

GOVERNMENTAL AFFAIRS WEEKLY REPORT

Weekly Highlights At-A-Glance

FEDERAL – Regulatory

President Biden Executive Orders. Since taking office, President Joe Biden (D) has issued a raft of executive orders to overturn policies of the prior Trump administration. One in particular specifically affects the oil and gas industry, and by extension, the landman profession. In particular, Biden's [Executive Order on Protecting Public Health and the Environment and Restoring Science to Tackle the Climate Crisis](#) (January 20, 2021), addresses multiple administrative and regulatory policies detailed as follows. The Order first requires the "Immediate Review of Agency Actions Taken Between January 20, 2017, and January 20, 2021." This will invariably include many oil and gas related agency actions to be reviewed and once the agency reviews are completed they may result in the "suspending, revising, or rescinding the agency actions." The Order also details specific actions, as follows:

1. Review of the Environmental Protection Agency (EPA) "Inspection Rule" (*Oil and Natural Gas Sector: Emission Standards for New, Reconstructed, and Modified Sources Reconsideration*) ([85 Fed. Reg. 57398](#); September 15, 2020) by September 2021. That rule amended the Obama-era New Source Performance Standards unfavorable to the oil and gas industry, relaxing requirements for oil and gas operators to monitor emissions leaks.
2. Review of the EPA science rule just published on January 6 by the outgoing administration. That final rule, *Strengthening Transparency in Pivotal Science Underlying Significant Regulatory Actions and Influential Scientific*

Information ([86 Fed. Reg. 469](#)), requires science researchers to disclose the raw data involved in their public health studies before the EPA can rely upon their conclusions to allow for scrutiny over scientific conclusions that could negatively impact rulemaking affecting industries such as oil and gas. No timetable has been provided by the Biden administration for this review.

3. Announces a Federal Implementation Plan in accordance with the EPA's *Findings of Failure To Submit State Implementation Plan Revisions in Response to the 2016 Oil and Natural Gas Industry Control Techniques Guidelines for the 2008 Ozone National Ambient Air Quality Standards (NAAQS) and for States in the Ozone Transport Region* ([85 Fed. Reg. 72963](#); November 16, 2020), for California, Connecticut, New York, Pennsylvania, and Texas by January 2022. This EPA Final Action related to Clean Air Act emissions reductions, controls and attainment requirements from the oil and gas industry.
4. The Order specifies a 60-day review of Trump's proclamations related to national monument "boundaries and conditions" and could affect oil and gas development in those areas. This affects *Modifying the Bears Ears National Monument* ([82 Fed. Reg. 58081](#); December 8, 2017) and *Modifying the Grand Staircase-Escalante National Monument* ([82 Fed. Reg. 58089](#); December 8, 2017).
5. The Order places "a temporary moratorium on all activities of the Federal Government relating to the implementation of the Coastal

Plain Oil and Gas Leasing Program, as established by the Record of Decision signed August 17, 2020, in the Arctic National Wildlife Refuge." The Order also restores "the original withdrawal of certain offshore areas in Arctic waters and the Bering Sea from oil and gas drilling" as implemented by the Obama administration and then rescinded by the Trump administration under Executive Order, *Implementing an America-First Offshore Energy Strategy*; May 3, 2017; [82 Fed. Reg. 20815](#). Although existing leases are legally binding and cannot be canceled unilaterally through a presidential executive order, at least not without buying out lease holders, the Biden administration will still have discretion over issuing drilling permits and conducting environmental impact reviews, which could halt any future oil and gas drilling. [Read more.](#)

6. Revokes the permit for the Keystone XL pipeline granted by President Trump on March 29, 2019. The 1,700-mile pipeline would have carried roughly 800,000 barrels of oil a day from Alberta, Canada to the Texas Gulf Coast, passing through Montana, South Dakota, Nebraska, Kansas, and Oklahoma. [Read more.](#) "As a result of the expected revocation of the Presidential Permit, advancement of the project will be suspended," said the Keystone XL operator in a statement. [Read more.](#)
7. Revokes President Trump's Executive Order, *Expediting Environmental Reviews and Approvals For High Priority Infrastructure Projects*; January 30, 2017; [82 Fed. Reg. 8657](#), which affected oil and gas projects such as pipelines.
8. Revokes President Trump's Executive Order, *Promoting Energy Independence and Economic Growth*; March 31, 2017; [82 Fed. Reg. 16093](#), which promoted and supported American energy exploration and production.
9. Revokes President Trump's Executive Order, *Review of Designations Under the Antiquities Act*; May 1, 2017; [82 Fed. Reg. 20429](#), which provided for broadening oil and gas drilling near national monument areas.
10. Revokes President Trump's Executive Order, *Implementing an America-First Offshore Energy Strategy*; May 3, 2017; [82 Fed. Reg. 20815](#), which promoted offshore energy exploration and production.
11. Revokes President Trump's Executive Order, *Promoting Energy Infrastructure and Economic Growth*; April 15, 2019; [84 Fed. Reg. 15495](#), which promoted energy independence and the ability of the United States to become a net energy exporter.
12. Revokes President Trump's Executive Order, *Establishing Discipline and Accountability in the Environmental Review and Permitting Process for Infrastructure Projects*; August 24, 2017; [82 Fed. Reg. 40463](#), which sought to create efficiencies and predictability in infrastructure projects, including those related to oil and gas.
13. Revokes President Trump's Memorandum, *Promoting Domestic Manufacturing and Job Creation Policies and Procedures Relating to Implementation of Air Quality Standards*; April 6, 2018; [83 Fed. Reg. 16761](#), which called for a more predictable, streamlined and industry-friendly procedure for review and implementation of air quality standards and requirements.
14. Revokes President Trump's Memorandum, *Promoting the Reliable Supply and Delivery of Water in the West*; October 25, 2018; [83 Fed. Reg. 53961](#), to improve Western states water availability and resource management to benefit various industries, including those involved in oil and gas exploration and production.

