

GOVERNMENTAL AFFAIRS WEEKLY REPORT

Weekly Highlights At-A-Glance

FEDERAL – Legislative

S. 2836 – America’s Revegetation and Carbon Sequestration Act of 2021. On September 23, bipartisan bill, [S. 2836](#), known as “America’s Revegetation and Carbon Sequestration Act of 2021,” was introduced by Sen. Joe Manchin (D-WV), and seeks to “improve revegetation and carbon sequestration activities in the United States.” Cosponsored by Sen. Angus King (I-ME), Sen. John Barrasso (R-WY), and Sen. Roger Marshall (R-KS), the bipartisan measure would sequester carbon and improve ecosystems through revegetation; mitigate carbon emissions through wildfire prevention; and store carbon through expanded use of wood products. The bill does not target the fossil fuel industry for carbon sequestration or capture. [Read more.](#)

FEDERAL – Regulatory

BLM Resource Advisory Councils. On September 21, the Bureau of Land Management (BLM) published a “National Call for Nominations for Resource Advisory Councils” ([86 Fed. Reg. 52496](#)). According to the BLM, “The purpose of this notice is to request public nominations for 16 of the Bureau of Land Management’s (BLM) statewide and regional Resource Advisory Councils (RAC) located in the West that have vacant positions and/or members whose terms are scheduled to expire. These RACs provide advice and recommendations to the BLM on land use planning and management of the National System of Public Lands within their geographic areas.” The nomination period is open through October 21, 2021. [Read more.](#)

BLM Resource Advisory Council Meetings – Northwest Colorado. On September 21, the BLM

published notice of the “Northwest Colorado Resource Advisory Council Meetings” ([86 Fed. Reg. 52495](#)) which will begin October 20, 2021. According to the BLM, “The 15-member Northwest Colorado RAC advises the Secretary of the Interior, through the BLM, on a variety of public-land issues in the Northwest District, including the Little Snake, White River, Kremmling, Grand Junction, and Colorado River Valley Field Office.” The meetings will include field tours and public comment periods. [Read more.](#)

BLM Resource Advisory Council Meetings – Southwest Colorado. On September 21, the BLM published “Notice of Public Meetings of the Southwest Colorado Resource Advisory Council” ([86 Fed. Reg. 52495](#)) which will begin October 20, 2021. According to the BLM, “The 15-member Southwest Colorado RAC advises the Secretary of the Interior, through the BLM, on a variety of public-land issues in the Southwest District, including the Uncompahgre, Tres Rios, and Gunnison Field Offices.” The meetings include a field trip and business meeting, which are open to the public. [Read more.](#)

BOEM Gulf of Mexico Lease Sale. (*Update to 9/20/21 Weekly Report*) On September 30, the Interior Department’s Bureau of Ocean Energy Management (BOEM) announced that it will hold its Gulf of Mexico lease sale on November 17, 2021. In its initial record of decision notice issued on September 7, the BOEM had not provided a date. Lease Sale 257 “will include 15,135 blocks that lie 3-231 miles offshore in water depths from 9 to more than 11,115 ft. The royalty rate will be 12.5% for leases in less than 200 m of water and 18.75% for all other leases.” [Read more.](#) For background, on September 7, the 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.](#)

Interior Department Nomination. On September 21, the Senate Committee on Energy & Natural Resources [held a full committee hearing](#) to consider the nomination of Laura Daniel-Davis for Assistant Secretary of the Interior, Land and Minerals Management. During testimony, Daniel-Davis told the panel that regarding the Biden administration’s pause on federal oil and gas leasing, “the department will publish its review of the federal oil and gas leasing program in the short term, but said it must first undergo interagency review.” According to the Hill, Daniel-Davis did not provide senators with a specific timeline for the release of the report, which was initially expected during the summer. [Read more.](#)

BLM Director Confirmation Hearing. (*Update to 6/14/21 Weekly Report*) On September 30, the U.S. Senate confirmed President Biden’s pick to head the BLM. Tracy Stone-Manning narrowly secured her position as BLM Director by a strict party line vote of 50-45 with no Republicans supporting her appointment. Throughout her contentious confirmation hearings, Stone-Manning was scrutinized by Republicans and industry groups for her former eco-activism and their belief that she wouldn’t support traditional energy development. [Read more.](#)

New Mexico Air Permitting. On September 20, environmental activist group, WildEarth Guardians [delivered a letter to Michael Regan, Administrator of the U.S. Environmental Protection Agency \(EPA\)](#) demanding the EPA sanction the New Mexico Environment Department (NMED) for allowing oil and gas production without the legally required operating permits and demanding “all sources of air

pollution operating in violation of Title V of the Clean Air Act to cease operations.” The letter claims that NMED “is currently allowing dozens of stationary sources of air pollution to illegally operate and pollute the air without required oversight under Title V of the Clean Air Act. These sources of air pollution are all associated with the oil and gas production industry.” [Read more.](#)

Office of Natural Resources Revenue; Royalties. (*Update to 6/14/21 Weekly Report*) On September 30, the Office of Natural Resources Revenue (ONRR) published its final rule, “ONRR 2020 Valuation Reform and Civil Penalty Rule: Final Withdrawal Rule” ([86 Fed. Reg. 54045](#)), which rescinds the Trump-era ONRR rulemaking that lowered some companies’ royalty payments to the federal government for oil, gas, and coal extracted from federal lands. The Biden administration’s withdrawal rulemaking reverts the valuation back to that which existed under the Obama administration. The rule also assesses civil penalties for violations of certain statutes, regulations, leases, and orders associated with mineral leases. According to the Interior Department, “The net impact of withdrawing the 2020 Rule is an estimated \$64 million annual increase in royalty collections over what would have been realized if the 2020 Rule went into effect.” The Trump-era rule, which was finalized in January 2021, was roundly supported by oil and gas industry groups who argued that the 2016 valuation regulations were “needlessly complex and injected uncertainty into the royalty process.” [Read more.](#)

FEDERAL – Judicial

Climate Change – New Jersey Federal Court. On September 8, in *City of Hoboken v. Exxon Mobil Corp.* (Case No. 20-CV-14243), the U.S. District Court for the District of New Jersey, addressed a case where a New Jersey city alleges that the defendant oil and gas companies are “engaged in a decades-long campaign to downplay the effect of fossil fuel usage on climate change” and that “its residents have been damaged by this conduct through the dire effects of global warming.” As the

court stated, this “case is one of many similar cases recently filed throughout the United States seeking to hold oil and gas companies accountable for their role in climate change.” The defendants have sought to keep the case in federal court, while the plaintiff seeks to pursue the action in state court, which they perceive as more favorable to their lawsuit. Here, the court agreed with the plaintiff city and remanded the case back to state court, holding that the “focus of Hoboken’s claims is on harm that occurred in Hoboken rather than in a federal enclave.”

