AAPL Powering The Profession

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GOVERNMENTAL AFFAIRS WEEKLY REPORT

Weekly Highlights At-A-Glance

FEDERAL – Legislative

S. 58 – West Coast Protection Act of 2021. On January 27, Sen. Diane Feinstein (D-CA) introduced S. 58, known as the *West Coast Ocean Protection Act of 2021*. The bill would "permanently ban oil and gas drilling in federal waters off the coast of California, Oregon and Washington." Sen. Feinstein's bill would make Biden's temporary moratorium permanent and prevent future administrations from overturning it without an act of Congress. Read more.

FEDERAL – Regulatory

Tribal Lands Presidential Memorandum. On January 26, President Biden issued a *Memorandum on Tribal Consultation and Strengthening Nation-to-Nation Relationships* which calls for "Tribal Consultation and Strengthening Nation-to-Nation Relationships." The Memorandum directs the heads of all Executive departments and agencies to report within 90-days detailed plans of action regarding "engaging in regular, meaningful, and robust consultation with Tribal officials in the development of Federal policies that have Tribal implications." According to The Hill, "The order isn't a large departure from current federal policy requiring consultation with tribes, but tribal leaders have complained for decades that they've been sidelined or silenced by federal agencies." The results of the Memorandum directives may affect the Bears Ears and Grand Staircase Escalante monument areas as well as drilling on Tribal lands. Read more.

Indefinite Federal Oil and Gas Moratorium. (*Update to 1/25/21 Weekly Report*) On January 27, President Biden signed an executive order, *Executive Order on Tackling the Climate Crisis at Home and Abroad*, which mandates a "pause" on new onshore and offshore oil and gas leasing on federal lands, "to the extent consistent with applicable law," while a comprehensive review of oil and gas permitting and leasing is conducted. According to the Oil & Gas Journal, "There is no time limit on the review, which means the president's moratorium on new leasing is indefinite. The order does not restrict energy activities on lands the government holds in trust for Native American tribes, the White House said. Existing leases, unaffected by the moratorium, can provide oil and gas for decades to come, but in diminishing amounts as fields are drained down. The length of the 'pause' may determine whether U.S. production is significantly reduced at some point in the future." Read more. The order also details other actions such as setting a goal to conserve 30 percent of federal lands and oceans by 2030; creates a cabinet-level agency task force to develop and facilitate the deployment of a government-wide approach to address climate change; creates new executive positions, such as a National Climate Advisor, led by former Obama Environmental Protection Agency Administrator Gina McCarthy; addresses oil and gas well plugging; and creates an "environmental justice" program, among other provisions. (Read the Presidential Fact Sheet here.) This hastily issued order came on the heels of the Acting Secretary of Interior's Order No. 3395 issued on Biden's first day in office, and as reported in the last AAPL Governmental Affairs Report, imposed a 60-day moratorium on federal oil and gas leasing and permitting, for which numerous lawmakers objected. For example, on January 25, newly-elected New Mexico congresswoman, Rep. Yvette Herrell (R-NM) delivered a letter to New Mexico Gov. Michelle Lujan Grisham (D) regarding the recent move and its catastrophic impact on state revenues and energy independence. "The oil and gas industry is the lifeblood of our state's economy,"

wrote Herrell. "If banned today, New Mexico stands to lose more than 60,000 jobs by 2022. The loss of these good-paying, family supporting jobs would devastate entire communities and have grave long-term consequences for our state." Herrell noted that "Royalty payments and taxes on the oil and gas industry account for more than a third of the state's annual budget. The state's K-12 public education system alone received more than $1 billion in funding from the oil and gas industry last year, which equates to $60,062 per teacher and $3,788 per student." Read more. Biden's broad-based January 27 order also addresses the "climate crisis" by stating, "We have a narrow moment to pursue action at home and abroad in order to avoid the most catastrophic impacts of that crisis and to seize the opportunity that tackling climate change presents. Domestic action must go hand in hand with United States international leadership, aimed at significantly enhancing global action." Apart from the leasing pause, the order would "identify steps through which the United States can promote ending international financing of carbon-intensive fossil fuel-based energy while simultaneously advancing sustainable development and a green recovery." The order also states "heads of agencies shall identify for the Director of the Office of Management and Budget and the National Climate Advisor any fossil fuel subsidies provided by their respective agencies, and then take steps to ensure that, to the extent consistent with applicable law, Federal funding is not directly subsidizing fossil fuels. The Director of the Office of Management and Budget shall seek, in coordination with the heads of agencies and the National Climate Advisor, to eliminate fossil fuel subsidies from the budget request for Fiscal Year 2022 and thereafter." However, any attempts to reign in supposed subsidies would have to be effectuated through an Act of Congress and Biden publicly stated that his administration will soon be sending legislation to Congress on this issue. In response to the above-noted drastic and misguided policy actions by the new administration, AAPL immediately delivered a letter to the Biden administration on behalf of our members clearly stating our opposition. (Read the AAPL President's letter here.) Many other industry groups have also publicly expressed their opposition to the President's alarming actions. Read more.