15. Revokes President Trump's Memorandum, *Developing and Delivering More Water Supplies in California*; February 26, 2020; [85 Fed. Reg. 11273](#), which would have provided greater water availability in the Central Valley, including to oil and gas fields.
16. Orders the Council on Environmental Quality (CEQ) to rescind its draft guidance, *Draft National Environmental Policy Act Guidance on Consideration of Greenhouse Gas Emissions*, [84 Fed. Reg. 30097](#) (June 26, 2019), which related to the process of assisting Federal agencies in their consideration of greenhouse gas emissions when evaluating proposed major Federal actions in accordance with the National Environmental Policy Act and would have been considerably more relaxed under the Trump administration.
17. Orders the CEQ to review, revise, and update its final guidance entitled, *Final Guidance for Federal Departments and Agencies on Consideration of Greenhouse Gas Emissions and the Effects of Climate Change in National Environmental Policy Act Reviews*, [81 Fed. Reg. 51866](#) (August 5, 2016), which affects resource management related to greenhouse gas emissions or the consideration of mitigation measures that reduce climate change impacts that would have been more relaxed under the Trump administration.

Interior Department Temporarily Halts Federal Onshore and Offshore Oil and Gas Leasing and Drilling. In keeping with the above-noted executive actions, on January 20, Biden's Acting Secretary of the Interior Department, Scott de la Vega, issued [Order No. 3395, Temporary Suspension of Delegated Authority](#), which suspends the Bureau of Land Management (BLM) and other Interior Department bureaus from taking multiple specified actions, including "issue any onshore or offshore fossil fuel authorization, including but not limited to a lease, amendment to a lease, affirmative extension of a

lease, contract, or other agreement, or permit to drill. This does not limit existing operations under valid leases. It also does not apply to authorizations necessary to: (1) avoid conditions that might pose a threat to human health, welfare, or safety; or (2) to avoid adverse impacts to public land or mineral resources." According to Bloomberg Law, the order imposes a 60-day moratorium on issuing oil and gas leases, but is temporary and separate from Biden's moratorium on leasing activity in Alaska's Arctic National Wildlife Refuge. The 60-day review process may result in the rescission or amendment of many Trump administration actions. We will keep AAPL members updated on this process. [Read more.](#)

BLM Greater Sage-Grouse Management. On January 14, the Bureau of Land Management (BLM) announced it "concluded additional review of its land use plans for Greater Sage-Grouse habitat in seven states, issuing decisions which find that no further land use planning or environmental analysis is warranted. The decisions affirm the collaborative process begun under the leadership of Secretary of the Interior David Bernhardt to develop Sage-Grouse plans that reflect the needs of Western communities and sagebrush-steppe habitat." The BLM formally published their Records of Decision for those seven Western states on January 14 (See: *Notice of Availability of the Record of Decision for Greater Sage-Grouse Management, Colorado*, [86 Fed. Reg. 3179](#); *Notice of Availability of the Record of Decision for Greater Sage-Grouse Management, Nevada and Northeastern California*, [86 Fed. Reg. 3177](#); *Notice of Availability of the Record of Decision for Greater Sage-Grouse Management, Idaho*, [86 Fed. Reg. 3180](#); *Notice of Availability of the Record of Decision for Greater Sage-Grouse Management, Oregon*, [86 Fed. Reg. 3186](#); *Notice of Availability of the Record of Decision for Greater Sage-Grouse Management, Wyoming*, [86 Fed. Reg. 3184](#); *Notice of Availability of the Record of Decision for Greater Sage-Grouse Management, Utah*, [86 Fed. Reg. 3187](#).) According to the BLM, "The determinations are not new planning decisions. Instead, they are a determination not to amend existing land use plans and thus, are not subject to appeal or protest. They also represent the

agency's response to issues identified in an order issued in October 2019 by the U.S. District Court for the District of Idaho, which placed a preliminary injunction on the implementation of 2019 BLM Sage-Grouse plans in Idaho, Wyoming, Colorado, Utah, Nevada, northeastern California, and Oregon." [Read more.](#)

BLM Draft Desert Land Use Plan – California.

