

GOVERNMENTAL AFFAIRS WEEKLY REPORT

Weekly Highlights At-A-Glance

FEDERAL – Legislative

S.J. Res 14 – Oil and Natural Gas Sector Emissions Standards Regulations.

(Update to 9/21/20 Weekly Report) On June 28, the House passed Democratic [S.J. Res. 14](#), “A joint resolution providing for congressional disapproval under chapter 8 of title 5, United States Code, of the rule submitted by the Environmental Protection Agency relating to ‘Oil and Natural Gas Sector: Emission Standards for New, Reconstructed, and Modified Sources Review’”. The measure already passed the Senate in April. President Biden signed the disapproval resolution on June 30 following the White House expressing its support for the measure which reinstates an Obama-era regulation limiting methane emissions from oil and gas drilling, and which the Trump administration overturned (See [85 Fed. Reg. 57018](#); September 14, 2020). [Read more](#). According to the Democratic resolution sponsors, “This joint resolution nullifies the Oil and Natural Gas Sector: Emission Standards for New, Reconstructed, and Modified Sources Review rule published by the Environmental Protection Agency on September 14, 2020. The rule finalized amendments to new source performance standards under the Clean Air Act for the oil and natural gas sector, such as an amendment that removed limitations on methane emissions from such sector.” The Obama-era rulemaking limits methane leaks from oil and gas wells during extraction. Proponents of the limit restoration are “hoping the EPA will impose stricter limits on fugitive methane, while opponents are concerned about more restrictions.” According to Bloomberg Government, “Regardless of what the EPA does, finding a long-term solution to methane emissions remains a key Democratic priority. Rep. Diana DeGette (D-CO), who led the push to use the Congressional Review Act to reverse Trump’s rule,

said, “There’s a lot of other methane legislation, as you know, that we have looked at, so we are going to sit down and figure out what we need to do next.” Congress was able to overturn the Trump administration rulemaking by use of the 1996 [Congressional Review Act](#), which allows Congress to scrap federal rules if acted upon within 60 legislative days of the session and only requires a majority vote. [Read more](#).

S. 2177 – Oil and Gas Bonding Reform and Orphaned Well Remediation Act.

On July 9, official bill text was made available for [S. 2177](#), known as the Oil and Gas Bonding Reform and Orphaned Well Remediation Act. Sponsored by Sen. Michael Bennet (D-CO), the bill would “amend the Mineral Leasing Act to ensure sufficient bonding and complete and timely reclamation of land and water disturbed by Federal and Indian oil and gas production.” According to Sen. Bennet, the measure “would take a two-step approach to address the risk that orphaned wells pose to watersheds, wildlife, and livestock; reduce the burden on local governments; modernize federal standards; and cut powerful methane pollution while creating good-paying jobs. First, it would create a fund to dramatically expand orphaned well cleanup on federal, state, and tribal lands, creating good-paying jobs. Second, it would modernize federal oil and gas bonding requirements to reflect the true cost of clean-up, while increasing transparency. This will ensure that companies, rather than taxpayers or state and local governments, cover the costs of future cleanup. President Joe Biden included funding for orphaned well cleanup in his American Jobs Plan.” [Read more](#).

S. 2170 – Public Engagement Opportunity on Public Land Exploration (PEOPLE) Act.

On June 22,

Sen. Michael Bennet (D-CO) introduced [S. 2170](#), known as the Public Engagement Opportunity on Public Land Exploration (PEOPLE) Act. The bill “would restore the role of the public, county commissioners, and other local elected leaders in shaping decisions about public land management and lease sales. The bill would increase transparency for lease sale nominations and bids, establish adequate and consistent public notice and comment periods, and require outreach to local governments, landowners, and public land user groups to minimize future conflict.” [Read more.](#)

H.R. 4219 – Federal Royalty Rate. On June 29, Rep. Liz Cheney (R-WY) introduced [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.” Specifically, the legislation would permanently fix the federal royalty rate for surface coal and onshore oil and gas at 12.5%. The bill has little chance of advancing in the Democrat-controlled House. [Read more.](#)

H.R. 3330 – Public Land Renewable Energy Development Act of 2021. On June 28, official bill text was made available for [H.R. 3330](#), known as the Public Land Renewable Energy Development Act of 2021. Sponsored by Rep. Paul Gosar (R-AZ), the bill “will increase production of wind, solar, and geothermal energy on public lands while also establishing a revenue sharing mechanism that ensures a fair return for states, counties, sportsmen, conservation, and taxpayers.” According to Rep. Gosar, “This bill will streamline land use and promote more renewable energy on federal lands. In addition, taxpayers also benefit because the legislation directs revenues to the Department of Treasury for deficit reduction.” [Read more.](#)

Federal Oil and Gas Leasing Pause. On June 24, Republican congressional lawmakers delivered a letter to Interior Secretary Deb Haaland, pressing the agency on details on its oil and gas leasing pause on federal offshore and onshore lands in light of the recent federal court injunction ordering the pause be lifted, as reported in the June 28, 2021, Governmental

Affairs report. Apart from calling for the resumption of quarterly lease sales, the representatives demanded that the Interior Department “provide remedies for the cancellation of leases that occurred this year.” The letter, which detailed eight items to be provided to Congress, requested a response by July 1, which has yet to be seen. [Read more.](#)

Conservative Climate Caucus. In late June, more than 50 Republican congressional representatives launched the [Conservative Climate Caucus](#) to provide “a consolidated message on private industry as the path to climate solutions.” Rather than tackle climate challenges through “overreaching” regulations, the group argues that “local governments can handle regulation, and free-market innovation will drive realistic carbon solutions faster without putting U.S. energy industries at a competitive disadvantage.” Caucus member Rep. Kelly Armstrong (R-ND) said, “we can develop our natural resources while protecting the environment and that “allowing innovation and the free market to lead on climate solutions will make our country stronger and our air and water cleaner.” [Read more.](#)

[FEDERAL – Regulatory](#)

Interior Department Nomination. On June 18, President Biden nominated Laura Daniel-Davis for Assistant Secretary, Land and Minerals Management, at the Interior Department. Daniel-Davis previously “served as Chief of Staff to Interior Secretaries Sally Jewell and Ken Salazar in the Obama administration. She was most recently the Chief of Policy and Advocacy for the National Wildlife Federation. Laura was Deputy Chief of Staff to Rep. Mark Udall (D-CO) and also served at Interior in the Clinton Administration in several roles, including as Chief of Staff to the Deputy Secretary.” [Read more.](#)

BLM Resource Advisory Council – New Mexico. On June 25, the Bureau of Land Management (BLM) announced the Northern New Mexico Resource Advisory Council (RAC) will meet in-person for a field trip to visit the El Malpais National Conservation Area on August 18, and the RAC will hold its meeting

virtually on August 19. According to the BLM notice, "The 12-member Northern New Mexico RAC provides recommendations to the Secretary of the Interior, through the BLM, on a variety of planning and management issues associated with public land management in the RAC's area of jurisdiction."

[Read more.](#)

BLM Resource Advisory Council – California.

On June 30, the BLM announced the Central California Resource Advisory Council (RAC) will hold a public meeting on September 22 and will accept public comments. The meeting will include topics related to land management and recreation areas.

[Read more.](#)

BLM Resource Advisory Council – California.

On June 24, the BLM announced the Northern California District Resource Advisory Council (RAC) will conduct a field tour on August 26 and hold a business meeting on August 27, which is open to the public. Topics to be discussed include the Northwest California Integrated Resource Management Plan, which is still under development.

[Read more.](#)

BLM Desert Advisory Council – California.

On June 24, the BLM announced the California Desert District Desert Advisory Council (DAC) will meet virtually on August 7 and invites public comments. DAC Issues to be discussed include renewable energy projects, mining projects, and monument planning, among other issues.

[Read more.](#)

BLM Public Lands Withdrawal Extension – Alaska.

On July 8, the BLM published a *Notice of Proposed Withdrawal Extension and Opportunity for Public Meeting; Alaska* (86 Fed. Reg. 36154), which proposes to extend the withdrawal of approximately 730.13 acres of public lands located in Anchorage, Alaska, for an additional 20-year term. The withdrawal created by Public Land Order (PLO) No. 6127, as extended by PLO No. 7471, expires on February 11, 2022. PLO No. 6127 withdrew public land from settlement, sale, location, or entry, under

the general land laws, including mining laws, and from selection under Section 6 of the Alaska Statehood Act for the Campbell Tract administrative site, and reserved for use by the BLM for administrative site in Anchorage, Alaska. This notice provides for the public to comment and request a public meeting for the 20-year withdrawal extension. The public comment period is open through October 6, 2021. [Read more.](#)

FEDERAL – Judicial

Eminent Domain; Pipelines – U.S. Supreme Court.

On June 29, in [*PennEast Pipeline Co. v. New Jersey*](#) (Case No. 19-1039), the U.S. Supreme Court ruled in a 5-4 decision "that a pipeline company can use federal eminent domain authority to build a pipeline across state-owned land and private lands where easements have been granted by states." In the case, New Jersey "refused to allow the proposed PennEast natural gas pipeline to cross two parcels of state-owned land and 40 parcels of private land where environmental easements and other easements gave the state an interest. When the company went to court to win enforcement of its authority to use eminent domain proceedings, New Jersey asserted its sovereign immunity protected it from a private party's lawsuit." The U.S. Court of Appeals for the Third Circuit adopted the state's argument, but here, the Supreme Court overruled that decision holding that natural-gas pipeline projects with federal approval can seize state-owned land. Writing for the majority, Chief Justice John Roberts stated that "federal eminent domain authority applies to state properties as well as private properties." [Read more.](#)

BLM Leases – North Dakota On July 7, 2021, North Dakota sued the Bureau of Land Management (BLM) alleging the agency wrongfully initiated a moratorium on federal oil and gas lease sales, which jeopardizes a key component of the state's economy. In *North Dakota v. U.S. Dept. of Interior* (Case No. 1:21-cv-00148), North Dakota says the Mineral Leasing Act requires lease sales to be held for the states at least quarterly and that the federal agencies "have failed

to comply with this mandatory statutory duty and have indicated that they intend to continue to do so for an indefinite period.” The complaint, which asks the court to review the agency action, states that “There was a quarterly lease sale scheduled for March 2021 for the BLM region that includes North Dakota” and “This lease sale was not held as required by statute.” [Read more.](#)

BLM Leases – Utah. On June 29, in *Rivers v. Hoffman* (Case No. 4:19-cv-00057-DN), the U.S. District Court for the District of Utah addressed a case involving suspended BLM oil and gas leases sold in Utah in 2018. In 2019, the BLM suspended the Utah oil and gas leases after the U.S. District Court for the District of Columbia ruled that the BLM failed to properly study the impact of greenhouse gas emissions for leases sold. The agency said the suspensions would stay in place until it completed a review under the National Environmental Policy Act. Living Rivers and the Southern Utah Wilderness Alliance argued the agency mismanaged the suspensions, which has prevented the leased public lands from being managed for multiple uses for the public’s benefit. According to the court, “The Bureau of Land Management can suspend oil and gas leases sold in Utah in 2018 without additional environmental review.” The Court held that the lease suspensions were not “major federal actions that require compliance with the National Environmental Policy Act.” As a result, the claim against the BLM was dismissed for lack of jurisdiction. [Read more.](#)

STATE – Legislative

Energy Source Bans – Florida. On June 21, Gov. Ron DeSantis (R) signed HB 919 into law. The Republican-backed legislation prohibits municipalities, counties, special districts, or other political subdivisions from restricting or prohibiting types or fuel sources of energy production used, delivered, converted, or supplied by certain entities to customers. The bill was a response to many municipalities in Democrat-led areas banning natural gas hookups in new residential and commercial properties. The Act took effect July 1. [Read more.](#)

Prohibits Forced Electric Charging Stations in Gas Stations – Florida. On June 16, Gov. Ron DeSantis (R) also signed HB 839, which is aimed at pushing back on environmental groups trying to force gas stations to install electric vehicle charging infrastructure. Specifically, the Act prohibits a “municipality, county, special district, or political subdivision from taking certain actions to prohibit siting, development, or redevelopment of fuel retailers & related transportation infrastructure & from requiring fuel retailers to install or invest in particular fueling infrastructure.” The Act took immediate effect upon signing. [Read more.](#)

Independent Contractors – Louisiana. (Update to 5/17/21 Weekly Report) On June 23, Gov. John Bel Edwards (D) signed HB 705 into law. Sponsored by Rep. Neil Riser (R), the Act provides for the misclassification of employees and criteria for classifying employees. Specifically, the Act provides that if an individual or entity meets at least seven of twelve criteria listed in the new law, there shall be a rebuttable presumption of an independent contractor relationship with the contracting party for whom the independent contractor performs work. The Act also provides that obtainment of an independent contractor certification from the state is optional and is not required to establish independent contractor status. The Act further provides that any contracting party or independent contractor may rely on the provisions of the law to establish an employment or independent contractor relationship. The Act will be effective as of August 1, 2021. [Read more.](#)

Notarial Acts – Michigan. On July 1, Rep. Stephanie Young (D) introduced HB 5249. The bill would allow for an additional technology fee for remote electronic notarization if agreed upon by the parties in advance. [Read more.](#)

Conservation Goals – Michigan. On June 24, Sen. Wayne Schmidt (R) introduced Senate Resolution 72. The resolution is “to urge the Governor to establish a statewide goal of conserving at least 30 percent of land and 30 percent of water in the state

by the year 2030, as part of the nationwide 30x30 effort to accelerate conservation efforts, and to update the state land management plan accordingly.” [Read more.](#)

Leasing; Royalties – Pennsylvania. On June 25, Sen. Gene Yaw (R) introduced SB 806, which amends existing law to provide for better transparency regarding royalty payments and deductions. According to the sponsoring memo, the “legislation would not impact lease agreements, but it would require entities making payments to landowners to provide more description, clarity and uniformity on their royalty check statements. This proposal is designed to help ensure all parties feel their lease agreements are executed as intended, and it will help mitigate concerns that have developed in recent years.” [Read more.](#)

Eminent Domain; Landowner's Bill of Rights; Right-of-Way Agents – Texas. (Update to 3/8/21 Weekly Report) On June 16, Gov. Greg Abbott (R) signed HB 2730 into law. According to the bill's statement of purpose, HB 2730 changes “the eminent domain process to make the process more transparent, accountable, and fair for landowners.” The Act provides for a landowner's bill of rights, probationary certificates for Right-of-Way agents, and qualifying and continuing education requirements for Right-of-Way agents. The Act is effective January 1, 2022. [Read more.](#)

Royalty Payment Cause of Action – Texas. (Update to 3/22/21 Weekly Report) On May 24, Gov. Greg Abbott (R) signed SB 1259 into law. Sponsored by Sen. Brian Birdwell (R), regarding causes of action for withholding payments of the proceeds from the sale of oil and gas production, “S.B. 1259 simply states that a payee does not have a common law cause of action for breach of contract against a payor for withholding royalty payments under the Natural Resources Code unless, for a dispute concerning the title, the contract requiring payment specifies otherwise.” The Act took immediate effect. [Read more.](#)



SPECIAL LEGISLATIVE SECTION: LOUISIANA SESSION ADJOURNMENT

LOUISIANA SESSION ADJOURNMENT ROUNDUP.