Republican Lawmakers Demand Response from Interior Department on Executive Orders. Related to the above item, on February 4, Republican lawmakers from the House Natural Resources Committee delivered a letter to Interior Department Acting Secretary de la Vega demanding a response by February 18 to provide information to the committee on the economic impacts of President Biden's moves to pause new oil and gas leasing on federal lands, as well as his cancellation of the Keystone XL Pipeline. "We are already seeing the harmful, long-term consequences of these abrupt orders," wrote the legislators. "With a high level of anticipated damages to the American worker, industry, and consumer, it is imperative that due diligence, not arbitrary and capricious decisions, prevail prior to implementing these policies." The letter contains a detailed list of documents and records that must be produced by the Interior Department by the deadline date. Read more.

Energy Department Confirmation Hearing. In light of Biden's sweeping executive actions, on January 27, Republican lawmakers grilled Energy Secretary nominee, former Gov. Jennifer Granholm (D-MI), on Biden's climate agenda. Sen. John Barrasso (R-WY) called out the new administration's moves, saying Obama "went on a regulatory rampage" to slow energy production and there were worries the Biden administration would do the same. Read more. In her testimony, Granholm took a more conciliatory tone regarding the oil and gas industry. "If we are going to get to net carbon zero emissions by 2050, we cannot do it without coal, oil, gas being part of the mix," said Granholm. The nominee also said she did not believe fossil fuels should be completely taken out of the country's energy portfolio. Read more.

Republican Senators Oppose Biden's Attack on Oil and Gas Industry. On January 28, 26 Republican Senators sent a letter to President Biden to "express

their opposition to his recent actions on fossil fuels, including revoking a permit for the Keystone XL pipeline and pausing the issuance of new oil and gas leases on public lands and waters." The lawmakers also requested a meeting with the new president to discuss his recent executive orders targeting the oil and gas industry. Read more.

Lending Discrimination Against the Oil and Gas Industry. (*Update to 8/10/20 Weekly Report*) In breaking news, the Office of the Comptroller of the Currency (OCC) announced on January 28 that it is "shelving a controversial rule meant to prevent banks from rejecting corporate customers based solely on their industry. The OCC announced that it would wait to publish its 'Fair Access' rule in the Federal Register until a full-time comptroller can review it, preventing it from taking effect until President Biden's eventual nominee assumes office." Read more. This sudden reversal of what had been a late-term victory for the Trump administration and was set to take effect on April 1, 2021 comes just days after the OCC finalized the rule in a January 14 release, *Fair Access to Financial Services*, which was to provide fair access to lending capital for the oil and gas industry, as well as other industries. The rule, now pending, makes it illegal for any bank regulated by the OCC with more than $100 billion in assets to reject a customer for reasons other than financial risk. "As Comptrollers and staff in previous administrations have made clear in speeches, guidance, and testimony, banks should not terminate services to entire categories of customers without conducting individual risk assessments," said then outgoing Acting Comptroller Brian Brooks. The OCC first proposed its fair access rule on November 19, 2020, with praise from Republicans who criticized several major banks that dropped clients in the firearm industry or pledged to stop funding Arctic drilling projects. Read more. For background, the rule is an outgrowth of pushback from numerous lawmakers and industry claiming discrimination against lending to the fossil fuel industry. On July 24, Brian P. Brooks, Acting Comptroller of the Currency for the U.S. Office of the Comptroller of the Currency (OCC) responded to U.S. Senator Dan Sullivan (R-AK) regarding the issue. Sullivan and others had been pushing Trump administration officials to punish banks for limiting fossil fuel lending. On June 16, the Alaska delegation sent a letter to then Federal Reserve Chairman Jerome Powell and Vice Chair Randy Quarles, Acting U.S. Comptroller of the Currency Brian P. Brooks, and Chairwoman Jelena McWilliams of the Federal Deposit Insurance Corporation, urging these officials to consider regulatory action and oversight of large American financial institutions that are "openly discriminating against some of the most economically disadvantaged regions of America" by refusing financing of domestic energy projects, particularly in Alaska and the Arctic. The Alaska delegation argued that the banks are harming a foundation of the U.S. economy at a time when businesses, workers, and families are already reeling from the economic fall-out of the COVID-19 pandemic. "It is clear that these policies are overtly political and actually meant to appease extreme activists' calls for fossil fuel divestment and to discriminate against certain sectors of the energy industry and projects in specific geographical areas," said the legislators. Since November 2019, Citigroup, Goldman Sachs, JP Morgan, Morgan Stanley, and Wells Fargo have announced policies to stop lending to new oil and gas projects in the Arctic, including the 1002 Area of the Arctic National Wildlife Refuge. The letter writers questioned whether these policies violate multiple federal laws. In his response, Brooks wrote, "Oil is the most actively traded commodity in the world. Given the industry's importance and ubiquity in our daily lives, I am skeptical of claims that the sector poses a 'reputational risk' to the banks that serve it." Brooks said the OCC would analyze whether certain decisions on oil and gas lending "violate any duty or obligation under federal laws." He specifically cited the Dodd-Frank Act mandate that the OCC ensure "fair access to financial services," adding that "the OCC will examine the possibility of issuing regulations defining fair access to provide clarity to banks and customers alike." Read more.