On January 14, the BLM published its *Notice of Availability of the Draft Desert Plan Amendment and Draft Environmental Impact Statement, California* ([86 Fed. Reg. 3181](#)), which releases its Draft Land Use Plan Amendment and Draft Environmental Impact Statement for an amendment to the California Desert Conservation Area Plan and the Bakersfield and Bishop Resource Management Plans. The Draft "includes consideration of changes to the management or modification to the boundaries of 129 Areas of Critical Environmental Concern" and addresses such issues as renewable energy projects, land use, and impacts on cultural resources. The BLM must await the Environmental Protection Agency's formal posting in the Federal Register before the 90-day public comment period opens, which to date has not yet occurred. [Read more.](#)

BLM Resource Advisory Council – Idaho. On January 12, the BLM announced that the Idaho Resource Advisory Council (RAC) will hold public meetings related to land management issues on April 14 and August 11. ([86 Fed. Reg. 2451](#)) "The RAC serves in an advisory capacity to BLM and USDA Forest Service officials concerning planning and management of public land and national forest resources located, in whole or part, within the State of Idaho." The meetings are open to the public and comments may be submitted on any agenda topics. [Read more.](#)

BLM Oil and Gas Lease Sale – New Mexico.

On January 12, the BLM announced it is seeking "public input on two parcels (202.16 acres) of federal minerals proposed for the July 15, 2021, competitive oil and gas lease sale." The public scoping period will run through February 1, 2021. According to the BLM,

"This scoping process is intended to solicit public input on relevant issues, potential impacts, and alternatives that the BLM should address in an environmental assessment to be prepared in compliance with the National Environmental Policy Act. The BLM will consider all substantive comments received during the public scoping period to ensure that the potential environmental consequences are analyzed in a manner that allows the BLM to make an informed decision about the proposed competitive lease sale." [Read more.](#)

BLM Bears Ear National Monument Advisory Committee – Utah.

On January 15, the BLM announced a meeting of the Bears Ear National Monument Advisory Committee to be held virtually on March 31. ([86 Fed. Reg. 4113](#)) The Committee meeting is open to the public and agenda items will "include discussing and receiving input on Bears Ears National Monument management planning efforts" among other topics. [Read more.](#)

BLM Resource Advisory Council – Utah. On January 15, the BLM announced a meeting of the Utah Resource Advisory Council (RAC) to be held virtually on March 2. ([86 Fed. Reg. 4114](#)) The RAC will discuss various resource management planning issues and is open to the public. [Read more.](#)

Office of Natural Resources Revenue. On January 15, the U.S. Interior Department's Office of Natural Resources Revenue (ONRR) published a final rule, *ONRR 2020 Valuation Reform and Civil Penalty Rule* ([86 Fed. Reg. 4612](#)), which amends certain regulations on how ONRR "values oil and gas produced from Federal leases for royalty purposes, values coal produced from Federal and Indian leases for royalty purposes, and assesses civil penalties for violations of certain statutes, regulations, leases, and orders associated with mineral leases." Considered a victory for the former Trump administration, the rule "will lessen the amount of money oil and gas companies that drill on public lands and in public waters pay to the federal government. The rule will make changes to the way that these royalties are calculated and, according to the administration, is

expected to result in an annual decrease of \$28.9 million in royalty collections.” According to The Hill, “The industry has argued that a previous rule on how the royalties are calculated was burdensome and created uncertainties.” The rule is effective February 16, 2021. [Read more.](#)

Rights-of-Way; U.S. Fish and Wildlife Service.

On January 19, the Interior Department’s U.S. Fish and Wildlife Service (FWS) published a proposed rule, *Streamlining U.S. Fish and Wildlife Service Permitting of Rights-of-Way* (86 Fed. Reg. 5120), which proposes “to revise and streamline FWS regulations for permitting of rights-of-way by aligning FWS processes more closely with those of other Department of the Interior bureaus, consistent with applicable law and to the extent practicable. The proposed rule would require a pre-application meeting and use of a standard application, the SF-299, Application for Transportation and Utility Systems and Facilities on Federal Lands; allow electronic submission of applications; and provide FWS with additional flexibility, as appropriate, to determine the fair market value or fair market rental value of rights-of-way across FWS-managed lands. This proposed rule would reduce the time and cost necessary to determine a right-of-way’s fair market value or fair market rental value, and also reduce an applicant’s time and cost to obtain a right-of-way permit. The proposed rule would also simplify the procedures that applicants must follow to reimburse the United States for costs that FWS incurs while processing right-of-way applications and monitoring permitted rights-of-way.” The public comment period is open through March 22, 2021. [Read more.](#)

U.S. Rejoins Paris Climate Accord Under Biden.

On the day of his inauguration, President Biden (D) overturned his predecessor’s actions by informing the United Nations that the U.S. will be rejoining the Paris climate accord, which follows through on the new president’s campaign pledge to recommit to the Obama-era agreement on his first day in office. “A cry of survival comes from the planet itself, a cry that can’t be any more desperate or any more clear,” said

Biden in his inaugural address, listing “a climate in crisis” as one of the many challenges facing the country. Biden has called for putting the U.S. on a path to net-zero emissions by 2050. Known formally as the [Paris Agreement on Climate Change](#), the global initiative seeks to lower emissions, reign in fossil fuels, and promote sustainable and renewable energy projects which each country is expected to do under its own regulatory and legislative regimes. The move came alongside Biden’s commitment to [revoke the permit for the Keystone XL oil pipeline and impose a moratorium on oil and gas leasing](#) activities in the Alaska National Wildlife Refuge, as noted above. [Read more.](#)

FEDERAL – Judicial

Hydraulic Fracturing Ban; Delaware River Basin – Pennsylvania.

