

GOVERNMENTAL AFFAIRS WEEKLY REPORT

Weekly Highlights At-A-Glance

FEDERAL – Legislative

H.R. 4833 – Migratory Bird Protection Act of 2021.

On August 16, official bill text was made available for [H.R. 4833](#), known as the Migratory Bird Protection Act of 2021. Sponsored by Rep. Alan Lowenthal (D-CA) and Rep. Brian Fitzpatrick (R-PA), the bill would “amend the Migratory Bird Treaty Act to affirm that the Migratory Bird Treaty Act’s prohibition on the unauthorized take or killing of migratory birds includes incidental take by commercial activities, and to direct the United States Fish and Wildlife Service to regulate such incidental take.” According to Rep. Lowenthal, “In December 2017, the Department of the Interior (DOI) issued a legal opinion that, for the first time, exempted all incidental take from enforcement. This reinterpretation led to widespread objections, including from former senior DOI officials of both Republican and Democratic administrations, multiple states, and hundreds of organizations. This reinterpretation was rescinded by the current administration, however, there remains the threat of future administrations reversing the interpretation once again in favor of commercial interests.”

[Read more.](#)

H.R. 4781 – Plugging Orphan Wells and Environmental Restoration Act of 2021 (POWER Act of 2021). On August 16, official bill text was made available for [H.R. 4781](#), known as the Plugging Orphan Wells and Environmental Restoration Act of 2021 or the POWER Act of 2021. Sponsored by Rep. Glenn Thompson (R-PA), the bill would “amend the Energy Policy Act of 2005 to reauthorize a program to address orphaned, abandoned, or idled wells on Federal land, to establish a program to provide grants to States and Tribes to address orphaned wells.” Specifically, the bill “reauthorizes the federal

orphan well remediation program under the Energy Policy Act of 2005 for five years at \$50 million per year. In addition, the bill would establish a new grant program for environmental restoration and reclamation of orphaned wells on state, private, and tribal lands and authorizes \$400 million per year for this purpose for five years.” The bill has bipartisan cosponsor support in the House. [Read more.](#)

H.R. 4671 – Ensuring Meaningful Petition Outreach While Enhancing Rights of States (EMPOWERS) Act.

On August 9, official bill text was made available for [H.R. 4671](#), known as the Ensuring Meaningful Petition Outreach While Enhancing Rights of States (EMPOWERS) Act. Sponsored by Rep. Jason Smith (R-MO), the bill “would mandate federal agencies consider local stakeholders’ input when making changes to the species listed under the Endangered Species Act.” According to Rep. Smith, “For too long, decisions about which species are protected by the Endangered Species Act have been made by Washington bureaucrats without any consideration about how local communities are impacted. The heavy-handed regulations that are put in place because of these listing decisions often hinder critical infrastructure investments and stifle economic growth, and it cannot continue.”

[Read more.](#)

FEDERAL – Regulatory

U.S. Treasury Department Guidance on Fossil Fuel Energy at Multilateral Development Banks. On August 16, the Biden administration announced it “would vote against decisions by the World Bank and other multilateral development banks to fund most projects that would develop fossil fuels.” The guidance explains that “the United States will promote ending international financing of carbon-

intensive fossil fuel-based energy while simultaneously advancing sustainable development and a green recovery.” The announcement was released by the U.S. Department of the Treasury in its “[Guidance on Fossil Fuel Energy at the Multilateral Development Banks](#)” which specifically states the administration’s “Opposition to oil,” stating, “We will oppose oil-based energy projects. There may be limited exceptions, such as oil-based power generation in crisis circumstances or as backup for off-grid clean energy, if no cleaner options are feasible.” The guidance details the narrow support for natural gas, stating, “We will oppose upstream natural gas projects. We will only support midstream and downstream natural gas projects when all of the below criteria are met,” for which the Treasury Department details those limited criteria. [Read more.](#)

BLM Onshore Geophysical Exploration on Federal Lands Information Collection. On August 19, the Bureau of Land Management (BLM) published a notice of information collection, “Agency Information Collection Activities; Onshore Geophysical Exploration” ([86 Fed. Reg. 46711](#)), which seeks public comment on the types of information collection the BLM collects regarding onshore geophysical exploration on Federal lands. According to the notice, “The BLM regulates exploration for oil and gas on lands it manages, and on occasion regulates such exploration on lands managed by other Federal land-management agencies. The U.S. Forest Service (USFS) regulates exploration for various types of minerals, including oil and gas, on lands it manages. The BLM and the USFS propose to revise the accuracy and usefulness of the forms they use for this collection of information.” The comment period is open through September 20, 2021. [Read more.](#)