[Read more.](#)

BOEM Gulf of Mexico Lease Sale. (Update to 9/7/21 Weekly Report) On September 22, the U.S. District Court for the District of Columbia ruled that Louisiana can intervene in a lawsuit brought by environmental groups against the Biden administration for their decision to hold an offshore oil and gas lease sale. According to Bloomberg Law, “The Biden administration told the court that the earliest date a lease will be issued and effective is Jan. 1, 2022.” The state had argued before the court that the environmental activists’ effort to block the sale conflicts with a Louisiana federal court’s order under which the sale must go forward. Here, the D.C. court said there’s doubt that the federal government will adequately represent the state’s interests and thus allowed them to intervene in the case to ensure the lease sale proceeds as intended. According to Judge Randolph D. Moss, who issued the order, Louisiana showed it has a “legally protected interest in the lease sale revenues” and that the environmental groups’ claims threaten that interest. For background, this litigation arises from the upcoming [BOEM Gulf of Mexico Lease Sale 257](#). On August 31, environmentalists filed a complaint against the Biden administration challenging the sale and sought 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.](#)

STATE – Legislative

Remote Notarial Acts – North Carolina. (Update to 9/7/21 Weekly Report) On September 22, HB 776 passed both chambers of the General Assembly. Sponsored by Rep. Robert Reives (D), the bill, if enacted, would amend existing notary law to provide for remote, online, and electronic notarial acts.

[Read more.](#)

Energy Transition Act – Illinois. On September 15, Gov. J.B. Pritzker signed a 1,000+ page comprehensive bill package into law, called the Energy Transition Act, and also referred to as the Climate and Equitable Jobs Act. This Democrat-sponsored measure, [SB 2408](#), creates a “pathway toward power sector decarbonization by 2045, creates equitable clean energy workforce development pathways and expands state commitments to energy efficiency, renewable energy and electric vehicles.” The Act aims to phase out fossil fuel energy sources by 2045, and mainly focuses on utility generation, which will be a blow mainly to the coal industry. According to reporting, “Illinois is the first state in the coal-heavy Midwest to commit to eliminating carbon emissions; the plan received some Republican support; and it includes programs to ensure economic and racial equity.”

According to the Midwest Energy Efficiency Alliance, “This legislation will usher in a new era of Illinois utility regulation, programming and power sector replacement moving Illinois toward broad decarbonization and equitable clean energy workforce development. Energy efficiency is essential to mitigate cost increases to ratepayers and to increase reliability and resiliency throughout the overhaul of Illinois’ energy system.” ([Read a bill provision summary here](#)) The Act has multiple effective dates. [Read more.](#)

Oil and Gas Taxation – Ohio. (*Update to 9/7/21 Weekly Report*) On September 15, SR 176 was adopted. Sponsored by Sen. Tim Schaffer (R), this Senate Resolution states 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.](#)

Plain Language in Oil and Gas Property Contracts – Pennsylvania. On September 27, Rep. Joe Webster (D) introduced [HB 1914](#), which seeks to “establish plain language in oil and gas property contracts.” The bill seeks to impose standardization of terms and definitions in oil and gas instruments as well as readability standards which would invariably conflict with long-established and recognized industry instruments, such as leases. A version of this bill has been introduced every year by a Democrat member and they always fail to advance in the Republican-controlled General Assembly. No action has been taken on HB 1914 since its introductory referral to the House Environmental Resources & Energy Committee. [Read more.](#)

High-Level Radioactive Waste – Texas. (*Update to 9/7/21 Weekly Report*) On September 9, Gov. Greg Abbott (R) signed HB 7 into law. Sponsored by Rep.

Brooks Landgraf (R), this Second Special Session bill amends 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. The Act takes immediate effect. [Read more.](#)

Flaring – Texas. (*Update to 9/7/21 Weekly Report*) HB 231, which was filed in the Second Special Session by Rep. Jon Rosenthal (D), failed to advance and died in session. The bill 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 would have provided 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](#)

Water Usage in Oil and Gas Operations – Colorado. On October 1, the Colorado Oil & Gas Conservation Commission (COGCC) announced they will be holding a hearing and presentation on October 5 regarding water usage in oil and gas production. The public is invited to attend the virtual meeting. For those reading this report after the hearing date, the COGCC also makes their hearings available for later [viewing here](#). For a full agenda and instructions on accessing the event, [Read more.](#)

Critical Infrastructure Operator Forms – Texas. (*Update to 9/20/21 Weekly Report*) On September 29, the Texas Railroad Commission (RRC) announced that at its open meeting on September 28, the RRC “proposed three new forms related to the recently

proposed amendments to [16 TAC §3.65 and §3.107](#) regarding critical infrastructure designation pursuant to [Senate Bill 3](#) and [House Bill 3648](#) from the 87th Legislature (Regular Session).” Although operator related, AAPL is providing the proposed form amendments to members for their reference. The form amendments are: (1) Form CI-D, Acknowledgement of Critical Customer/Critical Gas Supplier Designation, would be submitted by an operator of a facility designated as critical acknowledging the facility’s critical status; (2) Form CI-X, Critical Customer/Critical Gas Supplier Designation Exception Application, would be submitted by an operator certifying a facility needs an exception to critical designation because the facility is not prepared to operate in a weather emergency; and (3) Table CCI, specifies the information that an operator is required to submit to electric entities for load shed prioritization. The public comment period is open through November 1, 2021. [Read more.](#)

STATE – Judicial

Kern County Oil and Gas Production – California.

On September 13, Kern County, California sued Gov. Gavin Newsom (D) in *County of Kern v. Newsom* (Case No. not yet docketed), charging the governor with violating the state constitution and disregarding numerous state laws regarding oil and natural gas production. According to the California Independent Petroleum Association (CIPA), “In short, Kern County believes that Governor Newsom has acted illegally in attempting to shut down oil production in California.” Specifically, the lawsuit states that “under his direction, the State’s executive branch has pursued an unmistakable pattern and practice of impeding, delaying and/or outright blocking the issuance of oil and gas permits in a manner that thwarts existing law and implements substitute policies never approved by the duly elected California State Legislature (‘Legislature’) in violation of Article III, section 3 of the California Constitution (referred to as the “Separation of Powers’ clause). To date this illegal, as well as arbitrary and capricious, activity has included, among other things,

firing a State official who dared to enforce the law contrary to Newsom’s professed ‘values,’ unilaterally seeking to ban or phase out statutorily authorized oil and gas production methods without any legislative authorization to do so, erecting a host of unauthorized arbitrary administrative roadblocks to indefinitely delay the California Geologic Energy Management Division’s (‘CalGEM’) statutorily-mandated review and issuance of statutorily authorized oil and gas permits, unilaterally deciding that California’s climate change planning process must encompass and include the planned elimination of all of California’s in-state oil and gas production, refusing to acknowledge or follow statutory mandates and CalGEM’s own regulations, having a Newsom political appointee/bureaucrat unilaterally decide that an undeclared ‘climate emergency’ justifies CalGEM’s rejection of such permits, and otherwise taking action Newsom has repeatedly acknowledged he lacks authority to take.” As noted by CIPA, “Seventy percent of California’s oil production occurs within Kern County, so the impact of the Governor’s current actions are most harmful [to] Kern County and its workforce. The governor has taken action to end hydraulic fracturing, cyclic steaming, and even using his regulators to begin denying current permits to drill without any justification.” The Newsom administration has yet to respond to the complaint. [Read more.](#)

Hazardous and Idle-Deserted Wells – California.