Taking of Migratory Birds; U.S. Fish and Wildlife Service. (*Update to 1/11/21 Weekly Report*) On

February 3, the Biden administration halted the Trump administration's Migratory Bird rule from taking effect as scheduled for February 8. The rule has been flagged for regulatory review and under existing procedures may take as long as 45 days to complete and will include a public comment period. Read more. For background, 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 had 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 was 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 U.S. Court of Appeals for the Fifth Circuit," said then Interior Secretary David Bernhardt in an announcement of the rule. Read more. 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 published rule was an outgrowth of that court opinion and a victory for the outgoing Trump administration. Read more.

Office of Natural Resources Revenue Annual Penalty Increases. On February 2, the Interior Department's Office of Natural Resources Revenue (ONRR) published its final rule, *Inflation Adjustments to Civil Monetary Penalty Rates for Calendar Year 2021* (86 Fed. Reg. 7808), which sets the modest annual ONRR penalties adjustment for inflation. The rule is effective immediately. Read more.

Independent Contractors; U.S. Department of Labor – Washington, DC. (*Update to 1/11/21 Weekly Report*) On February 5, the Biden administration published a notice, *Independent Contractor Status Under the Fair Labor Standards Act: Delay of Effective Date* (86 Fed. Reg. 8326), which delays the effective date of the Trump administration's independent contractor rule to at least May 7, 2021, while it reviews the rule and solicits public comments. The rule originally had an effective date of March 8, 2021, but the timeline is now in limbo. The new public comment period is open through February 24. Read more. For background, 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 then outgoing Labor Secretary Eugene Scalia. Read more.

Biden Ends Labor Department Wage and Hour Program. On January 28, President Biden ended a Trump-era initiative that encouraged businesses to self-report wage-and-hour violations to the U.S. Department of Labor (DOL) in return for protection against further legal liability. The Payroll Audit Independent Determination program allowed employers "to review their pay practices, report violations of the Fair Labor Standards Act (FLSA), and then work with DOL's Wage and Hour Division (WHD) to correct mistakes and get workers properly paid." Bloomberg Law reports Biden's move as "an early signal of a stricter enforcement posture." The DOL's Wage and Hour Division launched the pilot program in 2018, "a move that some management-side lawyers welcomed as a method to make workers whole while safeguarding their clients from private litigation and additional back-wage penalties." Read more.

FEDERAL – Judicial

Forced Pooling – Colorado. In a victory for the industry, on February 1, in *Wildgrass Oil and Gas Committee v. Colorado* (Case No. 20-1151), the U.S. Court of Appeals for the Tenth District, on appeal from the U.S. District Court for the District of Colorado, affirmed the lower court decision regarding a challenge to a Colorado Oil and Gas Conservation Commission (COGCC) proceeding granting Extraction Oil & Gas, Inc.'s application to pool mineral interests owned by Wildgrass members. The Broomfield group had claimed the hearing violated the group's due process rights because the COGCC hadn't provided enough time to present its case, erroneously denied discovery requests, and didn't say what information it would consider to determine if the leasing terms were reasonable. The appellate court found the lower court did not abuse its discretion in dismissing the claims when the litigants may have brought their challenge of state regulatory activity in state court rather than federal court. Read more.