BLM Oil and Gas Leasing and Operations Information Collection. On August 9, the BLM published a notice of information collection, “Agency Information Collection Activities; Onshore Oil and Gas Leasing, and Drainage Protection” ([86 Fed. Reg. 43563](#)), which “collects information to

monitor and enforce compliance with drainage protection and other requirements pertaining to Federal and Indian oil and gas leasing and operations (except on the Osage Reservation).” According to the BLM, “There are no program or policy changes proposed with this renewal request.” The comment period closes on October 8, 2021. [Read more.](#)

BLM Federally Owned Mineral Interests Information Collection. On August 6, the BLM published a notice of information collection, “Agency Information Collection Activities; Conveyance of Federally-Owned Mineral Interests” ([86 Fed. Reg. 43266](#)), which seeks comment on information collection activities related to the conveyance of federally owned mineral interests. According to the BLM, federal law “Authorizes the Secretary of the Interior to convey Federally owned mineral interests to non-Federal owners of the surface estate. The respondents in this information collection are non-Federal owners of surface estates who apply for underlying Federally owned mineral interests. This information collection enables the BLM to determine if the applicants are eligible to receive title to the Federally owned mineral interests beneath their lands.” The public comment period is open through September 7, 2021. [Read more.](#)

Solar Energy Development; U.S. Department of Energy. On August 17, the U.S. Department of Energy released an issue brief memo, “[Investing in a Clean Energy Future: Solar Energy Research, Deployment, and Workforce Priorities](#),” in which the agency has projected “that solar power could comprise up to 40 percent of U.S. power generation nationwide by 2035, an increase of more than tenfold from today, with better incentives for renewable energy.” According to The Hill, “department officials cite a pre-publication study from the National Renewable Energy Laboratory indicating that solar energy would need to grow at a 300 to 400 percent rate to reach this point. With this level of acceleration, the memo states, solar generation could increase from 3 percent now to more than 40 percent over the next 14 years.” Solar energy development is strongly supported by the Biden

administration which “is pushing for an extension of a 26 percent tax credit, for which solar energy projects are currently eligible.” [Read more.](#)

FEDERAL – Judicial

NPR-A Oil and Gas Development Project – Alaska.

On August 18, the U.S. District Court for the District of Alaska rescinded approval of the ConocoPhillips Alaska Willow Project in the National Petroleum Reserve in Alaska (NPR-A) on Alaska’s North Slope in [Sovereign Inupiat for a Living Arctic v. Bureau of Land Management](#) (Case No. 3:20-cv-00290). In vacating project approval, the Obama-appointed judge held that “BLM’s exclusion of foreign greenhouse gas emissions in its alternatives analysis was arbitrary and capricious.” The court also held that “BLM acted contrary to law insofar as it developed its alternatives analysis based on the view that ConocoPhillips had the right to extract all possible oil and gas from its leases [and] BLM acted contrary to law in its alternative analysis for the Teshekpuk Lake Special Area insofar as it failed to consider the statutory directive that it give ‘maximum protection’ to surface values in that area.” The court also held that the project’s biological opinion, “which assesses the likelihood of the proposed action resulting in jeopardy to an endangered species or destruction or adverse modification to the species’ designated critical habitat” was “not in accordance with the law because it lacks the requisite specificity of mitigation measures for the polar bear.” While the “court recognizes that vacatur would have considerable economic consequences to ConocoPhillips, which has already made a significant investment in the Willow Project and it would have a negative impact to the many other stakeholders in the project” it is “also cognizant that construction at Willow has not yet commenced.” For background, the Trump administration approved permits for the project last year after concluding it wouldn’t harm the environment or wildlife. The Biden administration had also defended the project in court. According to Bloomberg Law, “The Willow project has been projected to produce more than 160,000 barrels of

oil a day and about 586 million barrels over its 30-year life. Environmentalists and Native Americans sued to halt the project, which they claimed would destroy polar bear and caribou habitat and forever alter the ecology of the Northern Slope.” Following the ruling, a ConocoPhillips spokeswoman said the company would “review the decision and evaluate the options available regarding this project.”

