

# GOVERNMENTAL AFFAIRS WEEKLY REPORT

## Weekly Highlights At-A-Glance

### FEDERAL – Legislative

**S. 563 – Fair Access to Banking Act.** On April 6, official bill text was made available for [S. 563](#), known as the *Fair Access to Banking Act*. The bill, introduced by Sen. Kevin Cramer (R-ND), would require banks of a certain size to lend to the fossil fuel industry if the same criteria were met as other industries. The bill comes on the heels of major banks announcing in recent months that they would no longer provide funding for the oil and gas industry. “There is no place in our society for discrimination, and big banks are no exception,” said Sen. Cramer regarding a planned rule that was never finalized and which like this bill would have prohibited such discrimination in lending. “Financial service providers do not have the right to circumvent the Constitution or the law to create de-facto bans on legally-compliant businesses like energy producers or firearms manufacturers when they believe it is politically convenient,” said Cramer. Specifically, the bill “would prevent banks of a certain size from refusing to do business with any person who follows the law and prohibit credit card companies from refusing service for political or reputational reasons.” [Read more.](#)

**S. 607 – End Speculative Oil and Gas Leasing Act of 2021.** On April 7, official bill text was made available for [S. 607](#), known as the *End Speculative Oil and Gas Leasing Act of 2021*. The bill, sponsored by Sen. Catherine Cortez Masto (D-NV), is “designed to protect public lands from speculative oil and gas leasing.” The measure specifically seeks to ban leasing where there is little to no prospect of energy development. “Nevadans depend on the public lands in our beautiful state for grazing, mining, recreation, and our outdoor and travel economy,” said Sen. Cortez Masto in a statement. “This legislation would protect these landscapes from oil and gas

companies’ speculative oil and gas leasing, including a full ban on any oil and gas leasing in the Ruby Mountains.” [Read more.](#)

**S. 609 – Ruby Mountains Protection Act.** On April 13, official bill text was made available for [S. 609](#), known as the *Ruby Mountains Protection Act*. The bill, sponsored by Sen. Catherine Cortez Masto (D-NV), would “withdraw the National Forest System land in the Ruby Mountains subdistrict of the Humboldt-Toiyabe National Forest and the National Wildlife Refuge System land in Ruby Lake National Wildlife Refuge, Elko and White Pine Counties, Nevada, from operation under the mineral leasing laws.” Specifically, the bill would withdraw approximately 450,000 acres of National Forest System district land from any eligibility for oil and gas leasing. The bill would also expand protection to the 39,926-acre Ruby Lake National Wildlife Refuge and prevents any future land or interest in land acquired by the United States for inclusion in the areas from being used for oil and gas leasing. [Read more.](#)

**S. 624 – Fair Returns for Public Lands Act 2021.** On April 7, official bill text was made available for the bipartisan federal onshore oil and gas royalties bill, [S. 624](#), known as the *Fair Returns for Public Lands Act of 2021*. The measure, sponsored by Sen. Jacky Rosen (D-NV) and Sen. Chuck Grassley (R-IA), would set a uniform federal royalty at 18.75 percent, applied to new oil and gas leases. ([Read more background here](#)) Specifically, the bill would increase the royalty rate for oil and gas leases, from 12.5 percent to 18.75 percent; increase the rental rate for oil and gas leases, from \$1.50 per acre for the first five years and \$2.00 per acre for the remainder of the lease, to \$3.00 per acre for the first five years and \$5.00 per acre for the remainder. It would also

increase the national minimum bid for oil and gas leases, from \$2.00 per acre to \$10.00 per acre, with discretion for the Secretary of the Interior to set a higher minimum bid for individual lease sales or lease parcels as needed; increase the rental and royalty rates for reinstated for oil and gas leases, by establishing a rental rate of \$20 per acre and a royalty rate of 25 percent that applies uniformly to all reinstated leases; establish a fee for expressions of interest, by requiring parties who wish to nominate public lands for oil and gas leasing to pay a fee sufficient to reimburse administrative costs of at least \$15 per acre; require regular adjustments, by directing the Secretary of the Interior to adjust these rates for inflation at least every four years, or earlier if necessary to enhance financial returns or promote more efficient management of oil and gas resources; and require a study, which must be completed in 3 to 5 years and will evaluate the efficacy of the Interior Department's implementation of the bill. [Read more.](#)

**S. 641 – Landowner Fairness Act.** On April 8, official bill text was made available for [S. 641](#), known as the *Landowner Fairness Act*. The bill, sponsored by Sen. Ron Wyden (D-OR), would end the legal presumption that gas exports are by definition in the public interest, standardize gas developers' communications to landowners while also setting time limits on Federal Energy Regulatory Commission actions, sets stricter standards on eminent domain claims, and provides a more robust appeals process for landowners. According to the bill sponsor, the bill "would strengthen the rights of landowners facing eminent domain claims from private companies exploiting public interest provisions to confiscate property in Oregon and nationwide for natural gas pipeline development." [Read more.](#)

**S. 655 – Ending Natural Gas Companies' Seizure of Land for Export Profits Act.** On April 8, official bill text was made available for [S. 655](#), known as the *Ending Natural Gas Companies' Seizure of Land for Export Profits Act*. Sponsored by Sen. Jeff Merkley (D-OR) and Sen. Ron Wyden (D-OR), the bill would "prohibit companies building export pipelines from

using eminent domain claims of private lands. In addition, the legislation would affirm that the federal government does not have the authority to allow companies to use eminent domain to seize state land for natural gas pipelines." [Read more.](#)

