

GOVERNMENTAL AFFAIRS WEEKLY REPORT

Weekly Highlights At-A-Glance

FEDERAL – Legislative

Congressional Letter Urging Biden Administration to Prioritize American Produced Energy. On October 14, House Republicans delivered a letter to President Biden in response to the administration's call for OPEC+ nations to produce more oil for the United States. The 145 signatories wrote, "we urge you to reverse course and embrace an American solution by rescinding Executive Orders and other policies designed by your Administration to reduce access to our country's oil and natural gas resources, which reduces the global competitiveness of American companies and workers." Reiterating recent statements by Republican congressional members, the letter writers tell Biden that they "disagree with your Administration's efforts to decrease access to American energy resources while soliciting OPEC+ nations to increase production of their resources. As you are aware, OPEC+ includes nations that are known American adversaries, such as Russia, Iran, and Venezuela. It is not in America's interest to rely on these nations for energy. Instead, eliminating barriers to American-produced oil and natural gas and its infrastructure will increase American economic and job growth, enhance national and energy security, and lower energy prices for American families." [Read more.](#)

FEDERAL – Regulatory

BLM Mineral Cost Recovery Fees. On October 4, the Bureau of Land Management published a final rule, "Minerals Management: Adjustment of Cost Recovery Fees" ([86 Fed. Reg. 54636](#)), which "updates the fees set forth in the Bureau of Land Management (BLM) mineral resources regulations for the processing of certain minerals program-related actions. It also adjusts certain filing fees for

minerals-related documents. These updated fees include those for actions such as lease renewals and mineral patent adjudications." [Read more.](#)

BLM Migratory Bird Rule Revocation. (*Update to 7/26/21 Weekly Report*) On October 4, the U.S. Fish and Wildlife Service (FWS) formally revoked the Trump-era Migratory Bird Treaty Act (MBTA) rule, which was issued in the final days of the Trump administration, and which excluded incidental take from the MBTA. As reported by the National Law Review, "Interior's action now reverses the agency's short-lived position on incidental takes (which was first articulated early in the Trump Administration via a Department of the Interior legal opinion), and the agency has explained in its revocation rule that it will be pursuing yet another rulemaking to develop and implement standards and a permitting program." (*See next item below*). "In the meantime, Interior will go back to its decades-long practice of enforcing the MBTA consistent with its interpretation of the text of the Act as including incidental take and any court decisions applicable to a particular enforcement action." According to the FWS final rule, "Regulations Governing Take of Migratory Birds; Revocation of Provisions" ([86 Fed. Reg. 54642](#)), "On January 7, 2021, we, the U.S. Fish and Wildlife Service (we, the Service, or USFWS), published a final rule (January 7 rule) defining the scope of the Migratory Bird Treaty Act (MBTA) as it applies to conduct resulting in the injury or death of migratory birds protected by the MBTA. We now revoke that rule for the reasons set forth below. The immediate effect of this final rule is to return to implementing the MBTA as prohibiting incidental take and applying enforcement discretion, consistent with judicial precedent and longstanding agency practice prior to 2017." The revocation is effective December 3, 2021. Throughout the rulemaking process, AAPL Governmental Affairs

had provided multiple opportunities for members to submit public comments, although the Biden administration did not decide to maintain the rule finalized under the Trump administration ([See "Regulations Governing Take of Migratory Birds," 86 Fed. Reg. 1134](#)). The Interior Department, in its [press prelease discussing the revocation](#) stated, "With this final and formal revocation of the January 7 rule, the Service returns to implementing the MBTA as prohibiting incidental take and applying enforcement discretion, consistent with judicial precedent and long-standing agency practice prior to 2017." [Read more.](#)

BLM Migratory Bird Treaty Act Proposed Rule.