[Read more.](#)

Federal Oil and Gas Leasing – Louisiana. On August 16, the American Petroleum Institute, joined by 11 other oil and gas associations, filed suit against the Biden administration asking whether the administration “may institute an indefinite moratorium on all federal oil and gas lease sales onshore and on the Outer Continental Shelf.” This suit in [American Petroleum Institute v. U.S. Dept. of the Interior](#) (Case No. 2:21-cv-02506), was filed in the same federal court as the pending suit noted below brought by Republican-led states. According to Bloomberg Law, the groups “argue the freeze circumvents congressional mandates in the Mineral Leasing Act and Outer Continental Shelf Lands Act, which require quarterly onshore lease sales and direct expeditious development of offshore resources.” Among other relief sought, the plaintiffs are asking the court to compel the Biden administration to proceed with lease sales under federal law as well as “promptly adopt a new Five-Year Leasing Program for OCS leasing.” [Read more.](#)

Federal Oil and Gas Leasing – Louisiana. (Update to 6/28/21 Weekly Report) On August 9, more than a dozen [Republican-led states asked a Louisiana federal court to compel the Biden administration to sell leases for offshore drilling](#), “arguing that the Interior Department is not following a court order requiring it to end a leasing pause.” In their court filing, the states argue “that the administration is not following the June injunction that ended its pause on issuing leases on new parcels of land for public lands and offshore drilling.” For background, on June 15, a federal judge issued a [Preliminary Injunction Order](#) lifting President Biden’s “pause” on new federal oil and gas leasing, which the administration has halted

since January. While Interior Secretary Debra Haaland initially said her agency will comply with the judge's order, the administration is expected to appeal the injunction order, so the status of the oil and gas leasing program may be in limbo if an appeal is filed. [Read more](#). On March 24, Louisiana originally led 12 other states in suing the Biden administration "to end a suspension of new oil and gas leases on federal land and water and to reschedule canceled sales of leases in the Gulf of Mexico, Alaska waters and western states." In [Louisiana v. Biden](#) (Case No. 2:21-cv-00778), the litigants claim the Biden administration's "stated policy of banning new drilling permits contravenes congressional commands" and is a violation of various federal statutes. "By executive fiat, Joe Biden and his administration have single-handedly driven the price of energy up — costing the American people where it hurts most, in their pocketbooks," said Louisiana Attorney General Jeff Landry (R). [Louisiana and 12 other states followed up this lawsuit with another filing on March 31](#) demanding that the U.S. District Court for the Western District of Louisiana order the Biden administration to immediately lift the federal oil and gas leasing pause by way of preliminary injunction. [Read more](#).

Interior Department Appeal; Federal Oil and Gas Leasing Pause. Regarding the above cases, on August 16, the Interior Department published a statement regarding the federal pause and review of new oil and gas leasing and the preliminary injunction ordered by a Louisiana federal court mandating that the agency immediately lift the pause. According to the statement, "The Department of the Interior (Interior) confirmed today that the Department of Justice (DOJ) has appealed the preliminary injunction entered by the district court in *Louisiana v. Biden*, which enjoined Interior from implementing the pause in new federal oil and gas leasing as set forth in Section 208 of Executive Order 14008. DOJ is appealing that decision to the United States Court of Appeals for the Fifth Circuit. Federal onshore and offshore oil and gas leasing will continue as required by the district court while the government's appeal is pending." The statement also notes that "Interior will

proceed with leasing consistent with the district court's injunction during the appeal. In complying with the district court's mandate, Interior will continue to exercise the authority and discretion provided under the law to conduct leasing in a manner that takes into account the program's many deficiencies. Separately, Interior continues to review the programs' noted shortcomings, including completing a report. The Department also will undertake a programmatic analysis to address what changes in the Department's programs may be necessary to meet the President's targets of cutting greenhouse gas emissions in half by 2030 and achieving net zero greenhouse gas emissions by 2050." According to reporting by Bloomberg Law, "the agency still hasn't made an official notice of an upcoming lease sale, either onshore or offshore" and "attorneys say they aren't expecting the Interior Department to announce an immediate oil and gas lease sale, after the agency said Monday that it'll proceed with leasing following a federal court injunction. Setting the day and time of an oil and gas lease sale requires advance planning, and 'you cannot wake up one morning and just say, let's have a lease sale tomorrow or in, say, 30 days, without being ready,' said Sam Kalen, a natural resources law professor at the University of Wyoming." This sentiment was echoed by Mark Squillace, a natural resources law professor at the University of Colorado Law School, saying, "Though it's too late to hold a lease sale in the third quarter, Interior can still hold a lease sale before the end of the year." Kathleen Sgamma, President of the Western Energy Alliance said, "Now that the Interior Department has missed the deadline to hold any sales before October, it's crystal clear there is no intention of complying with the judge's order." John C. Martin, a partner at Holland & Hart LLP in Wyoming, said "Interior is showing 'recalcitrance,' [and] is likely not complying with the injunction, and hasn't issued the notices necessary to hold a lease sale anytime soon." [Read more](#).