On January 12, two Republican Pennsylvania state senators, along with the Pennsylvania Senate Republican Caucus and Damascus Township sued the Delaware River Basin Commission (DRBC) in [Yaw v. Delaware River Basin Commission](#) (Case No. 2:21-cv-00119), seeking to overturn the DRBC ban on gas drilling and hydraulic fracturing in the Delaware River basin, “claiming it has usurped the state’s legislative power by declaring a de facto moratorium on the construction and operation of wells for natural gas production in the parts of the Marcellus Shale formation encompassed by the basin.” The litigants contend that the ban “has deprived private landowners of the right to drilling royalties, and has prevented Pennsylvania from leasing public lands to the gas industry and collecting fees from gas development. The suit further argues the ban’s “deleterious effects” have “been magnified by the COVID-19 pandemic and resulting economic downturn, with the state and local governments facing significant budget shortfalls.” According to the Associated Press, the senators want the federal court to invalidate the ban, “potentially opening a sliver of northeastern Pennsylvania to what their suit describes as \$40 billion worth of natural gas.” [Read more.](#)

STATE – Legislative

Notarial Acts – Arizona. On January 20, Sen. Michelle-Ugenti Rita (R) introduced SB 1115. The bill would amend existing law to provide for electronic notarial acts provisions. [Read more.](#)

Notarial Acts – Arkansas. On January 11, Sen. Dan Sullivan (R) introduced SB 14 which would allow for certain notarial acts to be conducted remotely in case of a declared emergency in the state. [Read more.](#)

Prohibition on Oil and Gas – Florida. On January 19, Rep. Anna Eskamani (D) pre-filed HB 283 for the session commencing on March 2, 2021. The bill would prohibit oil and gas exploration and production in the state. [Read more.](#)

Hydraulic Fracturing – Florida. On January 21, Sen. Gary Farmer (D) pre-filed SB 546 for the session commencing on March 2, 2021. The bill would prohibit hydraulic fracturing in the state. [Read more.](#)

Prohibition on Oil and Gas – Florida. On January 21, Sen. Lori Berman (D) pre-filed SB 720 for the session commencing on March 2, 2021. The bill would prohibit permitting, exploration and production of oil and gas in the state. [Read more.](#)

Prohibition on Oil and Gas – Florida. On January 19, Rep. Vance Aloupis (R) pre-filed HB 333 for the session commencing on March 2, 2021. The bill prohibits granting permits for drilling of wells for oil or gas and structures intended for drilling for, or production of, oil, gas, or other petroleum products within the Everglades. [Read more.](#) Companion Senate bill SB 722 was introduced by Sen. Ana Rodriguez (R) on January 21. [Read more.](#)

Notarial Acts – Florida. On January 15, Sen. Jennifer Bradley (R) pre-filed SB 228 for the session commencing on March 2, 2021. The bill would amend existing law regarding remote and electronic notarial acts. [Read more.](#) Related House bill, HB 121, was introduced by Rep. Sam Garrison (R). [Read more.](#)

Wills; Powers of Attorney; Trust Instruments; Electronic Recording; Notarial Acts – Indiana.

On January 14, Rep. John Young (R) introduced HB 1255. The bill ([Read full bill analysis here](#)) makes numerous changes to probate law, including wills, powers of attorney, trust instruments, electronic recording, and notarial acts. [Read more.](#)

Revised Unclaimed Property Act – Indiana.

On January 5, Sen. Eric Koch (R) introduced SB 188. The bill would repeal the Unclaimed Property Act and replaces it with the Revised Unclaimed Property Act and includes sections regarding minerals and mineral proceeds. [Read more.](#)

Hydraulic Fracturing – Massachusetts. On January 6, Sen. Diana Dizoglio (D) introduced SD 21. The bill would prohibit hydraulic fracturing in the state. [Read more.](#)

Mineral Estates – Mississippi. On January 18, Rep. Randy Boyd (R) introduced HB 555. The bill provides that mineral estates separated from the surface estate would revert to the surface owner after 20 years of nonproduction. [Read more.](#)

Oil and Gas Taxes – Mississippi. On January 18, Rep. Randy Boyd (R) introduced HB 664. The bill provides that oil and gas taxes are to be paid by the interest owner and provides ad valorem tax exemptions, among other provisions. [Read more.](#)

Independent Contractors – Mississippi. On January 18, Rep. Charles Beckett (R) introduced HB 767. The bill would exempt services performed by a petroleum landman on a contractual basis from the definition of employment. The bill would define a petroleum landman as an individual performing services on a contractual basis that includes but is not limited to the following: Negotiating for the acquisition or divestiture of mineral rights; Negotiating business agreements that provide exploration for or development of minerals; Determining ownership in minerals through the research of public and private records; Reviewing the status of title, curing title defects, providing title

due diligence and otherwise reducing title risk associated with ownership in minerals or the acquisition and divestiture of mineral properties; Managing rights or obligations derived from ownership or interests in minerals; Unitizing or pooling of interests in minerals. [Read more.](#)

Mineral Estates – Mississippi. On January 18, Rep. Bob Evans (D) introduced HB 906. The bill provides that mineral estates separated from the surface estate revert to the surface owner after 10 years of nonproduction. [Read more.](#)

Regulatory Oversight – Mississippi. On January 18, Sen. Joel Carter (R) introduced SB 2648. The bill provides that the state Oil and Gas Board would have jurisdiction over carbon dioxide sequestration and permitting for certain injection wells. [Read more.](#)