The Louisiana legislative session adjourned on June 10, 2021, and the deadline for action by Gov. John Bel Edwards (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 15 bills tracked for members was covered in prior reports.

HB 26 – Republican bill; Severance Taxes. Would have changed the value required for crude oil produced from stripper wells to be exempt from severance tax. Although the bill passed the legislature it was vetoed by Gov. John Bel Edwards (D).

HB 30 – Republican bill; Severance Taxes. Would have reduced the severance tax rate for oil over a specified period and fixed the severance tax rate for oil produced from certain wells at the current rate.

HB 57 – Republican bill; Severance Taxes. Would have exempted 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 specified circumstances.

HB 617 – Republican bill; Fossil Fuels. Would have established Louisiana as a fossil fuel sanctuary state and expressed that federal actions that curtail fossil fuels are an infringement on state's rights.

HB 658 – Republican bill; Wells. Would have exempted oil production of newly completed wells that are undergoing or have undergone certain well enhancements.

HB 661 – Republican bill; Severance Taxes. Would

have exempted oil production of certain newly drilled wells from severance taxes.

HB 662 – Republican bill; Severance Taxes. Would have exempted oil production of certain orphaned wells from severance tax. Although the bill passed both chambers, it died in conference.

SB 59 – Republican bill; Risk Charge. Would have provided for the risk charge against nonparticipating mineral owners in drilling units. The bill was passed over in favor of **SCR 44** (as previously reported) which established a Risk Charge Commission to study current law and consider making recommendations regarding the costs and risks in drilling a well in a unit, the results of which will be submitted by report no later than February 4, 2022.

All bills and history may be accessed directly at the Louisiana Legislature website:
<https://legis.la.gov/legis/BillSearch.aspx?sid=current>

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: TEXAS SESSION ADJOURNMENT

TEXAS SESSION ADJOURNMENT ROUNDUP. The Texas legislative session adjourned on May 31, 2021, and the deadline for action by Gov. Greg Abbott (R) on any legislation was June 20, 2021, bringing the 87th 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. All other legislation that passed from the 102 bills tracked for members was covered in prior reports.

HB 878 – Democrat bill; Tax Deduction for High-Cost Gas. Relates “to the repeal of the temporary tax

reduction for certain high-cost gas.” Would have phased out the tax reduction for high-cost gas to amend existing law by adding a September 1, 2021, deadline for applications and related processes.

HB 879 – Democrat bill; Duplicate bill to HB 878. Would have phased out the tax reduction for high-cost gas to amend existing law by adding a September 1, 2021, deadline for applications and related processes.

HB 901 – Republican bill; Eminent Domain. Would have amended existing property law regarding eminent domain to provide conditions for a private entity with eminent domain authority to acquire real property for a public use and the terms for instruments of conveyance of certain easements, and their implementing procedures.

HB 902/SB 986 – Republican bill; Eminent Domain; Landowner's Bill of Rights; Right-of-Way. The bill would have updated the Landowner's Bill of Rights as it pertains to eminent domain, creating an ombudsman for landowners, and creating qualifying and continuing education requirements for Texas right-of-way agents as well as added grounds for suspension or revocation of a certificate as well as the creation of a probationary certificate.

HB 1041 – Democrat bill; Railroad Commission Political Contributions. Would have imposed certain restrictions regarding political contributions by a member of the Railroad Commission of Texas and of political contributions made in connection with the office of a commissioner.

HB 1042 – Democrat bill; Railroad Commission Name Change. Would have changed the name of the Railroad Commission of Texas to the Texas Energy Resources Commission and also make changes to commissioner elected terms.

HB 1043 – Democrat bill; Administrative Penalties. Would have amended existing law regarding penalties related to the Railroad Commission of

Texas, specifically increasing penalties related to those “which pertain to safety or the prevention or control of pollution or the provisions of a rule, order, license, permit, or certificate which pertain to safety or the prevention or control of pollution and are issued under this title, the person may be assessed a civil penalty by the commission.” The bill also would have increased penalties related to certain natural gas activities and the state water code.

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

HB 1346 – Republican bill; Severance Taxes. Would have provided certain refunds for oil or gas severance taxpayers who do not hold a permit.

HB 1377 – Democrat bill; Gas Production Tax. Would have amended existing law to remove gas “produced from oil wells with oil and lawfully vented or flared” from the list of gas that is not taxed.

HB 1395 – Republican bill; Ad Valorem Taxation. Would have made changes to definitions and administrative officials and procedures regarding ad valorem taxation.

HB 1447 – Democrat bill; Remote Proceedings. Would have allowed for the use of remote technology in probate (and guardianship) proceedings. The bill passed the House but died in the Senate.

HB 1452 – Democrat bill; Flaring. Would have directed the Texas Railroad Commission to establish a policy before December 31, 2025, for the elimination of routine flaring of gas from wells or

other facilities regulated by the commission.

HB 1483 – Democrat bill; Conveyance Restrictions. Regarding real property conveyances, the bill would have provided that “if a grantee of an instrument conveying an interest in real property believes that a restriction in the instrument violates the constitution of this state or of the United States, the grantee may bring an action against the county in which the instrument is recorded to request the redaction of the restriction from the instrument.”

HB 1494 – Democrat bill; Taxes; Flared or Vented Gas. Would have imposed a 25 percent gas production tax on gas flared or vented and also provided for an exemption.

HB 1501 – Bipartisan bill; Energy Source Prohibitions. Relating to certain regulations adopted by a governmental entity restricting the use of a natural gas or propane appliance or other system or component, the bill would have prohibited the exclusion of energy sources. Passed both the House and Senate but died during the amendment process.

HB 1521 – Democrat bill; University Lands. Would have required the Board of Regents of the University of Texas System to adopt a formal policy goal to eliminate routine methane flaring on university lands by 2025.

HB 1683 – Republican bill; Federal Preemption. Would have sought to restrain any federal law that inhibits oil and gas operations in the state and provided that an “agency of this state or a political subdivision of this state, and a law enforcement officer or other person employed by an agency of this state or a political subdivision of this state, may not contract with or in any other manner provide assistance to a federal agency or official with respect to the enforcement of a federal statute, order, rule, or regulation purporting to regulate oil and gas operations if the statute, order, rule, or regulation imposes a prohibition, restriction, or other regulation that does not exist under the laws of this state.” The bill passed the House but died in the Senate.

HB 1834 – Republican bill; Mineral Liens. Would have amended existing law relating to a mineral contractor or subcontractor's lien to secure payment related to mineral activities to include "material, machinery, supplies."

HB 1879 – Republican bill; Eminent Domain. Would have required "establishing actual progress for the purpose of determining the right to repurchase real property from a condemning entity."

HB 1913– Democrat bill; Gas Capture Plan. Provided that the Railroad Commission "may not issue a permit to drill, deepen, plug back, or reenter an oil or gas well unless the applicant submits with the application a gas capture plan to minimize flaring from the well" and provided related procedures and requirements.

HB 1959 – Republican bill; Notaries Public. Would have amended existing notary law by updating provisions related to identification and fee adjustments.

HB 1975– Democrat bill; Flaring. Provided for the publishing of certain flaring information.

HB 1976– Democrat bill; Flaring Study. Would have directed the Texas Railroad Commission to conduct a study on natural gas flaring.

HB 2006 – Republican bill; Notice. Regarding the notice requirements for permits for the commercial surface disposal of oil and gas wastes, the bill would have required notice to a river authority or groundwater conservation district under the conditions provided. Like HB 2006, the Senate companion bill, **SB 771**, also died in committee.

HB 2042 – Republican bill; Eminent Domain. Would have provided certain requirements in connection with the acquisition of real property for public use by an entity with eminent domain authority. Although HB 2042 failed in committee, the Senate companion bill, **SB 723**, passed the Senate but then failed to advance in the House.

HB 2131 – Republican bill; Recorded Instruments. Regarding the retention of instruments recorded in the property records of a county, the bill would have provided for record retention requirements.

HB 2144 – Republican bill; Tort of Public Nuisance. Would have reformed the tort of public nuisance to remove the common law tort and replace it with a statute that specifically defines which actions may be actionable for public nuisance. According to the Texas Civil Justice League, "Traditionally, the common law doctrine of public nuisance has been used to enforce 'established public rights,' which means the common interest of all members of the public to the use of public land, air, and water. In terms of oil and gas operations, the common law can create litigation opportunities for plaintiffs who bring claims against resource development companies from upstream to downstream channels." As the [Texas Civil Justice League noted](#) in its support of the bill, "Public nuisance has also been used to launch national litigation against, for example, the Texas energy industry, threatening the economic well-being of our state and its citizens." Most importantly, the bill would have established that a person may be held liable for a public nuisance "only if the person causes an unlawful condition and controls that unlawful condition at the time the condition violates an established public right. Conditions arising from the following conduct are not considered unlawful conditions for purposes of a public nuisance action: an activity expressly authorized or encouraged by a statute, ordinance, rule, or other similar measure adopted by the state, a political subdivision of the state, the United States, or a regulatory agency of the state or the United States; and the lawful manufacturing, distributing, selling, advertising, or promoting of a lawful product."

([Read a complete bill summary and analysis here](#)) For example, if the Texas Railroad Commission had approved drilling operations and related practices, a private citizen could not bring a lawsuit against an operator for conducting those activities under the bill. The bill also required a higher burden be met by a plaintiff when bringing a public nuisance lawsuit.

HB 2292 – Republican bill; Ad Valorem Taxes. The bill related to the appraisal for ad valorem tax purposes of a real property interest in oil or gas in place.

HB 2370 – Democrat bill; Permit Applications. Related to procedures for certain permit applications submitted to the Texas Commission on Environmental Quality.

HB 2482 – Democrat bill; Active Wells; Application Fees. Would have increased certain application fees, provided for active well status procedures, bond requirements, and set plugging goals.

HB 2730 – Democrat bill; Eminent Domain; Landowner's Bill of Rights. Regarding eminent domain, the bill provided for a landowner's bill of rights.

HB 2868 – Democrat bill; Wells. Would have provided for financial security requirements for well operators and determinations of plugging costs.

HB 2881/SB 1030 – Republican bill; Non-participating Royalty Owners. Would have provided for definitions and applicability related to nonparticipating royalty interest owners.

HB 2882/SB 1031 – Republican bill; Division Orders; Payee Information. Related to information provided to a payee by a payor of proceeds of production from an oil or gas well that traverses multiple tracts.

HB 2883/SB 1032 – Republican bill; Payee Information. Related to the information a payor of the proceeds of production from an oil and gas well is required to provide a payee.

HB 2884/SB 1033 – Republican bill; Suspension of Payments. Provided for notification of suspension of payments from oil and gas production.

HB 2957/SB 1583 – Republican bill; Inspection of Oil and Gas Facilities. Provided for inspections and examinations by the Railroad Commission of Texas

of certain sites, such as wells, and facilities to be conducted using unmanned aircraft, such as drones.

HB 3039 – Republican bill; Railroad Commission. Would have allowed 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.

HB 3183 – Democrat bill; Gas Well Weatherization. Would have required gas well operators to take certain cold weather preparedness actions and provided for reporting and fines.

HB 3381 – Republican bill; Drill Cuttings. Related to the authority of the Railroad Commission of Texas to contract for the treatment of and to sell drill cuttings.

HB 3385 – Republican bill; Eminent Domain. Would have amended existing law regarding a landowner's bill of rights statement in connection with the acquisition of real property through eminent domain.

HB 3409 – Republican bill; Drainage; Offset Wells. Would have amended existing law relating to the duty of a lessee or other agent in control of certain state land to drill an offset well, pay compensatory royalty, or otherwise protect the land from drainage of oil or gas by a horizontal drainhole well located on certain land.

HB 4066 – Democrat bill; Railroad Commission; Wastewater. Would have amended existing law regarding the adoption by the Railroad Commission of a permit by rule for the beneficial reuse of domestic wastewater and mobile drinking water treatment system wastewater produced at certain oil and gas drilling facilities.