As noted above, with the revocation of the Trump-era Migratory Bird Treaty Act (MBTA) rule, the Interior Department also simultaneously published an "Advanced Notice of Proposed Rulemaking (ANPR) announcing the intent to solicit public comments and information to help develop proposed regulations to authorize the incidental take of migratory birds." The ANPR, "Migratory Bird Permits; Authorizing the Incidental Take of Migratory Birds" ([86 Fed. Reg. 54667](#)), "advises the public that the U.S. Fish and Wildlife Service (Service, we) intends to gather information necessary to develop a proposed rule to authorize the incidental taking or killing of migratory birds, including determining when, to what extent, and by what means it is consistent with the MBTA and compatible with the terms of the four migratory bird conventions. This information will be used to develop proposed regulations to authorize the incidental take of migratory birds under prescribed conditions and prepare a draft environmental review pursuant to the National Environmental Policy Act of 1969, as amended. We are furnishing this advance notice of proposed rulemaking and notice of intent to advise other agencies and the public of our intentions, obtain suggestions and information to include in the proposed rulemaking and environmental review, and announce public scoping webinars." The public comment period for the ANPR is open through December 3, 2021. [Read more.](#)

BLM Applications for Permits to Drill Fee Update.

On October 20, the BLM published its annual notice of fee increase, "Annual Statutorily Required Increase in Filing Fee for Processing Fiscal Year 2022; Applications for Permit To Drill" ([86 Fed. Reg. 58095](#)), which "updates the filing fee for Applications for Permits to Drill (APD) on Federal oil and gas leases. The updated APD fee amount is \$10,900, reflecting the adjustment for inflation as required by statute." The new fee amount took effect on October 20, 2021. [Read more.](#)

National Environmental Policy Act Revisions.

(Update to 8/10/20 Weekly Report) On October 7, the Biden administration began the rollback of Trump-era National Environmental Policy Act (NEPA) policies as the White House Council on Environmental Quality (CEQ) issued a Phase One Notice of Proposed Rulemaking, "National Environmental Policy Act Implementing Regulations Revisions" ([86 Fed. Reg. 55757](#)), which would revise regulations implementing NEPA, and which apply to oil and gas development projects. For example, the group Project NEPA reports that "Before an oil or gas company can conduct exploration or begin production activities, NEPA requires the completion of an environmental assessment to determine if a project is likely to have significant impacts on the environment. If the agency finds there will be a significant impact, it is then required to conduct the more stringent environmental impact statement (EIS) in order to meet the proper consideration and opportunity for public comment requirements." [Read more.](#) The Biden administration rulemaking proposals will take a more stringent approach to that process than those finalized under the Trump administration. According to the CEQ notice, the proposed rulemaking would "generally restore regulatory provisions that were in effect for decades before being modified in 2020. CEQ proposes these changes in order to better align the provisions with CEQ's extensive experience implementing NEPA, in particular its perspective on how NEPA can best inform agency decision making, as well as longstanding Federal agency experience and practice, NEPA's statutory text and purpose,

including making decisions informed by science, and case law interpreting NEPA's requirements. The proposed rule would restore provisions addressing the purpose and need of a proposed action, agency NEPA procedures for implementing CEQ's NEPA regulations, and the definition of 'effects.'" The 2020 Trump rulemaking streamlined the NEPA review process and also limited the scope of environmental reviews. Specifically, it removed requirements to consider climate change before proceeding on a project and allowed for greater industry involvement in reviewing the environmental effects of their projects. The Trump administration had argued the NEPA changes were necessary to "modernize" a law that can delay projects with environmental reviews that can last as long as four years. The 45-day public comment period for the notice of proposed rulemaking is open through November 22, 2021. [Read more.](#)

National Monuments Boundary Restorations

– **Utah.** On October 8, President Biden issued two presidential proclamations which restore protections for Utah national monuments that had been relaxed under the Trump administration. Specifically, the prior administration had reduced the boundaries for Bears Ears National Monument and Grand Staircase-Escalante National Monument and would have allowed for greater resource development in those areas. By [Presidential Proclamation 10285](#) (Bears Ear National Monument) and [Presidential Proclamation 10286](#) (Grand Staircase-Escalante National Monument), the Biden administration is restoring boundaries in place under the Obama administration. The actions were praised by Interior Secretary Deb Haaland who said, "I am proud to stand with President Biden in restoring these monuments and fulfilling his commitment to the American people." However, the [Utah Republican congressional delegation voiced their opposition to the move in a joint statement](#), saying, "Rather than take the opportunity to build unity in a divided region and bring resources and lasting protections to sacred antiquities by seeking a mutually beneficial and permanent legislative solution, President Biden fanned the flames of controversy and ignored input

from the communities closest to these monuments." [Read more.](#)

