

GOVERNMENTAL AFFAIRS WEEKLY REPORT

Weekly Highlights At-A-Glance

FEDERAL – Legislative

H.R. 4219 – Federal Leasing Royalty Rates. On July 23, official bill text was made available for [H.R. 4219](#), which would “amend the Mineral Leasing Act to adjust the royalty rates for leases for coal mining and oil and gas extraction on Federal land.” Sponsored by Rep. Liz Cheney (R-WY), the bill would “permanently fix the federal royalty rate for surface coal and onshore oil and gas at 12.5%.” According to Rep. Cheney, the bill “is supported by the Wyoming Mining Association, the Petroleum Association of Wyoming, and the Western Energy Alliance.” However, the measure is unlikely to advance in the Democrat-controlled House. [Read more.](#)

S. 645 – Methane Emissions Reduction Act of 2021. Official bill text has been made available for [S. 645](#), known as the Methane Emissions Reduction Act of 2021. Although originally introduced by Sen. Sheldon Whitehouse (D-RI) in March, the bill had not received any traction until recently as part of Democrat discussions of President Biden’s proposed infrastructure bill package. The bill would require “the Department of the Treasury to estimate annual methane emissions from each oil and natural gas producing basin and levy a fee for such emissions on each company that produces, gathers, processes, or transmits oil or natural gas. The fees must be used to provide grants through the National Coastal Resilience Fund of the National Fish and Wildlife Foundation.” According to Bloomberg Government, Senate Democrats are pushing to impose this methane fee on U.S. oil and gas production as part of their climate and infrastructure blueprint. If included in a bill package, the planned fee under the measure would be based on an estimated social cost of carbon, equaling \$1,800 per ton in 2023, with inflationary adjustments. We will

keep AAPL members informed if this bill is considered as part of an infrastructure package. [Read more.](#)

FEDERAL – Regulatory

Taking of Migratory Birds; U.S. Fish and Wildlife Service. (Update to 5/17/21 Weekly Report) On July 20, the Interior Department’s U.S. Fish and Wildlife Service (FWS) published two economic analysis documents prepared during development of a proposed rule to revoke the Trump-era rule governing the prohibitions on incidental take under the Migratory Bird Treaty Act (MBTA). (See proposed rule, “Regulations Governing Take of Migratory Birds; Proposed Rule,” [86 Fed. Reg. 24573](#)) According to the FWS, “This document announces the availability of an initial regulatory flexibility analysis and a regulatory impact analysis for public review.” For background, on January 7, 2021, the FWS, under President Trump, published a final rule defining the scope of the MBTA as it applies “to conduct resulting in the injury or death of migratory birds protected by the MBTA.” (See “Regulations Governing Take of Migratory Birds,” [86 Fed. Reg. 1134](#)) “The January 7 rule codified an interpretation of the MBTA set forth in a 2017 legal opinion of the Solicitor of the Department of the Interior, Solicitor’s Opinion M-37050, which concluded that the MBTA does not prohibit incidental take.” The economic analysis documents are mandated under federal law which “requires agencies to evaluate the potential effects of their proposed and final rules on small businesses, small organizations, and small governmental jurisdictions.” The public comment period is open through August 19, 2021. [Read more.](#)

FEDERAL – Judicial

Federal Land Restrictions – Alaska. On July 7, Alaska sued the Biden administration for “illegally and unjustifiably extending decades-long restrictions on nearly 28 million acres of federal land in Alaska.” The complaint in [Alaska v. Haaland](#) (Case No. 3:21-cv-00158) challenges the Biden administration and Interior Department “decision to delay the opening of millions of acres in Alaska to development.” As reported, under the President Trump, “the Interior Department had planned to open up to 28 million acres of Alaska land to development. Some of the land could have been transferred to state or private ownership. In April, the Biden administration paused the move for two years, citing the need to review what it called ‘defects’ in the Trump-era action involving National Environmental Policy Act requirements.” [According to Gov. Mike Dunleavy \(R\)](#), “These withdrawals have prevented the State from exercising its Statehood right to claim valuable lands or assess the natural resources on these lands, and blocked Alaska Native Vietnam War veterans from selecting land allotments.” [Read more.](#)