HB 4218 – Republican bill; Leasing; Overriding Royalties; Washouts. HB 4218 was vetoed by Gov. Greg Abbott (R). The bill would have amended existing law regarding a cause of action for the bad faith washout of an overriding royalty interest in an oil and gas lease. Specifically, the bill added the

definition of a bad faith washout to the Property Code and provided a remedy for such action. The bill would have authorized a person to bring a cause of action for a bad faith washout of the person's overriding royalty interest in an oil and gas lease in a district court of a county in which any part of the property subject to the lease is located. The bill also entitled the person to a remedy from that action in specific situations. Furthermore, H.B. 4218 required the person to bring the action not later than the second anniversary of the date the person obtained actual knowledge that the washout occurred. Additionally, the bill authorized an owner who prevails in the action to recover actual damages, court costs and attorney's fees, and the enforcement of a constructive trust on the oil and gas lease or mineral estate acquired to accomplish the washout of the overriding royalty interest. These remedies would have been cumulative of other remedies provided by common law or statute.

HB 4222 – Democrat bill; Railroad Commission. Would have amended existing law regarding the establishment of the oil and gas infrastructure security division within the Railroad Commission of Texas.

HB 4223 – Democrat bill; Oil and Gas Infrastructure. Would have amended existing law regarding the adoption of a comprehensive plan to protect oil and gas infrastructure in the state.

HB 4268 – Democrat bill; Gas Wells Cold Weather Preparedness. Would have amended existing law regarding cold weather preparedness of gas wells.

HB 4367 – Democrat bill; Orphaned Wells. Would have amended existing law regarding the reduction and plugging of orphaned oil and gas wells and provided for the imposition of a fee and an exemption from certain taxes and fees.

HB 4442 – Democrat bill; Oil and Gas Waste; Taxation. Would have amended existing law regarding the regulation of oil and gas waste, and created a tax exemption and imposed a fee.

HB 4524 – Democrat bill; Produced Water. Would have amended existing law regarding the adoption of rules by the Texas Commission on Environmental Quality regarding the discharge into water of produced water resulting from certain oil and gas activities.

HB 4551 – Democrat bill; Land Title Review Study. Would have created the Land Title Review Commission to study and provide recommendations on providing alternative remedies to disputed land title claims before litigation is pursued.

HJR 92 – Republican joint resolution. Proposed a constitutional amendment concerning the right to repurchase real property acquired by a governmental entity through eminent domain.

HJR 93 – Republican joint resolution. Proposed a constitutional amendment prohibiting the taking of property by eminent domain for the purpose of transferring the property to a private entity.

SB 127 – Democrat bill; Tax Reductions. Related to the tax reduction for certain high-cost gas, the bill would have amended existing law regarding application dates.

SB 310 – Democrat bill; Tax Deduction for High-Cost Gas. Related "to the repeal of the temporary tax reduction for certain high-cost gas."

SB 367 – Democrat bill; Permit Applications. Would have amended existing law regarding an application for a permit for a well adjacent to a well blowout site in certain counties. Specifically, the bill would have required 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.

SB 388 – Democrat bill; Methane Flaring Plan. Related to the reduction of methane gas flaring on land dedicated to the permanent university fund and would have created a Methane Flaring Reduction Plan which directs the Board of Regents of the University of Texas System to adopt a formal policy goal to eliminate routine methane flaring on university lands by 2025.

SB 423 – Democrat bill; Eminent Domain Notice. Would have amended the service of notice requirements of a special commissioners' hearing in an eminent domain proceeding.

SB 622 – Democrat bill; Flaring Emissions. Would have added systems that reduce flaring emissions and other site emissions to the preference list for the new technology grant program.

SB 722 – Republican bill; Eminent Domain. Regarding eminent domain appraisal reports, the bill provided that “an entity that fails to meet the requirements of this subsection is liable to the owner for reasonable attorney’s fees incurred by the owner in connection with the entity’s acquisition of the owner’s property.”

SB 724 – Republican bill; Eminent Domain. Provided for the award of attorney’s fees and other costs in an eminent domain proceeding.

SB 1006 – Democrat bill; Railroad Commission Notices. Provided certain notice requirements for the Railroad Commission.

SB 1468 – Democrat bill; Security Interests. Would have amended existing law regarding oil and gas liens. Specifically, the sponsoring statement noted “there are concerns that, unless the first purchaser statute is amended, the security interests of Texas oil and gas interest owners are likely to continue to be interpreted as unsecured and subordinate to other perfected security interests in cases where the

first purchaser is organized or incorporated out of state. S.B. 1468 fixes that problem by re-designating the mineral interest as real property versus personal property for the purposes of bankruptcy proceedings and therefore protects the Texas interests as opposed to companies incorporated in other states like Delaware.”

SB 2108 – Republican bill; Oil and Gas Well Financial Security. Would have amended existing law regarding the financial security requirements for operators of oil and gas wells.

All bills and history may be accessed directly at the Texas Legislature website:

<https://capitol.texas.gov/Home.aspx>

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

Hydraulic Fracturing Ban – California. On June 22, the Kern County Board of Supervisors sent a letter to the California Department of Conservation Geologic Energy Management Division (CalGEM) to formally oppose proposed CalGEM proposed rulemaking which would halt applications for hydraulic fracturing and other well stimulation practices beginning on January 1, 2024, in the state. The letter was also delivered to Gov. Gavin Newsom (D) and the Secretary of California Department of Natural Resources. The Board also unanimously voted on the same day to oppose the ban. “Our Board, as a regulator of 80% of the oil and gas produced in California, objects to this rule-making and opposes this targeting of a specific technology method since the ban has no basis in the established science or real-world implementation,” wrote the Board. “Passage of this regulation will interfere with the legal rights of mineral owners to access oil and gas

and the ability to provide economic benefits through jobs and property tax revenue.” As we have reported in prior reports, CalGEM is in the early stages of draft rulemaking and we will continue to keep members updated as rulemaking proposals are released for public review, comment, and hearings. [Read more.](#)

Financial Assurance Rulemaking – Colorado.

As previously reported, the Colorado Oil and Gas Conservation Commission (COGCC) is continuing its rulemaking processes to implement [SB19-181](#), which was enacted in 2019, and “ensures that oil and gas development and operations in Colorado are regulated in a manner that protects public health, safety, welfare, the environment and wildlife resources.” Per the COGCC, “Financial Assurance is one of the three remaining mandated rulemakings from SB 19-181, which directed the Commission to broadly consider changes to financial assurance.” The COGCC is currently in the process of considering rulemaking regarding Financial Assurance and the bonding requirements for operators. ([See Fact Sheet here.](#)) The COGCC has set forth the process for public comment and hearing participation for the proposed rulemaking, with written comments due by September 10, 2021. The COGCC will also make available the opportunity for the public to sign up to make oral comments during a future hearing by September 16, 2021. [For more information click here.](#) [Read more.](#)

Oil Production Revenue – New Mexico. Last week, New Mexico reported oil production on state land led to a record \$1.25 billion in revenue in the last fiscal year. According to the New Mexico State Land Office, “since January, when the oil and gas industry began recovering from a downturn brought on by the COVID-19 pandemic, monthly royalty payments were at least \$100 million, with June’s early projection at \$135 million – a new record.” New Mexico State Land Commissioner Stephanie Garcia Richard added that relief “granted to oil and gas operators in allowing them to idle or shut in wells without forfeiting leases during the pandemic meant they were able to resume production when the market recovered.” [Read more.](#)

STATE – Judicial

Corrected Instruments; Assignments – Texas.

(Update to 1/14/19 Weekly Report) On May 14, in [Broadway National Bank v. Yates Energy Corp.](#) (Case No. 19-0334), the Texas Supreme Court addressed the issue of the Texas Property Code which “authorizes the correction of a material error in a recorded original instrument of conveyance by agreement.” Under the state code, “[t]o be effective, the instrument correcting the error must be executed by each party to the original instrument ‘or, if applicable, a party’s heirs, successors, or assigns.’” According to the court, “[t]he issue here is when are an original party’s heirs, successors, or assigns applicable, such that their agreement is necessary to make the correction. In this case, the court of appeals considered whether the original parties could validly agree to correct a mistake in the original instrument of conveyance, after a third party acquired an interest. The court concluded that the original parties could no longer correct their mistake solely by their agreement after an assignment.” The appellate court “reasoned that the assignment or sale of an interest in the property by an original party triggered the ‘if applicable’ clause, requiring the joinder of the assign for a material correction.” In sum, “the court held that a validly executed correction instrument under section 5.029 must be signed by the property’s current owners.” Here, the Texas Supreme Court held that “[w]e do not agree that a correction instrument’s validity under 5.029 invariably depends on the consent of an assign or subsequent purchaser. Rather, we understand the ‘if applicable’ clause to provide a substitute person or entity to sign when a party to the original conveyance is unavailable to sign a correction instrument for a material error. Because we disagree with the court of appeals’ interpretation of the ‘if applicable’ clause as the statute’s method for protecting the property interests of subsequent purchasers, we reverse and remand.” According to law firm, Gray Reed, “the remand back to the appellate court will require consideration of the trial court’s ruling that neither Yates nor its assigns are bona fide purchasers.” The Supreme Court’s slim

5-4 holding was followed by a scathing dissent in which those justices found the “majority read the words ‘if applicable’ out of the statute by allowing the original parties to alter a deed without even giving notice to the current owners. Aside from a grammar lesson and what is possibly the longest footnote in judicial history, their most compelling argument addresses the consequences of the decision. For instance, requiring current property owners to monitor real property records for correction instruments filed by their predecessors is especially burdensome.” The Texas Oil & Gas Association also had warned in a filed amicus brief of the “perils of reversing the appellate court’s decision.”

[Read more.](#)

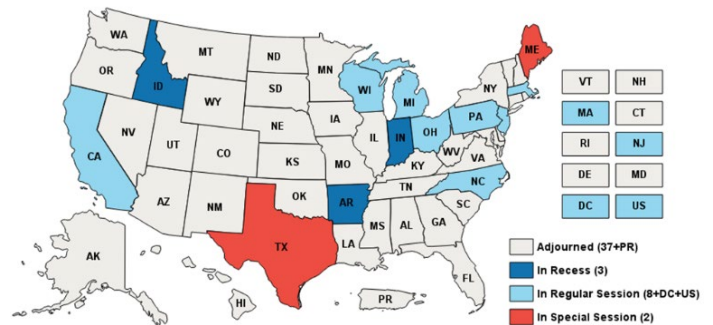
INDUSTRY NEWS FLASH

► **New Mexico reaches pre-pandemic crude oil production levels.** On June 24, the Permian Basin Petroleum Association reported that “New Mexico is the first state to reach pre-pandemic level in crude oil production.” According to production data, “New Mexico is the nation’s third highest oil-producing state, and production is up 4 percent from March 2020 with Texas and North Dakota posting declines.” [Read more.](#)

► **DUC wells declined 27% in past year.** On June 28, the U.S. Energy Information Administration (EIA) reported that estimated inventory of drilled but uncompleted (DUC) wells in key oil and gas basins declined 27% from June 2020 through May 2021. “Since the COVID-19 pandemic began, exploration and production (E&P) companies have cut capital expenditures, deployed fewer rigs, and reduced oil and natural gas production in response to lower demand and lower prices,” noted the EIA in a written statement. [Read more.](#)

LEGISLATIVE SESSION OVERVIEW

States in Session



Session Notes (by date): California, Massachusetts, Michigan, New Jersey, North Carolina, Ohio, Pennsylvania, and Wisconsin are in regular session. The U.S. Congress is also in session.

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

Maine convened for a special session on April 28. The purpose of the special session is to consider a supplemental budget proposed by Democratic Gov. Janet Mills as well as changes to the state’s criminal defense system, reports the [Maine Wire](#). The legislature will reconvene for a veto day on July 19, which is the scheduled end to the special session.

Texas Gov. Greg Abbott (R) has called state lawmakers back into a special session of the legislature mainly to consider bills related to voting and elections, bail overhaul, social media censorship, abortion-related legislation, and critical race theory education in public schools. There may be several oil and gas bills that are introduced and considered during the special session which started on July 8 and is expected to last up to 30 days maximum. We will keep members informed of any relevant bills that move during the special session. [Read more.](#)

West Virginia adjourned a second special session on June 24. The purpose of the special session was to allocate excess tax dollars. Lawmakers in the House and Senate approved 24 appropriations bills to spend \$250 million in surplus tax-revenue on economic

development, tourism and corrections projects, reports [WDTV](#).

Alaska adjourned a second special session on June 28 after the House voted to allow the budget to go into effect on July 1, and averted what would have been the state's first ever government shutdown, reports [Alaska Public Media](#). Republican Gov. Mike Dunleavy has said he will review the budget for any line items he may veto and then is prepared for implementation. Governor Dunleavy is also 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](#).

South Carolina held a special session on June 29 where lawmakers returned more than \$150 million in local projects into the state budget after Republican Gov. Henry McMaster removed the items through his vetoes, reports the [Herald Sun](#).

Missouri adjourned a special session on June 30 after lawmakers were able to pass [SB 1](#) and send it to Republican Gov. Mike Parson's desk, reports [Columbia Missourian](#). The bill extends provider taxes crucial to the state's Medicaid program. The special session was called in response to anti-abortion lawmakers who want to limit access to contraceptives and ban Planned Parenthood as a Medicaid provider through the tax bill. The new version of the bill states "family planning services shall not include abortions or any abortifacient drug or device that is used for the purpose of inducing an abortion," but does not defund Planned Parenthood.

The **Minnesota** House adjourned a special session on July 1 after the legislature successfully passed the state's two-year \$52 billion budget and averted a partial government shutdown, reports [CBS Minnesota](#). The last two pieces of the spending plan were the education package, which passed unanimously, and the tax bill, which passed with amendments. The Senate adjourned a special session on July 7 after extending their special session to review Democratic Gov. Tim Walz's state agency, Senate and board appointments.