EPA Science Transparency Rule – Montana. On February 1, the U.S. District Court for the District of Montana ruled in favor of environmentalists who challenged the Trump administration's eleventh hour "Secret Science" rulemaking by granting the Biden administration's request to vacate the rulemaking. According to the court in *Environmental Defense Fund v. U.S. Environmental Protection Agency* (Case No. 4:21-cv-00003-BMM), "Defendants explain that in light of the Court's conclusion that the Final Rule constitutes a substantive rule, the Environmental Protection Agency [EPA] lacked authorization to promulgate the rule pursuant to its housekeeping authority, which is the only source of authority identified in the Final Rule." Under federal regulations, a substantive rule that violates federal law in making the contentious rule may not take effect immediately upon its publication in the Federal Register, as occurred here, but rather must observe the 30-day waiting period before becoming effective. "Based on the Court's conclusion that the Final Rule is a substantive rule, the sole source of authority for the rule's promulgation cannot support the rulemaking," according to an EPA statement. The court's order sends the rule back to the EPA for review. For background, on January 6, the Trump administration's 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 then-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.

Biden's Federal Oil and Gas Leasing Moratorium – Wyoming. In response to President Biden's indefinite pause on federal oil and gas leasing (*see coverage above*), the Western Energy Alliance immediately filed a federal lawsuit to challenge the action. On January 27, in *Western Energy Alliance v. Biden* (Case No. 0:21-cv-00013), a petition for review was filed in the U.S. District Court for the District of Wyoming challenging the government action from the Acting Secretary of the Interior, acting at the President's direction, to suspend "indefinitely the federal oil and gas leasing program. The suspension is an unsupported and unnecessary action that is inconsistent with the Secretary's statutory obligations." According to Western Energy Alliance President Kathleen Sgamma, "Presidents don't have authority to ban leasing on public lands. Drying up new leasing puts future development as well as existing projects at risk," adding that the move will cost tens of thousands and perhaps millions of jobs. According to Bloomberg Law, the administration's moratorium "buys time for a broad review of whether fossil fuels should be extracted from lands under the U.S. government's control. Environmentalists want President Joe Biden to make the suspension of leasing permanent. But even if he doesn't, future leasing could encompass far less terrain and come with higher costs and environmental limits." We will keep AAPL members updated as the case progresses. Read more.

Dakota Access Pipeline – Washington, DC. (*Update to 8/10/20 Weekly Report*) On January 6, the U.S. Court of Appeals for the District of Columbia upheld a lower court's decision regarding the Dakota Access Pipeline (DAPL) in that the U.S. Army Corps of Engineers violated federal environmental laws and will now require a full environmental impact statement (EIS) to study the risks the controversial oil infrastructure poses to the Standing Rock Sioux Tribe. (Read the decision here.) The EIS will examine risks of an oil spill and evaluate alternative routes that do not impose risks on the Tribe. The latest order, while vacating easements granted for the pipeline construction to cross federally owned land, does not immediately shut down the pipeline. Read more. For background, on August 5, 2020, the same court gave a reprieve to the court-ordered shutdown of the DAPL. Despite a lower district court calling for its immediate shutdown by August 5, 2020, the appellate court, however, ruled that the lower court did not have the "findings necessary" for such a move. As reported by The Hill, "It's now up to the Army Corps of Engineers to decide whether to shut down the pipeline and if it doesn't do so, the matter will return to the lower court." In the original case, *Standing Rock Sioux Tribe v. U.S. Army Corps of Engineers* (Case No. 16-1534), the U.S. District Court for the District of Columbia held that the U.S. Army Corps of Engineers violated the National Environmental Policy Act (NEPA) when it granted the easement to construct the pipeline under Lake Oahe (which is a large reservoir lying behind a damn on the Missouri River and stretching between North and South Dakota). The Court held that NEPA required the Army Corps of Engineers to produce an

Environmental Impact Statement (EIS) for the easement application, rather than only the Environmental Assessment that was completed. Judge James Boasberg ruled that the pipeline, which has been in operation since 2017, should be turned off until the Corps completes an EIS. This process is expected to take 13 months. In sum, the Court held that "given the seriousness of the Corps' NEPA error, the impossibility of a simple fix, the fact that Dakota Access did assume much of its economic risk knowingly, and the potential harm each day the pipeline operates, the Court is forced to conclude that the flow of oil must cease. Not wishing to micromanage the shutdown, it will not prescribe the method by which DAPL must achieve this. The Court will nonetheless require the oil to stop flowing and the pipeline to be emptied within 30 days from the date of this Opinion and accompanying Order." Industry players and analysts also weighed in on the July decision. "This court ruling will create major obstacles for producers in North Dakota, who've been struggling to rebound," said Sandy Fielden, director of research for Morningstar, Inc. The buyers of Bakken crude, he said, will simply turn elsewhere for supplies once the pipeline dries up. Phillips 66, which owns a stake in the pipeline, said it was disappointed in the court ruling. "The negative impacts resulting from this court's decision to markets, customers, and jobs up and down the energy value chain will inflict more damage on an already struggling economy and jeopardize our national security," said spokesman Dennis Nuss. Read more.