Orphaned Wells – Mississippi. On January 18, Sen. Briggs Hopson (R) introduced SB 2725. The bill would remove the authority to use capital expense funds for the emergency plugging of orphaned wells. [Read more.](#)

Orphaned Wells – Mississippi. On January 15, Sen. Joel Carter (R) introduced SB 2372. The bill would extend the repeal date on the use of disbursements from the Oil and Gas Conservation Fund for the plugging of orphaned wells. [Read more.](#)

Orphaned Wells – Mississippi. On January 8, Rep. Jerry Turner (R) introduced HB 194. The bill would “extend the date of the repealer on the authority of the state oil and gas board to obtain funds from the capital expense fund for the emergency plugging of orphaned wells.” [Read more.](#)

Recording Fees – Mississippi. On January 8, Rep. Charles Beckett (R) introduced HB 145. The bill would “reduce the Chancery clerk fee for recording each oil and gas assignment per assignee per each book and page listed.” [Read more.](#)

Oil and Gas Subdivision Parcels – New Mexico. On January 19, Rep. Greg Nibert (R) introduced HB 136.

The bill would create an exception to the New Mexico Subdivision Act for parcels divided for oil or gas operations. [Read more.](#)

Fresh Water; Regulatory – New Mexico. On January 19, Sen. Antoinette Sedillo Lopez (D) introduced SB 86. The bill would prohibit the use of fresh water in oil and gas production; creates spills, leaks, and other releases penalties; and provides for the promotion of public health, among other provisions. [Read more.](#)

Water Rights – New Mexico. Rep. Christine Chandler (D) pre-filed HB 30 for the legislative session that commenced January 19. The bill would amend existing law to provide that a lease of water under a water right and subsequent use of that water shall not take effect until after the application has been approved in accordance with law. [Read more.](#)

Oil and Gas Private Right of Action – New Mexico. Rep. Georgene Louis (D) pre-filed HB 50 for the legislative session that commenced January 19. The bill provides for a private right of action related to oil and gas injury and imminent harm, economic and otherwise, under existing statutes. [Read more.](#)

Environmental Database Act – New Mexico. Rep. Gail Chasey (D) pre-filed HB 51 for the legislative session that commenced January 19. The bill would create an environmental database, accessible to the public and state agencies, which contains data from various state agencies, including locations of active oil and gas wells, locations of active state trust land leases, the locations of oil and gas pipelines, air pollution data, and other data sets. [Read more.](#)

Permit Violations – New Mexico. Rep. Christine Chandler (D) pre-filed HB 76 for the legislative session that commenced January 19. The bill would allow the denial of a permit application or revoke any permit issued pursuant to the Air Quality Control Act if the applicant or permittee has committed any of the provided list of infractions. [Read more.](#)

Royalties – North Dakota. On January 15, Sen. Brad Bekkedahl (R) introduced SB 2217. The bill would

add a new section of law regarding royalty penalties which prohibits certain postproduction costs, sets forth arms-length transaction provisions for royalties, and includes penalties. [Read more.](#)

Limited Liability Company Act – Ohio. (*Update to 7/27/20 Weekly Report*) On January 8, Gov. Mike DeWine (R) signed SB 276 into law. The Act, sponsored by Sen. Kristina Roegner (R), revises the Ohio Limited Liability Company Act (OLLCA) and replaces it with the Ohio Revised Limited Liability Company Act (ORLLCA). The Act sets forth all the new provisions for limited liability companies under Ohio law. Read the [final Ohio Legislative Service Commission detailed bill analysis here](#). The Act takes effect January 1, 2022. [Read more.](#)

Gross Production Tax – Oklahoma. Sen. Mark Allen (R) pre-filed SB 389 for the legislative session commencing February 1. The bill would reduce the gross production tax as specified. [Read more.](#)

Gross Production Tax – Oklahoma. Rep. Mark McBride (R) pre-filed HB 1831 for the legislative session commencing February 1. The bill removes a provision related to the reduction of the gross production tax. [Read more.](#)

Nuisance – Oklahoma. Rep. Mark McBride (R) pre-filed HB 1833 for the legislative session commencing February 1. The bill creates a new nuisance law and states that no action for nuisance shall be brought against oil and gas activities which has lawfully been in operation for two years or more prior to the date of bringing the action, and provides supporting provisions. [Read more.](#)

Division Orders – Oklahoma. Rep. Terry O'Donnell (R) pre-filed HB 2029 for the legislative session commencing February 1. The bill amends existing law to provide that the name, address, and tax identification number of each interest owner with a provision requiring notice of change of ownership must be included in a division order. [Read more.](#)

Income Tax; Licenses – Oklahoma. House Speaker

Charles McCall (R) pre-filed HB 2080 for the legislative session commencing February 1. The bill provides for the garnishment of delinquent income taxes owed by those licensed in the state but does not apply to a licensee who was not previously required to pay income tax or has moved to the state within the past year. The bill applies to those holding a license to “engage in a profession, occupation or business in this state.” [Read more.](#)