## **FEDERAL – Regulatory**

**BLM Leasing – Alaska.** On April 16, the Bureau of Land Management (BLM) published an amended opening order, *Extension of the Opening Order in Public Land Order No. 7899 and Addressing Pending Public Land Orders in Alaska* ([86 Fed. Reg. 20193](#)), which delays former Interior Secretary David Bernhardt's January 2021 order that allowed mining and other mineral leasing on more than 9 million acres of federal land in Alaska. Bernhardt's order was never published in the Federal Register in the final days of the Trump administration, so it never took effect. The April 16 extension publication delays the effective date of the order until April 2023. According to Bloomberg Law, the BLM found "defects" in Bernhardt's order, "including insufficient environmental analysis required by the National Environmental Policy Act, reliance on outdated environmental information and failure to comply with the Endangered Species Act and National Historic Preservation Act." The BLM will "take the next two years to correct the defects and conduct a more thorough analysis," says Interior Department spokesman Tyler Cherry. [Read more.](#)

**Interior Department; National Environmental Policy Act.** On April 16, Interior Secretary Deb Haaland issued [Order No. 3399](#), "Department-Wide Approach to the Climate Crisis and Restoring Transparency and Integrity to the Decision-Making Process," which is aimed at bolstering the National Environmental Policy Act (NEPA) to undue much of the more relaxed regulatory regime under President Trump. "This Order prioritizes action on climate change and establishes a Departmental Climate Task Force. This Order also provides instruction on how science may be used in the decision-making process and clarifies Departmental policy to improve transparency to the public on the Department's

decision-making process.” The Order directs that Interior bureaus and offices should not apply 2020 changes to NEPA “in a manner that would change the application or level of NEPA that would have been applied to a proposed action before the 2020 Rule went into effect.” The Order further directs that in instances where the department’s regulations “irreconcilably conflict” with the Trump-era changes, the issue should be brought to both the relevant assistant secretary within the department and to the White House’s Council on Environmental Quality. [Read more.](#)

**Interior Department Nomination.** On April 14, President Biden announced he will nominate Tommy Beaudreau to be Deputy Secretary of the Interior Department. Most recently an environmental attorney, Beaudreau previously served in the Obama administration as Interior Department chief of staff and as the first director of the Bureau of Ocean Energy Management, as well as the acting Assistant Secretary for Land and Minerals Management in the Interior Department. Beaudreau also played a key role in the aftermath of the Deepwater Horizon spill in his oversight of offshore oil development. [Read more.](#)

**U.S. Department of Labor; FLSA Actions.** On April 9, the U.S. Department of Labor (DOL) issued a Field Assistance Bulletin (FAB) to Wage and Hour Division (WHD) field staff which rescinds Trump-era guidance regarding the practice of seeking liquidated damages in settlements in lieu of litigation in Fair Labor Standards Act (FLSA) cases. According to Bloomberg Law, the FAB action will increase the DOL’s use of liquidated damages—or double the amount of back pay an employer owes—when enforcing wage law violations. This latest move is part of the Biden administration’s policies to enforce FLSA actions more strongly than his predecessor. Former WHD administrator Cheryl Stanton, who was appointed by President Trump, had directed DOL enforcers to not assess liquidated damages when there was not clear evidence of bad faith and willfulness on the business’s part, or if the employer had no prior history of violations. [Read more.](#)

**Office of Natural Resources Revenue.** On April 16, the Office of Natural Resources Revenue (ONRR) published a delay of a final rule, *ONRR 2020 Valuation Reform and Civil Penalty Rule: Delay of Effective Date* ([86 Fed. Reg. 20032](#)), which pushes back the effective date from April 16, 2021 to November 1, 2021 of the final rule entitled “ONRR 2020 Valuation Reform and Civil Penalty Rule” (“2020 Rule”). According to the ONRR, “The purpose of this second delay is to avoid placing undue regulatory burdens on lessees caused by allowing the 2020 Rule to go into effect while ONRR considers whether it will revise or withdraw some or all of that rule due to apparent defects in that rule.” The rule, put in place by the Trump administration, changed the way that royalties are calculated for drilling on federal land and was expected to decrease that amount by \$28.9 million each year in favor of the oil and gas industry. [Read more.](#)

**Office of Natural Resources Revenue.** On April 16, the ONRR published a notice of information collection, *Agency Information Collection Activities: 30 CFR Parts 1227, 1228, and 1229, Delegated and Cooperative Activities With States and Indian Tribes* (86 Fed. Reg. 20194), which is collected “to review and approve delegation proposals from a State that is seeking to perform royalty management functions and to prepare a cooperative agreement with a State or Indian tribe seeking to perform royalty audits and investigations.” According to the ONRR, this information collection is used to “Review and approve delegation proposals from states seeking to perform royalty management functions, and (2) prepare a cooperative agreement with a State or Indian tribe seeking to perform royalty audits.” The public comment period is open through June 15, 2021. [Read more.](#)