STATE – Legislative

Leasing – Alaska. On January 29, the Senate Rules Committee (R) at the request of the governor introduced SB 2062. The bill "removes an artificial barrier to allowing the Division to offer leases for oil and gas exploration in a small portion of the Cook Inlet, adjacent to the current leasing program." Read more.

Hydraulic Fracturing – Arizona. On January 25, Rep. Andres Cano (D) introduced HB 2199. The bill would prohibit hydraulic fracturing in the state but has little to no chance of advancing in the Republican-controlled legislature. Read more.

Hydraulic Fracturing – Arizona. On January 28, Rep. Myron Tsosie (D) introduced HB 2520. On February 2, companion Senate bill SB 1688 was introduced by Sen. Juan Mendez (D). The bills would prohibit hydraulic fracturing in the state but have little to no chance of advancing in the Republican-controlled legislature. Read more.

Notaries Public – Arkansas. On February 1, Rep. Clint Penzo (R) introduced HB 1367. The bill provides for remote, electronic notarial acts and retroactive effect in case of an emergency, such as a pandemic. Read more.

Oil and Gas Liens – Arkansas. On January 26, Rep. Stu Smith (R) introduced HB 1273. The bill would establish the Oil and Gas Owners' Lien Act of 2021 which states that an interest owner "is granted an oil and gas lien to the extent of the interest owner's interest in an oil and gas right that exists as part of an incident to the ownership of an oil and gas right" and provides provisions for the perfection of an oil and gas security interest, commingling of liens, rights of purchasers, lien priorities, effect on legal title, and lien expiration and enforcement, and rights of operators. Read more.

Notarial Acts – Illinois. On February 3, Sen. Linda Holmes (D) introduced SB 97. The bill would amend existing law to provide for remote, electronic notarial acts and related application and examination requirements. Read more.

Notarial Acts – Kansas. On January 28, the Senate Judiciary Committee (R) introduced SB 106. The bill would revise existing notarial law to adopt the Revised Uniform Law on Notarial Acts, and provides for remote, electronic notarial acts. Read more.

Independent Contractors – Kansas. On February 1, the House Committee on Commerce, Labor and Economic Development (R) introduced HB 2196.

The bill amends existing employment law to specifically protect independent contractor landmen by providing that landmen providing services on a contractual basis are not considered employees. Read more.

Hydraulic Fracturing – Maryland. In a favorable action, HB 196 was withdrawn by its sponsor after receiving a negative committee report by the House Environment and Transportation Committee on February 4, which kills the bill. The measure was just introduced on January 27 by Del. Julian Ivey (D) and would have prohibited hydraulic fracturing in the state, or the export of oil and natural gas produced by hydraulic fracturing. Read more.

State Oil and Gas Board – Mississippi. On January 27, Rep. Brent Powell (R) introduced HB 1037. The bill would replace the Mississippi Commission on Environmental Quality and the Mississippi Environmental Permit Board with the state Oil and Gas Board for jurisdiction and authority over sequestration of carbon dioxide. Read more.

Notarial Acts – Missouri. On February 2, Rep. Mary Elizabeth Coleman (R) introduced HB 1013. The bill provides for remote, electronic notarial acts and related procedures. Read more.

Subsurface Rights – Missouri. On January 27, Sen. Dan Hegeman (R) introduced SB 439. The bill provides that "an action to quiet title involving subsurface rights to real property, failure by any person claiming to hold the subsurface rights, other than the surface owner of the real property, to exercise the subsurface rights for a period in excess of 20 years shall create a rebuttable presumption that the subsurface rights have been abandoned by such person in favor of the surface owner." Read more.

Hard Rock Mining – Montana. On January 21, SB 53, sponsored by Sen. Jeff Welborn (R), passed the Senate and has been transmitted to the House. The bill provides the Department of Environmental Quality hard rock mining program the authority to apply improved permitting and regulatory actions to rock product mining facilities (dimensional stone quarries, rock pickers, and others) by streamlining the permitting process and improving the regulatory framework for such mining. Read more.

Dominant Estates – Nebraska. On January 20, Sen. Mike Flood introduced LB 650. The bill addresses carbon dioxide storage and sets provisions regarding reservoir estates and the priority of mineral estates and subsurface use. Read more.

Hydraulic Fracturing – New Mexico. On January 31, Sen. Antoinette Sedillo Lopez (D) introduced SB 149. The bill would prohibit the issuance of new hydraulic fracturing permits and sets certain reporting requirements. This is a reintroduction of a bill that failed in last year's session. Read more.

