising eminent domain under certain circumstances. [Read more.](#)

Employee Misclassification – Virginia. (*Update to 4/27/20 Weekly Report*) To follow up our 2020 reporting, HB 1407 took effect on January 1, 2021.

The Act, sponsored by Del. Jeion Ward (D), and which Gov. Ralph Northam (D) signed into law last April, 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. [Read more.](#)

Employee Misclassification – Virginia. (*Update to 4/27/20 Weekly Report*) To follow up our 2020 reporting, SB 744 took effect on January 1, 2021. The Act, sponsored by Sen. Jeremy McPike (D), and which Gov. Ralph Northam (D) signed into law last April, 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.” [Read more.](#)

STATE – Regulatory

CalGEM Public Health Rulemaking – California. As reported by the California Independent Petroleum Association, the Department of Conservation’s California Geologic Energy Management Division (CalGEM) announced that “the public health rulemaking impacting oil and gas operations will be delayed until Spring 2021.” According to the December 31, 2020 CalGEM release, “Consistent with [Executive Order N-79-20](#), CalGEM planned to release its draft regulations this month, but this timeline has been extended to enable input from an independent panel of public health experts, which took longer to assemble than anticipated. CalGEM will receive guidance from the public health expert panel to inform the draft regulation that CalGEM will post online -- for a minimum of 60 days of public review -- in Spring 2021.” The Executive Order states that CalGEM, “Propose a significantly strengthened, stringent, science-based health and safety draft rule

that protects communities and workers from the impacts of oil extraction activities." We will keep AAPL members updated once the proposed rules are released for review and public comment. [Read more.](#)

CIPA Petition to Protect Oil and Gas – California.

The California Independent Petroleum Association (CIPA) has urged those in the oil and gas industry to submit an online petition to CIPA and Gov. Gavin Newsom (D) regarding his "recent announcements to hasten the end of in-state production of oil and gas [that] will hurt California's environmental leadership, kill thousands of quality careers, eliminate tax revenue for vital services, and take away affordable and reliable energy choices during our state's economic recovery. For a state as large as California, we need all-of-the-above energy solutions, not one size fits all." To [submit a petition click here](#). According to CIPA, "The 2021 legislative session will pit extremists and coastal legislators against industry and Central Valley legislators for the survival of production in California. Taking their cue from the Governor, some legislators who were just elected over the fall are vowing to support halting hydraulic fracturing (HF) and other forms of extraction, although they have little to no background on this highly-regulated industry." You may also [contact CIPA](#) for more information about their upcoming January 13, 2021 press conference if you would like to be involved further. [Read more.](#)

New Mexico State Land Office Fresh Water Policy.

On December 15, 2020, the New Mexico Commissioner of Public Lands, Stephanie Garcia Richard, [issued a letter](#) which, "announced plans to halt the practice of commercial sale of fresh water from state trust lands for oil and gas development. This shift in policy will better ensure the long-term stewardship of state trust lands and natural resources." ([Read the full press release here](#)) According to the release, "The Commissioner sent the letter to companies that hold easements that grant access to state trust land to pump fresh water for sale to the oil and gas industry. The letter articulates that "No new easements will be issued for the sale of water for use in oil and gas, and existing

easements will be not be renewed once they expire." You may also see the Commissioner's policy guide effectuating this change, ENCOURAGING REUSE/RECYCLING OF WATER FOR OIL AND GAS DEVELOPMENT, [here](#), which was also made public on December 15, 2020. [Read more.](#)

Sale and Operation of Oil and Gas Leases

Proposed Rulemaking – Oklahoma.