**Office of Natural Resources Revenue.** On April 7, the ONRR published a notice, *Major Portion Prices and Due Date for Additional Royalty Payments on Gas Produced From Indian Lands in Designated Areas That Are Not Associated With an Index Zone* ([86 Fed. Reg. 18072](#)), regarding “major portion prices applicable to calendar year 2019 and the date by



which a lessee must report and pay any additional royalties due under major portion pricing.” According to the ONRR notice, the due date to pay additional royalties based on the major portion prices is May 31, 2021. The notice is applicable only to Indian lands. [Read more.](#)

#### **Resource Advisory Council Meeting – Colorado.**

On April 9, the Bureau of Land Management (BLM) published *Notice of Joint and Individual Colorado Resource Advisory Council Meetings* ([86 Fed. Reg. 18554](#)), announcing upcoming Resource Advisory Council (RAC) meetings for Colorado over multiple days in May. “The Colorado RACs advise the Secretary of the Interior, through the BLM, on a variety of public-land issues in Colorado” and will consider multiple topics for discussion. The meetings are open to the public and will be held via the Zoom Webinar Platform. Written comments may be submitted in advance of the RAC meetings. [Read more.](#)

**Resource Advisory Councils.** On April 5, the BLM published a notice of information collection and request for public comment regarding the Resource Advisory Council (RAC) application. In its notice, *Agency Information Collection Activities; Bureau of Land Management Resource Advisory Council Application* ([86 Fed. Reg. 17635](#)), the BLM is seeking feedback on the RAC application and process used “to determine education, training, and experience related to possible service on advisory committees.” The public comment period is open through June 4, 2021. [Read more.](#)

### **FEDERAL – Judicial**

**Offshore Drilling – Ninth Circuit (Alaska).** On April 13, the U.S. Court of Appeals for the Ninth Circuit, on appeal from the U.S. District Court for the District of Alaska, ruled in favor of the Biden administration in consolidated cases, [League of Conservation Voters v. Biden](#) (Case No. 19-35460), upholding Obama-era orders for Arctic and Atlantic Ocean protections which were rescinded by then-President Trump which unwound the Obama administration’s permanent ban on offshore oil and gas drilling in the

oceans. The Court held that since President Biden had revoked President Trump’s executive order the case was now moot, concluding that “[b]ecause the terms of the challenged Executive Order are no longer in effect, the relevant areas of the OCS [outer continental shelf] in the Chukchi Sea, Beaufort Sea, and Atlantic Ocean will be withdrawn from exploration and development activities regardless of the outcome of these appeals.” [Read more.](#)

#### **Dakota Access Pipeline – Washington, DC.**

(*Update to 2/8/21 Weekly Report*) On April 9, the Biden administration angered environmental and tribal groups when it told the court during a case status conference that it will not ask the court to order the Dakota Access Pipeline (DAPL) to shut down pending an environmental review by the government. Ben Schiffman, an attorney representing the U.S. Army Corps of Engineers, said the federal government is requiring the pipeline to abide by conditions that were set in a now-vacated permit that allowed for its construction but “has not taken any additional action.” [Read more.](#) For background, on January 26, the U.S. Court of Appeals for the District of Columbia upheld a lower court’s decision regarding the 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. That prior order, while vacating easements granted for the pipeline construction to cross federally owned land, did not immediately shut down the pipeline. [Read more.](#) 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 when it granted the easement to construct the pipeline under Lake Oahe (which is a large reservoir lying behind a dam on the Missouri River and stretching between North and South Dakota). [Read more.](#)

**Royalties; Leasing – Arkansas.** On March 31, in *Pennington v. BHP Billiton Petroleum (Fayetteville), LLC* (Case No. 4:20-cv-00178-LPR), the U.S. District Court for the Eastern District of Arkansas, addressed a motion to dismiss regarding royalty payment obligations under numerous leases. The lessor-defendants argued that the claims were time-barred and should be dismissed. The Court found it would be bound by decisions of the Arkansas Supreme Court as to the meaning of Arkansas law. As such, the Court remanded the case to the Arkansas Supreme Court to determine how the statute of limitations would be applied to the royalties at issue, specifically whether each monthly royalty underpayment would serve as a separate breach of contract with its own five-year limitations period. [Read more.](#)

**Climate Change Lawsuit – New York.** On April 1, in *City of New York v. Chevron Corp.* (Case No. 18-21880, the U.S. Court of Appeals for the Second Circuit (New York) ruled against New York City in its ongoing lawsuit against five multinational oil companies under New York tort law seeking to recover damages for the harms caused by global warming. The district court had dismissed the city's complaint, and here, the Second Circuit court affirmed the dismissal. The Court held that "global warming is a uniquely international concern that touches upon issues of federalism and foreign policy. As a result, it calls for the application of federal common law, not state law. Second, the Clean Air Act grants the Environmental Protection Agency — not federal courts — the authority to regulate domestic greenhouse gas emissions. Federal common law actions concerning such emissions are therefore displaced. Lastly, while the Clean Air Act has nothing to say about regulating *foreign* emissions, judicial caution and foreign policy concerns counsel against permitting such claims to proceed under federal common law absent congressional direction." And insomuch as "no such permission exists, each of the City's claims is barred and its complaint must be dismissed." [Read more.](#)