Severance Tax – New Mexico. On January 25, Rep. Larry Scott (R) introduced HB 181. The bill provides "the tax on carbon dioxide shall be zero percent until December 31, 2030 for a qualified enhanced recovery project that involves the injection of captured carbon dioxide in the process of displacing oil and other liquid hydrocarbons that is demonstrated to sequester the carbon dioxide pursuant to rules promulgated by the department." Read more.

Federal Oil and Gas Development – North Dakota. On January 28, Rep. Chuck Damschen (R) introduced HCR 3027. This House Concurrent Resolution urges President Biden "to continue oil development on federal land and on federal minerals." Read more.

Tribal Lands; Taxation – North Dakota. On January 25, Sen. Jordan Kannianen (R) introduced SB 2319. Regarding tribal lands, the bill adds a new provision regarding taxation to include that "[w]ells located within the exterior boundaries of the reservation" includes wells with one or more horizontal laterals that penetrate the reservation. Read more.

Oil Extraction Tax Credit – North Dakota. On January 25, Sen. Corey Mock (D) introduced SB

2328 which relates to a tax credit for oil produced from a well site using an onsite flare mitigation system and provides provisions for the credit. Read more.

Well Bonds; Plugging – North Dakota. On January 25, Sen. Tim Mathern (D) introduced SB 2339. The bill amends existing law to require for wells covered by a blanket bond, the wells be placed on a single-well bond in an amount equal to the cost of plugging the well and reclaiming the well site. Read more.

Notarial Acts – Oklahoma. On February 1, Sen. Brent Howard (R) introduced SB 916. The bill amends existing law to provide for remote, electronic notarial acts. Read more.

Independent Contractors – Oklahoma. On February 1, Sen. Micheal Bergstrom (R) introduced SB 380. The bill would create The Uniform Worker Classification Act "to bring clarity, certainty and uniformity under the laws of this state to differentiate employees from independent contractors in employment and to impose objective and uniform standards for making that distinction" and which provides criteria for independent contractor determination. Read more.

Nuisance – Oklahoma. (*Update to 1/25/21 Weekly Report*) Sen. Julie Daniels (R) has introduced Senate companion bill, SB 467 for the session commenced on February 1. Rep. Mark McBride (R) already pre-filed the House version, HB 1833, which 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.

Hydraulic Fracturing – Pennsylvania. On January 29, Rep. Mary Louise Isaacson (D) introduced HB 353. The bill would require that well operators add tracer substances directly to fracking fluids before the fluids are used in hydraulic fracturing operations. "The addition of tracer substances would allow for the identification of fluids used by natural gas well operators which, in turn, would help regulators identify the party responsible for related water quality impairment." Read more.

Notarial Acts – South Dakota. On February 3, Sen. David Wheeler (R) introduced SB 193. The bill provides for notarial acts performed by video communications technology. Read more.

Endangered Species – South Dakota. On January 27, SB 72 unanimously passed the Senate and has been transmitted to the House. The bill, sponsored by Sen. John Wiik (R), removes the notice requirement for listing and delisting species on the threatened and endangered species list. Read more.

University Lands; Flaring – Texas. On February 1, Rep. Gina Hinojosa (D) introduced HB 1521. The bill would require the Board of Regents of the University of Texas System to adopt a formal policy goal to eliminate routine methane flaring on university lands by 2025. (*See also SB 388 below.*) Read more.

Taxes; Flared or Vented Gas – Texas. On February 1, Rep. Vikki Goodwin (D) introduced HB 1494. The bill would impose a 25 percent gas production tax on gas flared or vented and provides for an exemption. Read more.

Eminent Domain – Texas. On February 1, Rep Erin Zwiener (D) introduced HB 1506. Regarding eminent domain condemnation and possession, the bill sets timeline conditions for possession regarding litigation. Read more.

Conveyance Restrictions – Texas. On January 29, Rep. Jarvis Johnson (D) introduced HB 1483. Regarding real property conveyances, the bill provides that "if a grantee of an instrument conveying an interest in real property believes that a restriction in the instrument violates the constitution of this state or of the United States, the grantee may bring an action against the county in which the instrument is recorded to request the redaction of the restriction from the instrument." Read more.

Remote Proceedings – Texas. On January 28, Rep. Ina Minjarez (D) introduced HB 1447. The bill allows for the use of remote technology in probate and guardianship proceedings. Read more.

Flaring – Texas. On January 28, Rep. Jon Rosenthal (D) introduced HB 1452. The bill directs the Texas Railroad Commission to establish a policy before December 31, 2025, for the elimination of routine flaring of gas from wells or other facilities regulated by the commission. Read more.