The Oklahoma Commissioners of the Land Office have released a [notice of proposed rulemaking](#) affecting "CHAPTER 15. Sale and Operation of Oil and Gas Leases." According to the announcement summary, "The proposed rule amendments revise and modernize rules related to sale and operation of oil and gas leases in compliance with [Executive Order 2020-03](#)." The proposed changes affect Oklahoma Administrative Code sections [385:15-1-1 through 385:15-1-34](#) pertaining to oil and gas leasing from the state regarding mineral interests on school lands and other public lands managed by the Land Office. ([Access the proposed rule changes here](#).) Public comments will be accepted through January 15, 2021. A public hearing will also be held in person and virtually on January 19, 2021. For further information on submitting comments, attending the public hearing, or for further agency contact information, [Read More.](#)

New Railroad Commissioner – Texas. On January 4, Jim Wright was sworn in as Commissioner of the Railroad Commission of Texas (RRC). "The lifelong South Texan joins a three-member Commission in leading an agency that is more than a century old. The RRC plays a major role in oversight and regulation of the oil and gas industry – an industry that has been the backbone of the state economy and plays a vital role in keeping energy costs low for Texans while also helping pave the way for the nation's energy independence." According to Wright, "Oil and natural gas will make up the majority of our nation's energy for decades to come and it is best for our state, our nation and the world if that energy is produced right here in Texas. As commissioner, I will work to streamline enforcement and increase transparency at the Commission, with

the ultimate goal of creating a sustainable and dependable lifestyle for all Texans supported by our state's abundant natural resources."

[Read more.](#)

Railroad Commission – Texas. On December 14, 2020, the Texas Railroad Commission (RRC) announced it has made non-substantive updates to multiple oil and gas forms. The approval to update the following forms was granted by the RRC commissioners in an open meeting on December 8, 2020. The review and update to these forms is part of the Texas Oilfield Relief Initiative. The forms were identified for updates during a review of all RRC forms required for permit applications and reporting purposes. According to the RRC, "The changes to the forms were needed to ensure consistency with recently amended rules and updates to online systems. Updating the forms will reduce reporting errors and administrative burdens on the oil and gas industry and RRC staff." To access the RRC forms, [click here](#). For more information on the RRC Texas Oilfield Relief Initiative, [Read more](#).

STATE – Judicial

Saltwater Injection Well Permitting – Ohio. On December 9, in [State ex rel. Omni Energy Group, L.L.C. v. Ohio Dept. of Natural Resources, Div. of Oil & Gas Resources Mgt.](#) (Case No. 2020-Ohio-5581), the Ohio Supreme Court addressed a case where Omni sought a writ of mandamus (ordering a government official to act in a manner as directed by a court) against the Ohio Department of Natural Resources, Division of Oil and Gas Resources Management; department director Mary Mertz; and division chief Eric Vendel, to compel Vendel to render decisions on two saltwater injection well permit applications. According to law firm, Vorys, Sater, Seymour and Pease LLP, "the Court discussed whether (1) the Division of Oil & Gas Resources Management had the right to call a public meeting concerning Omni's permit application, (2) Omni had a right to compel the Division to rule on the validity of objections received to its permit application, and (3) the Division could schedule a hearing on those

objections after a certain statutory deadline expired." The Court granted the writ of mandamus, "but instead of ordering Vendel to immediately render a decision on the applications, we order him to rule upon the validity of the objections that have been submitted concerning Omni's applications. That ruling will determine whether Vendel must issue the permits or hold a hearing on the applications."

[Read more.](#)

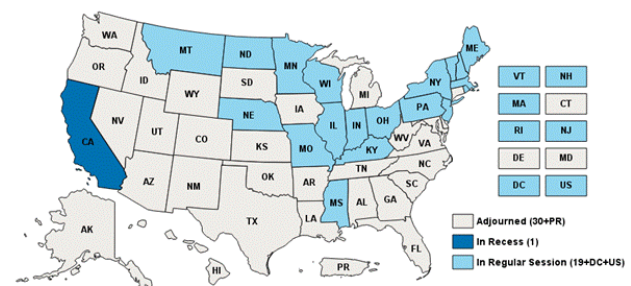
INDUSTRY NEWS FLASH

► **Big banks oppose proposed banking rule requiring financing of oil and gas industry.** On January 4, the federal Office of the Comptroller of the Currency closed its comment period on a proposed rule requiring that the oil and gas industry be provided "fair access" to financing. The Trump administration and congressional Republicans pushed for the rulemaking after several large banks announced they will no longer finance oil and gas sector projects as a result of recent public opposition. [Read more.](#)