**EPA Greenhouse Gas Emissions Rule.** On April 5, a

three-judge panel of the U.S. Court of Appeals for the District of Columbia Circuit vacated a Trump-era rule that limited Environmental Protection Agency (EPA) authority over greenhouse gas emissions, and which only allowed future greenhouse gas limits on power plants, "sidestepping oversight over the oil and gas industry, iron and steel manufacturers and other polluting industries." (See *Pollutant-Specific Significant Contribution Finding for Greenhouse Gas Emissions From New, Modified, and Reconstructed Stationary Sources: Electric Utility Generating Units, and Process for Determining Significance of Other New Source Performance Standards Source Categories*; [86 Fed. Reg. 2542](#); January 13, 2021.) Since EPA calculations showed that the oil and gas sector contributed between only 2.5 percent and 3 percent of U.S. greenhouse gas emissions, it was exempt from tougher regulations under the Trump rule. However, the Court's latest decision in [California v. Environmental Protection Agency](#) (Case No. 21-1035) overturns that rule and was supported by the Biden administration. In response to the decision, an EPA spokesperson said that the agency "will follow the science and law in accordance with the Biden-Harris Administration's executive orders and other directives in reviewing all of the agency's actions issued under the previous Administration to ensure that they protect public health and the environment." [Read more.](#)

## **STATE – Legislative**

### **Mineral Rights; Tax Assessments – Arkansas.**

On April 12, HB 1755 was signed into law by Gov. Asa Hutchinson (R). The Act, sponsored by Rep. Lane Jean (R), amends existing law regarding the assessment of mineral rights for property tax purposes by amending assessment standards for the valuation of oil wells and production equipment for property tax assessments by mandating that production equipment, defined as "piping and other equipment of an oil well from the bottom of the casing to and including the sales valve at the tank battery" be assessed as real property; requiring the assessment of production equipment at a value of one dollar (\$1.00) per foot; prohibiting taxation of oil

well casings that have been rendered inoperable as a result of a cement or mechanical plug; requiring uniform expense deductions per barrel of oil, regardless of the average daily production, when calculating the working interest value of an oil well; and limiting production increases for oil wells being valued as newly discovered property to production from a newly producing geographic zone or horizon. The Act is effective January 1, 2022. [Read more.](#)

**Hydraulic Fracturing Ban – California.** (*Update to 2/22/21 Weekly Report*) In a victory for the oil and gas industry, on April 13, [SB 467](#), the hydraulic fracturing ban and well setback bill, failed in the Senate Natural Resources and Water Committee by a 4-3 vote. This is a major failure for embattled Gov. Gavin Newsom (D) who had called on state lawmakers as recently as September to ban hydraulic fracturing and also voiced support for buffer zones around wells. [Read more.](#) According to reports from Bloomberg Government, the bill's primary sponsor, Sen. Scott Weiner (D) had initially said the bill would "jump-start the conversation of how and when California will phase out oil and gas extraction in the state." But now, "the bill's defeat means the conversation could be on hold." The bill would have revised the definition of 'well stimulation treatment' to include steam flooding and water flooding and prohibited the issuance or renewal of a permit to conduct hydraulic fracturing, acid well stimulation treatment, steam flooding, water flooding, or cyclic steaming for the extraction of oil and gas beginning January 1, 2022, and would prohibit new or repeated hydraulic fracturing, acid well stimulation treatments, steam flooding, water flooding, or cyclic steaming, except as conducted pursuant to a permit lawfully issued before that date. The bill would have then prohibited all hydraulic fracturing, acid well stimulation treatments, steam flooding, water flooding, cyclic steaming, or other well stimulation treatments beginning January 1, 2027. The bill also would have made certain hydraulic fracturing activities a crime. Regarding setbacks, the bill also would have prohibited "the issuance of new or renewed permits for oil and gas

extraction more generally within 2,500 feet of homes, schools, healthcare facilities, prisons and dormitories by the start of 2022." [Read more.](#)

**Abandoned Wells; Plugging – Kansas.** (*Update to 1/11/21 Weekly Report*) On April 9, Gov. Laura Kelly (D) signed HB 2022 into law. The Act, sponsored by Rep. Troy Waymaster, updates "the state corporation commission's authority to regulate and determine responsibility for abandoned oil and gas wells and abolishing the well plugging assurance fund and transferring all assets and liabilities to the abandoned oil and gas well fund." The Act is effective July 1, 2021. [Read more.](#)

**Risk Charges; Nonparticipating Mineral Owners – Louisiana.** On April 12, Sen. Bob Hensgens (R) introduced SB 59. The bill provides for the risk charge against nonparticipating mineral owners in drilling units, and among other amendatory provisions, sets forth the obligations owed by the lessee and drilling owner with respect to the payment of any lessor royalty and overriding royalty due. [Read more.](#)

**Severance Taxes – Louisiana.** On April 12, Sen. R. L. Bret Allain, II (R) introduced SB 171. The bill provides for severance tax exemptions and site-specific trust funds for certain orphan wells. [Read more.](#)

**Severance Taxes – Louisiana.** On April 12, Rep. Danny McCormick (R) introduced HB 26. The bill would change the value required for crude oil produced from stripper wells to be exempt from severance tax. [Read more.](#)

**Severance Taxes – Louisiana.** On April 12, Rep. Phillip DeVillier (R) introduced HB 30. The bill reduces the severance tax rate for oil over a certain period of time and fixes the severance tax rate for oil produced from certain wells at the current rate. [Read more.](#)