The following states adjourned their 2021 legislative sessions on the dates provided (by date): **New Hampshire** (June 24), **Oregon** (June 26), **Arizona** and **Delaware** (June 30), and **Rhode Island** (July 1).

Signing Deadlines (by date): **Missouri** Republican Gov. Mike Parson had until June 28 to sign or veto legislation, or it became law without signature. **New Hampshire** Republican Gov. Chris Sununu had until June 30 to sign or veto legislation, or it was pocket vetoed. **Hawaii** Democratic Gov. David Ige had until July 1 to sign or veto legislation, or it became law without signature. **Colorado** Democratic Gov. Jared Polis had until July 8 to sign or veto legislation, or it became law without signature. **New York** Democratic Gov. Andrew Cuomo had until July 10 to sign or veto legislation, or it is pocket vetoed. **Rhode Island** Democratic Gov. Daniel McKee had until July 11 to sign or veto legislation, or it becomes law without signature. **Arizona** Republican Gov. Doug Ducey has until July 12 to sign or veto legislation, or it becomes law without signature. **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 Jersey** Democratic Gov. Phil

Murphy has 45 days from presentment to act on legislation 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: [Colorado](#), [Connecticut](#), [Georgia](#), [Kentucky](#), [Louisiana](#), [Maryland](#), [Nebraska](#), [New Mexico](#), [North Dakota](#), [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](#), and [Utah](#). ■

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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

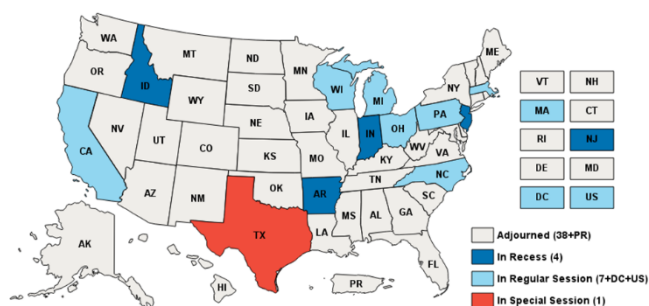
conveyed land from the grantor to the grantee, but contained a clause requiring the grantee to give a third party – a ‘stranger’ – the right of first refusal to any future conveyance of the land.” The Court noted that the “stranger to the deed” rule “is an ancient one that identifies someone who is neither a grantor nor a grantee to a conveyance as a ‘stranger.’ The rule also posits that any property interest in favor of that stranger, and which is contained in a reservation or an exception, is void.” The appellate court “applied the rule and concluded that the right of first refusal clause in the deed favored a stranger and was, accordingly, void and unenforceable.” However, the West Virginia Supreme Court disagreed on applying the rule, reversed the decision, and held “that a right of first refusal clause in a deed is neither a reservation nor an exception, and such a clause is therefore outside the boundaries of the ‘stranger to the deed’ rule.” [Read more.](#)

► **Texas upstream sector adds nearly 9,000 jobs in first half of 2021.** On July 16, the Texas

► OPEC forecasts global oil demand to reach pre-pandemic levels by 2022. On July 15, the

LEGISLATIVE SESSION OVERVIEW

States in Session



Session Notes (by date): California, Massachusetts, Michigan, North Carolina, Ohio, Pennsylvania, and Wisconsin are in regular session. The U.S. Congress is also in session.

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

Texas Republican Gov. Greg Abbott convened a special session on July 8 that is set to last up to 30 days, reports [The Texas Tribune](#). The purpose of the special session is to address bills that died at the end of the regular legislative session. In his [proclamation](#) Governor Abbott identified 11 agenda items including bail reform, election integrity, border security, social media censorship, Article X funding, family violence prevention, youth sports, abortion-inducing drugs, thirteenth check, critical race theory and appropriations. On July 12, Texas Democrats fled the state and flew to Washington, D.C. in an effort to again block a GOP attempt to pass voting legislation, reports [The Texas Tribune](#). Democratic lawmakers made it clear that they would stay in Washington D.C. until August 6, when the special session is set to expire.

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

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GOVERNMENTAL AFFAIRS WEEKLY REPORT

Weekly Highlights At-A-Glance

FEDERAL – Legislative

S. 2393 – Fracturing Regulations are Effective in State Hands (FRESH) Act.

On July 29, official bill text was made available for [S. 2393](#), known as the Fracturing Regulations are Effective in State Hands Act, or FRESH Act. Sponsored by Sen. Jim Inhofe (R-OK), the bill clarifies “that a State has the sole authority to regulate hydraulic fracturing on Federal land within the boundaries of the State.” According to Sen Inhofe, “[t]he bill states explicitly a state is the only authorized entity to regulate hydraulic fracturing on any land located within its borders. This takes the federal nexus away. The exclusivity of regulation also applies to all federal lands located in the state.” [Read more.](#)

S. 2394 – Federal Land Freedom Act of 2021.

On July 29, official bill text was made available for [S. 2394](#), known as the Federal Land Freedom Act of 2021. Sponsored by Sen. Jim Inhofe (R-OK), the bill’s purpose is to “achieve domestic energy independence by empowering States to control the development and production of all forms of energy on all available Federal land.” According to Sen. Inhofe, the bill “gives each state the right to develop all of the energy resources on the federal lands located within that state’s borders. Federal lands that will not apply: Indian lands, national parks, units of the National Wildlife Refuge System and Congressionally designated wilderness areas. The bill allows a state to develop a regulatory program governing the leasing and permitting of energy activities on its federal land. None of the actions taken by a state to lease or permit lands would be subject to judicial review. Further, the act will exempt the activities under the ‘program’ from the requirements of [National Environmental Policy Act] [Endangered Species Act] and National Historic

Preservation Act. It will also not be subject to the Administrative Procedures Act. The bill retains the current royalty share between states and the federal government under the Mineral Leasing Act (essentially 50–50); it does, however, reverse the flow of cash. Operators will now pay royalties to states, which will then send the federal government’s share to the treasury.” [Read more.](#)

H.R. 4334 – American Energy First Act.

On July 30, official bill text was made available for [H.R. 4334](#), known as the American Energy First Act and which will “empower States to manage the development and production of oil and gas on available Federal land, to distribute revenues from oil and gas leasing on the Outer Continental Shelf to certain coastal States, to promote alternative energy development.” Sponsored by Rep. Steve Scalise (R-LA), the bill specifically allows the Interior Department to delegate to states the authority for permitting and regulation of oil and gas activities on federal land within that state. The bill would also establish revenue sharing for the states on the Atlantic Ocean and Alaska for oil and gas production off their coastlines. H.R. 4334 also increases the state share of oil and gas production revenues in the Gulf of Mexico from 37.5% to 50% and removes a \$500 million per year cap on the funds received by the states under the Gulf of Mexico Energy Security Act. “For decades, America has been a world leader in energy production and exploration by embracing an all-of-the-above energy strategy, yet due to President Biden’s disastrous policies, we have witnessed an all-out assault on American energy that jeopardizes our security,” said Rep. Scalise. “The American Energy First Act invests in America’s energy future by opening up more areas to energy exploration, encouraging alternative sources of energy like wind, solar, and geothermal, and cutting

red tape to lower the cost of energy for hard-working families." [Read more.](#)

H.R. 4153 – Clean Energy Future through Innovation Act of 2021. On August 4, official bill text was made available for bipartisan legislation, [H.R. 4153](#), known as the Clean Energy Future through Innovation Act of 2021. Sponsored by Reps. David McKinley (R-WV) and Kurt Schrader (D-OR), the bill will “boost innovation of clean energy technologies and reduce emissions from the power sector while preserving affordability and reliability.” ([Read Section-by-Section fact sheet here](#)) This comprehensive bill “calls for a decade of public and private investments in clean energy innovation and infrastructure development, followed by new regulatory standards to ensure environmental and energy goals are met.” Widely supported by stakeholders on both sides of the aisle, including Richard Jackson, President, Operations, U.S. Onshore Resources and Carbon Management, Occidental, who said of H.R. 4153, “The Clean Energy Future Through Innovation Act of 2021 is an incredibly impactful proposal that will invest in technology and incentivize emission reductions, and Occidental is proud to support it. Last year, Occidental announced our Pathway to Net-Zero before 2040 for operational and energy use emissions, and before 2050 for emissions associated with our products.” [Read more.](#)

[FEDERAL – Regulatory](#)

ANWR Leasing Program. On August 4, the Bureau of Land Management (BLM) published a “Notice of Intent To Prepare a Supplemental Environmental Impact Statement for the Coastal Plain Oil and Gas Leasing Program, Alaska” ([86 Fed. Reg. 41989](#)) the purpose of which is “to prepare a Supplemental Environmental Impact Statement (EIS) to the September 2019 Coastal Plain Oil and Gas Leasing Program EIS. The Supplemental EIS will provide a comprehensive analysis of the potential environmental impacts of the Program.” The Notice formally announces the Biden administration’s review of the Trump administration’s opening of the

Arctic National Wildlife Refuge (ANWR) to drilling which the new administration claims had “legal deficiencies” related to the oil and gas leasing program in the Arctic’s Coastal Plain. According to the BLM, “The supplemental EIS ordered by the department will analyze the potential effects of leasing on surface waters, wetlands and vegetation, as well as wildlife such as caribou, birds and polar bears and the greenhouse gas emissions caused by leasing activity.” The public comment period is open through October 4, 2021. [Read more.](#)

Federal Oil and Gas Leasing Pause. On July 27, during a U.S. Senate Energy Committee hearing regarding the Interior Department’s fiscal 2022 budget, Interior Secretary Deb Haaland was grilled on the status of the Biden administration’s ongoing moratorium on new oil and gas leases on public lands. Committee Chairman Joe Manchin (D-WV) forcefully pushed Haaland on the status of the pause. “While I’ve supported administration’s desire to pause lease sales to make sure the American people are getting fair returns for our shared resources, we are now well — now into the early summer timeline when we were told the review would be completed,” said Manchin. “We need a plan to move forward for responsible oil and gas leasing both onshore and offshore.” As always, Haaland was evasive in answering questions about timelines saying, “the review is being finalized internally and should be out very soon.” Sen. Lisa Murkowski (R-AK) was also frustrated with the delay and told Haaland, “I’m not going to ask you when you think it’s coming. I hope you can sense the frustration in anticipating this and wondering when we will be able to expect you’ll be in compliance with the judge’s order,” she said, which referenced a June federal court injunction lifting the pause, and with which the Biden administration has yet to comply. [Read more.](#)

Joint Employer Rule; U.S. Department of Labor. (Update to 3/22/21 Weekly Report) On July 30, the U.S. Department of Labor (DOL) Wage and Hour Division rescinded the Trump-era rule titled “Joint Employer Status Under the Fair Labor Standards Act.” [Read more.](#) The DOL rescission published at

"Rescission of Joint Employer Status Under the Fair Labor Standards Act Rule;" [86 Fed. Reg. 40939](#), "removes the regulations established by that rule." For background, on March 12, the Biden administration issued a notice of proposed rulemaking to rescind the Trump administration's DOL joint employer rule. The notice, [Rescission of Joint Employer Status Under the Fair Labor Standards Act Rule; 86 Fed. Reg. 14038](#), sought to rescind the rule, which had already been mostly vacated by the U.S. District Court for the Southern District of New York in a September 8, 2020 decision. The Trump rule provided consideration under the Fair Labor Standards Act (FLSA) as to whether companies are classified as joint employers of workers and thereby can be held responsible for labor violations including requirements on minimum wage and overtime pay, and could affect franchising companies, contractors, and temporary staffing companies, and was much more favorable to businesses than the Obama-era DOL policies were. The Trump DOL rule provided a four-factor "balancing test" for determining FLSA joint employer status in situations where an employee performs work for one employer that simultaneously benefits another entity or individual. [Read more.](#)

Lesser Prairie-Chicken; U.S. Fish and Wildlife Service. (Update to 6/14/21 Weekly Report) On July 28, Sen. Jim Inhofe (R-OK), joined by 14 other members of Congress, [sent a letter to the U.S. Fish and Wildlife Service \(FWS\)](#) urging them to extend the public comment period for the proposed rule seeking to list two Distinct Population Segments (DPSs) of the Lesser Prairie-Chicken (LPC) under the Endangered Species Act (ESA) by at least six months. The original public comment period for the proposed rule had an August 2, 2021, end date. [Read more.](#) For background, on June 1, the FWS published a proposed rule, "Endangered and Threatened Wildlife and Plants; Lesser Prairie-Chicken; Threatened Status With Section 4(d) Rule for the Northern Distinct Population Segment and Endangered Status for the Southern Distinct Population Segment" ([86 Fed. Reg. 29432](#)), which seeks to list two DPSs of the LPC. According to the

FWS, the DPSs would be added "to the List of Endangered and Threatened Wildlife and extend the Act's protections to them." The rulemaking would cover species population living in Texas and New Mexico, whose range overlaps with the Permian Basin. According to The Washington Post, "The agency stopped short of awarding the same protections to the birds' northern population, in Oklahoma and Kansas, on the grounds that their numbers had declined less drastically." Regarding the DPSs, "The southern population of about 5,000 birds living along the New Mexico-Texas border would be considered endangered, while a northern group would be listed as threatened, a less-restrictive designation. After taking input from the public, the agency will make a final decision on these listings within a year." [Read more.](#)

UPDATE: As a result of the congressional outreach, on July 30, the FWS announced in the Federal Register ("Endangered and Threatened Wildlife and Plants; Lesser Prairie-Chicken; Threatened Status With Section 4(d) Rule for the Northern Distinct Population Segment and Endangered Status for the Southern Distinct Population Segment;" [86 Fed. Reg. 41000](#)) that they are extending the public comment period from the original closing date of August 2, 2021, to September 1, 2021. [Read more.](#)

Paycheck Protection Program Loan Forgiveness.