STATE – Legislative

Second Special Session – Texas. On August 7, Gov. Greg Abbott (R) called a Second Special Session into order that is set to last up to 30 days. The purpose of the special session is to address bills that died at the end of the regular legislative session, and which also failed to advance in the First Special Session called in July after Texas Democrats fled the state to defeat a quorum call, thus stalling any legislative advancement. Apart from the 17 agenda items called for by the governor, which include bail reform, election integrity, border security, social media censorship, family violence prevention, youth sports, abortion-inducing drugs, and critical race theory, among other issues, several filed bills relate to real property and the energy industry, but none of those have advanced past the initial filing stage. On August 6, Rep. Ron Reynolds (D) filed [HB 73](#), which relates to air quality permits issued by the Texas Commission on Environmental Quality for certain oil and gas facilities, and [HB 74](#), which relates to the analysis of inspection and maintenance requirements for air quality permits issued by the Texas Commission on Environmental Quality for certain oil and gas facilities. On August 7, Rep. Cody Vasut (R) filed [HB 109](#), which relates to a limitation on increases in the appraised value of real property for ad valorem tax purposes, and [HJR 11](#), which proposes a constitutional amendment to authorize the legislature “to limit the maximum appraised value of real property for ad valorem tax purposes to 103.5 percent or more of the appraised value of the property for the preceding tax year.” [Read more.](#)

STATE – Regulatory

Natural Gas Tax Credits; Railroad Commission – Texas. On August 5, Texas Railroad Commissioner Jim Wright wrote in an op-ed article published in the Houston Chronicle that “the natural gas industry should get tax credits similar to renewable energy, to protect state infrastructure from extreme weather events such as the February winter storm and reduce gas flaring.” According to Wright, “The state and federal government should consider leveling

the playing field between renewables and abundant, affordable and reliable Texas natural gas. Equalizing these incentives could assist with necessary infrastructure investments that guarantee ample supplies of this important Texas resource are available whenever they are needed.” [Read more.](#)

State Lands Oil and Gas Leases – Montana. On August 5, the Montana Department of Natural Resources and Conservation’s amended Administrative Rules of Montana (ARM), [ARM 36.25.205](#), pertaining to Oil and Gas Leases on State Lands, went into effect. The amended rule sections are identified as underlined for new matter, and strikethrough for deleted matter as follows: 36.25.205 PROCEDURES FOR ISSUE OF LEASE (1) A sale of oil and gas leases on state lands ~~normally~~ will be held ~~scheduled~~ once each quarter, on the first or second Tuesday of March, June, and December, and on a day in September that will not conflict with the Labor Day holiday. For in-person auctions, the date of sale is the day on which the auction will be held. For online auctions, the date of sale will be the last day of online bidding. It will be in ~~the department's~~ discretion to waive or postpone a sale on any of these dates if insufficient applications have been received or to postpone if circumstances warrant. In such event a notice of "no sale" will be published in a publication of general circulation in Montana and on the department's website. Notice will also be sent to stakeholders on the department's oil and gas lease sale mailing list. (2) Sale of each lease will be by competitive, ~~or~~ in-person or online bidding. (a) through (c) remain the same. (d) The successful bidder shall pay the first year's rental, the bonus amount, and the issuance fee to the department. For online auctions, the successful bidder may also be required to pay an online service fee and any fees associated with payment processing or wire transfers. (3) through (6) remain the same. [Read more.](#)