**Severance Taxes – Louisiana.** On April 12, Rep. Jean-Paul Coussan (R) introduced HB 57. The bill exempts oil produced from orphaned wells, newly

drilled wells, or newly completed wells that are undergoing or have undergone well enhancements including but not limited to re-entries, workovers, or plugbacks from certain severance taxes under certain circumstances. [Read more.](#)

**Fossil Fuels Sanctuary State – Louisiana.** On April 12, Rep. Danny McCormick (R) introduced HB 617. The bill establishes Louisiana as a fossil fuels sanctuary state and would prohibit any agency, political subdivision, or employee of an agency or political subdivision from knowingly and willingly participating in the enforcement of any federal act, law, order, rule, or regulation which negatively impacts fossil fuel energy in the state. [Read more.](#)

**Notaries Public – Maryland.** On April 13, SB 212, sponsored by the Senate Judicial Proceedings Committee (D), was signed into law by Gov. Larry Hogan (R). The Act “clarifies the information that must be included in the official stamp of a notary public.” The Act “repeals a requirement that the official stamp of a notary public include the notary public’s ‘jurisdiction’ and specifies that for a notary public who resides in the State, the official stamp must include the county in which the notary public resides. For a notary public who resides outside the State, the official stamp must include the county in which the notary public was qualified.” The Act is effective July 1, 2021. [Read more.](#)

**State Personal Income Tax – Mississippi.** The state’s attempt to repeal the personal income tax failed when it died in committee during the legislative session. [HB 1439](#) would have phased out “the state’s individual income tax by making the personal exemption more generous over time, funded by increases to sales and excise tax rates and the dedication of future revenue growth to the tax’s elimination.” According to Bloomberg Law, Gov. Tate Reeves (R) expressed concerns over the replacement of income taxes with hikes on sales and sin taxes. Policy studies found the poorest of Mississippians would feel the greatest impact of those tax hikes. Instead, in his budget Gov. Reeves called for belt-tightening and long-term cuts to

education and infrastructure, asserting, “It will not be necessary for us to increase other taxes in order to make up for lost revenue from the elimination of the income tax.” [Read more.](#)

**Hard Rock Mining – Montana.** (*Update to 2/8/21 Weekly Report*) On April 8, Gov. Greg Gianforte (R) signed SB 53 into law. The Act, sponsored by Sen. Jeff Welborn (R), provides the Department of Environmental Quality hard rock mining program with 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. The Act is effective October 1, 2021. [Read more.](#)

**Stripper Oil Taxation – Montana.** On April 7, HB 661 passed the House. The bill, sponsored by Rep. Joshua Kassmier (R), revises taxation of stripper oil and gas wells, and provides for definitions and lowers tax rates on stripper oil production. [Read more.](#)

**Local Air Quality Regulations – New Mexico.** (*Update to 2/22/21 Weekly Report*) On April 8, Gov. Michelle Lujan Grisham (D) signed SB 8 into law. The Act, sponsored by Sen. Peter Wirth (D), amends three sections of law to allow the state and local governments to adopt certain environmental regulations that are more stringent than federal regulations. First, the Act removes provisions that currently prohibit the Environmental Improvement Board (EIB) and the local board, i.e. the Albuquerque/Bernalillo County Air Quality Control Board, from adopting certain types of state air quality regulations and standards that are more stringent than federal regulations and standards under the Clean Air Act. SB 8 also amends part of the Hazardous Waste Act to remove language that prohibits regulations for hazardous waste from being more stringent than regulations under the federal Resource Conservation and Recovery Act unless the EIB confirms that existing federal regulations are insufficient to protect public health and the



environment. SB 8 also repeals existing provisions regarding EIB duties and powers and local board for attainment and maintenance of national ambient air standards for ozone and replaces it “with new language requiring the EIB and local board to address ozone pollution when national ambient air quality standards are elevated, as the existing statute does, but with fewer items for the board to consider during rulemaking than in current law and with no restrictions to the types of sources from which the board or local board may seek emission reductions.” The Act is effective July 1, 2021. [Read more.](#)

**Environmental Database Act – New Mexico.**

*(Update to 1/25/21 Weekly Report)* On April 7, HB 51 was signed into law by Gov. Michelle Lujan Grisham (D). The Act, sponsored by Rep. Gail Chasey (D), creates 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. Because no effective date was provided in the bill, under New Mexico law, the Act is effective 90 days after session adjournment (March 20, 2021). [Read more.](#)

**Omnibus Tax Legislation – New Mexico.** *(Update to 2/22/21 Weekly Report)* On April 7, HB 98 was signed into law by Gov. Michelle Lujan Grisham (R). This broad Omnibus Tax bill includes provisions related to the energy industry such as extending the Renewable Energy Production Tax Credit; and amends the Oil and Gas Conservation Tax Act, the Oil and Gas Emergency School Tax Act, and the Oil and Gas Ad Valorem Production Tax Act by defining “volume” regarding oil and natural gas. The Act has multiple effective dates. [Read more.](#)

**Notarial Acts – New Mexico.** *(Update to 2/22/21 Weekly Report)* On April 7, SB 12 was signed into law by Gov. Michelle Lujan Grisham (R). The Act, sponsored by Sen. Daniel Ivey-Soto (D), enacts the Revised Uniform Law on Notarial Acts, which among provisions allows for remote notarization, electronic

signatures, sets fees, and provides for certain administrative processes. The Act is effective January 1, 2022. [Read more.](#)