Continuing with our ongoing COVID-19 resource information regarding the federal Paycheck Protection Program (PPP), [as reported by the American Society of Association Executives \(ASAE\) on July 29](#), the Small Business Administration (SBA), which administered the PPP, issued new guidance designed to accelerate the end of the program "by streamlining the process for millions of small businesses and nonprofit employers to have their emergency payroll loans forgiven. The PPP was one of the largest and most popular federal relief programs created last year to help small businesses and nonprofit organizations survive the COVID-19 pandemic." The issued SBA guidance "simplifies loan forgiveness for loans of \$150,000 or less, which account for more than 90 percent of all outstanding PPP loans," according to the SBA. "In its guidance

this week, the SBA said it has notified banks that the agency is setting up its own online forgiveness platform that will accept applications from borrowers directly. In addition, the SBA will announce plans to spare certain borrowers who received second-draw PPP loans worth less than \$150,000 from having to supply documentation proving that they suffered a 25 percent revenue reduction in 2020 that was a condition of the loans.” [Read more.](#)

FEDERAL – Judicial

Leasing – North Dakota. On June 10, the North Dakota Supreme Court affirmed a lower court determination against lessors that oil and gas leases with Continental Resources had not expired and remained in effect. The plaintiff-lessors in *Pennington, Steven Nelson, Donald Nelson, and Charlene Bjornson, Plaintiffs and Appellants, v. Continental Resources, Inc.* (Case No. 20200318), argued that the district court erred in concluding the leases had not expired. Here, the Supreme Court, affirmed, concluding the issues the plaintiffs raised on appeal were “precluded under the law of the case doctrine and mandate rule.” In the case, the plaintiffs had argued that Continental’s delay in obtaining regulatory approval to drill did not extend the lease term. However, the district court held that the regulation and delay paragraph of the leases extended the leases until regulatory approval could be obtained to begin drilling operations. Under the case doctrine and mandate rule, as the Court explained, the plaintiffs could no longer bring claims already adjudicated in earlier proceedings for which the appeal was based, thus ruling in favor of Continental in the present appeal. [Read more.](#)

STATE – Legislative

Notarial Acts; Real Property Recordation – Illinois. On July 23, Gov. J.B. Pritzker (D) signed SB 2664 into law. The Act, sponsored by Sen. Linda Holmes (D), amends the Illinois Notary Public Act and provides requirements concerning electronic notarization and electronic notaries public; amends the Uniform Real Property Electronic Recording Act;

provides that a paper or tangible copy of an electronic document that a notary public has certified to be a true and correct copy satisfies specified recording requirements; provides further requirements concerning the certification of electronic documents by notaries public; and defines certain terms. The Act is effective on the later of: (1) January 1, 2022; or (2) the date on which the Office of the Secretary of State files with the Index Department of the Office of the Secretary of State a notice that the Office of the Secretary of State has adopted the rules necessary for implementation; except that, the changes made to specified provisions of the Illinois Notary Public Act take effect July 1, 2022. [Read more.](#)

Electronic Court Records – Louisiana. On August 6, a Joint Task Force hearing was held regarding Senate Resolution 202, which was enacted in the regular session and which created a “Task Force on Statewide Standards for Clerks of Court Electronic Filing and Records Retention.” Sponsored by Sen. Jay Morris (R), the measure “Requests a task force to study the feasibility and propriety of the clerk of court creating electronic records of original paper documents, and the maintenance, preservation, and disposition of original paper documents once converted to electronic record, and to propose recommendations for legislation by written report to the legislature no later than February 15, 2022.” The resolution also provides that the task force terminates on June 30, 2022. [Read more.](#)

STATE – Regulatory

Adams County Setback Regulations – Colorado. On July 27, the [Adams County Board of County Commissioners voted 3-1 in favor of new oil and gas regulations at their public hearing.](#) The new regulations “increase setback distances to 2,000 feet from homes, schools, daycares, environmentally sensitive areas, and parks and open spaces. The text amendments also expand the definition of environmentally sensitive areas and require closer monitoring of nuisance impacts.” According to public reporting, “Industry proponents said the new

regulations effectively ban drilling in the county, while county commissioners said the text amendments were necessary to address the growing concern over air quality and pollution. According to the Adams County Commissioners, staff has “until August 10 to make minor grammatical and formatting changes before final posting.” [Read more.](#)

Simultaneous Operations Draft Rule – Ohio.

On July 26, the Ohio Department of Natural Resources (DNR), Division of Oil and Gas Resources Management announced it will hold a public hearing to accept testimony on proposed changes to Ohio Administrative Code rules [1501:9-1-05](#) and [1501:9-1-06](#) and the rescission of Ohio Administrative Code rules [1501:9-3-10](#), [1501:9-5-08](#), [1501:9-7-13](#), and [1501:9-9-07](#). The Division proposes to rescind 1501:9-1-05 of the Administrative Code and replace it with a rule governing simultaneous operations. The Division has developed a draft rule regulating simultaneous oil and gas operations. The rule defines simultaneous operations as activities happening concurrently on a well site, such as the drilling or hydraulic fracturing of a new well in close proximity to a well that is producing oil and gas. The draft rule establishes minimum standards operators must follow and requires the operator to develop a simultaneous operations plan that will be reviewed by the Division and either accepted or rejected before the simultaneous operations can begin. The rule provides for modification procedures and requires the Division to verify operations are conducted according to the accepted plans. In order to simplify rules under Ohio Administrative Code 1501:9-1 through 1501:9-12, the Division proposes to maintain a single severability rule (1501:9-1-06) that will cover the enumerated chapters, while rescinding the multiple, independent severability clauses currently contained throughout Ohio Administrative Code 1501:9-3 through 1501:9-12. For more information about the proposed rules, visit oilandgas.ohiodnr.gov. Those with questions may contact Mark Bruce at (614) 265-6920 or mark.bruce@dnr.ohio.gov. The public hearing will be held August 23, 2021 starting at 1:00 p.m. Any

person affected by the proposed rule may present their comments in-person, in writing, virtually, or via telephone. For those wishing to participate, please choose from the following options: In-person: The hearing will be held at 2045 Morse Road, F-1 Conference Room, Columbus, OH 43229. Written may be submitted by 5:00 p.m. August 23, 2021. Written comments may be submitted to DOGRM.Rules@dnr.ohio.gov or mailed to Ohio Department of Natural Resources, Division of Oil and Gas Resources Management, Attn: Mark Bruce, Building F-2, 2045 Morse Road, Columbus, OH 43229. For participants wishing to stream the meeting see the [DNR website](#) for more information or participate by telephone at 1-614-721-2972 and enter the phone conference ID: 895 035 938#. [Read more.](#)

Railroad Commission Regulatory Webinars –

Texas. As previously reported, the Texas Railroad Commission (RRC) announced a series of regulatory webinars available to the public. The series continues with webinars on topics including Statewide Rule 32 regarding the venting and flaring of casinghead and gas well gas; Statewide Rule 101 regarding Certification for Severance Tax Exemption or Reduction for Gas Produced from High-Cost Gas Wells; Underground Injection Control (UIC) Permitting; creation of the RRC State Tracking and Reporting system, or LoneSTAR; and Drilling Permits, among other topics. The RRC has also made available a video on the LoneSTAR system, which you can view the video on the [RRC's YouTube channel here](#). For more information on the RRC webinars and a full schedule, [Read more.](#)

STATE – Judicial

Leasing; Pooling; Royalties – Texas. On June 11, in *BPX Operating Co. v. Strickhausen* (Case No. 19-0567), the Texas Supreme Court addressed a case where a lease required BPX to obtain the lessor's “express written consent” before pooling her tract with others. If the consent was not given, then “pooling for oil or gas is expressly denied and shall not be allowed under any circumstances.” Here,

Strickhausen never gave her express written consent, which meant her interests could not be pooled. However, BPX argued that Strickhausen “nevertheless impliedly ratified an unauthorized pooling agreement by depositing royalty checks calculated on a pooled basis.” Here, the Court explained that “whether Strickhausen impliedly ratified the pooling depends on whether she exhibited an objective intent to do so. As always, determining objective intent requires an examination of all the relevant circumstances. While the circumstances here include Strickhausen's acceptance of royalties calculated on a pooled basis, they also include many other objective manifestations of her rejection of the pooling and her intention to assert her contractual anti-pooling rights.” As such, the Supreme Court held that on the issue of ratification the evidence did not “conclusively establish as a matter of law” the intention “giving validity to the earlier act of pooling” sending the case back to the trial court for further determinations. [Read more.](#)

INDUSTRY NEWS FLASH

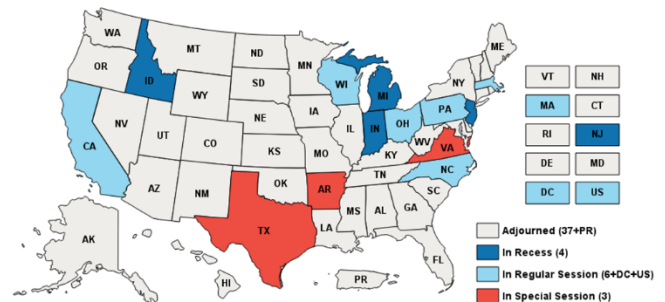
► **EIA forecasts rise in August shale formation output.** Crude output from seven major shale formations is expected to rise by 42,000 bpd in August, to 7.907 million bpd, compared with a 28,000 bpd rise in July, according to the U.S. Energy Information Administration's (EIA) latest monthly drilling productivity report. According to the EIA, the “forecast is led by growing production in the largest formation, the Permian Basin, where crude output is estimated to rise 53,000 bpd in the month, offsetting falling output expected from the Bakken formation of North Dakota.” [Read more.](#)

► **New Mexico oil production surged to a record in May.** According to an August 2 report by Rigzone, “New Mexico's oil production surged to a record in May highlighting the Permian Basin's role as the shale industry sees some recovery from the pandemic.” The state “produced about 4% more crude in the month to reach a record 1.22 million

barrels a day” and “also topped North Dakota, to become America's second-biggest onshore oil supplier.” [Read more.](#)

LEGISLATIVE SESSION OVERVIEW

States in Session



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Texas Republican Gov. Greg Abbott convened a second special session on August 7 with 17 agenda items identified for consideration. The second special session is set to last up to 30 days. The first special session failed to deliver on legislation after Texas Democrats fled the state house for Washington, DC to protest bills they disagreed with and thereby stalling the session due to the absence of a quorum. According to Gov. Abbott, the second special session is set to address bail reform, election integrity, education, border security, radioactive waste, and social media censorship, among other agenda items. [Read more.](#)

Virginia convened for a special session on August 2 to fill judicial vacancies and allocate more than \$4.3 billion in federal relief funding, reports [WDBJ7](#).

Arkansas Republican Gov. Asa Hutchinson convened the legislature for a special legislative session on August 4 to discuss amending [Act 1002](#), which prohibits state governments from requiring face masks from most entities, reports [Kark 4 News](#).

Alaska Republican Gov. Mike Dunleavy is scheduled to call the legislature into a third special session on August 16 to fix the yearlong fiscal conflict over the Permanent Fund dividend, reports the [Associated Press](#). The original start date of August 2 was delayed following a request from legislative leaders.

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. **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,

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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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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

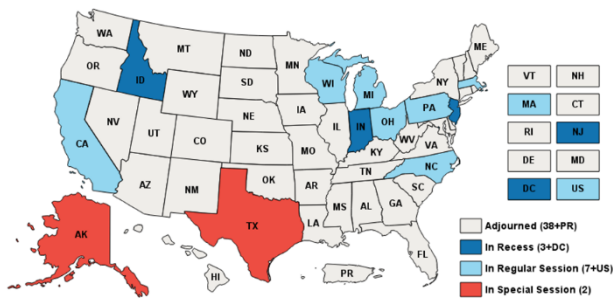
any particular action on the part of DCNR, would take us into the realm of speculation and conjecture." The Court went further, holding that the plaintiff "points to no legislative enactments or regulatory provisions, and we have found none, that mandate DCNR to develop and maintain a forest resource 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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FEDERAL – Legislative

H.Res. 614 – Oil and Gas Leasing; OPEC+ Oil Imports; Russian Nord Stream 2 Pipeline. On August 31, Rep. Bob Latta (R-OH) introduced House Resolution 614 ([H.Res. 614](#)). The purpose is for “Condemning the Biden administration’s Executive actions imposing a moratorium on oil and gas leases on Federal lands and waters, given the administration has also called for increased importation of crude oil from OPEC+ countries and refused to implement congressionally mandated sanctions on the builders of the Russian Nord Stream 2 pipeline.” Joining Rep. Latta are 20 Republican cosponsors who support the measure. “Since the President assumed office, he has continued to attack American energy while requesting that undemocratic countries like Russia, Iran, and Venezuela increase production,” said Rep. Latta. “American oil and natural gas are more heavily regulated in the United States than anywhere in the world. They produce cleaner and safer energy that power our homes, businesses, and vehicles.” The measure is unlikely to advance in the Democrat-controlled House. [Read more.](#)

