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To: IPANM members
From Karin Foster
Re: New Mexico Half way point legislature report
Date: February 17, 2013

Dear IPANM members –

We have reached the half way point in the 2013 Session which means introduction of legislation has concluded. However, leadership in both the House and Senate have ‘dummy’ bills which can be used to introduce new legislation. Given the numerous bills attacking industry that have already been introduced, I will be watching very carefully for a stealth dummy bill that could have a negative impact on our membership.

Because the tables are getting quite long, I have included a new column that I hope you will find useful. Also, note that titles in RED are bills I am actively working to kill or substantially amend. Titles in BLUE are bills that industry should support. Text in GREEN is new text from this week’s table. The green text will be useful for you to track the most recent updates on previously introduced bills. The table I sent out last week has all the abbreviations for committees. Recall that for a bill to become law, it must pass, by majority vote each committee and the floor and then the respective opposite chambers; committees and floor. The bill must then be signed by the Governor for it to become law. I have noted whether a bill is still in first committee that means it has a significantly reduced chance of passage since it the committees and floor calendars are quite bottled up at this point.

In addition, on the county front, SB 463 seeks to limit counties and municipalities from promulgating oil and gas regulations because the State has vested that authority in the Oil Conservation Commission in the Oil and Gas Act. The bill has been introduced and is assigned to be heard in the Senate Conservation Committee and the Senate Judiciary Committee prior to the Senate Floor. I have spoken to the Senate Conservation Chairman who is reluctant to put the bill on for hearing as he fears opposition from Santa Fe residents, the Association of Counties and the New Mexico Municipal League. There are 26 days left in the Session and the bill still has a long way to go even after it gets out of Senate Conservation.

As always, it is an honor to work for this industry. Please contact me if you have any questions.
Karin

HOUSE Bills

Bill Numbers		Bill Names	Committee Assignments	Sponsors	quick status
House	Senate				
HB 5		Dept. of Game & Fish Appropriation Act	HHGIC/HAFC	Stewart	
					watching
Provides funding to the NMGFD that is different than recommended by the Governor; sponsor amended the bill to exclude funding for species conservation and replaced that language with wildlife management. The bill is awaiting a hearing in HAFC but the bill will probably be rolled into HB 2					
HB 19		Status of Water Rights under Lease	HAGC/HJC	Gonzales	watching
	SB 188		SCONC/SJC	Griego	watching
this bill might assist in leasing water rights for temporary oil and gas development. HB 19 passed HAGC 10-0 ; SB 188 has not had a hearing as of yet.					
HB 108		Rules Development Requirements	HHGIC/HJC	Gentry	
					support
A regulatory reform effort carried by the House Minority Whip; this is a good bill that will require state agencies to have more public participation in drafting of regulations; hearings and will extend the public comment period to a set 30 days after initial publication of the rule Passed HHGIC 11-0 .					
HB 136		Disclosure of Fracturing Fluid Composition	HENRC/HAGC/HJC	Egolf	waiting hearing in 2nd committee
During the hearing in HENRC an amendment to require notification of constituents used for a HF to surface owners and the public 30 days prior to completion operations was added both amendment and bill passed on 7-5 partyline vote. Adds a new section to the Oil and Gas Act to require that operators disclose the composition of HF fluids to the IOGCC or GWPC of all ingredients that go down-hole regardless if required on an MSDS sheet; allows for land owner and adjacent landowners, any agency of the state or the federal government to overcome a trade secrets exemption; AG King representative was expert on bill					
HB 189		No false statements to environment department	HENRC/HJC	Egolf	substituted to amend OG out
IPANM worked with the NMED to amend this Governor's bill; The bill was substituted on 2/4 - now it applies only to liquid waste systems owned by a public entity; I will continue to watch this to ensure it does not get amended again. This bill seeks to criminalize misstatements made to the department; a fourth degree felony for a misrepresentation (18 months jail); a third degree felony if the misrepresentation caused an 'adverse impact to the environment' (three years jail) and a second degree felony if the misrepresentation caused serious bodily injury (15 years jail). While the Department claims that a 'knowing element is necessary, as drafted this is not the case HB 189 . There is also a \$10,000 per day penalty from the date of the misrepresentation to the date the penalty is imposed. This bill covers any reporting required under the Environmental improvement Act, the air Quality Control Act; Ground Water Protection Act or the Environmental Compliance Act.					
					watching