**Permit Violations – New Mexico.** *(Update to 1/25/21 Weekly Report)* On April 6, HB 76 was signed into law by Gov. Michelle Lujan Grisham (R). The Act, sponsored by Rep. Christine Chandler (D), allows the denial of a permit application or to 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. Because no effective date was provided in the bill, under New Mexico law, the Act is effective 90 days after session adjournment (March 20, 2021). [Read more.](#)

**Oil Extraction Tax Credit – North Dakota.** *(Update to 2/8/21 Weekly Report)* On April 12, Gov. Doug Burgum (R) signed SB 2328 into law. The Act, sponsored by Sen. Corey Mock (D), relates to a tax credit for oil produced from a well site using an onsite flare mitigation system and provides provisions for the credit. The Act applies to flare mitigation from a qualifying well on which a flare mitigation system is installed between June 30, 2021 and July 1, 2023 and is effective through June 30, 2023. [Read more.](#)

**State Regulations – Oklahoma.** On April 12, Gov. Kevin Stitt (R) signed [SB 913](#) into law. The Act, sponsored by Sen. Julie Daniels (R), will “improve democratic oversight of the state’s regulatory agencies by creating a legislative joint committee to review proposed agencies rules and an expeditious process to repeal old ones,” according to the governor’s office. Specifically, “the measure allows the Legislature to repeal an agency rule by joint resolution and removes the Governor’s authority to repeal agency rules by declaration. Additionally, the measure requires agencies to respond to small businesses requesting a review of their rules no later than 90 business days and to the Legislature or Governor within 30 days instead of the 90 days currently provided for in law.” The Act will limit the ability of state agencies to promulgate rules that are at odds with the will of the people and elected



lawmakers. “The Legislature is the voice of the people and has the constitutional responsibility to make law and policy for the State of Oklahoma,” wrote the Pacific Legal Foundation, which defends against government overreach and supported the bill. “Senate Bill 913 gives the Legislature the tools necessary to prevent overly burdensome regulations from being enacted, and also the ability to quickly cut bad or unnecessary rules.” The Act will be effective September 1, 2021. [Read more.](#)

**Railroad Commission – Texas.** On April 13, HB 3039 passed the House Energy Resources Committee. Sponsored by Rep. Jake Ellzey (R), the bill would allow the Railroad Commission to electronically send certain notices related to delinquent inactive well contracts, certificate of compliance cancellations, surface mine bonding, and quarry safety certificate applications. [Read more.](#)

**Permit Applications – Texas.** (*Update to 1/25/21 Weekly Report*) On April 12, SB 367 passed the Senate and has been transmitted to the House. The bill, sponsored by Sen. Borris Miles (D), 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.](#)

**Natural Resources – Virginia.** (*Update to 1/25/21 Weekly Report*) On March 30, Gov. Ralph Northam (D) signed HB 1836 into law. The Act, sponsored by Del. Kenneth Plum (D), changes the title of the Secretary of Natural Resources to the Secretary of Natural and Cultural Resources. The Act is effective

July 1, 2021. [Read more.](#)

**Worker Classification – Virginia.** (*Update to 1/25/21 Weekly Report*) On March 30, Gov. Ralph Northam (D) signed HB 2134 into law. The Act, sponsored by Del. Amanda Batten (R), 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.” The Act is effective July 1, 2021. [Read more.](#)

**State Personal Income Taxes – West Virginia.** On April 9, the West Virginia legislature’s attempt to eliminate the state personal income tax failed with the session ending April 10. According to Bloomberg Law, regarding the Republican-backed bill, HB 3330, “lawmakers couldn’t reconcile differences between competing plans to either phase out or immediately reduce and eventually remove the individual income tax during the last day of the state’s legislative session. They couldn’t agree on a way to substitute revenue and passed the budget without any major tax changes, leaving it unclear whether they will revisit the topic in a special session later this summer.” [Read more.](#)

**Independent Contractors – West Virginia.** (*Update to 4/5/21 Weekly Report*) This entry provides an update with further details for members regarding the beneficial independent contractor bill signed into law on March 19 by Gov. Jim Justice (R). [SB 272](#), sponsored by Sen. Craig Blair (R), simplifies the criteria used to define independent contractors and imposes objective standards on the differentiation of independent contractors from employees. [Read more.](#) According to the law firm, Spilman Thomas & Battle, PLLC, “For years, West Virginia businesses have had to consider varying standards for determining whether a worker is considered an employee or an independent contractor by state agencies. The West Virginia Legislature has attempted to fix that problem by

enacting the West Virginia Employment Law Worker Classification Act ('the Act'). The purpose of the Act is to create a single test for distinguishing employees from independent contractors under West Virginia workers' compensation law, unemployment compensation, the Human Rights Act, and the Wage Payment and Collection Act. According to the Act, the intent was to have 'clear, objective, and certain standards for determining who is an employee and who is an independent contractor' under those state laws. While the Act will not govern federal agencies, such as the Department of Labor or the Internal Revenue Service, the criteria used by the Act are based on the concepts used by those federal agencies. Under the Act, for a person to qualify as an independent contractor, that person must both 'actually and directly control the manner and means by which the work is to be accomplished' and satisfy three or more of a list of nine stated criteria. The designated criteria are ones that have historically been used to identify an independent contractor relationship such as having control of the amount time spent providing services, not being required to work exclusively for one business, the freedom to hire employees or contract with assistance, and being responsible for bearing the costs of any licenses, certifications, insurance, or permits that the worker needs to perform their services. If a worker meets those tests, then the Act establishes a type of safe harbor where the independent contractor signs a written agreement acknowledging the independent contractor status and obligation to pay federal and state income taxes." The Act is effective June 9, 2021. [Read more.](#)