► **OPEC+ nations keep oil production flat; Saudi Arabia announces production cuts.** On January 5, OPEC+ nations agreed to keep oil production flat, while Saudi Arabia announced planned production cuts. The announcements pushed West Texas Intermediate crude futures above \$50/bbl for the first time since February 2020. [Read more.](#)

LEGISLATIVE SESSION OVERVIEW

States in Session



Session Notes (by date): Illinois House, Indiana, Kentucky, Maine, Massachusetts, Minnesota, Mississippi, Missouri, Montana, Nebraska, New Hampshire, New Jersey, New York, North Dakota, Ohio, Pennsylvania, Rhode Island, Vermont, and Wisconsin are in regular session. The District of Columbia Council and the U.S. Congress are also in session.

The following will convene their 2021 legislative sessions on the dates provided: Arizona, Arkansas, Georgia, Idaho, Iowa, Kansas, and Puerto Rico (January 11); Delaware, Michigan, New Jersey, South Carolina, South Dakota, Tennessee, Texas, and Wyoming (January 12); Colorado, Illinois, Maryland, North Carolina, and Virginia (January 13).

California convened its 2021 legislative session on December 7 and recessed following an organizational session. The legislature delayed its reconvene date to January 11 in wake of uncontrolled COVID-19 cases, reports [The Sacramento Bee](#).

The Illinois House convened January 8 for a lame duck session that is expected to last until the 2021 legislature convenes on January 13, reports [The State Journal Register](#).

Colorado will convene its 2021 legislature on January 13 but is expected to recess soon after until February 16 due to the prevalence of COVID-19 in the state, reports [The Colorado Sun](#).

Signing Deadlines (by date): Ohio Republican Gov. Mike DeWine had until January 10 to sign or veto legislation or it becomes law without signature. Rhode Island Democratic Gov. Gina Raimondo has until January 14 to sign or veto legislation or it becomes law without signature. New York Democratic Gov. Andrew Cuomo has until February 5 to act on legislation or it is pocket vetoed. District of Columbia Democratic Mayor Muriel Bowser has 10 days from presentment, not including weekends or holidays, to sign or veto legislation or it becomes law without signature. Massachusetts Republican Gov. Charlie Baker has 10 days from presentment to sign or veto legislation or it becomes law without

signature. Michigan Democratic Gov. Gretchen Whitmer has 14 days from presentment to sign or veto legislation or it is pocket vetoed. South Carolina Republican Gov. Henry McMaster has until two days after the next meeting of the legislature to act on legislation or it becomes law. Pennsylvania Democratic Gov. Tom Wolf had a signing deadline of December 30, 2020, for the most recent session.

Interim Committee Hearings: The following states are currently holding 2020 interim committee hearings: [Alabama](#), [Alaska](#), [Arkansas](#), [Colorado](#), [Connecticut](#), [Delaware](#), Georgia [House](#) and [Senate](#), [Hawaii](#), [Idaho](#), [Illinois](#), [Iowa](#), [Kansas](#), [Louisiana](#), [Maryland](#), [Nevada](#), [New Mexico](#), [North Carolina](#), [Oklahoma](#) [House](#) and [Senate](#), [Oregon](#), South Carolina [House](#) and [Senate](#), [South Dakota](#), [Tennessee](#), Texas [Senate](#), [Utah](#), [Virginia](#), [Washington](#), [West Virginia](#) and [Wyoming](#).

Bill Pre-Files: [Alabama](#), [Arizona](#), [Arkansas](#), [Delaware](#), [Florida](#), [Georgia](#), [Iowa](#), [Kansas](#) [House](#), [Nevada](#), [Oklahoma](#), [South Carolina](#), [Tennessee](#), [Texas](#), [Utah](#), [Virginia](#) and [Wyoming](#) are currently posting 2021 bill drafts, pre-files and interim studies. ■

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