(Update to 9/20/21 Weekly Report) On September 23, Gov. Gavin Newsom (D) signed SB 47 into law. Sponsored by Sen. Monique Limón (D), the Act 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. An identified section of SB 47 only

takes effect if [SB 84](#), which revises and enhances the legislative reporting requirements of the California Geologic Energy Management Division's idle oil and gas well program, is also enacted. SB 84 was presented to the governor on September 13, and must be signed or vetoed by October 10, 2021.

[Read more.](#)

Retained Acreage; Leasing – Texas. On August 25, in *Vermillion FC, LP v. 1776 Energy Partners, LLC* (Case No. 04-20-00089-CV), the Court of Appeals of Texas, Fourth District (San Antonio), addressed a dispute “related to the retention of certain acreage under the parties’ oil and gas lease” and specifically, “whether 1776 Energy breached the lease’s terms by, among other things, retaining excess acreage in the well tract and untimely filing a partial release of non-retained acreage under the lease, more than two years after 1776 Energy was supposed to file it as provided by the lease.” Vermillion had argued at trial that “the 320-acre well tract designated by 1776 Energy should have been 40 acres and that the lease terminated as to all other acreage.” Here, regarding multiple motions, the appellate court affirmed summary judgment for 1776 Energy on the untimely well-tract designation claim and as to the partial release claim. However, the court also reversed the trial court’s summary judgment for 1776 Energy on the well tract claim, concluding 1776 Energy was entitled to 280 acres, not 320 acres. The court also affirmed in part and reversed in part the trial court’s summary judgment for 1776 Energy on the option fee and release, affirming as to acreage outside the well tract, and reversing as to the 40 acres not properly included in the well tract that 1776 Energy did not properly release. Finally, the court remanded back to the trial court for further proceedings to determine what damages, if any, Vermillion is entitled to for 1776 Energy’s breach of relevant lease provisions.

[Read more.](#)

INDUSTRY NEWS FLASH

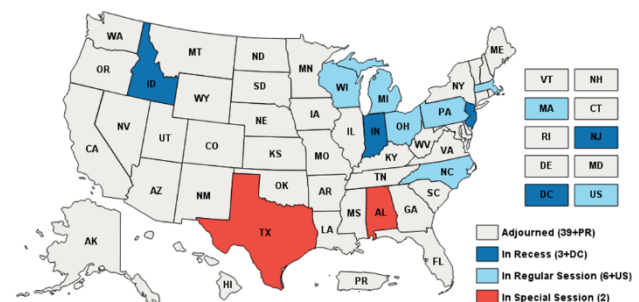
► Texas upstream employment continues to rise.

As reported by Rigzone on September 23, Texas upstream employment increased by 2,800 jobs as

of the latest monthly data (August) compared to revised June numbers, says the Texas Independent Producers and Royalty Owners Association (TIPRO). “TIPRO noted that Texas upstream employment in August 2021 represented an increase of 19,700 positions compared to August 2020. TIPRO outlined that this number reflected a rise of 18,500 jobs in the services sector and increase of 1,200 jobs in oil and natural gas extraction.” [Read more.](#)

LEGISLATIVE SESSION OVERVIEW

States in Session



Session Notes: 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: **Indiana** and **New Jersey** (TBD) and **Idaho** House (call of the speaker).

Texas Republican Gov. Greg Abbott called the legislature into a third special session on September 20 to focus on redistricting, restrictions on transgender student athletes, property tax relief, bail changes, the ongoing COVID-19 pandemic and penalties for illegal voting, reports [The Texas Tribune](#).

Alabama Republican Gov. Kay Ivey called the legislature into a special session on September 27 to vote on a prison construction plan that would use part of the state’s COVID-19 relief funds, reports [The Darien Times](#).

Alaska Republican Gov. Mike Dunleavy is scheduled to call the legislature into a fourth special session on

October 4, reports [Anchorage Daily News](#). This special session will focus on discussing Governor Dunleavy's new formula for paying dividends in the future and an act making appropriations for a supplemental 2021 Permanent Fund dividend. The previous special session allowed for a \$1,100 dividend beginning the week of October 11, but Governor Dunleavy has supported a \$2,350 payment.

Iowa Republican Gov. Kim Reynolds announced she is calling the legislature into special session on October 5 to begin the redistricting process, [Iowa Public Radio](#) reports.

Tennessee Republican Gov. Bill Lee announced in a [press release](#) that he will call the legislature into special session on October 18 to address funding, buildout and oversight of Ford Motor Company's \$5.6 billion investment at the Memphis Regional Megaseite.

Georgia Republican Gov. Brian Kemp will call the legislature into a special session on November 3 to begin the redistricting process, as reported by the [Atlanta-Journal Constitution](#).

South Dakota lawmakers are scheduled to convene for a special session on November 9 to consider Attorney General Jason Ravnsborg's impeachment, reports [The Grand Forks Herald](#).

Oklahoma Republican Gov. Kevin Stitt is scheduled to call the legislature into a special session on November 15 to address redistricting issues caused by the U.S. Census Bureau's delayed release of 2020 census data, reports [Tulsa World](#).

Nebraska adjourned their special session on September 30 after approving six redistricted maps, reports [News Channel Nebraska](#).

Signing Deadlines (by date): **California** Democratic Gov. Gavin Newsom has until October 10 to sign or veto legislation or it becomes law without signature. **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. **Nebraska** Republican Gov. Pete Ricketts has five days from presentment to sign or veto legislation, Sundays excepted, 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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FEDERAL – Legislative

H.R. 5628 – Pecos Watershed Protection Act.

On October 29, official bill text was made available for [H.R. 5628](#), known as the “Pecos Watershed Protection Act.” Sponsored by Rep. Teresa Leger Fernández (D-NM), the bill would remove certain federal lands in the Pecos Watershed from mineral resource development. “Protecting this special area for future generations from mineral exploitation is crucial for our survival. This area is important for wildlife, hunting and fishing and recreation as well as a vital water source for farming and ranching,” said Janice Varela, San Miguel County Commissioner, in support of the bill. Senate companion bill, [S. 182](#), was introduced in February 2021 by Sen. Martin Heinrich (D-NM) but has not advanced following its committee hearing in June 2021. [Read more.](#)

H.R. 5708 – Endangered Species Act Regulations.

On October 29, official bill text was made available for H.R. 5708. Sponsored by Rep. Cliff Bentz (R-OR), the bill seeks to [codify certain regulations](#) relating to the Endangered Species Act of 1973 finalized under the Trump administration related to critical habits and other species protections that the Biden administration has proposed to rescind to put back in place more stringent protections. The bill has a low likelihood of consideration in the Democrat-controlled House, especially in light of the Biden Administration’s current, proposed rulemaking seeking to roll back the Trump-era regulations. (*See more under Federal-Regulatory section below.*) [Read more.](#)

H.R. 5725 – Threatened Species Protection Improvement Act of 2021. Related to the above bill, on November 2, official bill text was made available

for [H.R. 5725](#), known as the “Threatened Species Protection Improvement Act of 2021.” Sponsored by Rep. Ken Buck (R-CO), the bill “ensures animals listed as threatened under the Endangered Species Act are provided with protections specifically tailored to their conservation needs.” The bill also seeks to [codify Trump era regulations](#). According to Rep. Buck, “By passing this legislation, we can improve conservation efforts and prevent the Biden Administration from weaponizing the Endangered Species Act to lock away thousands of acres of land across the country.” [Read more.](#)

H.R. 5733 – Endangered Species Act Regulations.