Bill Numbers		Bill Names	Committee Assignments	Sponsors	quick status
House	Senate				
HB 214		Oversized Oilfield Vehicle Hours of operation	HTPWC/HJC	Roch	support
Amends Section 66-7-413.6 to allow for 24 hour operations of oilfield equipment transport vehicles with special permits. The bill passed out of Transportation 2/19.					
HB 259		Recover Damages for Natural Resource Injuries	HENRC/HJC	Kane	Tabled
<p>On 2/6 the hearing was held on HENRC; The bill was stalled on a tie vote; voting to kill the bill were Republicans Ezzell, Strickler, Bratton and Lewis. Democrat Rep Magdalena provided the final vote to hold the bill in committee; this is a big win for industry as this bill was terrible. Note that AG King proposed this bill and sent a representative to be the expert and Commissioner Powell also sent a representative to support this bill. This bill is a power grab by the appointed Natural Resources Trustee to significantly expand her authority; HB 259 expands the definition of 'facility' beyond the scope of CERCLA (42 USC §§9601 et seq) to protect any resource impacted by 'injurious' substances. The bill defines an injurious substance as any hydrocarbon or anything that poses a 'potential hazard to human health or the environment when improperly treated, transported or disposed of; it expands the list of natural resources to protect to include minerals, soils, sediments geologic resources, ground water and all surface water; the bill requires damages paid for any intentional or unintentional release of an injurious substance imposing joint and several liability on the current owner, any past owners, anyone who arranged for release, disposal or treatment of the substance at the facility and anyone who transported to a disposal or treatment facility. The damages assessed include cost of restoration or replacement; value of the resource lost to the public and the full cost of investigating, assessing and collecting damages and enforcing the state's rights.</p>					
HB 285		Pipeline Safety Act Violation Penalties	HBIC/HJC	McCamley	watching
<p>This bill passed HBIC on an 11-0 vote; this is not a concern for upstream and no midstream companies testified against the bill; this may be necessary for federal funding; This bill changes the penalty provisions for violations of the Act from \$25,000 per violation per day with a max of \$500,000 to apply federal law 49 CFR 190.223(a) - \$100,000 per day per violation with a max of \$1,000,000 for any related series of violations. Attaching NM Statutes to Federal law is not good for business certainty as the federal rules could change with no NM input.</p>					
HB 286		Oil and Gas Financial Assurance	HENRC/HJC	Chasey	1st committee
				M. Sanchez	
<p>HB 286 will be reheard in HENRC on 2/20; Several D's had concerns about targeting mineral owners and the overall cost of bonding as proposed. The sponsor offered to amend the bill to a \$100,000 max bond and take out the potential liability for mineral owners. Review of Committee Sub: IPANM will still strongly oppose this bill. The sub increases financial assurance from \$50,000 blanket to \$100,000 minimum plus a financial assurance of \$5000 per well including for inactive wells; deletes the provision in original draft that allowed suit against the mineral owner. Increases penalties to \$10,000 per day per violation unless under valid permit or regulation; if the penalty is not paid within 30 days it becomes final; if a knowing and willful violation of OG Act the penalty is \$15,000 per day per violation; knowing and willful violation is expanded to include procurement, aiding or abetting in the commission of any violation of a rule, order or provision of the OG Act. Note that the definition of 'inactive' for well plugging is a well that is not being used for 'beneficial purpose" .</p>					