Royalties Class Action – Colorado. On July 20, Noble Energy and DCP Midstream LP saw a procedural win in a would-be class action lawsuit over allegedly underpaid oil and gas royalties when the U.S. Court of Appeals for the Tenth Circuit, on appeal from the U.S. District Court for the District of Colorado Tenth Circuit, decided that the case should have been sent to state court because the amount in controversy did not exceed the necessary \$75,000 jurisdictional threshold for the case to be heard in federal court. In *Phelps Oil & Gas, LLC v. Noble Energy Inc.* (Case No. 19-1376), the Court noted that the plaintiff royalty holder’s claim against the defendants “is less than \$1,000. It is ‘legally certain’ that a declaratory judgment entered as to Phelps would not result in more than \$75,000 at controversy in this case.” [Read more.](#)

Hydraulic Fracturing Ban; Delaware River Basin – Pennsylvania. (Update to 6/14/21 Weekly Report)
On July 12, Pennsylvania Republican state senators

announced they will appeal a federal judge’s finding that they failed to show harm from a moratorium on hydraulic fracturing in the Delaware River Basin. For background, on June 11, the [U.S. District Court for the Eastern District of Pennsylvania dismissed a lawsuit](#) by the state lawmakers seeking to overturn a ban on gas drilling and hydraulic fracturing in the Delaware River Basin, ruling that the plaintiffs lacked standing to sue. In dismissing the suit, the Court stated that the dispute “is primarily partisan and is best resolved through the political process.” However, the Court did allow the Pennsylvania municipal plaintiffs representing Carbon and Wayne counties and Damascus and Dyberry Townships to proceed, giving them permission to refile the suit by July 1, 2021, to give them a chance to “articulate how the moratorium has actually injured them.” Originally filed on January 12, two Republican Pennsylvania state senators, along with the Pennsylvania Senate Republican Caucus and the counties and townships sued the Delaware River Basin Commission (DRBC) in [Yaw v. Delaware River Basin Commission](#) (Case No. 2:21-cv-00119), seeking to overturn the DRBC ban on gas drilling and hydraulic fracturing in the Delaware River basin, “claiming it has usurped the state’s legislative power by declaring a de facto moratorium on the construction and operation of wells for natural gas production in the parts of the Marcellus Shale formation encompassed by the basin.” The litigants contended that the ban had deprived private landowners of the right to drilling royalties and has prevented Pennsylvania from leasing public lands to the gas industry and collecting fees from gas development. The suit further argued the ban’s “deleterious effects” have “been magnified by the COVID-19 pandemic and resulting economic downturn, with the state and local governments facing significant budget shortfalls.” According to the Associated Press, the senators wanted the federal court to invalidate the ban, “potentially opening a sliver of northeastern Pennsylvania to what their suit describes as \$40 billion worth of natural gas.” [Read more.](#)

STATE – Legislative

Oil and Gas Strategic Plan – California. (Update to 2/22/21 Weekly Report) On July 7, SB 419, which was scheduled for a hearing before the Assembly Natural Resources Committee, was pulled by the bill sponsor even though it had passed the Senate in June. Sponsored by Sen. Henry Stern (D), the bill would have provided that the Geologic Energy Management Division in the Department of Conservation develop a strategic plan through a public process to incorporate the purposes of protecting public health and safety and environmental quality, including reduction and mitigation of greenhouse gas emissions associated with the development of hydrocarbon and geothermal resources in a manner that meets the energy needs of the state. According to the California Independent Petroleum Association (CIPA), the measure also “would have required oil producers to hire union labor for specified work in the oil patch. The bill met controversy on the Senate floor, as a diverse group of senators expressed concerns that the bill would force thousands of currently employed workers into the unemployment line, only because they are not members of a trade union.” CIPA further noted that “Concerns about the bill’s impacts continued to swirl in the Assembly even though the author amended the bill to delay its implementation by two years. Despite the amendments, various stakeholders continued to either oppose the bill outright or press hard for additional amendments to protect workers from losing their jobs because of the bill.” [Read more.](#)

Environmental Justice – Colorado. (Update to 6/14/21 Weekly Report) On July 2, HB21-1266 was signed into law by Gov. Jared Polis (D). The Act, known as the Environmental Justice Act and sponsored by Rep. Dominique Jackson (D), provides for environmental justice strategies, planning, and reporting. The bill creates the Environmental Justice Action Task Force within the Department of Public Health and Environment and requires the Air Quality Control Commission to engage with disproportionately impacted communities on

proposed state actions and includes enforcing emissions reductions in oil and gas and industrial sectors. The Act has multiple effective dates.