Related to the above bills, on November 2, official bill text was made available for [H.R. 5733](#), which also seeks to codify Endangered Species Act of 1973 [regulations finalized under the Trump administration](#) related to critical habits and other species protections that the Biden administration has proposed to rescind. Sponsored by Rep. Yvette Herrell (R-NM), the bill would restore to the U.S. Fish and Wildlife Service “the authority to exclude areas from being designated critical habitat under the Endangered Species Act if the economic impact of doing so outweighs the benefit to the species.” Like H.R. 5708 and H.R. 5725, the bill has a low likelihood of advancing in the Democrat-controlled House. [Read more.](#)

H.R. 5740 – Endangered Species Act Regulations.

Related to the above bills, on November 4, official bill text was made available for [H.R. 5740](#), which also would “codify certain regulations relating to endangered species and threatened species listing and critical habitat designation.” Sponsored by Rep. Dan Newhouse (R-WA), like the bills above, the legislation seeks to codify Trump era regulations that “clarify, interpret, and implement portions of the Act concerning the procedures and criteria used for

listing or removing species from the Lists of Endangered and Threatened Wildlife and Plants and designating critical habitat.” Those regulations allowed for more permissive use than those proposed by the Biden administration. [Read more.](#)

FEDERAL – Regulatory

BLM Greenhouse Gas Emissions; Federal Leasing.

On October 29, the Bureau of Land Management (BLM) announced they will “consider contributions to national greenhouse gas emissions as it prepares to sell oil and gas drilling leases — and could ultimately put off selling certain parcels as a result.” The [BLM statement](#) detailed that “For the first time, the environmental assessments will [analyze greenhouse gas emissions](#) on a national scale and consider the social cost of greenhouse gases. The environmental assessments will also analyze impacts of potential energy development on air and water quality, wildlife habitat, the quality of life for nearby communities, and other factors.” Recently sworn-in BLM Director Tracy Stone-Manning said in a statement, as reported by Bloomberg Government, that the department will continue to carry out leasing that “fulfills the Interior Department’s legal responsibilities” but will “also consider what’s known as the ‘social cost’ of greenhouse gases — a calculation of how much emissions cost society that can be used in climate-related decision-making.” The BLM also announced that environmental assessments are now available for [Colorado](#), [Eastern States](#), [Montana and the Dakotas](#), [Nevada](#), [New Mexico](#), [Utah](#), and [Wyoming](#) for those lease sales and has opened the public comment period for 30 days for those states/regions regarding proposed oil and gas lease sales to be held in early 2022. [Read more.](#)

BLM Solar Lease Sale – Arizona. On November 4, the BLM announced that it will accept competitive bids to lease public lands for solar energy projects on approximately 8,526 acres in the Arizona for a public auction to be held on December 8, 2021. The “Notice of Competitive Offer for Solar Energy Development on Public Lands in the State of Arizona” ([86 Fed. Reg. 60905](#)), provides that this will

be a live auction to be held at the BLM Arizona State Office, 1 North Central Ave, #800, Phoenix, AZ 85004. [Read more.](#)

Endangered and Threatened Species; Critical

Habitat. On October 27, the Biden administration began the process of rescinding Trump era regulations that relaxed designations of endangered and threatened species and critical habits. The first proposed rule, issued by the U.S. Fish and Wildlife Service (FWS), “Endangered and Threatened Wildlife and Plants; Regulations for Designating Critical Habitat” ([86 Fed. Reg. 59346](#)), would roll back the assessment of the benefits of designating an area as critical habitat for endangered species by considering the economic impacts of such a designation. The second proposed FWS rule, “Endangered and Threatened Wildlife and Plants; Regulations for Listing Endangered and Threatened Species and Designating Critical Habitat” ([86 Fed. Reg. 59353](#)), involves the definition of “critical habitat” and under the Trump-era rule, “would have restricted that definition to only an area that could currently support an endangered species, but not areas that could be restored or might become suitable as the climate crisis shifts conditions and range.” The public comment period for both proposed rescission rules is open through November 26, 2021. [Read more.](#)

EPA Methane Emissions Reduction Rulemaking.

During his trip to the COP26 climate change summit in Glasgow, Scotland last week, [President Biden laid out plans for the United States to reduce methane emissions](#) as part of a global effort supported by other nations in attendance. As a first step in that broad policymaking agenda, the U.S. Environmental Protection Agency (EPA) announced forthcoming proposed rulemaking “in fighting the climate crisis and protecting public health through a proposed rule that would sharply reduce methane and other harmful air pollution from both new and existing sources in the oil and natural gas industry. The proposal would expand and strengthen emissions reduction requirements that are currently on the books for new, modified and reconstructed oil and

natural gas sources, and would require states to reduce methane emissions from hundreds of thousands of existing sources nationwide for the first time.” [Read more](#). Although the EPA has yet to formally publish the proposed rule, the agency has made their policy goals public with [an overview of the proposed rule](#). As reported by Bloomberg Government, the “EPA proposed rule stops short of imposing an outright ban on routine, intentional flaring, when that excess natural gas is burned instead. That omission is set to disappoint activists who lobbied the EPA to bar flaring, following the lead of some states.” The EPA requirements would focus “surveillance efforts on the sites and equipment the agency says are most likely to have large emissions. Under the proposal, well sites with estimated emissions of at least 3 tons per year would have to be monitored quarterly for leaks, with prompt repairs of any that are discovered, according to an EPA official. By contrast, well sites estimated to emit fewer than 3 tons per year could undertake just one survey to demonstrate they are free of leaks or malfunctions. Although the EPA predicts its approach would focus efforts on the wells responsible for the vast majority of leaks and reduce 41 million tons (37 million metric tons) of methane releases from 2023 to 2035, the determination is based on agency estimates that scientists and activists have widely said underestimate emissions.” The EPA is expected to formally publish notice of the proposed rule in the coming weeks, opening up the process for public comment, and we will keep AAPL members informed once they do. This is the beginning of a long rulemaking process, and as noted by the Independent Petroleum Association of America, the “EPA is taking a layered approach over the next six months to a year to implement their framework.” [Read more](#).