FEDERAL – Regulatory

BLM and BOEM Lease Sales. As an update to our prior reporting, on August 24, [the Interior Department announced that it will resume onshore and offshore oil and gas leasing](#) in the wake of the June federal court decision that mandated those sales resume after a judge found the pause to be unlawful. (See the [Preliminary Injunction Order](#)) According to the Interior Department announcement, “the United States appealed the preliminary injunction entered by the district court in [Louisiana v. Biden](#), which enjoined the Department

of the Interior from implementing the pause in new federal oil and gas leasing as set forth in [Section 208 of Executive Order 14008](#). The federal onshore and offshore oil and gas leasing program will continue as required by the district court while the government’s appeal is pending. Today, as required by the court, the Department of Justice (DOJ) filed a brief advising the district court of the steps taken by the Interior Department to comply with the preliminary injunction, including next steps in the offshore and onshore oil and gas leasing processes.” In a not-yet-publicly available affidavit filing dated August 24 in the Interior Department’s appeal, Assistant Secretary for Land and Mineral Management, Laura Daniel-Davis, stated the agency plans to consider drilling’s effect on the climate when making oil and gas leasing decisions saying the department wants to ensure it is fully complying with the National Environmental Policy Act “by appropriately analyzing greenhouse gas emissions from proposed sales.” Those processes are announced as follows: (1) “The Bureau of Ocean Energy Management (BOEM) will submit the Record of Decision for Lease Sale 257 in the Gulf of Mexico to the Federal Register by the end of August. The sale notice for Lease Sale 257 is expected to be published in September. By law, the lease sale may not take place sooner than 30 days after publication of the sale notice. This fall, BOEM also will issue and take comments on a Draft Environmental Impact Statement analyzing Lease Sale 258 in Cook Inlet;” and (2) “The Bureau of Land Management (BLM) state offices will post for scoping parcels included in Quarter 1 and Quarter 2 2021 leasing deferrals by the end of August. Following a 30-day scoping period and taking into account comments received, the BLM will undertake environmental reviews of parcels for potential leasing. Following this review, state offices will identify any eligible parcels and applicable

stipulations in lease sale notices posted later this year.” [Read more.](#) **UPDATE:** On August 31, the BOEM announced its Record of Decision to proceed with Lease Sale 257. [Read more.](#)

BLM Oil and Gas Lease Sales. Related to the above item, on August 31, the BLM began steps to facilitate those court-mandated oil and gas lease sales by issuing a series of official announcements that solicit public feedback “on proposals for upcoming competitive oil and gas lease sales.” According to those announcements, the BLM “is asking for public feedback on parcels that were previously under consideration for competitive auction at the deferred 2021 Quarter 1 and Quarter 2 lease sales. To the extent parcels had already been deferred from those sales through analysis completed by the prior administration, those parcels will not be reevaluated. Following a 30-day scoping period and taking into account comments received, the BLM will undertake environmental reviews of parcels for potential leasing and provide an opportunity for public comment in accordance with [Instruction Memorandum 2021-027](#). Following this review, available parcels will be identified, along with applicable stipulations, for public comment.” Separate BLM announcements were simultaneously published for [Colorado](#), [Eastern States](#), [Montana-Dakotas](#), [Nevada](#), [New Mexico](#), [Utah](#), and [Wyoming](#), noting the scoping period will end on October 1, 2021, and the BLM “anticipates publishing notices of competitive lease sales later this year.” The BLM scoping documents show lease sales first resuming in 2022 and according to Bloomberg Government, not before February and March 2022. Formal notice of which parcels will pass the Interior Department’s environmental review – which will include greenhouse gas emissions impacts – are expected to be issued by the agency in December 2021. [Read more.](#)

BLM Renewable Energy Rights-Of-Way Rulemaking. On August 31, the BLM announced it “is initiating a process to revise its regulations related to renewable energy permitting and linear rights-of-way on public lands. As part of this process, the BLM is soliciting

preliminary input from the public on this proposed rulemaking. On August 18, 2021, the BLM sent letters to potentially affected Tribes, and intends to hold separate virtual government-to-government consultation meetings with interested parties regarding the proposed rule.” The BLM is inviting interested stakeholders to submit input and/or partake in one of their upcoming listening sessions, beginning September 1, 2021, which will detail the proposed regulations. [Read more.](#)

BLM Resource Advisory Council Application.

On August 30, the BLM published a notice of information collection, “Agency Information Collection Activities; Bureau of Land Management Resource Advisory Council Application” ([86 Fed. Reg. 48438](#)) requesting public comment “on the Resource Advisory Council Application (Form No. 1120-19) to determine education, training, and experience related to possible service on advisory committees.” According to the BLM, “This information is necessary to ensure that each advisory council is structured to provide fair membership balance, both geographic and interest-specific, in terms of the functions to be performed and points of view to be represented, as prescribed by its charter.” The public comment period is open through September 29, 2021. [Read more.](#)

FEDERAL – Judicial

BOEM Gulf of Mexico Lease Sale Related to the above item regarding the [BOEM Gulf of Mexico Lease Sale 257](#), on August 31, environmental groups filed a complaint against the Biden administration challenging the sale and seeking an injunction to stop it. In [Friends of the Earth v. Haaland](#) (Case No. 1:21-cv-02317), the litigants claim the sale is unlawful and say the decision “to hold Offshore Oil and Gas Lease Sale 257 in the Gulf of Mexico in reliance on arbitrary environmental analyses, [is] in violation of the National Environmental Policy Act (‘NEPA’) and the Administrative Procedure Act (‘APA’).” According to one of the plaintiffs, the Center for Biological Diversity, “The environmental analysis of the proposed sale relies on improper modeling to

conclude that *not* having the lease sale will result in *more* greenhouse gases.” [The group says](#) “The analysis is not only flawed but also out of date. The Interior Department last looked at the environmental impacts of a lease sale in 2017. Since Interior completed its environmental analysis, significant new information has emerged that demonstrates, among other things, the dire state of the climate crisis and the potential for increased harm to endangered species, including the Rice’s whale, one of the most endangered whales on the planet, that is only found in the Gulf of Mexico.” The Interior Department has not yet responded to the lawsuit. [Read more.](#)

Federal Climate Change Policies – Missouri. (*Update to 5/17/21 Weekly Report*) On August 31, a lawsuit brought by Missouri Attorney General Eric Schmitt (R) and 12 other Republican-led states against the Biden administration was dismissed by a federal judge who held that the case is “not ripe.” The complaint in [Missouri v. Biden](#) (Case No. 4:21-cv-00287-AGF) charged the Biden administration with exceeding its executive authority by establishing an interim climate metric used to calculate the social cost of greenhouse gases. In dismissing the case, the court held the plaintiffs’ claims are not ripe for judicial review because any impact of President Biden’s executive order and interim estimates cannot “be said to be felt immediately” by the plaintiffs if at all “in conducting their day-to-day affairs,” and because “no irretrievably adverse consequences flow from requiring a later challenge.” For background, the states sued the Biden administration and [sought a preliminary injunction](#) to bar federal agencies from using the newly strengthened “social cost of greenhouse gases” as “binding values in any agency action.” Federal agencies use the “social cost of greenhouse gases” to assess the cost of emitting carbon dioxide, methane, and other gases. The Trump administration lowered that value, but the Biden administration restored Obama-era methodology and adopted higher values. According to the lawsuit, “In theory, these numbers would justify imposing hundreds of billions or trillions of

dollars in regulatory costs on the U.S. economy in upcoming years to offset these supposed ‘social costs.’” And “In practice,” they wrote, “these numbers will inevitably be used to justify increased regulation and expansion of federal regulatory authority in numerous areas.” The states said they will appeal the August 31 ruling. [Read more.](#)

Environmental Policy – Virginia. On June 21, the U.S. District Court for the Western District of Virginia ruled against environmental activists who challenged The White House’s Council on Environmental Quality’s adoption of revised regulations implementing the National Environmental Policy Act (NEPA) following an allegedly defective notice-and-comment rulemaking process. In *Wild Virginia v. Council on Environmental Quality* (Case No. 3:20-CV-00045), the plaintiffs claimed that NEPA implementing regulations, finalized in 2020, did not take many of their concerns into account, primarily those related to environmental reviews in the case that included the American Petroleum Institute and the Interstate Natural Gas Association of America among the case defendants. The court rejected the plaintiffs’ claims that they would be harmed by the NEPA regulations and agreed with the defendants “that the plaintiffs’ claims regarding the 2020 Rule are not appropriate for judicial resolution at this time. Delaying judicial review of the 2020 Rule until it can be considered in an as-applied challenge will not create a significant hardship for the plaintiffs.” The Court explained that “While the plaintiffs have pointed to certain proposed projects that they predict will be reviewed less rigorously as a result of the 2020 Rule, at this time, one cannot say with anything close to certainty exactly how each agency will interpret the 2020 Rule and apply it to future project proposals.” As such, the Court held that “the plaintiffs’ claims are not justiciable and the court is thus without jurisdiction,” and dismissed the action. [Read more.](#)

STATE – Legislative

Oil and Gas Production Tax – Alaska. On August 30, Rep. Geran Tarr (D) introduced HB 3005, which

would amend oil and gas production tax law to provide for oil produced on and after January 1, 2022, and before January 1, 2024. [Read more.](#)

Oil and Gas Production Tax Credits – Alaska. On August 30, the House Ways & Means Committee introduced HB 3007, which would amend oil and gas production law regarding nonrefundable tax credits to adjust the amount of tax credit for a barrel of taxable oil to a lower dollar amount. [Read more.](#)

Real Property Records – Illinois. On August 20, Gov. J.B. Pritzker (D) signed SB 1845 into law. Sponsored by Sen. Mattie Hunter (D), the Act amends the Property Tax Code to provide that the owner of a certificate of purchase must file with the county clerk the names and addresses of the owners of the property and those persons entitled to service of notice at their last known addresses. The Act also provides that the clerk shall mail notice within 30 days from the date of the filing of addresses with the clerk. The Act is effective January 1, 2022. [Read more.](#)

Remote Notarial Acts – North Carolina. On August 31, HB 776 was referred for a Senate committee hearing following House passage. The bill, sponsored by Rep. Robert Reives (D), would amend existing notary law to provide for remote, online, and electronic notarial acts. [Read more.](#)

Oil and Gas Taxation – Ohio. On September 2, Sen. Tim Schaffer (R) filed SR 176, which resolves that the Ohio General Assembly does “respectfully oppose federal policies that will increase the costs and taxes on the larger business community” and “urge[s] the Congress of the United States to fight any attempt to target the natural gas and oil industry by disproportionately increasing the tax burden, or by other punitive measures on the companies that are leading our post-pandemic recovery” and “That these attempts are negatively impacting the constituents of the districts we represent.” [Read more.](#)

High-Level Radioactive Waste – Texas. As of September 2, HB 7, sponsored by Rep. Brooks Landgraf (R), passed the House and Senate in the Second Special Session. The bill, if signed, would amend the Health and Safety Code to prohibit the issuance of certain permits by the Texas Commission on Environmental Quality for the construction or operation of a facility that is licensed to store high-level radioactive waste by the U.S. Nuclear Regulatory Commission. The bill would also prohibit the transport of high-level radioactive waste on the state's highways or railways and prohibit the disposal or storage of high-level radioactive waste in the state other than storage at certain current or formerly operating nuclear reactors or test reactors. [Read more.](#)

High-Level Radioactive Waste – Texas. On August 25, Rep. Brooks Landgraf (R) introduced HB 200 for the Second Special Session. The bill has passed committee but now has been marked postponed until September 26, 2021. The bill relates to “the prohibition on the transportation, storage, and disposal of high-level radioactive waste in certain areas.” Specifically, the bill states that “A person may not import into, dispose of, or store high-level radioactive waste in an area of this state designated as a critical energy infrastructure zone.” This would apply to designated oil and activities as well as renewable energy. On the same day, Rep. Landgraf also filed [HB 236](#) which contains identical language. [Read more.](#)

Flaring – Texas. On August 25, Rep. Jon Rosenthal (D) filed HB 231, which relates “to the establishment by the Railroad Commission of Texas (RRC) of a policy to eliminate the routine flaring of natural gas from wells or other facilities regulated by the commission.” Specifically, the bill provides for the elimination of routine flaring and would order the RRC to “establish a policy to eliminate before December 31, 2025, the routine flaring of gas from wells or other facilities regulated by the commission.” [Read more.](#)

STATE – Regulatory

Climate Executive Order – New Mexico. On August 25, New Mexico Gov. Michelle Lujan Grisham (D) signed [Executive Order 2021-052, *Protecting New Mexico's Lands, Watersheds, Wildlife, and Natural Heritage*](#), which creates a “30 by 30” committee “to evaluate conservation and environmental efforts of all New Mexico lands.” According to the Governor, “the committee will work to conserving 30% of all land in New Mexico by 2030.” Specifically, the order, which includes efforts to meet the state’s “climate change objectives” directs “seven different state departments to ‘support and implement programs’ aimed at conservation, protecting, and enhancing New Mexico’s ‘lands and natural environments.’” As part of the order, the state’s Energy, Minerals and Natural Resources Department, Environment Department, Office of the State Engineer, Department of Agriculture, Indian Affairs, Game and Fish and Outdoor Recreation Division will meet quarterly to assess the state’s program toward the 30 by 30 goal.” [Read more.](#)

Oil and Gas Ozone Regulations – New Mexico. To follow up prior reporting, the [New Mexico Environmental Improvement Board has announced](#) it will hold a public hearing beginning September 20, 2021, to consider the New Mexico Environment Department (NMED) “proposed regulations targeting emissions of ozone precursor pollutants from the oil and natural gas sector.” The New Mexico Administrative Code (NMAC) draft rulemaking for [20.2.50 NMAC Oil and Gas Sector-Ozone Precursor Pollutants Rulemaking \(EIB No. 21-27 \(R\)\) may be accessed here](#). The public meeting will be held virtually and [can be accessed here](#). For specific questions, the public may contact the Environmental Improvement Board at (505) 660-4305 or email pamela.jones@state.nm.us. [Read more.](#)

Production Reporting; Railroad Commission – Texas. (*Update to 5/17/21 Weekly Report*) On August 30, the Texas Railroad Commission (RRC) [announced the availability of adopted revisions](#) which include two changes to the Form PR