priority kill if resurrected

Substitute bill is terrible - priority kill bill

Bill Numbers		Bill Names	Committee Assignments	Sponsors	quick status
House	Senate				
HB 293		Tax Net Operating Loss Carryover	HTRC/HAFC	Dodge	
					watching
extends net operating loss carry over that occur after July 1, 2014 to 14 years. Any NOL's incurred prior to July 1, 2014 will still have the current 5 year limitation.					
HB 335		Water Resource Testing & Damage Remedies	HENRC/HJC	Egolf M. Sanchez	hearing 2/20
<p>Sponsor to redraft for hearing 2/20. Original bill: Adds a new section to the Oil and Gas Act for prior to conducting an HF operation, the owner must conduct a geologic and hydrologic assessment for each proposed well for all surface and ground water within 2000 meters of the well to a depth of 1000 feet below the well's target depth; he must conduct water testing from the surface to 1000 feet below the well's target depth; establishes a list of constituents required for water testing; water testing to be completed 1) before drilling; 2) during drilling; 3) one week after HF operations; 4) six month post well completion. All results of water sampling made available to the public and all samples kept at OCD for three years; any 'statistically significant increase' in any component is presumed to have been caused by HF but that presumption may be rebutted by clear and convincing evidence in court; must make damages claim within 3 years of publication of last water test sample results; owners include owner, agent, employee, subcontractors, assigned, parents and joint ventures - all of whom are joint and severally liable.</p>					
HB 410		Motor tax for highway projects & project fund	HTPWC/HTRC/HAFC	Lundstrom	
					watching
HB 410 temporarily increases the motor vehicle excise tax to 4 percent of the price paid or reasonable value of the vehicle (up from 3%) until 7/1/28. allowances granted for trade-ins may be deducted from the price paid or reasonable value. Until 7/1/28, 25% of the funds received from this increase shall be deposited in a new Major Investment Highway Fund; the state may bond against the fund.					
HB 429		Environmental private right of action	HENRC/HJC	Louis	Tabled 2/18 but rehearing 2/20
<p>This bill was heard in HENRC on 2/18 and was tabled on a 7-3 vote; however one of the members has asked for an amendment to delete the ability to sue counties and will then vote for the bill; the bill will be reheard on 2/20; HB 429 amends the Oil and Gas Act (70-2-29 NMSA); and adds new sections to the Environmental Improvement Act(74-1 to 13 NMSA) and the Water Quality Act(74-6 NMSA) to allow a private person who is injured in fact, economically or otherwise, or who is imminently threatened with injury economically or otherwise, to commence a civil action against an other person, including the state or other political subdivision charging a violation of the Act, rule, permit or order; or against the OCD or OCC alleging a failure to perform any substantive duty required by a provision of the Act or rule promulgated pursuant to the Act; the allegation of violation of failure to perform must relate to statutes, rules, permits or orders include but are not limited to pits, closed-loop systems, below-grade tanks and sumps; plugging of wells; remediation, produced water, waste disposal or surface waste management facilities; must give 60 notice to OCC, OCD, AG and violator unless 'immediate threat to health or safety or immedate and irreversible impairment of a legal interest could occur; the court has the discretion of order that civil penalties assessed, not to exceed \$25,000, be used</p>					
Bad amendments; priority kill bill					