ONRR Information Collection. On October 7, the Interior Department's Office of Natural Resources Revenue (ONRR) published a notice of information collection, "Agency Information Collection Activities; Accounts Receivable Confirmations Reporting" ([86 Fed. Reg. 55858](#)), which states that the "ONRR is proposing to renew an information collection. Through this Information Collection Request ('ICR'), ONRR seeks renewed authority to collect information from royalty payors to verify a small number of ONRR accounts receivable randomly selected by the Office of Inspector General ('OIG') for audit." The public comment period is open through November 8, 2021. [Read more.](#)

IRS Worker Classification. On September 15, the IRS issued [Notice IR-2021-186](#) to remind "business owners that it's critical to correctly determine whether the individuals providing services are employees or independent contractors." The IRS notice explains "the three-factor test used to classify employees and independent contractors and the consequences of misclassification." [Read more.](#)

STATE – Legislative

Notarial Acts – Arkansas. (*Update to 1/25/21 Weekly Report*) SB 14, sponsored by Sen. Dan Sullivan (R), died at the close of the 2021 legislative session. The bill would have allowed for certain notarial acts to be conducted remotely in case of a declared emergency in the state. [Read more.](#)

Orphan, Idle, and Abandoned Wells – California. (*Update to 9/20/21 Weekly Report*) On October 9, SB 84 was signed into law by Gov. Gavin Newsom (D). Sponsored by Sen. Melissa Hurtado (D), the Act "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 Act 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 Act requires 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 Act 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." The Act is effective January 1, 2022, as the other bills requiring passage for which SB 84 relied upon have also been enacted as provided for in the bill text. [Read more.](#)

Idle and Deserted Wells – California. (*Update to 9/20/21 Weekly Report*) On October 8, AB 896 was signed into law by Gov. Gavin Newsom (D). Sponsored by Asm. Steve Bennett (D), the Act 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. The act is effective January 1, 2022 since [SB 84](#) was also enacted and was required for AB 896 to take effect. [Read more.](#)

Critical Wells – California. (*Update to 9/20/21 Weekly Report*) On October 8, SB 406 was signed into law by Gov. Gavin Newsom (D). Sponsored by Sen. Henry Stern (D), the Act 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." The Act has multiple effective dates. [Read more.](#)

Corporate Income Taxes – Michigan. On October 27, a committee hearing will be held for HB 4879, which was introduced by Rep. Diana Farrington (R) in May but has had no movement since. The bill would amend the existing corporate tax code to provide for deductions for net operating losses and eliminates income and expenses from producing oil and gas for all tax years. [Read more.](#)

STATE – Regulatory

Setbacks Draft Rulemaking – California. On October 21, at the direction of Gov. Gavin Newsom (D), the California Department of Conservation's Geologic Energy Management Division (CalGEM) released [draft rulemaking](#) which seeks to "ban new oil drilling within 3,200 feet of schools, homes and hospitals to protect public health." ([See full draft rule here](#)) According to CalGEM, they have "undertaken a process to update public health and safety protections for communities near oil and gas production operations. This process began in response to a November 2019 directive by Governor Gavin Newsom and has resulted in the preliminary draft rule that is the subject of this notice." The draft begins the first stage of the rulemaking process, and as reported, "signal[s] what the administration is seeking, but could be changed over a 60-day comment period." The public comment period is open through December 1, 2021, and a public workshop will also be held on that date. [Read more.](#)