[Read more.](#)



SPECIAL LEGISLATIVE SECTION: COLORADO SESSION ADJOURNMENT

COLORADO SESSION ADJOURNMENT ROUNDUP

The Colorado General Assembly legislative session adjourned on June 8, 2021, and the deadline for action by Gov. Jared Polis (D) has passed, bringing the regular 2021 legislative session to a close. Following is the status of the remaining bills AAPL had been tracking and reporting on for members this session that failed to advance and died upon adjournment. All other legislation that passed from the bills tracked for members was covered in prior reports or above.

SB21-114 – Republican bill; Setbacks. The bill would have required “that proposed public school building sites be set back from existing oil and gas facilities a distance that is no less than: the setback distance required by the local government having land use jurisdiction over the site for locating new oil and gas facilities from public school properties; or if there are no local government setback requirements, the setback distance required by the oil and gas conservation commission for siting new oil and gas facilities from existing public school properties.”

SB21-200 – Democrat bill; Greenhouse Gas Emissions. The bill would have supplemented existing greenhouse gas (GHG) emissions reductions by requiring the state Air Quality Control Commission to consider the social cost of GHG emissions, finalize certain rules by 2022, requiring power generation and transmission entities to submit GHG reductions plans, and requiring retail, wholesale, and municipal electric utilities to reduce GHG emissions by specified dates. The bill also would have labeled GHGs as a “regulated pollutant” as well as establishing environmental justice programs.

All bills and history may be accessed directly at the Colorado General Assembly website:
<https://leg.colorado.gov/bills>

As always, these and all other bills AAPL tracks for members can be found in the Bill Tracking Summary spreadsheet available only to members on the AAPL website at:
<https://www.landman.org/resources/advocacy-and-legal>.



SPECIAL LEGISLATIVE SECTION: MISSOURI SESSION ADJOURNMENT

MISSOURI SESSION ADJOURNMENT ROUNDUP

The Missouri legislative session adjourned on May 30, 2021, and the deadline for action by Gov. Mike Parson (R) on any legislation has passed, bringing the 2021 regular legislative session to a close. Following is the status of the remaining bills AAPL had been tracking and reporting on for members this session that failed to advance and died upon adjournment. Any other legislation that passed from the bills tracked for members was covered in prior reports.

HB 133 – Democrat bill; Notaries Public. Would have modified provisions relating to the content contained in a notary public's journal.

HB 214 – Republican bill; Independent Contractors. Would have established the criteria of a worker to be considered as an independent contractor, rather than an employee.

HB 564 – Republican bill; Mining Royalties. Would have provided that federal mining royalties on federal land in the state must be deposited in the newly created "Federal Mineral Royalties Distribution Fund" and directs allocations.

HB 1013 – Republican bill; Notarial Acts. Would have Provided for remote, electronic notarial acts and related procedures.

SB 148 – Republican bill; Employee Classification. Would have provided criteria for consideration and designation of a worker as an independent contractor rather than an employee.

SB 439 – Republican bill; Subsurface Rights. Regarding an action to quiet title involving subsurface rights to real property, the bill provided that 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.

SB 549 – Republican bill; Independent Contractors. The bill would have deferred to the more permissive guidance issued by the Internal Revenue Service when determining whether an individual or entity is an employee or independent contractor.

All bills and history may be accessed directly at the Missouri General Assembly website:
<https://www.mo.gov/government/legislative-branch/>

As always, these and all other bills AAPL tracks for members can be found in the Bill Tracking Summary spreadsheet available only to members on the AAPL website at:
<https://www.landman.org/resources/advocacy-and-legal>.