Royalties – Oklahoma. Rep. Anthony Moore (R) pre-filed HB 2230 for the legislative session commencing February 1. The bill creates the Royalty Standardization Act, which provides that for purposes of determining the respective rights of the owners to the proceeds due pursuant to the Production Revenue Standards Act and derived from or attributable to the production from an oil or gas well located in this state, the working interest owners shall be responsible for the costs of production; and the proceeds due owners of a royalty interest shall not be decreased, either directly or indirectly, by any costs of production. Further, the “Royalty Standardization Act shall apply to all owners and shall apply to all production occurring on or after the effective date of this act, from all producing wells in the State of Oklahoma, regardless of the date pooled, drilled or of the date of the underlying leases.” The bill states that its purpose is to “promote uniformity, standardization and simplification of royalty payments in this state, to encourage a more cooperative relationship between Oklahoma's producers and royalty owners, and to decrease the volume of litigation over royalty disputes, the provisions of the Royalty Standardization Act shall be considered a supplement to the Production Revenue Standards Act and the Energy Litigation Reform Act.” [Read more.](#)

Proceeds Payments – Oklahoma. Sen. Zack Taylor (R) pre-filed SB 1003 for the legislative session commencing February 1. The bill amends existing law to extend the required proceeds payment date for oil and gas production. [Read more.](#)

Energy Committee – Oklahoma. Sen. Zack Taylor (R) pre-filed SB 1034 for the legislative session commencing February 1. The bill removes the Oklahoma Energy Resources Board from directing the Committee for Sustaining Oklahoma's Energy Resources. [Read more.](#)

Transfer of Wells – Oklahoma. Sen. Zack Taylor (R) pre-filed SB 476 for the legislative session commencing February 1. Regarding the transfer of wells, the bill provides a new section to existing law that reads: "If it can be demonstrated that the transfer of a well or wells has been done for improper or fraudulent purpose, the Commission shall have the authority to rescind the transfer and the transferor shall remain liable for plugging costs and any additional liabilities applicable under this section." [Read more.](#)

Oil and Gas Liens – Oklahoma. Sen. Zack Taylor (R) pre-filed SB 632 for the legislative session commencing February 1. Regarding oil and gas liens, the bill adds new definitions of oil and gas rights to also include proceeds owed for oil and gas drilling and development; proceeds from the acquisition of oil and gas rights including but not limited to a lease bonus or pooling bonus; or proceeds from an unfulfilled contract or agreement for the purchase of mineral rights. [Read more.](#)

Railroad Commission Political Contributions – Texas. On January 11, Rep. Rafael Anchia (D) introduced HB 1041, which imposes certain restrictions regarding political contributions by a member of the Railroad Commission of Texas and of political contributions made in connection with the office of a commissioner. [Read more.](#)

Railroad Commission Name Change – Texas. On January 11, Rep. Rafael Anchia (D) introduced HB 1042, which would change the name of the Railroad Commission of Texas to the Texas Energy Resources Commission and also makes changes to commissioner elected terms. [Read more.](#)

Administrative Penalties – Texas. On January 11,

Rep. Rafael Anchia (D) introduced HB 1043, which amends existing law regarding penalties related to the Railroad Commission of Texas, specifically increasing penalties related to those "which pertain to safety or the prevention or control of pollution or the provisions of a rule, order, license, permit, or certificate which pertain to safety or the prevention or control of pollution and are issued under this title, the person may be assessed a civil penalty by the commission." The bill also increases penalties related to certain natural gas activities and the state water code. [Read more.](#)

Permit Applications – Texas. On January 15, Sen. Borris Miles (D) introduced SB 367, which would amend existing law regarding an application for a permit for a well adjacent to a well blowout site in certain counties. Specifically, the bill would require that an applicant for a permit to drill an oil or gas well in a county with a population of more than 750,000 disclose to the commission in the application that the applicant was the operator of an oil or gas well: (1) located at a site adjacent to the site of the proposed well; (2) drilled through or into the same formations as the proposed well is to be drilled; and (3) from which an uncontrolled release of a subterranean fluid containing oil, gas, or condensate or of a well fluid that is caused by a loss of well control occurred while the applicant operated the oil or gas well. [Read more.](#)

Tax Deduction for High-Cost Gas – Texas. (*Update to 1/11/21 Weekly Report*) On January 11, Sen. Sarah Eckhardt (D) introduced [SB 310](#) which relates "to the repeal of the temporary tax reduction for certain high-cost gas." We previously reported on House versions HB 878/HB 879, pre-filed on December 18, 2020, by Rep. Gina Hinojosa (D). Those [bills](#) relate to the phasing out of the tax reduction for high-cost gas to amend existing law by adding a September 1, 2021 deadline for applications and related processes. [Read more.](#)

Eminent Domain – Texas. On December 22, 2020, Rep. DeWayne Burns (R) introduced HB 901. The bill would amend existing property law regarding eminent domain to provide conditions for a private

entity with eminent domain authority to acquire real property for a public use and the terms for instruments of conveyance of certain easements, and their implementing procedures. [Read more.](#)

Eminent Domain; Landowner's Bill of Rights; Right-of-Way Agents – Texas. On December 22, 2020, Rep. DeWayne Burns (R) introduced HB 902. The bill updates the Landowner's Bill of Rights as it pertains to eminent domain, creates an ombudsman for landowners, and creates qualifying and continuing education requirements for Texas right-of-way agents as well as added grounds for suspension or revocation of a certificate as well as the creation of a probationary certificate. [Read more.](#)

Worker Misclassification – Virginia. On January 18, Del. Amanda Batten (R) introduced HB 2134. The bill provides that “a hiring party providing an individual with personal protective equipment in response to a disaster caused by a communicable disease of public health threat for which a state of emergency has been declared [...] shall not be considered in any determination regarding whether such individual is an employee or independent contractor.” [Read more.](#)