Fossil Fuels Ballot Measure – California. On October 4, of the many ballot measures filed in California for the 2022 general election, one specifically targets the oil and gas industry, [21-0028](#). The measure would add sections to the California Public Resources Code to ban new permits for hydraulic fracturing or other well stimulation treatments starting in January 2025 and provides that existing permits would not be renewed. The measure does, however, allow for clean out work

and maintenance. Additionally, as reported by the California Independent Petroleum Association, "It also begins phasing out oil and gas production beginning in 2027, and even goes so far as to ban 'the use or consumption of fossil fuel' in the state beginning on January 20, 2050." The measure has not yet been certified and is in the "proposed initiative" early stage of the certification process. AAPL members can submit public comments on the ballot measure through November 3, 2021. [Read more.](#)

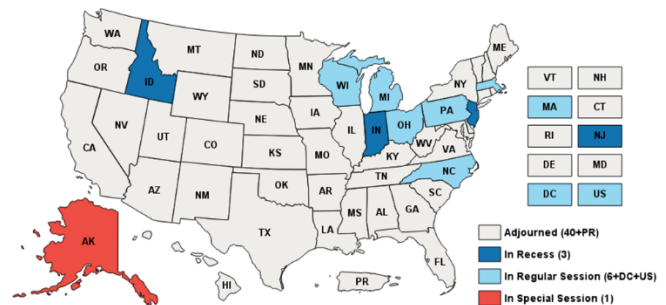
Railroad Commission – Texas. Commissioner Wayne Christian has been elected Chairman of the Railroad Commission of Texas (RRC) to succeed Christi Craddick. "It is my privilege to serve as chairman at a point when our nation's energy security is under threat by those in the media, the education system and, most of all, the federal government," said Christian on September 28 after being elected. "Texas – not Washington – and the private sector – not government – know best how to meet our energy needs. And that's a fight that I will never quit." [Read more.](#)

INDUSTRY NEWS FLASH

► **Permian Basin shale drilling is booming again.** As reported by Rigzone on October 11, with oil trading around \$80 a barrel, the Permian Basin is seeing "a revival of shale drilling in America's biggest oil field, where production is expected to return to pre-pandemic highs within weeks. Only this time, the surge is being driven by private operators, rather than the publicly traded companies that fueled the previous booms." [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: **Alaska** Republican Gov. Mike Dunleavy convened 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. This special session is expected to adjourn on November 2, reports [The Frontiersman](#). **Alabama** lawmakers are expected to convene for a special session on redistricting on October 25, reports the [Alabama Daily News](#). **Wyoming** lawmakers have formally announced a three day special session on October 26 to pass legislation against President Biden's vaccine mandate, reports [Wyoming Public Media](#). **Iowa** Republican Gov. Kim Reynolds issued a [proclamation](#) calling for a second special session on October 28 to revisit redistricting with redrawn maps by the Legislative Services Agency. **Georgia** Republican Gov. Brian Kemp will call 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](#). **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](#). **Texas** adjourned their third special session on October 19 after approving most of Republican Gov. Greg Abbott's agenda items, reports [The Texas Tribune](#). Lawmakers voted this session to boost the GOP's reach in the newly redistricted maps, restrict transgender student athletes from playing on sports teams that align with their gender identity and spend federal COVID-19 relief funds. Controversial election fraud penalties and vaccine mandate prohibitions were not acted upon. There are no plans for a fourth special session at this time. **Tennessee** adjourned their special session on October 20 after approving a \$900 million incentive package for Ford Motor Company, reports [Tennessee Lookout](#). During the special session, Republican Gov. Bill Lee introduced a series of proposed restrictions on COVID-19 vaccination and mask mandates under [HB 8003](#). After much speculation as to whether or not the proposed legislation fit the purview for the Ford special session, the legislature scheduled a second special session to address COVID mandates on October 27, reports [The Tennessean](#). **West Virginia** adjourned their special session on October 20 after approving new congressional maps, passing the governor's vaccine mandate exemption bill and creating a billion-dollar broadband development fund, reports [13News](#).

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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