FEDERAL – Judicial

EPA Greenhouse Gas Emissions Rule – U.S. Supreme Court. (*Update to 4/19/21 Weekly Report*)

On October 29, the U.S. Supreme Court agreed to review four consolidated cases regarding the extent of the authority of the Environmental Protection

Agency (EPA) to regulate greenhouse gas emissions. Although the legal battle “is over regulation of electric power generation” the states “that petitioned the Supreme Court warned that if a January appeals court ruling is allowed to stand, EPA’s authority to revamp U.S. buildings and equipment for emission control could be unlimited.” We will keep AAPL members informed as the case progresses in the Supreme Court. [Read more](#). For background, on April 5, a three-judge panel of the U.S. Court of Appeals for the District of Columbia Circuit vacated a Trump-era rule that limited Environmental Protection Agency authority over greenhouse gas emissions, and which only allowed future greenhouse gas limits on power plants, “sidestepping oversight over the oil and gas industry, iron and steel manufacturers and other polluting industries.” (See “Pollutant-Specific Significant Contribution Finding for Greenhouse Gas Emissions From New, Modified, and Reconstructed Stationary Sources: Electric Utility Generating Units, and Process for Determining Significance of Other New Source Performance Standards Source Categories”; [86 Fed. Reg. 2542](#); January 13, 2021.) Since EPA calculations showed that the oil and gas sector contributed between only 2.5 percent and 3 percent of U.S. greenhouse gas emissions, it was exempt from tougher regulations under the Trump rule. However, the Court’s latest decision in [California v. Environmental Protection Agency](#) (Case No. 21-1035) overturned that rule and was supported by the Biden administration. In response to the decision, an EPA spokesperson said that the agency “will follow the science and law in accordance with the Biden-Harris Administration’s executive orders and other directives in reviewing all of the agency’s actions issued under the previous Administration to ensure that they protect public health and the environment.” [Read more](#).

Royalties; Leasing – Pennsylvania. On September 21, in *Tennant v. Range Resources-Appalachia, LLC* (Case No. 18-1533), the U.S. District Court for the Western District of Pennsylvania addressed a claim by mineral owners that Range Resources-Appalachia, LLC “breached certain oil and gas leases between the parties by failing to demonstrate that

post-production costs deducted from their royalty payments resulted in a net increase in the value of gas produced under those leases.” The Court disagreed, writing that “Given that the plain and unambiguous language” of the addendum to the leases “does not impose on Defendant a duty to demonstrate that post-production costs deducted from Plaintiffs’ royalty payments resulted in a net increase in the value of the gas produced, it is impossible for Defendant to have breached the Leases.” In sum, the Court ruled in favor of Range Resources-Appalachia, LLC, granting their summary judgment motion, and held that “Even if the Court were to construe Plaintiffs’ breach of contract claim as alleging that Defendant improperly deducted post-production costs from their royalty payments, Plaintiffs have not met their summary judgment burden on such claim.” [Read more.](#)

STATE – Legislative

State Public Lands Strategic Plan – Michigan.

On October 28, a hearing was held for HB 5388, introduced on October 13 by Rep. Gary Howell (R). The bill would amend existing Department of Natural Resources code of the Natural Resources and Environmental Protection Act to approve the strategic plan entitled, “The Power of Public Lands: Your resources. Our commitment. Michigan’s legacy. Michigan Department of Natural Resources Public Land Strategy 2021-2027.” [Read more.](#)

STATE – Regulatory

Emissions Reductions – New Mexico. On October 25, New Mexico Gov. Michelle Lujan Grisham (D) pledged that the state would cut all carbon emissions from every sector by 2050. Speaking at the New Mexico Climate Summit, Lujan Grisham told the audience that this goal, “first created via an executive order Lujan Grisham signed upon taking office in 2019, would be codified into law via legislation during the 30-day 2022 session.” The emissions reduction goals would apply to every sector, including oil and gas production. “We are, in fact, leading the country in a number of

environmental strategies, policies and statutory frameworks that are reducing our emissions and increasing our reliance on renewable energy,” said Lujan Grisham. “I think we should codify that work in this next legislative session. If you don’t have that framework in statute, it’s too easy to not work as diligently.” Lujan Grisham also said states should be able to “set stringent methane and other emissions standards for oil and gas production on federal land within their borders.” [Read more.](#)

STATE – Judicial

Lack of Production; Reversion; Leasing; Deeds; Chain of Title – Ohio.

On October 19, in *Kuster v. Ohio Department of Taxation* (Case No. 2021-Ohio-3721), the Court of Appeals of Ohio, Fifth District (Licking County), addressed issues surrounding title to property, lease terms, and well registration with the Ohio Division of Mineral Resources. Here, the Court held that “The oil and gas lease was dependent upon the production of gas in paying quantities. The failure to produce gas in paying quantities expressly violated the terms of the habendum clause of the lease; therefore, the lease terminated by its own terms and the leasehold interest reverted back to the owner of the fee simple estate.” As to the well registration, the property owner-appellant stated that “he ‘believes’ if the oil and gas lease expired, David and Mary Kuster could not have registered the well and claimed ownership of the Well in 2006.” However, the Court noted that the “appellant does not include any citations to authorities, statutes, or parts of the record on which he relies in support of his argument.” [Read more.](#)

Leasing – Texas. On September 20, in *Tier 1 Resources Partners v. Delaware Basin Resources LLC* (Case No. 08-20-00060-CV), the Court of Appeals of Texas, Eighth District (El Paso), addressed an oil and gas dispute that “questions whether a group of identical leases automatically terminated — as to one section of land — at the end of the leases’ primary term.” The Appellants “include twelve Appellant-Lessors of mineral interests

covering two sections of land in Reeves County, Texas, and Tier 1 Resources Partners, LLC (Tier 1), an unrelated third-party Lessee who entered a group of subsequent leases upon termination of the section at issue (collectively, Appellants).” The Appellee, “Delaware Basin Resources LLC (DBR) is the original Lessee of the group of leases at issue.” At trial, the court granted summary judgment in favor of DBR. In this appeal, the Appellants “challenge the trial court’s interpretation of the relevant lease provisions and ask this Court to reverse the adverse judgment entered against them.” Here, the Court found that the lease at issue provides “a clear, precise, and unequivocal special limitation that automatically terminates the lease if no operations are conducted on the covered land during the primary term.” DBR, however, argued that the provision “is a standard clause providing for automatic termination if the property is not developed by the end of the primary term. The dispute in this instance centers on whether each lease created two separate leases.” The Court wrote, “If the document is to be interpreted as two separate leases, then one would automatically terminate if no operations were conducted on the specific parcel covered, even if operations were conducted on the other parcel.” The Court disagreed with DBR, writing, “First, the beginning of the sentence places an explicit limitation on the purpose the land may be deemed to contain 1,280 acres, and the purpose is for calculating any agreed-upon bonus or other payment under the lease. Second, even if there was a conflict between Paragraph 11 and this part of Paragraph 1, the language in Paragraph 11 would control as a result of the ‘notwithstanding’ clauses at the beginning of Exhibit A and Paragraph 11.” Further, the Court found it “unambiguous and clear that the separate tracts are to be treated as being held by separate leases and that each provision of the lease document—including the special limitation in Paragraph 2—is to be applied to each tract individually.” As such, the Court held that two separate leases were established, and reversed the trial court ruling in favor of the Appellants. [Read more.](#)

INDUSTRY NEWS FLASH

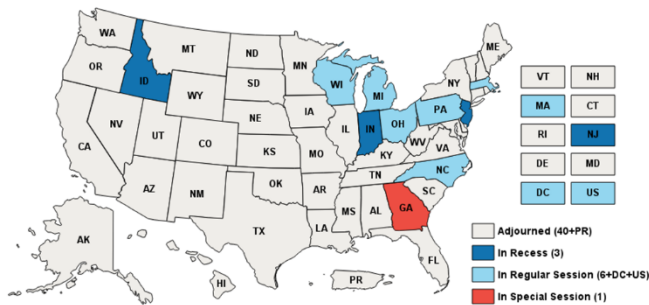
► **OPEC+ maintains current production plan; defies President Biden.** As reported in the Oil & Gas Journal last week, in defiance of President Biden’s request that OPEC+ nations increase oil production, the group has “decided to hold firm on current production plans of increasing 400,000 b/d for December 2021.” Russian Energy Minister Alexander Novak said, “The decision was made previously to increase production by 400,000 b/d every month, and I underscore every month, until the end of 2022. Today the decision was reiterated to maintain current parameters which were decided on earlier.” [Read more.](#)