**State Land Leases – Wyoming.** (*Update to 3/8/21 Weekly Report*) On April 9, Gov. Mark Gordon (R) vetoed SF 114. The bill, sponsored by Sen. Brian Boner (R), related to state lands, and would have amended existing law to require auctions under certain circumstances and provide for preferred rights in rental offers. [Read more.](#)

**Federal Oil and Gas Suspension – Wyoming.** (*Update to 3/8/21 Weekly Report*) On April 6, Gov. Mark Gordon (R) signed SJ 3. The Joint Resolution requests "Congress and the federal government to

reverse federal orders and actions that inhibit the safe development of oil and gas in Wyoming and that negatively and disproportionately impact Wyoming citizens and industries." [Read more.](#)

#### **Mine Product Taxes; Natural Gas – Wyoming.**

On April 14, Gov. Mark Gordon (R) signed HB 189 into law. The Act, sponsored by Rep. Hans Hunt (R), amends existing law regarding the mine product tax, clarifying the imposition of severance taxes on natural gas that is consumed on-site. The Act is effective January 1, 2022. [Read more.](#)

### **STATE – Regulatory**

**Hydraulic Fracturing Ban – Multiple States.** On April 13, [nearly 400 state and local elected officials sent a letter to President Biden and Congressional leadership](#) calling on national leaders to halt permitting for new hydraulic fracturing and fossil fuel infrastructure projects and to revoke existing permits for oil and gas extraction within 2,500 feet of homes and schools. The letter writers also seek an end to subsidies for the fossil fuel industry and support a just transition to clean energy for workers and communities impacted by fossil fuels as well as a nationwide hydraulic fracturing ban by 2025. [Read more.](#)

### **STATE – Judicial**

#### **State Leases; Overriding Royalty Interests –**

**Alaska.** On April 9, in *PLC, LLC and MH2, LLC v. Alaska* (Case No. S-17500), the Alaska Supreme Court addressed a case regarding an overriding royalty interest (ORRI) in a state oil and gas lease and the expansion of a unit. The plaintiffs held the ORRI and the unit operator applied to expand a subset of that unit which the Department of Natural Resources (DNR) ultimately approved. The plaintiffs' ORRI was included in the original application by the unit operator, but it was left out of the approved application. The plaintiffs appealed the decision to the DNR Commissioner who dismissed the appeal on the grounds that the plaintiffs lacked standing. The plaintiffs then appealed to the superior

court, which affirmed the Commissioner's decision. Here, the Supreme Court held that because the plaintiffs have a financial stake in DNR's decision whether to approve the unit operator's proposal for unit expansion to include the plaintiffs' associated lease, the plaintiffs have standing, and thus the case was remanded back to DNR for further consideration. [Read more.](#)

**Marketable Title Act – Ohio.** On March 31, the Ohio Court of Appeals, Seventh Appellate District, addressed a dispute involving the Marketable Title Act (MTA) in [O'Kelley, Jr. v. Rothenbuhler](#) (Case No. 2021-Ohio-1167). The case centered on the interpretation of a 1969 deed reference, for which the court determined that "the language was not sufficiently specific to save a severed mineral interest from extinguishment under Ohio's Marketable Title Act." At issue was the question of whether the language in the deed that was the root of title which stated "and also excepting the oil and gas minerals..." was sufficiently specific to stop extinguishment under the MTA. The trial court granted summary judgment in favor of the defendants-appellees, holding that it was not specific and, thus, was extinguished by the MTA. Here, the Seventh District appellate court agreed. [Read more.](#)

**Purchase and Sale Agreement; Assignments; Arbitration – Texas.** On April 9, in *Sundown Energy LP v. HJSA No. 3 LP* (Case No. 19-1054), the Texas Supreme Court decided a case involving a contract dispute over the interpretation of a mineral lease's "continuous drilling program" provision. The lessor contended that the provision operates as a special limitation that terminated the lease as to non-producing tracts when the lessee failed to timely "spud-in" new wells. The Supreme Court, however, ruled against the lessor and held that under the lease's special definition of "drilling operations," activities other than spudding-in a well "are sufficient to maintain the lease as to non-producing tracts." Because the lessee timely conducted "drilling operations," as that term is defined in the lease, the Supreme Court held that the Court of Appeals erred in ruling against the lessee on the contract

construction issue. [Read more.](#)

**Purchase and Sale Agreement; Assignments; Arbitration – Texas.** On April 9, in *Wagner v. Apache Corp.* (Case No. 19-0243), regarding a Purchase and Sale Agreement and oil assignment, the Texas Supreme Court decided whether indemnity claims fall within an exception to an arbitration clause. Also, at issue was whether non-signatory assignees are bound by the agreement to arbitrate. The trial court held that the claims fell within the exception and should not be arbitrated. The Court of Appeals reversed, holding that the claims did not fall within the exception and also held that the non-signatory assignees were bound by the agreement under a theory of assumption. Here, the Supreme Court agreed with the Court of Appeals and affirmed the decision and remanded the case back to the lower court for arbitration proceedings. [Read more.](#)