Bill Numbers		Bill Names	Committee Assignments	Sponsors	quick status
House	Senate				
in beneficial mitigation projects.					
HB 458		Consolidated Environmental Review Act	HENRC/HJC/HAFC	Chasey	
					1st committee
HB 458 creates a new act and claims to seek "consolidation of regulatory processes and environmental reviews to mitigate burdens on project proponents". But HB 458 also states that all agencies shall require an applicant as part of a permitting process to prepare an environmental assessment; if the agency determines the project to have a 'significant effect on the environment' it shall require the applicant to prepare an environmental impact statement; the EIS shall include a determination of cumulative impacts (defined as: incremental impacts combined with impacts caused by past projects, other current projects and impacts caused by reasonably foreseeable future projects), impacts on cultural properties and on communities already 'burdened by previous environmental impacts of industries that require water or air quality permits and federal permits and licenses"; consultant to assist with preparation with EIS must not have been previously employed or contracted with the applicant for 7 years prior. HB 458 would also require state agencies to review a federal agencies final action under NEPA and may require additional information and evaluation prior to approval of any permits.					priority kill bill
HB 494		Pipeline Location notices for excavation	HBIC/HJC	Easley	
					1st committee
Amends the Utility code; changes definition of pipeline to apply to all gathering lines etc. by taking out the "pipeline subject to the jurisdiction of federal law or regulation" language, requires a call into One Call and marking with "Clear" or "no underground facility" flags. Operators will need to provide PRC positive response logs					kill bill
HB 616		Alternative Fuel Tax Credits	HTPWC/HTRC	Egolf	
					1st committee
Adds new section to the Income Tax Act to allow for a 50% tax credit for an alt fuel vehicle or qualified conversion vehicle; EMNRD to adopt rules to certify qualified conversions. An alt fueling station credit is also created to allow residential for 50% of cost or \$2500; commercial alt fuel to receive 75% credit; applies for both corporate and personal taxes					support
HM 21		Preserve Prairie Chicken to oppose listing	Signed by Governor	Ezell	
					Signed
HM 21 passed House floor on a 39-28 vote; was signed by Governor Martinez: This bill calls upon the Governor, NMGFD, BLM and the congressional delegation to support continuing state, local and private efforts to preserve and protect the lesser prairie chicken and oppose the USFWS listing the species as 'threatened'. Note that industry has registered over 2 million acres for conservation efforts thru candidate conservation agreements and candidate conservation agreements with assurances and the NMGFD is working with 4 other states in the species range to enlist companies in conservation agreements. County Governments are also engaging the federal government in 'coordination efforts' under 43 CFR 1712.					

SENATE Bills

Bill Numbers		Bill Names	Committee Assignments	Sponsors	quick status
House	Senate				
		Tax Expenditure & Revenue Budget & Reporting		Varela	
	SB 7		SPAC/SFC/ FLOOR	Keller	Senate Floor
<p>The bill was substituted in SFC; "tax expenditure" means a deduction, credit, exemption, exclusion, rebate, offset, preferential tax rate, subtraction or allowance or related tax structure that reduces tax liability when compared with a normal tax system as determined by the consensus revenue estimating group"; the consensus group consisting of economists from DFA, DOT, TRD and LFC; to prepare a report on a 5 year cycle. Committee substitute addressed IPANM concerns by adding qualified economists to prepare report</p>					opposed until amended
		Corporate Rates and Combined Reporting		Wirth	first committee
	SB 13		SCORC/SFC		
<p>SB 13, SB 59 and SB 277 are going to be rolled into one bill in SFC; Industry should prefer SB 277 of all the bills proposed; A repeat from the last session; including elimination of discretionary opt out with approval from TRD; the bill last year passed the Senate (28-13) and the House (36-33) but was vetoed; This bill amends corporate income tax rates down and requires unitary corporations to file a combined return with their other unitary corporations as though the entire net income were that of one corporation in NM and then pays based on an apportionment formula; effective date 1/14; similar to SB 59</p>					will get rolled into a larger bill
		Corp. Tax, Reporting, Single Sales & Repeals		Cisneros	first committee
	SB 59		SCORC/SFC		
<p>This bill is identical to Wirth's SB 13 except that it adds provisions changing the formula for apportionment of business income from manufacturing; processing natural resources including hydrocarbons is specifically exempt from the manufacturing definition; repeals several tax credits including the rural jobs tax credit and the high wage jobs tax credit.</p>					will get rolled into a larger bill
		Energy Bonds		Wirth	watching
	SB 101		SCONC/SFC		
<p>The American Recovery and Reinvestment Act of 2009 granted the State of NM \$20.6 million in bonding activity to finance clean energy projects, efficiency programs, renewable energy and public outreach. Senate Bill 101 requires the State Board of Finance (BOF) to determine the amount under the federal act to be allocated to each large local government. The bill passed Senate Conservation on a 10-0 vote this week.</p>					
		Real Property Sale Affidavits		Munoz	tabled
	SB 117		SCORC/SJC		
<p>Bill tabled in SCORC after strong opposition by IPANM and the commercial real estate developers; the expert on this bill was the San Juan County Assessor who is facing significant drop in revenue with loss of coal properties; Several Senators and the bill proponent of the bill indicated this bill was supported by the Governor; This bill changes the reporting provisions in the property tax code to require reporting of all property transfers of real property by deed or real estate contract. This would give Assessors additional information that would most likely result in increases in property valuations and taxes; Currently, only residential transfers are necessary. But there are still problems with the residential valuations resulting in a robust practice of property valuation contests.</p>					SJ County Assessor will continue work on bill
		Clarify Fraud against Tax Payers Act		Cervantes	2nd committee
	SB 153		SPAC/SJC		