Instructions that apply to all new and corrected Form PR filings for production cycle months of September 2021 and later. For background, the RRC adopted revisions to the instructions to Form PR, Monthly Production Report, on February 23, 2021. On May 5, the RRC published a notice alerting oil and gas operators of [electronic filing requirements for Form PR, Monthly Production Report](#). Per the RRC notice, “The revisions support the RRC’s regulation of flaring and venting of produced natural gas. The proposed revisions are to the Form PR Instructions and how operators need to complete the form, not to the structure of the form itself.” According to the RRC, “The revisions support the RRC’s regulation of flaring and venting of produced natural gas.” The revisions “are to the Form PR Instructions, instructions on how operators need to complete the Form PR, not to the structure of the form itself.” Those adopted revisions are: “Disposition Code 4”, which was used to report the volume of gas that was vented or flared, has been discontinued. “Disposition Code 4” will continue to be used for all new and corrected production reports for reporting cycle months of August 2021 and earlier. Two new disposition codes have been implemented to allow operators to allocate gas. For gas that was flared, use “Disposition Code 10”. For gas that was vented, use “Disposition Code 11”. As of September 1, 2021, “Disposition Code 4 will no longer be accepted. Gas that is flared must be allocated to Disposition Code 10 and gas that is vented must be allocated to Disposition Code 11. On January 1, 2022, operators must report the applicable 2-letter authorization codes in the ‘REMARKS’ field on the form.” [Read more.](#)

RRC Form Revisions – Texas. On August 26, the [Railroad Commission of Texas \(RRC\) announced it is accepting public comment on proposed revisions](#) to the Form P-5 LC (Irrevocable Documentary Letter of Credit) and the proposed consolidation of the Form P-5 PB1 (Individual Performance Bond) and Form P-5 PB2 (Blanket Performance Bond) into the new Form P-5 PB (Performance Bond). According to the RRC, “Proposed revisions [to] the Form P-5 LC will remove references to terms/items no longer in use by the RRC; update the estimated plugging costs;

and correct the final time of day that drafts may be presented at the bank (from 2 p.m. to 5 p.m.). The proposed consolidation of the Forms P-5 PB1 and P-5 PB2 into the new Form P-5 PB is due to the similarity and redundancy of information requested between both forms. A new consolidated form will provide an operator the ability to select either 'individual' or 'blanket' performance bond via a check box at the top of the form and then only fill out the information required for the selected option." The public comment period is open through September 27, 2021. [Read more.](#)

RRC Commissioners Conference – Texas. On August 31, the RRC announced it will be holding an open meeting Commissioners Conference on September 14, 2021. The agenda has not yet been posted by the RRC. Please check the RRC website for the agenda once they have made it publicly available. Meeting webcasts can be viewed live and are also archived for up to 6 months. [Read more.](#)

STATE – Judicial

Leasing; Production – Ohio. On June 30, in *Browne v. Artex Oil Co.* (Case No. 2021-Ohio-2239), the Ohio Court of Appeals, Fifth District, addressed a case that went up to the Ohio Supreme Court on the question of "which statute of limitations applied to appellants' claim that the lease terminated by its terms and by operation of law" and was remanded back to the trial court which ruled in favor of the lessee by declaring "the oil and gas lease to be a valid and subsisting oil and gas lease fully enforceable in accordance with its original terms with respect to the entire property described in the lease from the surface to the center of the earth." The trial court also concluded that the lessees "presented significant evidence that the Mercer No. 1. Well has been producing from at least 1993-1999 pursuant to the affidavits, depositions, and production records," and that "Plaintiffs have not presented any evidence to satisfy their burden." On this appeal, the lessors claimed, "the lease expired under its terms and by operation of law because the well failed to produce oil for commercial sale for over a period of two

consecutive years from 1993 through 1999." Here, the appellate court reiterated that "we find it is law of the case that production records and affidavits can be used to prove oil and gas production." Further, it is not the lessee's "burden to prove that the well was profitable between 1993 and 1999. Rather, it is appellants' [lessor's] burden to show the well was not producing in paying quantities for a two-year or greater period between 1993 and 1999." Since the court found the "absence of any genuine issue of material fact with regards to production in paying quantities from 1993 to 1999" they ruled against the mineral owners in favor of the lessees.

[Read more.](#)

INDUSTRY NEWS FLASH

► **OPEC+ to increase oil production, though in defiance of President Biden.** On September 1, OPEC+ nations agree to "move ahead with a previously planned increase in its output despite a call from the Biden administration to increase it further." In a statement, OPEC+ said it would "reconfirm" a "plan approved in July to add 400,000 barrels per day to its monthly overall production until pandemic-related cuts are phased out." The group did not agree to increase production at levels requested by the Biden administration. [Read more.](#)

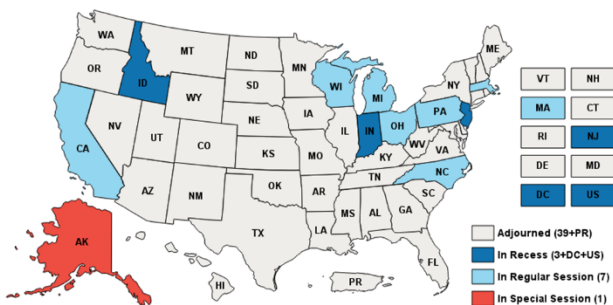
► **Permian oil production forecast to increase in September.** As reported on August 26 by the Permian Basin Petroleum Association magazine, "U.S. oil production from seven major shale formations is forecast to grow by 49,000 barrels per day in September" according to the U.S. Energy Information Administration. That growth is led by the Permian Basin, which is expected to increase by 49,000 b/d from 4.756 million b/d in August to 4.805 million b/d in September to offset declines in other regions. [Read more.](#)

► **Texas upstream employment increases.** As reported by Rigzone on August 25, "Texas upstream employment for July increased by 1,500 jobs

from June, the Texas Independent Producers and Royalty Owners Association (TIPRO) highlighted, citing the latest figures from U.S. Bureau of Labor Statistics.” TIPRO also “noted that Texas upstream employment in July represented an increase of 15,800 positions compared to July 2020. The organization outlined that the figure reflects a rise of 17,000 jobs in the services sector and decrease of 1,200 jobs in oil and natural gas extraction.” [Read more.](#)

LEGISLATIVE SESSION OVERVIEW

States in Session



Session Notes: California, Massachusetts, Michigan, North Carolina, Ohio, Pennsylvania, and Wisconsin are in regular session.

The following legislatures are in recess until the dates provided: U.S. Senate (September 13), U.S. House (September 20), Indiana and New Jersey (TBD) and Idaho House (call of the speaker).

Alaska Republican Gov. Mike Dunleavy called the legislature into a third special session on August 16 to fix the yearlong fiscal conflict over the Permanent Fund dividend, reports the [Associated Press](#). The special session is scheduled to last 30 days. On September 2, Governor Dunleavy [expanded](#) the special session to include two pieces of legislation that will aid the state’s response to the recent COVID surge. The legislation includes the expansion of telehealth and telemedicine and the adoptions of a Multistate Licensure Compact.

Kentucky Republican Gov. Andy Beshear is expected to call the legislature into a special session on September 7 to deal with the legislative response to the COVID-19 pandemic, according to [The Lane Report](#).

Nebraska Republican Gov. Pete Ricketts issued a proclamation to call the legislature into a special session on September 13, reports [KMTV](#). The purpose of the special session will be redistricting the boundaries of Supreme Court judicial districts, Public Service Commission districts, Board of Regents of the University of Nebraska districts, state Board of Education districts, legislative districts, and congressional districts.

Illinois lawmakers adjourned from a one day special session on August 31, after passing a new set of legislative maps based on official 2020 Census data, reports [WGLT](#). Two ongoing federal lawsuits were filed challenging the original redistricting maps approved by democrats in May. The original maps were based on census estimates, not final Census data because it was delayed due to the COVID-19 pandemic and Illinois has a June 30 deadline for redistricting. Republicans who filed the lawsuits intend to file amended complaints against the new maps since they were approved after the June 30 deadline in the hopes of getting a bipartisan commission to draw the new boundaries.

New York Democratic Gov. Kathy Hochul called the legislature into a one-day special session on September 1, reports [Bloomberg](#). Lawmakers voted to extend the eviction moratorium in New York through January 15, 2022, after the federal eviction moratorium expired on August 31. Included in the eviction legislation was a suspension of the Open Meetings Law that allows a government entity to ban protesters, lobbyists, the press, and all other members of the public from physically attending meetings if they are broadcasted online.

Texas adjourned a second special session on September 2, after the Republican led legislature passed nearly all of Governor Abbott’s agenda items,

including new provisions on the state's voting process, critical race theory and legislation restoring funding to the legislature itself. Sens. Roland Gutierrez, D-San Antonio, and Sarah Eckhardt, D-Austin, filed a [federal lawsuit](#) on September 1 arguing that state lawmakers cannot legally redraw the state's legislative maps this fall. Committee hearings are set for next week as lawmakers begin their work on the state's new boundaries and Governor Abbott is expected to call a third special session to sign off on the redrawn maps, reports [The Texas Tribune](#).

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. **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. Kathy Hochul 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](#), [Arizona](#), [Arkansas](#), [Colorado](#), [Connecticut](#), [Delaware](#), [Georgia](#), [Hawaii](#), [Illinois](#), [Indiana](#), [Iowa](#), [Kentucky](#), [Louisiana](#), [Maine](#), [Maryland](#), [Mississippi](#) [House](#) and [Senate](#), [Montana](#), [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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GOVERNMENTAL AFFAIRS WEEKLY REPORT

Weekly Highlights At-A-Glance

FEDERAL – Legislative

H.R. 5253 – Fossil Free Finance Act. On September 14, Rep. Mondaire Jones (D-NY) introduced [H.R. 5253](#), known as the Fossil Free Finance Act. The bill would amend “the Bank Holding Companies Act to require the Federal Reserve to mandate, via regulation or guidance, that all bank holding companies with more than \$50 billion in assets align their financing of greenhouse gas emissions and deforestation risk commodities with science-based emissions targets.” ([Read full bill summary here](#)) The bill seeks alignment with emissions reductions obligations under the Paris Climate Agreement and according to The Hill, “orders the Fed to take unprecedented steps meant to steer financial support away from oil, gas, coal and companies by unraveling banks who refuse to comply.” Specifically, under the bill, “banks with more than \$50 billion in assets must develop plans to reduce 50 percent of the carbon emissions they finance by 2030 and 100 percent of their financed carbon emissions by 2050; end new and expanded fossil fuel-related projects after 2022; end the financing of all fossil fuel projects after 2030; and halt thermal coal financing after 2024.” [Read more.](#)

H.R. 5193 – Just Transition for Energy Communities Act. On September 7, Rep. Teresa Leger Fernández (D-NM) introduced [H.R. 5193](#), known as the Just Transition for Energy Communities Act. The bill “would provide resources to help state and Tribal governments that are reliant on fossil fuel development, production, and utilization to diversify and grow their economies.” According to the bill sponsor, approximately 30% of the state revenue in New Mexico comes directly from oil and gas revenue and 90% of education funding is derived from revenue related to fossil fuels, so the bill would seek

to provide federal payments in its place. Specifically, the bill establishes a U.S. Treasury Department program “to provide payments to states and Tribes to support these communities’ transition and economic diversification efforts.” The bill also prohibits “the funding from being used to further fossil fuel development” and would authorize “\$5 billion over 10 years, with a \$500 million set-aside for tribes.” [Read more.](#)

Proposed Methane Fees. On September 7, Sen. Kevin Cramer (R-ND) wrote to House Speaker Nancy Pelosi (D-CA) and Senate Majority Leader Chuck Schumer (D-NY) voicing his opposition to the reconciliation budget package, and specifically a proposal to enact a methane fee on oil and gas facilities. Sen. Cramer wrote, that “as a member of the Senate Environment and Public Works Committee, I am particularly concerned with the proposed fee on methane emissions from oil and natural gas facilities. This punitive plan, based on the Methane Emissions Reduction Act of 2021, would assess an escalating \$1,800 per-ton fee on businesses based on their share of activity in a particular geologic basin versus a company’s actual emissions.” Cramer continued, that “this policy is only one of many set to harm U.S. energy producers in my state of North Dakota, as well as New Mexico, Pennsylvania, Texas, Colorado, and West Virginia, among others.” AAPL has also delivered a letter of opposition to these methane fees, and other adverse budget proposals targeting our profession. You can [find this letter signed by the AAPL President James T. Devlin, CPL](#), on our website. [Read more.](#)

Methane Fee Opposition Letter to Congress. If you have not already seen this posting on the AAPLConnect Governmental Affairs Network ([See more here](#)), on September 7, AAPL joined

the American Petroleum Institute (API) and 130 energy, manufacturing, business and labor trade organizations across the natural gas and oil supply chain [in a letter](#) sent to the U.S. Senate Committee on Environment and Public Works “opposing legislation that would place a fee on methane. The organizations, led by API, explain that the proposal is a ‘pay-for’ that ‘could jeopardize affordable and reliable energy with likely little reduction in greenhouse gas (GHG) emissions’ and that cost-effective regulation is a better approach.” [Read more.](#)

[FEDERAL – Regulatory](#)

National Petroleum Reserve – Alaska. On September 7, the Biden administration filed a legal copy of a memorandum from the Interior Department’s Principal Deputy Assistant Secretary, Land and Minerals Management, Laura Daniel-Davis, to Bureau of Land Management staff directing the evaluation of the National Petroleum Reserve in Alaska (NPR-A) [Final Integrated Activity Plan Environmental Impact Statement \(2020 IAP/EIS\)](#) developed under the Trump administration. This action begins the BLM’s reevaluating plans “to offer up nearly 18.6 million acres of the western Arctic, known as the National Petroleum Reserve-Alaska. Its initial review indicates the plan is inconsistent with President Biden’s [Executive Order 13990](#) — Protecting Public Health and the Environment and Restoring Science To Tackle the Climate Crisis.” According to the Center for Biological Diversity, “The announcement states that other alternatives to the plan may be more appropriate, although it does not specify what those alternatives are. The bureau says it has not yet decided whether to withdraw or replace the plan.” Environmental groups believe this action may be the beginning phase of the BLM withdrawing the Trump administration’s approval of NPR-A resource development. [Read more.](#)

BLM Onshore Oil and Gas Operations and Production Information Collection Notice. On September 17, the Bureau of Land Management (BLM) published a notice of information collection, “Agency Information Collection Activities; Onshore

Oil and Gas Operations and Production” ([86 Fed. Reg. 51912](#)), that seeks public input on certain information collection activities related to onshore oil and gas operations and production. This is an extension of a currently approved BLM information collection, and the public comment period is open through October 18, 2021. [Read more.](#)

BLM Solar Energy Development Notice – Utah.