**Climate Change Litigation – Texas.** On April 5, ExxonMobil filed its [Reply in Support of Petition for Review](#) in the Texas Supreme Court in the ongoing climate change lawsuit brought against oil and gas companies by out-of-state municipalities regarding the alleged impacts of climate change. In *ExxonMobil Corp. v. City of San Francisco* (Case No. 20-0558), litigants "allege that the companies are engaging in activities that have caused or are causing an imminent rise in sea levels, and seek billions of dollars in damages from the companies, allegedly to address this risk." In their petition, ExxonMobil writes that the out-of-state municipalities "have targeted the state by filing lawsuits against 18 Texas-based oil and gas companies to suppress free speech in Texas and coerce the adoption of so-called progressive views on climate change in Texas. Their attempt to wrest an important policy debate from Texas citizens is an assault on Texas itself." AAPL will continue to monitor the case as it progresses. [Read more.](#)

## **INDUSTRY NEWS FLASH**

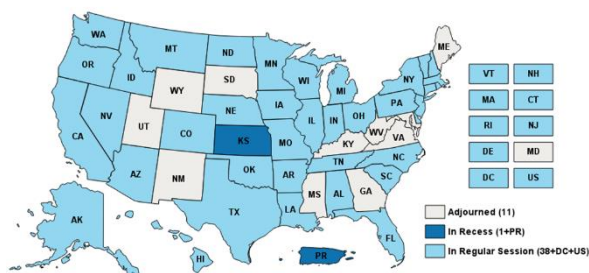
► **EQT supports tighter caps on methane leaks from natural gas wells.** On April 15, EQT announced its support for Congressional resolutions which

would rescind the Trump-era rollback of Obama-era limits on emissions from new oil and gas wells. EQT also announced its plans to obtain third-party certification for its produced gas. [Read more](#).

► **Occidental rejects carbon tax.** During the April 6, Texas Independent Producers & Royalty Owners Association 75th Annual Convention, Occidental CEO Vicki Hollub told attendees that unlike some of the other large oil and gas companies and most recently, the American Petroleum Institute, her company prefers the existing system of tax credits designed to encourage oil companies to store carbon dioxide and reduce emissions, rather than a carbon tax. [Read more](#).

## LEGISLATIVE SESSION OVERVIEW

### States in Session



**Session Notes (by date):** Alabama, Alaska, Arizona, Arkansas, California, Colorado, Connecticut, Delaware, Florida, Hawaii, Idaho, Illinois, Indiana, Iowa, Louisiana, Massachusetts, Michigan, Minnesota, Missouri, Montana, Nebraska, Nevada, New Hampshire, New Jersey, New York, North Carolina, North Dakota, Ohio House, Oklahoma, Oregon, Pennsylvania, Rhode Island, South Carolina, Tennessee, Texas, Vermont, Washington, and Wisconsin are in regular session. The U.S. Congress is also in session. The following states are in recess until the dates provided: **Ohio Senate** (April 20) and **Kansas** (May 3).

The following states adjourned their 2021 legislative sessions on the dates provided: **West Virginia** (April 10) and **Maryland** (April 12).

The following states are scheduled to adjourn their 2021 legislative sessions on the dates provided:

**Arizona** (April 24), **Washington** (April 26), **Montana** and **North Dakota** (April 28), **Indiana** (April 29) and **Arkansas, Florida, Iowa, and Tennessee** (April 30).

### Signing Deadlines (by date): New Mexico

Democratic Gov. Michelle Lujan Grisham had until April 9 to sign or veto regular session legislation or it was pocket vetoed and has until April 20 to sign or veto special session legislation or it is pocket vetoed. **South Dakota** Republican Gov. Kristi Noem has until April 19 to sign or veto legislation or it becomes law without signature. **Wyoming** Republican Gov. Mark Gordon has until April 22 to sign or veto legislation or it becomes law without signature. **West Virginia** Republican Gov. Jim Justice has until April 28 to sign or veto legislation or it becomes law without signature. **Georgia** Republican Gov. Brian Kemp has until May 10 to sign or veto legislation or it becomes law without signature. **Maryland** Republican Gov. Larry Hogan has until June 1 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. **Kentucky** Democratic Gov. Andy Beshear has 10 days from presentment, except Sundays, to sign or veto legislation or it becomes law without signature. **Mississippi** Republican Gov. Tate Reeves has 15 days from presentment, except Sundays, to sign or veto legislation or it becomes law without signature. ■

This report is provided exclusively for AAPL members. If you have received this report as a non-member, please contact AAPL member services to learn more about joining AAPL. For more information, email [membership@landman.org](mailto:membership@landman.org) or call us at: 817-847-7700.

CONTENT DISCLAIMER: Information and/or website sources provided in this report may be among the many resources available to you. This report does not endorse nor advocate for any particular attorney or law firm, nor other private entity, unless expressly stated. Any legal, financial, and/or tax information contained herein is provided solely for informational purposes and does not represent legal, financial, or tax advice on behalf of AAPL and/or its affiliates. Links to outside sources are provided for reference only and any cited outside source is derived solely from material published by its author for public use. Any copyrighted material remains the property of its respective owner and no use or distribution authorization is granted herein.