STATE – Judicial

Gas Well Tax Appraisals – Kansas. On August 6, in *In Re the Appeal of River Rock Energy Co.* (Case No. 120,387) the Kansas Supreme Court sided with the Kansas Board of Tax Appeals, which upheld the county appraisers' application of the Kansas Oil and Gas Appraisal Guide to value River Rock's working interests in more than 200 gas wells and related equipment. The Court held that the company's challenge to the appraisal of its gas well interests and equipment failed to prove that a longstanding oil and gas valuation guide wasn't appropriate for the valuation. The company claimed that the guide's methods failed to take all the costs of operation into account when using the minimum lease value method, which is a decades-old Kansas appraisal methodology for valuing working interests in certain properties. But the Court disagreed, finding that the company had not submitted well-specific information to support an appraiser deviating from the guide in order to achieve a valuation that would more accurately reflect fair market value. The case, however, was remanded back to the lower court regarding notice issues. [Read more.](#)

State Forests Drilling – Pennsylvania. On August 6, in [*Pennsylvania Environmental Defense Foundation v. Commonwealth Department of Conservation and Natural Resources*](#) (Case No. 609 M.D. 2019), the Commonwealth Court of Pennsylvania ruled against the environmental plaintiffs by dismissing their petition challenging the Department of Conservation and Natural Resources (DCNR) State Forest Management Plan allowing for natural gas resources production and having the court order DCNR to take certain actions. The Plan "changed the focus of management away from the science of ecosystem management and its trustee responsibilities to one where the Plan said it is DCNR's mission to extract and sell the oil and gas resources for the economic use of DCNR and the Commonwealth." The environmental plaintiffs claimed this plan was a constitutional violation. However, the Court held, "Finding a constitutional violation based on statements in the 2016 SFRMP, without reference to

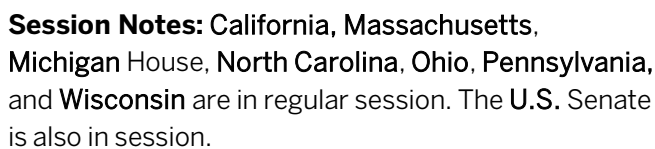
any particular action on the part of DCNR, would take us into the realm of speculation and conjecture." The Court went further, holding that the plaintiff "points to no legislative enactments or regulatory provisions, and we have found none, that mandate DCNR to develop and maintain a forest resource management plan in the first place. Because the Foundation seeks to compel DCNR to do something it is not mandated to do, mandamus will not lie, and we sustain DCNR's preliminary objections as to the mandamus claims." [Read more.](#)

INDUSTRY NEWS FLASH

► **Permian Basin gets infrastructure spending boost.** As reported by Rigzone on August 10, "a coalition of energy companies, along with state and local partners, plans to spend \$844 million on roads, education, workforce development, housing, broadband and health care in the region, according to the Permian Strategic Partnership, which assembled the group." Most of the funds will come from the Texas Department of Transportation, while oil and gas companies including Chevron and Halliburton are also providing funding. [Read more.](#)

► **President Biden Asks OPEC to boost oil production.** On August 11, President Biden "urged OPEC and its allies to boost oil output to tackle rising gasoline prices that they see as a threat to the global economic recovery." According to Reuters, "The request reflects the White House's willingness to engage major world oil producers for more supply to help industry and consumers, even as it seeks the mantle of global leadership in the fight against climate change and discourages drilling at home." [Read more.](#) In response to the administration's actions, which failed to call upon domestic producers to increase production, on August 16, AAPL delivered a President's Letter to the National Security Advisor, as well as other industry stakeholders. [Read more.](#)

States in Session



Texas Republican Gov. Greg Abbott convened a second special session on August 7, one day after the first special session expired and with many House democrats still in Washington D.C. advocating for federal voting rights legislation, reports [Texas Public Radio](#). In addition to the original agenda items, specifically the contentious election integrity legislation that caused House democrats to flee the state in the first place, Governor Abbott's expanded [17-item agenda](#) for the second session includes the spending of federal COVID-19 relief funds and potential changes to the legislative rules regarding quorums. On August 12, Texas law enforcement was

Signing Deadlines (by date): **Alaska** Republican Gov. Mike Dunleavy has 20 days after delivery, Sundays excepted, 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. **Nebraska** Republican Gov. Pete Ricketts has five days from presentment to sign or veto legislation, Sundays excepted, or it becomes law without signature. **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](#), [Hawaii](#), [Illinois](#), [Indiana](#), [Kentucky](#), [Louisiana](#), [Maine](#), [Maryland](#), [Mississippi House](#) and [Senate](#), [Nebraska](#), [Nevada](#), [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](#), [Florida](#), [Kentucky](#), [Oklahoma](#), [Tennessee](#) and [Utah](#).



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