On September 10, the BLM published a “Notice of Competitive Offer for Solar Energy Development on Public Lands in Beaver County, Utah” ([86 Fed. Reg. 50738](#)). With the notice, the BLM will accept competitive bids to lease public lands for solar energy projects on approximately 4,836 acres within the Milford Flats South Solar Energy Zone in Beaver County, Utah, through a competitive solar lease offer. The competitive solar lease offer will be held at 1 p.m. on November 9, 2021. Sealed bids must be received by the BLM Cedar City Field Office on or before 10 a.m. MST on November 9, 2021. [Read more.](#)

BLM Color-of-Title Notice. On September 7, the BLM published a notice of information collection, “Agency Information Collection Activities; Color-of-Title Application” ([86 Fed. Reg. 50160](#)). The notice seeks public comment on information collection activities conducted by the BLM regarding the validity of claims under the Color-of-Title Act. The public comment period is open through October 7, 2021. [Read more.](#)

BOEM Gulf of Mexico Lease Sale. On September 7, the Interior Department’s Bureau of Ocean Energy Management (BOEM), published a notice of availability of a record of decision for Gulf of Mexico leasing. According to the BOEM notice, “Gulf of Mexico, Outer Continental Shelf (OCS), Oil and Gas Lease Sale 257” ([86 Fed. Reg. 50160](#)), “This Record of Decision identifies BOEM’s selected alternative for proposed Lease Sale 257, which is analyzed in the *Gulf of Mexico OCS Lease Sale: Final Supplemental Environmental Impact Statement 2018* (2018 GOM Supplemental EIS).” [Read more.](#)

Office of Natural Resources Revenue Notice.

On September 10, the Office of Natural Resources Revenue (ONRR) published a notice of information collection, "Agency Information Collection Activities: Royalty and Production Reporting" ([86 Fed. Reg. 50742](#)). Per the ONRR, through this information collection, "ONRR seeks renewed authority to collect information used to verify, audit, collect, and disburse royalty owed on oil, gas, and geothermal resources produced from Federal and Indian lands." Public comments may be submitted through November 9, 2021. [Read more.](#)

FEDERAL – Judicial

Independent Contractors – Fifth Circuit (Texas).

On July 30, in *Sanchez Oil & Gas Corp. v. Crescent Drilling & Production, Inc.* (Case No. 20-20304), the United States Court of Appeals, Fifth Circuit, on appeal from the U.S. District Court for the Southern District of Texas, addressed a case where Sanchez was sued by a subcontractor, who claimed to be an employee of a contractor, for alleged violations of the Fair Labor Standards Act (FLSA). Crescent had hired the subcontractor and Sanchez filed a third-party complaint alleging breach of contract for Crescent's failure to indemnify Sanchez and failure to comply with the FLSA. The district court denied Sanchez's motion for summary judgment and granted Crescent's. Here, the Fifth Circuit found "material fact issues as to whether Langen was an 'independent contractor' or otherwise exempt from the FLSA." Langen performed a variety of roles, ranging from Production Foreman to Flowback Supervisor and billed Crescent at a day rate. This case arose over Crescent's demands that Sanchez indemnify them for Langen's claims. In sum, the Fifth Circuit concluded that their "reading of the parties' MSA [Master Services Agreement] holds that, for Sanchez to obtain indemnification for the Langen settlement and its defense costs for that lawsuit, Sanchez has to prove that Langen's suit 'resulted from' Crescent's 'breach' of its duty to pay Langen in accord with the FLSA. It is also necessary to decide whether Crescent unreasonably withheld consent to the

Sanchez-Langen settlement. Material fact issues exist as to both of these aspects of the relevant FLSA indemnity provisions." As such, the Fifth Circuit remanded the case back to the district court for further findings. [Read more.](#)

STATE – Legislative

Orphan, Idle, and Abandoned Wells – California.

(*Update to 1/11/21 Weekly Report*) On September 7, SB 84 passed both chambers of the California State Legislature. Sponsored by Sen. Melissa Hurtado (D), the bill, if signed into law, "revises and enhances the legislative reporting requirements of the California Geologic Energy Management Division's idle oil and gas well program and related matters." ([Read full bill summary here](#)) Specifically, the bill requires the Division supervisor to provide "the process the supervisor has established to determine that the current operator does not have the financial resources to fully cover the cost of plugging and abandoning the well or the decommissioning of deserted production facilities, or for a previous operator. The bill would require the supervisor to, in a timely manner, post the materials provided to the legislative committees on a public portion of the division's internet website." The bill also provides for specific idle well reporting and reporting the location of hazardous wells, idle-deserted wells, deserted facilities, and hazardous facilities remaining, and "criteria for determining the priority of plugging and abandoning hazardous or idle-deserted wells and decommissioning hazardous or deserted facilities to be remediated." Gov. Gavin Newsom (D) must sign or veto bills by October 10, 2021. [Read more.](#)

Hazardous and Idle-Deserted Wells – California.

On September 9, SB 47 passed both chambers of the legislature. Sponsored by Sen. Monique Limón (D), the bill increases the annual expenditure limit from the Oil, Gas and Geothermal Administration Fund, the principal source of funding for the Geologic Energy Management Division from a production fee assessed on oil and gas production in the state, for the plugging and abandonment of hazardous or idle-deserted wells to \$5 million. Assembly Amendments

removed a provision to retain unspent funds, clarify the accounting of liens, require a report be annually updated and its sunset removed, and add chaptering out amendments. SB 47 is only given effect if SB 84 (above) is enacted. Gov. Gavin Newsom (D) must sign or veto bills by October 10, 2021. [Read more.](#)

Critical Wells – California. (*Update to 2/22/21 Weekly Report*) On September 10, SB 406 passed both chambers of the legislature. Sponsored by Sen. Henry Stern (D), the bill states that “Existing law requires the operator of a well to file a written notice of intention to commence drilling with, and prohibits any drilling until approval is given by, the State Oil and Gas Supervisor or district deputy. Existing law requires the notice to contain the pertinent data the supervisor requires on printed forms supplied by the division or on other forms acceptable to the supervisor. This bill would require the form for the notice to clearly identify whether the well is a critical well, as defined.” [Read more.](#)

Idle and Deserted Wells – California. (*Update to 3/22/21 Weekly Report*) On September 8, AB 896 passed both chambers of the legislature. Sponsored by Asm. Steve Bennett (D), the bill provides for collection of unpaid idle well fees from an operator; establishes timelines and criteria for determining if a well has been deserted; and for locating or collecting any costs from the operator or responsible party for a well that has been deserted or ordered to undergo well integrity testing or to be plugged and abandoned by the state regulator. Gov. Gavin Newsom (D) must sign or veto bills by October 10, 2021. [Read more.](#)

Emissions Reductions – California. In a victory for our profession, AB 1395 died in the legislative session ended September 10, 2021. The bill, sponsored by Asm. Al Muratsuchi (D), would have mandated the California Air Resources Board establish new climate goals to achieve 90% greenhouse emission reductions by 2045. According to the California Independent Petroleum Association (CIPA), “the bill would have led to massive reductions in new housing construction, agriculture production, energy, transportation,

and all manufacturing. It was an extraordinarily aggressive goal that would have required large-scale transformation of California’s entire economy, on top of the changes and costs that have already occurred to implement California’s current first-in-the-nation climate program.” CIPA notes that “AB 1395 would have upended the entire regulatory process, setting entirely new and unreasonable goals.” [Read more.](#)

Royalty Valuation – Pennsylvania. On August 5, Rep. Eric Davanzo (R) introduced HB 1763. The bill would amend the state Oil and Gas Lease Act to define “royalty.” According to the bill sponsor, the legislation arises from a 2010 state Supreme Court decision case inquiry into royalty valuation. Rep. Davanzo asks, “What is royalty? Traditionally natural gas was both measured and sold at the wellhead. With changes in industry practices and the implementation of local gathering systems, there has been confusion as to: 1) where natural gas volume is measured for production subject to royalty, and 2) where the sale price of gas is set for calculation of royalty.” His bill “will define the place of measurement of volume (the mouth of the well) and the sale price (the point of sale to an unaffiliated 3rd party buyer). It is essential to note that this bill will not change terms of any contract. It is critical to Pennsylvania landowners and industry representatives that the definition of terms used in contracts is precise and just; this legislation will provide assurance that the two parties can work together in furtherance of this important industry.” [Read more.](#)

STATE – Regulatory

Natural Gas Critical Infrastructure – Texas.

On September 14, the Texas Railroad Commission (RRC) announced it is accepting public comment on proposed new rule [16 Texas Administrative Code \(TAC\) §3.65](#), relating to Critical Designation of Natural Gas Infrastructure, and proposed amendments to [16 TAC §3.107, relating to Penalty Guidelines for Oil and Gas Violations](#), which were proposed at their open meeting the same day.

According to the RRC, “The proposed rules implement a process for designating certain natural gas entities as critical during an energy emergency as specified in legislation passed in the 87th Regular Legislative Session. The new rule section in §3.65 would “specify the criteria and process by which entities associated with providing natural gas in Texas are designated as critical customers or critical gas suppliers during an energy emergency.” The amendments to §3.107 relate to implementing §3.65. The public comment period is open through November 1, 2021. To access the public comment portal, scroll down to “Chapter 3. Oil and Gas – 1 Proposed” and use the provided link. [Read more.](#)

Los Angeles County Drilling Phaseout – California.

On September 15, the Los Angeles County Board of Supervisors unanimously voted to end new oil and gas drilling and to phase out existing drilling infrastructure in the county as part of their motion, [Protecting Communities Near Oil and Gas Drilling Operations in Los Angeles County](#). According to the Hill, this could potential close “nearly 2,000 sites” in the “unincorporated L.A. County area [which] contains some 1,600 active and idle wells” per the motion. “Most of these are part of the Inglewood Oil Field, the biggest urban oilfield in the U.S.” [Read more.](#)

RRC Production Report for Pending Leases Data Set – Texas. On September 9, the Texas Railroad Commission announced that “[b]eginning in September 2021, the Railroad Commission of Texas (RRC) [Production Reports for Pending Leases data set will feature four new fields](#). The addition of the new fields is in response to the recent revisions to the instructions to the Form PR, Monthly Production Report, and support the RRC’s regulation of flaring and venting of produced natural gas.” Those fields are: 1) Gas disposition code 10 (flare) volume; 2) Gas disposition code 10 remark; 3) Gas disposition code 11 (vent) volume; and 4) Gas disposition code 11 remark. The RRC notes that “Any original or corrected production filed for August 2021 and prior months will still use the disposition code 4.” [Read more.](#)

STATE – Judicial

Deeds; Oil and Gas Rights – Pennsylvania. On June 21, in *Jenkins v. P.P. & V Corp.* (Case No. 692 WDA 2020), the Superior Court of Pennsylvania addressed a dispute over whether P.P. & V. conveyed oil and gas rights to successors in title, including the plaintiffs. The trial court unanimously determined that two deeds, when read together, transferred the oil and natural gas rights to the plaintiffs. Here, the Superior Court agreed and affirmed the lower court decision. The Court applied the state’s *Dunham* rule, which holds that if, in connection with a conveyance of land, there is a reservation, or an exception of minerals without any specific mention of, natural gas or oil, a presumption, rebuttable in nature, arises that the word “minerals” was not intended by the parties to include natural gas or oil. To rebut the presumption established in *Dunham* that natural gas or oil is not included within the word “minerals” there “must be clear and convincing evidence that the parties to the conveyance intended to include natural gas or oil within such word.” Reading the two deeds at issue together, one of which referenced all rights owned by the grantor and the other specifically referring to oil and natural gas rights, the Court found “no room for doubt” that the conveyances included oil and gas rights. [Read more.](#)

INDUSTRY NEWS FLASH

► **Energy Department says U.S. can get 40% of its electricity from solar energy by 2035.** The U.S. Department of Energy’s [Solar Futures Study](#) shows “how solar energy can help decarbonize the U.S. power grid and help achieve a Biden administration goal of net zero emissions in the electricity sector by 2035.” The study proposes how the country can transition to a carbon-free electric grid and solar energy’s role in those efforts. [Read more.](#)

► **BLM headquarters moving back to Washington, DC.** On September 17, the Interior Department announced that BLM headquarters, which moved to Colorado during the Trump administration, will

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.

The following states are currently holding 2022 interim committee hearings: [Alabama](#), [Alaska](#), [Arizona](#), [Arkansas](#), [Colorado](#), [Connecticut](#), [Delaware](#), [Florida House](#), [Georgia](#), [Hawaii](#), [Illinois](#), [Indiana](#), [Iowa](#), [Kentucky](#), [Louisiana](#), [Maine](#), [Maryland](#), [Mississippi House](#) and [Senate](#), [Montana](#), [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](#), [Arkansas](#), [Iowa](#), [Florida](#), [Kentucky](#), [Oklahoma](#), [Tennessee](#), and [Utah](#). ■

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