Severance Taxes – Texas. On January 25, Rep. Chris Paddie (R) introduced HB 1346. The bill would provide certain refunds for oil or gas severance taxpayers who do not hold a permit. Read more.

Gas Production Tax – Texas. On January 25, Rep. Jessica González (D) introduced HB 1377. The bill would amend existing law to remove gas "produced from oil wells with oil and lawfully vented or flared" from the list of gas that is not taxed. Read more.

Eminent Domain Notice – Texas. On January 26, Sen. Juan Hinojosa (D) introduced SB 423. The bill amends the service of notice requirements of a special commissioners' hearing in an eminent domain proceeding. Read more.

Restriction on Energy Sources – Texas. As a reaction to numerous municipalities and states around the country seeking to ban gas hookups to commercial and residential buildings as a way to discourage – or impose de-facto bans – on natural gas production, on January 22, Rep. Joe Deshotel (D) introduced HB 1282. The bill would prohibit any regulatory authority, planning authority or political subdivision from adopting any policy or enforcing any regulation that would have the effect of discriminating against or prohibiting connection of a utility service based on the type or source of energy to be delivered to the end-use customer. Read more.

Regulatory Enforcement – Texas. On January 22, Rep. Chris Paddie (R) introduced HB 1284. The bill relates to the jurisdiction of the Railroad Commission of Texas (RRC) over the injection and geologic storage of carbon dioxide and amends existing law regarding enforcement, penalties, and operator applications for a certification from the RRC. Companion Senate bill, SB 450, was introduced by Sen. Kelly Hancock (R) on January 26. Read more.

Methane Flaring Plan – Texas. On January 22, Sen. Sarah Eckhardt (D) introduced SB 388. The bill relates to the reduction of methane gas flaring on land dedicated to the permanent university fund and would create a Methane Flaring Reduction Plan which directs the board of regents of The University of Texas System to adopt a formal policy goal to eliminate routine methane flaring on university lands by 2025. Read more.

Notaries Public – Utah. On February 1, Rep. Merrill Nelson (R) introduced HB 276. The bill expands eligibility for individuals to qualify for a notarial commission to those employed in the state and amends resignation requirements to account for the eligibility expansion. Read more.

Severance Taxes – Utah. On January 27, Sen. David Hinkins (R) introduced SB 133, which creates the Division of Air Quality Oil, Gas, and Mining Restricted Account; Division of Water Quality Oil, Gas, and Mining Restricted Account; the Division of Oil, Gas, and Mining Restricted Account; and the Utah Geological Survey Oil, Gas, and Mining Restricted Account and establishes deposits of certain portions of severance tax revenues to the restricted accounts and makes appropriations. Read more.

Independent Contractors – Virginia. On January 12, Sen. Senator Siobhan S. Dunnavant (R) introduced SB 1323. The bill would support independent contractor status by providing that worker classification as an independent contractor would be based on the more permissible 20-factor test under IRS Revenue Ruling 87-41 known as the common law right-of control test. Read more.

Mineral and Tax Liens – Wyoming. (*Update to 1/25/21 Weekly Report*) On February 3, SF 41

passed both chambers. The bill, introduced January 12 by the Joint Minerals, Business & Economic Development Interim Committee (R), amends certain provisions of existing law regarding tax liens and mineral liens. Under Wyoming law, once the bill is transmitted to the governor he has 3 days in which to sign or veto legislation or it becomes law without his signature. Read more.

Ad Valorem Taxes – Wyoming. On February 4, SF 60 passed both chambers. The bill, introduced January 12 by the Joint Revenue Interim Committee, updates existing law regarding the ad valorem tax on mineral production and its corresponding payment due dates. Under Wyoming law, once the bill is transmitted to the governor he has 3 days in which to sign or veto legislation or it becomes law without his signature. Read more.

STATE – Regulatory

Methane Controls – Colorado. On January 27, environmental groups announced they have entered into an agreement with industry groups "on a joint proposal to the Colorado Air Quality Control Commission for a first-in-the-nation rule to require pneumatic control devices at oil-and-gas facilities to be retrofit to lower methane emissions." According to Earthjustice, which represented some of the parties, the "conservation groups have been calling for additional emission reductions from pneumatic devices for years and proposed retrofit requirements to the Commission in 2017 and 2020. The consensus proposal calls for non-emitting controllers at new installations, with very limited exceptions and also requires operators to begin replacing polluting pneumatic controllers at existing production facilities and compressor stations." Read more.