STATE – Regulatory

RRC Monitoring and Enforcement Plan – Texas. On June 22, the Texas Railroad Commission (RRC) published its [Fiscal Year 2022 Oil & Gas Monitoring and Enforcement Plan](#). As stated in the RRC plan document, "The purpose of this plan is to define and communicate the Oil and Gas Division's strategic priorities for its monitoring and enforcement efforts. The plan confirms many of the Division's current priorities—to ensure public safety and protect the

environment—as well as establishing direction for data collection, stakeholder input, and new priorities for fiscal year 2022.” According to the RRC, “The plan affirms the RRC’s commitment to inspecting every oil and gas facility at least once every five years. It provides an overview of penalties and procedures and a current snapshot of various violations and the agency’s progress.” [Read more.](#)

Environmental Permitting Regulatory Changes – New Mexico. To follow up prior reporting of New Mexico Administrative Code (NMAC) regulatory changes, the New Mexico Environmental Improvement Board held a public hearing on June 25 to consider the New Mexico Environment Department’s (NMED) proposal to amend 20.2.79 NMAC, Permits - Nonattainment Areas. According to the NMED, “the Board deliberated on the hearing record and unanimously adopted the Department’s proposal. The effective date of the amendment is August 21, 2021.” As [reported in the Albuquerque Journal](#), “The purpose of the amendments is to make technical and administrative corrections to the rule. [20.2.79 NMAC](#) specifies permitting requirements for any new major stationary source or major modification of an existing source located within a designated nonattainment area, or which is located within an area designated attainment or unclassifiable and will emit a regulated pollutant that significantly impacts a nonattainment area for the same pollutant. A source subject to this regulation must submit a permit application to the Department and cannot construct or operate the new source or modification until it receives a permit or permit revision.” [Read more.](#)

STATE – Judicial

State Leasing; Trusts – Pennsylvania. On July 21, the Pennsylvania Supreme Court addressed a case brought by environmentalists challenging amendments to the Fiscal Code by the Pennsylvania General Assembly that diverted to the General Fund revenues generated from oil and gas leases on state forest and game lands, and which was held a violation of state law and unconstitutional in the

lower court. In *Pennsylvania Environmental Defense Foundation v. Wolf* (Case No. 64 MAP 2019) the Supreme Court agreed and held that “the bonus payments, rentals and penalty interest qualify as income and not the sale of trust assets. Since the [state law] does not create an entitlement to income in the beneficiaries, the revenue generated from these Marcellus Shale leases must be returned to the corpus to benefit all the people. Accordingly, we hold that the income generated from the revenue streams at issue must be returned to the corpus as a matter of trust law.” [Read more.](#)

Leasing; Repudiation; Termination – Texas.

On May 28, in *Gramrich Oil & Gas Corp. v. Meng* (Case No. No. 11-19-00022-CV), the Texas Court of Appeals, Eleventh District (Eastland) addressed a lease dispute involving a period of non-production. According to the Court, “The parties primarily dispute who bears the burden to prove lease termination and cessation of production, each contending the other party bears the burden. Lessees contend that the trial court erred in granting summary judgment on the issue of lease termination because the trial court improperly placed the burden on Lessees.” The Court noted that “each party bore their own respective burdens to prove that the lease did or did not terminate.” Here, the “Lessees sought affirmative declaratory relief that the lease remained valid and in full force and effect. Therefore, Lessees bore the burden to prove either that there was continuous production as required by the terms of the lease or that the lease did not terminate for some other reason.” However, the lessor “counterclaimed for declaratory relief that the lease had terminated. Therefore, Meng also bore an equal burden to prove cessation of production of oil and gas for a duration required by the terms of the lease.” By examining the lease provisions in light of the facts, the Court determined the leases at issue in particular units had terminated. [Read more.](#)

Deeds – West Virginia. On June 4, in *Klein v. McCullough* (Case No. 19-0888), the West Virginia Supreme Court examined the “stranger to the deed” rule. According to the Court, “The deed in question

