

GOVERNMENTAL AFFAIRS WEEKLY REPORT

Weekly Highlights At-A-Glance

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

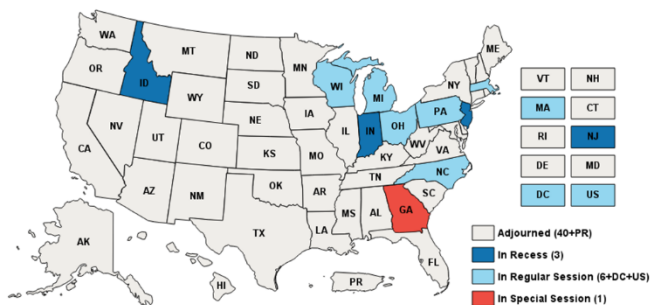
► **OPEC+ maintains current production plan; defies President Biden.** As reported in the Oil & Gas Journal last week, in defiance of President Biden’s request that OPEC+ nations increase oil production, the group has “decided to hold firm on current production plans of increasing 400,000 b/d for December 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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