Commission on Environmental Quality Permits – Texas. On February 2, the Texas Commission on Environmental Quality (TCEQ) released its final "Revisions to Oil and Gas General Operating Permits (GOPs) Numbers 511, 512, 513, and 514." According to the TCEQ, "The revised GOPs were proposed on November 13, 2020, and the public comment period closed on December 16, 2020. One positive comment was received. Please refer to the Statements of Basis for these permits for a detailed description of the revisions and the comment. Current permit holders are required to submit an application for a new authorization to operate (ATO), if any of the emission units, applicability determinations, or the basis for the applicability determinations are affected by the revisions in the GOPs. If the revisions in the GOPs do not affect your site, a new ATO is not required." Read more.

Railroad Commission; Flaring Exceptions – Texas. On January 26, Texas Railroad Commissioner Jim Wright (R) released a statement following that day's Commissioners' Conference regarding flaring exceptions. "I elected to pass on most of the requests for exceptions to Statewide Rule 32 governing flaring permits," wrote Commissioner Wright. "Most items that dealt with flaring did not appear to have a clear and concise plan on natural gas utilization, and I wanted more time to review these requests and discuss them with Commission staff. I want to be clear that I do not take these requests lightly as flaring natural gas is a waste of our precious resources." Read more.

STATE – Judicial

Lease Interpretation; Drainage – Texas. On December 16, 2020, a petition for review was filed in the Texas Supreme Court in *Rosetta Resources Operating, L.P. v. Martin* (Case No. 20-0898) which involved the interpretation of an offset well clause in an oil and gas lease. According to the appellate court, "we are once again called on to interpret and apply 'opaquely worded' 'cryptic language' in an oil and gas lease." The Texas Court of Appeals, 13th District, (Corpus Christi), examined the lease terms and found that Rosetta's obligations to protect the undrilled acreage at issue from drainage and to spud an offset well or release the acreage were triggered. The appeal is currently pending before the Texas Supreme Court. Read more.

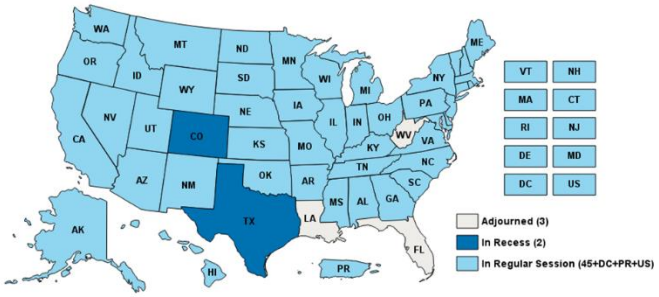
INDUSTRY NEWS FLASH

▶ **Texas governor threatens lawsuits over Biden's climate agenda.** "We're here for a singular purpose today. To make clear that Texas is going to protect the oil and gas industry from any type of hostile attack launched from Washington, DC," said Gov. Greg Abbott (R) to industry leaders during a January 28 roundtable meeting. Read more.

▶ **Biden administration federal lease review may raise royalty rates.** According to reporting from Rigzone, apart from the Biden administration's indefinite pause on new federal oil and gas leasing, federal royalty rates may also change after agency reviews are completed, especially in light of those rates not increasing for decades. Read more.

LEGISLATIVE SESSION OVERVIEW

States in Session



Session Notes (by date)**:** Alabama, Alaska, Arizona, Arkansas, California, Connecticut, Delaware, Georgia, Hawaii, Idaho, Illinois, Indiana, Iowa, Kansas, Kentucky, Maine, Maryland, Massachusetts, Michigan, Minnesota, Mississippi, Missouri, Montana, Nebraska, Nevada, New Hampshire, New Jersey, New Mexico, New York, North Carolina, North Dakota, Ohio, Oklahoma, Oregon, Pennsylvania, Rhode Island, South Carolina, South Dakota, Tennessee, Utah, Vermont, Virginia, Washington, Wisconsin and Wyoming are in regular session. The U.S. Congress is in session.

The following will convene their 2021 legislative sessions on the dates provided: **West Virginia** (February 10), **Florida** (March 2) and **Louisiana** (April 12).

The **Colorado** legislature recessed on January 15 after passing state COVID-19 relief, reports *The Gazette*. The legislature is scheduled to return on February 16. **Virginia** Democratic Gov. Ralph Northam signed a proclamation calling the legislature to convene for a special session on February 10. The purpose of the special session is to align the legislative calendar with the customary 46-day length for odd-numbered years, reports WTKR 3.

Signing Deadlines: **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: **Florida** House, **Louisiana** and **West Virginia**.

Bill Pre-Files: Florida and Louisiana are currently posting 2021 bill drafts, pre-files and interim studies. ■