► **Permian Basin oil production continues growth.** According to the [U.S. Energy Information Administration’s October 18 drilling productivity report](#), oil production in the Permian Basin is forecast to grow to 4.888 million b/d in November from 4.826 million b/d in October. Additionally, the count of drilled but uncompleted wells continues to decline. [Read more.](#)

► **ExxonMobil supports methane emissions reduction initiative.** As reported by Rigzone on October 27, ExxonMobil has announced its support of an initiative to reduce methane emissions by 30 percent below 2020 levels by 2030. The company said it “was committed to working with the U.S. government, the European Commission, and other governments to help achieve the objectives of the [Global Methane] Pledge.” [Read more.](#)

LEGISLATIVE SESSION OVERVIEW

States in Session



Session Notes: 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: **Indiana** and **New Jersey** (TBD) and **Idaho** House (call of the speaker).

Special Session Notes: Georgia Republican Gov. Brian Kemp called the legislature into a special session on November 3 to begin the redistricting process, reports the [Atlanta-Journal Constitution](#). **South Dakota** lawmakers are scheduled to convene for a special session on November 9 to consider Attorney General Jason Ravnsborg's impeachment, reports [The Grand Forks Herald](#). **Florida** Republican Gov. Ron DeSantis issued a proclamation calling the legislature into a special session from November 15 to November 19, reports [News4Jax](#). The purpose of the special session is to fight federal COVID vaccination mandates. **Oklahoma** Republican Gov. Kevin Stitt is scheduled to call the legislature into a special session on November 15 to address redistricting issues caused by the U.S. Census Bureau's delayed release of 2020 census data, reports [Tulsa World](#). The **Tennessee** legislature adjourned their second special session on October 30 after passing sweeping [legislation](#) to curb COVID restrictions, reports [Chalkbeat Tennessee](#). **Alaska** adjourned their fourth special session on November 2 without agreeing on Republican Gov. Mike Dunleavy's Permanent Fund Dividend formula or a long term budget plan, reports [KTOO](#). **Alabama** lawmakers adjourned their special

session on November 4 after approving new voting district maps and appropriating another \$80 million of federal pandemic relief funds, reports [AL.com](#). At the end of the special session, two bills were also passed relating to fighting COVID vaccine mandates. [SB 15](#) requires parental consent for minors to receive a COVID-19 vaccination and [SB 9](#) requires employers or contractors to allow medical or religious exemptions from the vaccine, reports [Alabama News Network](#). **Wyoming** lawmakers adjourned a seven-day special session on November 4, reports the [Wyoming Tribune Eagle](#). One bill, [HB 1002](#), that emerged from the session appropriates \$4 million to the governor's office for future litigation related to fighting the federal COVID-19 vaccine mandate. The bill also features a resolution stating Wyoming's right to defy the mandate as well as providing legal standing to do so. Wyoming is part of a 10-state coalition suing to block the federal vaccine mandate as it relates to federal contractors and federally contracted employees.

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. **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.

The following states are currently holding 2022 interim committee hearings: [Alabama](#), [Alaska](#), [Arizona](#), [Arkansas](#), [Colorado](#), [Connecticut](#), [Delaware](#), [Florida](#) [House](#), [Georgia](#), [Hawaii](#), [Idaho](#), [Illinois](#), [Indiana](#), [Iowa](#), [Kansas](#), [Kentucky](#), [Louisiana](#), [Maine](#), [Maryland](#),

[Minnesota](#), [Mississippi House](#) and [Senate](#), [Missouri House](#) and [Senate](#), [Montana](#), [Nebraska](#), [Nevada](#), [New Hampshire House](#) and [Senate](#), [New Mexico](#), [North Dakota](#), [Oregon](#), [Rhode Island](#), [South Carolina House](#) and [Senate](#), [South Dakota](#), [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](#), [Florida](#), [Iowa](#), [Kentucky](#), [New Hampshire](#), [Oklahoma](#), [Tennessee](#), and [Utah](#). ■

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GOVERNMENTAL AFFAIRS WEEKLY REPORT

Weekly Highlights At-A-Glance

FEDERAL – Legislative

S. 3214 – Sustainable International Financial Institutions Act of 2021. On November 22, official bill text was made available for [S. 3214](#), known as the “Supporting Made in America Renewable and Traditional Energy Act” or the “SMART Energy Act.” Sponsored by Sen. Steve Daines (R-MT), the purpose of the bill is “to promote domestic energy production, to require onshore oil and natural gas lease sales, development of renewable energy on public lands, and offshore oil and natural gas and wind lease sales.” In describing his bill, Sen. Daines “stressed that Democrats’ plans to raise royalty rates and impose new taxes on American energy development would only result in higher prices for Montanans and less energy production.” Daines “also emphasized the need to support made in America energy and raised his concern that reducing American energy production just increases U.S. reliance on foreign energy sources like Russia.” [Read more.](#)

AAPL President Delivers Letter to U.S. Senators Opposing Provisions in the Build Back Better Act. On December 1, in conjunction with AAPL Governmental Affairs, AAPL President Jim T. Devlin, CPL, delivered a letter to key U.S. senators opposing numerous provisions targeting the oil and gas industry and the profession in the nearly 2,500-page, Build Back Better Act ([H.R. 5376](#)). This multitrillion-dollar budget reconciliation bill narrowly passed the U.S. House of Representatives on a strictly partisan basis on November 19 and has struggled to gain the support needed in the Senate. This “social spending” budget legislation contains all manner of programs seeking to reshape American policy, as well as numerous provisions specifically targeting traditional energy, including a methane fee on oil and gas

producers, and more than 10 other provisions detrimental to domestic oil and gas production. In the letter, AAPL expressed its strong opposition to those provisions and specifically requested they be stricken from any bill considered in the Senate. We will continue to keep AAPL members informed of our advocacy and engagement on this bill. [Read the letter here.](#)

FEDERAL – Regulatory

Interior Department Oil and Gas Leasing Review Report. On November 26, the U.S. Department of the Interior released its long-awaited report on the Biden administration’s federal oil and gas leasing and permitting practices. The [Report on the Federal Oil and Gas Leasing Program](#) responds to President Biden’s January 27, 2021, [Executive Order 14008, Tackling the Climate Crisis at Home and Abroad](#), “which directed the Department of the Interior (DOI) to conduct a review of Federal oil and gas leasing and permitting practices. This report considers both onshore and offshore oil and gas leasing programs in light of the Secretary of the Interior’s broad stewardship responsibilities over public lands and Federal offshore waters.” According to the Interior Department, the review “found a Federal oil and gas program that fails to provide a fair return to taxpayers, even before factoring in the resulting climate-related costs that must be borne by taxpayers; inadequately accounts for environmental harms to lands, waters, and other resources; fosters speculation by oil and gas companies to the detriment of competition and American consumers; extends leasing into low potential lands that may have competing higher value uses; and leaves communities out of important conversations about how they want their public lands and waters managed.” ([See Interior Department Announcement](#)