Bill Numbers		Bill Names	Committee Assignments	Sponsors	quick status
House	Senate				
					opposing
	SB 159	Civil Case reciprocal attorney fees	SPAC/SJC	Cervantes	second committee
					opposing
	SB 193	Water Quality Control Commissioners	SRC/SCONC	Griego	1st committee
	SB 270	Unfair Trade Practices Attorney Fees	SPAC/SJC	Cervantes	tabled
	SB 273	Transportation Public-Private Partnerships	SCORC/SJC/SFC	Keller	first committee
					oppose
	SB 277	Single Sales & Reduce Corporate Sales Tax	SCORC/SFC	Munoz	first committee
					will be rolled into a larger bill
		Reform Tax Code			

Bill Numbers		Bill Names	Committee Assignments	Sponsors	quick status
House	Senate				
	SB 368		SCONC/SCORC/SPAC/SFC	Sharrer	1st committee
SB 368 does a complete overhaul of the tax code, including deletion of exemptions to payment of gross receipts tax including the following under 7-9-13 thru 7-9-42. This list includes the exemptions to GRT for payment of OG mineral interests; for products subject to OG emergency School tax; to persons subject to natural resource processors tax. The number of referrals on this bill ensures it will not make it out of the Senate this session.					Will be subject of Blue ribbon taskforce or interim committee
-	-				
	SB 463	State Preemption of Local Oil and Gas Laws	SCONC/SJC	Cisneros	1st committee
Amends the Municipal Code to expressly preempt the authority of a county or municipality in the fields of regulating the exploration, development, production and transportation of oil and gas as delineated in the Oil and Gas Act; reserves the exclusive authority to the oil conservation commission and the oil conservation division.					support
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	SB 482	Water vulnerabilities list working group	SCONC/SFC	Wirth	1st committee
Seeks \$250,000 for NM Tech and NMSU to establish a work group of hydrologists; demographers and economists to conduct a study on water demand and supply; to develop a projection of demand, climate variability; develop a list of vulnerabilities for next 20 years;					watching
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	SB 535	Energy Education & Marketing Tax Act	SCORC/SFC	Munoz	1st committee
imposes a new tax on industry of 1/10 of 1% of value of all products severed; Each operator shall, make a return to the department showing the total value, volume and kind of products sold from each production unit for each calendar month; 25% of funds to Energy education fund; 25% to clean energy grants fund; 50% to lottery scholarship fund; Energy education board is created with 9 members with 'oil and gas experience'; The sponsor claims there is a \$20 million shortage in lottery funds.					oppose
-	-				
	SB 547	Ban Horizontal Oil & Gas Fracturing	SCONC/SCORC/SFC	Soules	1st committee
Adds a new section to the Oil and Gas Act banning the use of multistage fracturing in horizontal wells.					Kill bill