Electronic Notarial Acts – Virginia. On January 12, Del. Marcus Simon (D) introduced HB 2064. The bill would amend existing notary law regarding online and remote notarial acts. [Read more.](#)

Natural Resources – Virginia. On January 19, HB 1836 passed the House and has been transmitted to the Senate. Introduced by Del. Kenneth Plum (D) on January 6, the bill would change the title of the Secretary of Natural Resources to the Secretary of Natural and Cultural Resources. [Read more.](#)

Mineral and Tax Liens – Wyoming. On January 12, the Joint Minerals, Business & Economic Development Interim Committee introduced SF 41, which amends certain provisions of existing law regarding tax liens and mineral liens. [Read more.](#)

Ad Valorem Taxes – Wyoming. On January 12, the Joint Revenue Interim Committee introduced SF 45, which “changes the recipient of ad valorem taxes on mineral production from the counties to the Department of Revenue, beginning with the ad valorem tax on mineral production from calendar year 2020. Under this bill, payments to the Department of Revenue would begin on September 10, 2021.” [Read more.](#)

Probate Proceedings – Wyoming. On January 12, Sen. Cale Case (R) introduced SF 48, which makes changes to probate law by increasing certain limits on property, including mineral interests. [Read more.](#)

Ad Valorem Taxes – Wyoming. On January 12, the Joint Revenue Interim Committee introduced SF 60, which adds a new section to the Ad Valorem Taxation law regarding the “Monthly payment of ad valorem tax on gross product of mineral production.” [Read more.](#)

Severance Tax Exemption – Wyoming. On January 12, the Joint Minerals, Business & Economic Development Interim Committee introduced HB 11, which would “provide an exemption on taxes for the production of crude oil and natural gas” as specified. [Read more.](#)

Electronic Filing of Court Documents – Wyoming. On January 12, the Joint Judiciary Interim Committee introduced SF 22, which would require “acceptance of electronic filings in courts without an electronic filing system.” [Read more.](#)

Notarial Acts – Wyoming. On January 12, the Joint Corporations, Elections & Political Subdivisions Interim Committee introduced SF 29, which would enact the Wyoming Revised Uniform Law on Notarial Acts and includes provisions related to electronic notarial acts, the performance of and requirements of notarial acts, certificates of notarial acts, notary qualifications and related fees. [Read more.](#)

STATE – Regulatory

State Land Office COVID Lease Extensions – New Mexico. On December 17, 2020, the New Mexico State Land Office (SLO) announced it is extending their temporary COVID extension program for an additional three months, into March 2021, recognizing that ongoing disruptions in oil and gas development logistics still exist due to the pandemic. According to the SLO, three-month COVID lease extensions are available to lessees and SLO “may grant the extension after a review of whether the lease is in good standing. The SLO will verify whether a bond is on file, whether royalties are up to date, and whether the lease is currently active. The SLO will verify whether open spills or compliance actions exist. One three-month extension is available. The Commissioner may grant an additional extension, in her sole discretion, upon a showing of good cause.” [Read more.](#)

EPA Approves Hydraulic Fracturing Wastewater Plan – Texas. On January 15, the U.S. Environmental Protection Agency (EPA) announced that it has approved Texas’ request to administer the National Pollutant Discharge Elimination System program for discharges from produced water, hydrostatic test water, and gas plant effluent or oil and gas discharges within the state. The Texas Commission on Environmental Quality (TCEQ) will take over responsibility of permitting authority for the discharges of oil and gas activities, pipelines and natural gas processing plants that formerly were under the jurisdiction of the Railroad Commission of Texas. The EPA approval came over the objections of environmental groups and delegates authority to the TCEQ, which allows the agency assume oversight of the discharges of wastewater from oil and gas drilling from the Texas Railroad Commission. “After a rigorous review process, we are pleased to announce that the state of Texas will take responsibility of this Clean Water Act program,” said EPA Region 6 Administrator Ken McQueen. “This action will help Texas administer a process for the regulated community without unnecessary and duplicative permitting processes and ensure the

best environmental and economic outcomes.” [Read more.](#)

STATE – Judicial

Rule of Capture; Trespass – Pennsylvania. (*Update to 1/27/20 Weekly Report*) As an update to our 2020 reporting on the pivotal state rule of capture/trespass case, [Briggs v. Southwestern Energy Production Co.](#) (Case No. 63 MAP 2018), on December 8, 2020, the Pennsylvania Superior Court addressed the remaining issue on remand from the Pennsylvania Supreme Court regarding whether there had been physical intrusion “because the pleadings in the trial court did not clearly allege there had been a physical intrusion,” so the Supreme Court remanded the case back to the Superior Court for additional proceedings on that issue. According to law firm Gordon Rees Scully Mansukhani, LLP, “[f]ollowing remand, the Superior Court granted each party permission to file a supplemental brief in support of their respective positions. On December 8, 2020, following careful review, the Superior Court [affirmed the trial court’s Order](#) granting summary judgment in favor of Southwestern.” ([Read a detailed analysis of Briggs and the Superior Court’s order](#)) For background, on January 22, 2020, the Pennsylvania Supreme Court delivered a victory for producers with the Court overturning a lower court ruling that could have opened a floodgate of trespass claims about hydraulic fracturing in the state’s gas-rich Marcellus Shale. In *Briggs*, the Pennsylvania Supreme Court held that the “rule of capture” applies to hydraulic fracturing in the state, meaning oil and gas companies cannot be held liable for underground trespass when their production technique drains hydrocarbons from adjacent land. In this case, a Pennsylvania family claimed a producer trespassed on their property by extracting gas from an 11-acre parcel of family-owned land by drilling and hydraulically fracturing a well sited on a neighboring property. The issue before the Supreme Court was whether the rule of capture applied to oil and gas produced from wells that were completed using hydraulic fracturing and preclude trespass liability for allegedly draining oil or gas from under