[here](#)) The report calls for increases to onshore and offshore royalties, as well as reforms to bonus bids, rental rates, and bonding. The report also calls for reforms to land use planning, an end to speculative leasing, and updates to bidding requirements. Further, the report calls for greater input from “local community voices” to end former processes that perpetuated “environmental injustice.” At present, the report only makes assessments and recommendations, and not policy or new rulemaking, which may be forthcoming. As noted by The Hill, “For both onshore and offshore drilling, the report says Interior will continue to study the best way to incorporate the cost of the planet-warming gases carbon dioxide, methane and nitrous oxide — but it didn’t lay out specific steps that would be taken.” [Read more.](#) We will continue to keep AAPL members informed of any proposed regulations that arise from the Interior Department report. [Read more.](#)

BLM Sage-Grouse Land Use Plans. On November 22, the Bureau of Land Management (BLM) published a “Notice of Intent To Amend Land Use Plans Regarding Greater Sage-Grouse Conservation and Prepare Associated Environmental Impact Statements” ([86 Fed. Reg. 66331](#)), which “intends to address the management of Greater sage-grouse (GRSG) and sagebrush habitat on BLM-managed public lands in the States of California, Colorado, Idaho, Montana, Nevada, North Dakota, Oregon, South Dakota, Utah, and Wyoming through a land use planning initiative. The BLM will prepare environmental impact statements to support the planning initiative, and by this notice is announcing the beginning of the scoping process to solicit public comments on the planning initiative.” BLM Deputy Director Nada Culver said, “everything’s on the table” as the agency initiates its evaluation of the habitat areas, with “no set deadlines for action.” Culver said, “From changes to the buffers, to how we manage energy development, to how we manage every other activity...we are evaluating it and we are looking for input on what are the most important things to look at.” As reported by the Associated Press, Kathleen Sgamma, president of the oil and gas industry group, Western Energy Alliance, said

the move by the Biden administration came as no surprise. “Sage grouse has been a political football for decades,” she said. “The back and forth continues.” [Read more.](#)

BLM Information Collection. On November 22, the BLM published a notice of information collection, “Agency Information Collection Activities; Onshore Oil and Gas Leasing, and Drainage Protection” ([86 Fed. Reg. 66333](#)), which solicits comments from the public and other Federal agencies on the proposed BLM information collection activities regarding “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).” The BLM notes that respondents/affected public are “Holders of onshore oil and gas lease and public lands and Indian lands (except on the Osage Reservation), operators of such leases, and holders of operating rights on such leases.” The BLM also notes there “are no program or policy changes proposed with this renewal request.” [Read more.](#)

Strategic Petroleum Reserve. (*Update to 11/22/21 Weekly Report*) On November 23, [President Biden announced](#) the United States will “tap the Strategic Petroleum Reserve (SPR) as part of a global effort by energy-consuming nations to calm 2021’s rapid rise in fuel prices.” This comes amidst soaring gas prices – the highest in seven years – and runaway inflation. According to reporting, “Biden called on oil-producing nations such as Saudi Arabia and the United Arab Emirates to ramp up production to provide some relief to American consumers, but those countries rebuffed requests to pump more crude, leaving Biden with few options to lower gas prices.” [Read more.](#) The administration “will release 50 million barrels from the SPR. Of that total, 32 million barrels will be an exchange over the next several months, while 18 million barrels will be an acceleration of a previously authorized sale.” However, any benefits are only expected to be temporary, and the move has been questioned by industry experts and even those working in the administration. “Our analysis shows that it’s

generally short-lived—a couple of months—and that typically the other dynamics in the market would overtake any decrease in price,” said Stephen Nalley, acting administrator of the U.S. Energy Information Administration. [Read more.](#)

FEDERAL – Judicial

Keystone XL Pipeline. Last week, Alberta’s energy minister said the Canadian province will take the United States to arbitration over President Biden’s cancellation of the Keystone XL pipeline permit on his first day in office. This comes just days after pipeline operator, TC Energy, launched its own arbitration claim against the Biden administration. TC Energy has officially “filed a formal request for arbitration under NAFTA rules, seeking \$15 billion in compensation from the U.S. government for the money it spent on trying to develop the cancelled Keystone XL pipeline. The company said in a statement late Monday that it has officially filed paperwork under a part of NAFTA rules that allows companies to seek compensation for lost investment. The case is moving ahead under NAFTA rules and not new ones made under its successor, the Canada-U.S.-Mexico Agreement (CUSMA).” [Read more.](#)

STATE – Regulatory

State Land Office Annual Report – New Mexico.

On December 2, the New Mexico State Land Office released its [Annual Report for Fiscal Year 2021](#). The report “outlines total revenue raised and the earnings for each of the 22 Trust beneficiaries, as well as a detailed overview of highlights from each of the State Land Office’s leasing and operational divisions.” According to the report, the state’s Oil, Gas, and Minerals Division “oversaw 6,800 oil and gas leases, approximately 262 mineral leases, and 567 fresh water and salt water disposal easements together covering nearly 2.3 million acres of state trust mineral estate.” Division staff also “prepared 16 mineral evaluations for land exchanges and renewable energy projects” in the fiscal year. [Read more.](#)

Natural Gas Critical Infrastructure – Texas.

(Update to 9/20/21 Weekly Report) On November 30, the Texas Railroad Commission (RRC) announced at its open meeting that the RRC has adopted new rule [16 TAC §3.65 and amendments to 16 TAC §3.107](#) regarding critical infrastructure designation pursuant to [Senate Bill 3](#) and [House Bill 3648](#) from the 87th Legislature (Regular Session). According to the RRC, the “adoption notice for the new rule and amendments will be published in the Friday, December 17, 2021, issue of the Texas Register, and will become effective Monday, December 20, 2021.” [Read more.](#) According to the RRC, the 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. Additionally, in conjunction with the adopted rules, [the RRC has also adopted two new forms](#) related to 16 TAC §3.65: Form CI-D, *Acknowledgement of Critical Customer/Critical Gas Supplier Designation*, “and its attachment would be submitted by an operator of a facility designated as critical acknowledging the facility’s critical status” and Form CI-X, *Critical Designation Exception Application*, and its attachment “would be submitted by an operator certifying a facility seeks an exception to critical designation because the facility is not prepared to operate in a weather emergency.” [Read more.](#)

STATE – Judicial

Oil and Gas Wells; County Ordinances – California.