INDUSTRY NEWS FLASH

Independent Producers and Royalty Owners Association (TIPRO) reported that “Texas’ upstream oil and gas sector added 8,766 net jobs during the first half of 2021 when compared to the second half of 2020.” According to TIPRO’s President Ed Longanecker, “While the job losses were significant last year for many sectors, improving market conditions will further strengthen employment opportunities for Texas families and the tremendous economic benefits provided by oil and natural gas production in our state.” [Read more.](#)

Organization of the Petroleum Exporting Countries (OPEC) forecasted that world oil demand would rise in 2022 to reach levels similar to those before the pandemic, led by growth in the United States, China and India. The OPEC monthly report expects demand next year would rise by 3.4% to 99.86 million barrels

LEGISLATIVE SESSION OVERVIEW

[illegible]

The following legislatures are in recess until the dates provided: **Arkansas, Indiana, New Jersey** (TBD) and **Idaho** House (call of the speaker).

Maine adjourned sine die on July 19, after passing a bill to approve spending federal COVID-19 relief funds, reports [News Center Maine](#).

Louisiana lawmakers adjourned the state's first ever veto override session on July 21, reports [The Advocate](#). The veto session was prompted by the Republican-dominated legislature in an attempt to challenge Democratic Gov. John Bel Edwards' vetoes on a transgender sports ban, gun rights expansion and 26 other vetoes. The Senate narrowly agreed to the veto override, but the House fell two votes short of bypassing the governor and the session failed to overturn any vetoes.

Alaska Republican Gov. Mike Dunleavy is scheduled to call the legislature into a third special session on August 2 to fix the yearlong fiscal conflict over the Permanent Fund dividend, reports the [Anchorage Daily News](#).

Signing Deadlines (by date): **Oregon** Democratic Gov. Kate Brown has until July 23 to sign or veto legislation or it becomes law without signature. **Delaware** Democratic Gov. John Carney has until July 30 to sign or veto legislation or it is pocket vetoed. **Alaska** Republican Gov. Mike Dunleavy has 20 days after delivery, Sundays excepted, to sign or veto legislation or it becomes law without signature. **Connecticut** Democratic Gov. Ned Lamont has 15 calendar days, Sundays and legal holidays excepted, from presentment 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. **Kansas** Democratic Gov. Laura Kelly has 10 calendar days from presentment, not including the day it was presented, to sign or veto legislation or it becomes law without signature. **Maine** Democratic Gov. Janet Mills must act on legislation presented within 10 days of adjournment or it becomes law unless returned within three days after the next meeting of the same legislature. **Nebraska** Republican Gov. Pete Ricketts has five days from presentment to sign or veto legislation, Sundays excepted, or it becomes law without signature. **New Hampshire** Republican Gov. Chris Sununu has five days from presentment, Sundays excepted, 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. **New York** Democratic Gov. Andrew Cuomo has 10 days from presentment, Sundays excluded, to sign or veto legislation or it is pocket vetoed. **South Carolina** Republican Gov. Henry McMaster has five days from presentment, excluding Sundays, to act on legislation or it becomes law without signature. **Tennessee** Republican Gov. Bill Lee has 10 days starting the day after presentment, Sundays excluded, to sign or veto legislation or it becomes law without signature. **Vermont** Republican Gov. Phil Scott has five days from presentment, excluding Sundays, to act on legislation or it will become law without signature.

The following states are currently holding 2022 interim committee hearings: [Alabama](#), [Alaska](#), [Colorado](#), [Connecticut](#), [Delaware](#), [Georgia](#), [Illinois](#), [Indiana](#), [Kentucky](#), [Louisiana](#), [Maryland](#), [Mississippi House](#) and [Senate](#), [Nebraska](#), [New Hampshire House](#) and [Senate](#), [New Mexico](#), [North Dakota](#), [Oregon](#), [Rhode Island](#), [South Carolina House](#) and [Senate](#), [Tennessee](#), [Utah](#), [Vermont](#), [Virginia](#), [Washington](#), [West Virginia](#) and [Wyoming](#).

The following states are currently posting 2022 bill drafts, pre-files, and interim studies: [Alabama](#), [Kentucky](#), [Oklahoma](#), [Tennessee](#) and [Utah](#). ■

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 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. © 2021 AAPL.