nearby property, where the well is drilled solely on and beneath the driller's own property and the hydraulic fracturing fluids are injected solely on or beneath the driller's own property. At trial, the Superior Court drew a distinction between hydraulic fracturing and conventional drilling, holding the rule did not apply to prohibit a trespass claim by an adjoining unleased landowner against a producer when that producer utilizes hydraulic fracturing for a horizontal well. The appellate Superior Court overturned that ruling, and the Pennsylvania Supreme Court affirmed in favor of the producer. The state Supreme Court held "that the rule of capture remains extant in Pennsylvania, and developers who use hydraulic fracturing may rely on pressure differentials to drain oil and gas from under another's property, at least in the absence of a physical invasion." Further, the Court concluded that "insofar as the panel's decision may be construed to suggest that a natural-versus-artificially-induced-flow litmus should be employed to determine whether the rule of capture applies in a given situation, that standard rests on a false distinction and is disapproved." [Read more.](#)

INDUSTRY NEWS FLASH

► Texas oil and gas industry pays out billions.

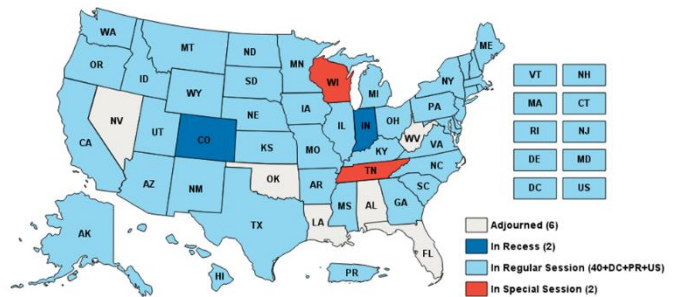
Even during a difficult year, the Texas oil and gas industry paid \$13.9 billion in taxes and state royalties in Fiscal Year 2020, according to the Texas Oil and Gas Association. This falls a few billion short, however, of the record-setting \$16.3 billion in taxes and royalties paid in 2019. [Read more.](#)

► First successful electric grid-powered hydraulic fracturing operation reported.

On January 14, Halliburton reported "it has deployed the industry's first successful electric grid-powered hydraulic fracturing operation." Halliburton has deployed the technology in the Permian Basin and "pointed out that it has completed nearly 340 stages across multiple wells, adding the utility-powered frac pumps have demonstrated 'consistent superior performance.'" [Read more.](#)

LEGISLATIVE SESSION OVERVIEW

States in Session



Session Notes (by date): Alaska, Arizona, Arkansas, California, Connecticut, Delaware, Georgia, Hawaii, Idaho, Illinois, Iowa, Kansas, Kentucky, Maine, Maryland, Massachusetts, Michigan, Minnesota, Mississippi, Missouri, Montana, Nebraska, New Hampshire, New Jersey, New Mexico, New York, North Carolina, North Dakota, Ohio, Oregon, Pennsylvania, Rhode Island, South Carolina, South Dakota, Texas, Utah, Vermont, Virginia, Washington, and Wyoming are in regular session. The District of Columbia Council, Puerto Rico and the U.S. Congress are also in session.

The following will convene their 2021 legislative sessions on the dates provided: **Nevada** and **Oklahoma** (February 1); **Alabama** (February 2); **West Virginia** (February 10) and **Florida** (March 2).

The **Colorado** legislature recessed on January 15 after passing state COVID-19 relief, reports [The Gazette](#). The legislature will return on February 16.

The **Indiana** legislature recessed on January 19 and reconvened on January 25 out of an abundance of caution as the nation braces for possible violent protests, reports [The Journal Gazette](#).

Tennessee convened for a special session on January 19 to focus on education and learning loss in the state, reports the [Tennessean](#). This special session was expected to end on January 22, reports [WSMV](#).

Wisconsin convened for a special session on January 19 to modernize the state unemployment system. This special session adjourned immediately and reconvened on January 21, reports the [Wisconsin State Journal](#).

Signing Deadlines (by date): **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. **Illinois** Democratic Gov. J.B. Pritzker has 60 days from presentment 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. **New Jersey** Democratic Gov. Phil Murphy has 45 days from presentment to act on legislation or it becomes law without signature.

Interim Committee Hearings: The following states are currently holding 2020 interim committee hearings: [Alabama](#), [Louisiana](#), [Nevada](#), [Oklahoma House](#) and [Senate](#) and [West Virginia](#).

Bill Pre-Files: [Alabama](#), [Florida](#), [Nevada](#) and [Oklahoma](#) are currently posting 2021 bill drafts, pre-files and interim studies. ■

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