On October 13, the California Court of Appeal, Sixth District, upheld a trial court judgment in favor of Chevron regarding “the trial court’s judgment striking down a County ordinance banning ‘land uses in support of’ new oil and gas wells and ‘land uses in support of’ wastewater injection in unincorporated areas of Monterey County.” In *Chevron U.S.A., Inc. v. County of Monterey* (Case No. H045791), the

appellate court held that the state Public Resources Code “explicitly provides that it is the State of California’s oil and gas supervisor who has the authority to decide whether to permit an oil and gas drilling operation to drill a new well or to utilize wastewater injection in its operations. These operational aspects of oil drilling operations are committed by section 3106 to the State’s discretion and therefore local regulation of these aspects would conflict with section 3106.” In short, the Court held that the restrictive local ordinances were preempted by the state’s specified authority over oil and gas operations as to the matters at issue, although the Court also noted that their “narrow holding does not in any respect call into question the well-recognized authority of local entities to regulate the location of oil drilling operations.” [Read more.](#)

Mineral Interests; Tax Deeds – West Virginia.

On November 18, in *Young v. Bonacci* (Case No. 20-0030), the Supreme Court of Appeals of West Virginia reviewed an appeal in which it was held that the Bonacci brothers were the owners of the undivided oil and gas estate at issue because the tax deeds through which the opposing parties allegedly had obtained title to the same mineral estate were held to be void. Here, the appellants “contend that the circuit court erred in determining that the Bonacci brothers, and not the Petitioners, own the subject oil and gas estate.” However, the Supreme Court disagreed and upheld the lower court conclusion “that the underlying tax deeds were void because the Bonacci brothers’ predecessors in interest had paid the property taxes assessed on the subject, undivided oil and gas estate; the taxes thereon were not delinquent; and no tax lien attached to the mineral estate that could be sold at a tax sale.” As reported by Bloomberg Law, in short, the Supreme Court ruled that property cannot be sold at a tax sale if it is part of another property whose owner has been making timely payments that include the supposed delinquent taxes. “The State is not entitled to double taxes on the same land under the same title,” wrote Chief Justice Evan H. Jenkins. “A deed made pursuant to a tax sale under a void assessment is void.” In sum, the Supreme Court

affirmed the lower court judgment and order “determining the Bonacci brothers are the owners of the undivided and unsevered oil and gas estate at issue in this case.” [Read more.](#)

INDUSTRY NEWS FLASH

► **Sen. Joe Manchin (D-WV) calls for President Biden to restore the Keystone XL Pipeline.** On November 23, Sen. Joe Manchin (D-WV) called on President Biden to restore the permit his administration cancelled for the Keystone XL pipeline during his first days in office. “I continue to call on President Biden to responsibly increase energy production here at home and to reverse course to allow the Keystone XL pipeline to be built which would have provided our country with up to 900,000 barrels of oil per day from Canada, one of our closest allies,” said Sen. Manchin. [Read more.](#)

► **OPEC+ continues with its previously planned modest increase in oil production.** Despite calls from the Biden administration for OPEC+ nations to increase their oil production, on December 2, the group voted to maintain the modest increases they previously planned. A [statement from the group](#) “affirmed that it will stick to its plan to increase supply monthly by 400,000 barrels per day for January 2022.” [Read more.](#)

► **US shale spending expected to increase 19% in 2022.** On December 1, energy analyst, Rystad Energy, reported that domestic “shale expenditure is projected to surge 19.4% next year, up from an expected \$69.8 billion in 2021 to \$83.4 billion, the highest level since the onset of the COVID-19 pandemic and signaling the industry’s emergence from a prolonged period of uncertainty and volatility.” [Read more.](#)

► **Domestic Energy Producers Alliance Launches “No Surrender” Campaign.** On November 18, the Domestic Energy Producers Alliance (DEPA) rolled out a TV campaign called “No Surrender” in which

DEPA urges members of Congress not to allow the United States to lose its energy independence status and once again force Americans to rely on unstable, adversarial nations for our energy needs. DEPA was founded by “oil legend” Harold Hamm and draws upon oil and gas producers for its advocacy efforts. [Read more.](#)

LEGISLATIVE SESSION OVERVIEW

States in Session



Session Notes: Massachusetts, Michigan, New Jersey, North Carolina, Ohio, Pennsylvania, and Wisconsin are in regular session. The U.S. Congress is also in session. North Carolina is scheduled to go into recess on December 10 and reconvene on December 30.

Special Session Notes: Arkansas Republican Gov. Asa Hutchinson is scheduled to call the legislature into a special session on December 6 to consider income tax cuts, reports [Arkansas Online](#). Maryland Republican Gov. Larry Hogan is scheduled to call the legislature into a special session on December 6 to adopt newly drawn and controversial legislative maps, reports [The Washington Post](#). New Mexico Democratic Gov. Michelle Lujan Grisham announced that she will call the legislature into a special session on December 6 to finalize and approve new legislative district maps, as well as appropriating outstanding federal COVID-19 relief funds, reports [KOAT Action News](#). Kansas lawmakers adjourned a one-day special session on November 22 after advancing a compromise “religious freedom” bill that would allow vaccine exemptions under certain conditions and

require employers to accept exemptions without question, reports [KWICH12](#). The bill would fine employers who do not offer exemption, deny exemption requests or terminate an employee that submits an exemption and also allows for terminated employees to file for unemployment. Republican Gov. Laura Kelly has said that she intends to sign the bill. Georgia adjourned their special session on November 23 after approving new legislative districts, reports the [GPB News](#). Oklahoma adjourned their special session on November 26 after approving new legislative districts, reports the [Tahlequah Daily Dress](#). Republican Gov. Kevin Stitt signed all six of the redistricting bills that Democrats claimed are gerrymandered. Along with the legislation on redistricting, the legislature passed temporary adjustments to residency and party registration requirements.

Signing Deadlines (by date): Indiana Republican Gov. Eric Holcomb had until November 22 to act on legislation or it became law without signature. Idaho Republican Gov. Brad Little had until November 29 to act on legislation or it became law without signature. 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. Nebraska Republican Gov. Pete Ricketts has five days from presentment to sign or veto legislation, Sundays excepted, or it becomes law without signature.

The following states are currently holding 2022 interim committee hearings: [Alabama](#), [Alaska](#), [Arizona](#), [Arkansas](#), [California](#), [Colorado](#), [Connecticut](#), [Delaware](#), Florida [House](#), [Georgia](#), [Hawaii](#), [Idaho](#), [Illinois](#), [Indiana](#), [Iowa](#), [Kansas](#), [Kentucky](#), [Louisiana](#), [Maine](#), [Maryland](#), [Minnesota](#), [Mississippi](#) [House](#) and [Senate](#), [Missouri](#) [House](#) and [Senate](#), [Montana](#), [Nebraska](#), [Nevada](#), New Hampshire [House](#) and [Senate](#), [New Mexico](#), [North Dakota](#), [Oklahoma](#) [House](#) and [Senate](#), [Oregon](#), [Rhode Island](#), [South Carolina](#) [House](#) and [Senate](#), [South Dakota](#), [Tennessee](#), [Vermont](#), [Virginia](#), [Washington](#),

[West Virginia](#) and [Wyoming](#).

The following states are currently posting 2022 bill drafts, pre-files, and interim studies: [Alabama](#), [Florida](#), [Georgia](#), [Indiana](#), [Iowa](#), [Kansas](#), [Kentucky](#), [Missouri House](#) and [Senate](#), [New Hampshire](#), [Oklahoma](#), [South Carolina](#), [Tennessee](#), [Utah](#), and [Virginia](#). ■

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