

# 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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