

GOVERNMENTAL AFFAIRS WEEKLY REPORT

Weekly Highlights At-A-Glance

FEDERAL – Legislative

H.R. 2176 – Ensuring Access to Domestic Mineral Production Act. On June 9, official bill text was made available for [H.R. 2176](#), known as the *Ensuring Access to Domestic Mineral Production Act*. Sponsored by Rep. Chris Stewart (R-UT), the bill would “provide for the continued and uninterrupted production of domestic minerals in the United States.” According to Rep. Stewart, “Right now, massive areas of land are ‘withdrawn’ from mineral exploration in the name of environmental protection without any consideration for the national security and economic consequences. This bill prohibits the Secretary of the Interior from any withdrawal until a study has been completed that demonstrates our national security will not be jeopardized.” [Read more.](#)

H.R. 2184 – End Oil and Gas Tax Subsidies Act of 2021. (*Update to 5/31/21 Weekly Report*) On June 2, official bill text was made available for [H.R. 2184](#), known as the *End Oil and Gas Tax Subsidies Act of 2021*. The bill, sponsored by Rep. Earl Blumenauer (D-OR), is similar to a Senate bill we recently reported on sponsored by Sen. Bernie Sanders (I-VT). That bill, [S. 1167](#), known as the *End Polluter Welfare Act of 2021*, would eliminate certain subsidies for fossil fuel production. Specifically, the legislation would “prohibit taxpayer-funded fossil fuel research and development; update below-market royalty rates for oil and gas production on federal lands; recoup royalties from offshore drilling in public waters; and ensure competitive bidding and leasing practices for coal development on federal lands.” H.R. 2184 would similarly “repeal fossil fuel subsidies for oil companies” by eliminating certain tax deductions and credits for oil and gas production companies. According to Rep. Blumenauer, “The oil and gas sectors are some of the world’s most profitable

industries, with billions of dollars in earnings each year. Despite this success, these fossil fuel companies receive billions in tax breaks and subsidies annually, undermining the nation’s ability to invest in renewable energy sources and damaging our environment. The End Oil and Gas Tax Subsidies Act would eliminate 11 of these provisions in the tax code that unfairly benefit oil and gas companies.” [Read more.](#)

H.R. 2836 – Florida Coastal Protection Act. On June 8, official bill text was made available for [H.R. 2836](#), known as the *Florida Coastal Protection Act*. Sponsored by Rep. Kathy Castor (D-FL), the bill would amend the Outer Continental Shelf Lands Act to prohibit oil and gas preleasing, leasing, and related activities in certain areas of the Outer Continental Shelf off the coast of Florida. The bill would make permanent the current moratorium on oil drilling off Florida’s coast that is slated to expire in 2022. [Read more.](#)

S. 1537 – Strategic Energy and Minerals Initiative Act of 2021. On June 8, official bill text was made available for [S. 1537](#), known as the *Strategic Energy and Minerals Initiative Act of 2021* or *SEMI Act*. Sponsored by Sen. Lisa Murkowski (R-AK), the bill aims to help American companies better compete in global markets by promoting domestic production of oil, gas, and minerals. Among other provisions, the legislation would direct the U.S. Export-Import Bank to create a strategic energy and minerals portfolio to provide financing for infrastructure projects related to civil nuclear energy, natural gas, and critical minerals that would increase American exports. “As a resource development state, Alaska has immense potential at a national and global scale. But, despite our desire to bring domestic resources to market, we are unnecessarily relying on foreign countries such

as China and Russia to meet our oil, gas, and mineral needs,” said Sen. Murkowski. “By allowing ourselves to remain dependent on other nations, we are missing opportunities to strengthen America’s national security and nationwide economy. My legislation, the SEMI Act, is a commonsense approach to strengthening our domestic energy and critical minerals supply.” [Read more.](#)

S. 1298 – Clean Energy for America Act. On June 4, official bill text was made available for [S. 1298](#), known as the *Clean Energy for America Act*. Sponsored by Sen. Ron Wyden (D-OR), the bill [primarily provides tax incentives for increased investment in clean energy](#) but also sunsets the use of percentage depletion for oil and gas wells and repeals the Intangible Drilling Costs deduction. Barry Russell, President and CEO of the Independent Petroleum Association of America, has come out publicly against the bill stating, “The Democrat bill considered by the Senate Finance Committee today demonstrates an unjustified bias against American oil and natural gas that imperils future energy security. The provisions of this bill that repeal an array of oil and natural gas tax deductions were written solely to undermine American production. They target small businesses; they target the 12 million royalty owners who rely on their oil and natural gas income for their farms, ranches, and retirement; they will not reduce American reliance on oil and natural gas for two-thirds of its energy but return the nation to reliance of foreign energy supply.” [Read more.](#)

Democrat Wins Interior Secretary’s Former Congressional Seat – New Mexico. On June 1, New Mexico state Rep. Melanie Stansbury (D) defeated New Mexico state Sen. Mark Moores (R) in the special election to fill the House seat formerly held by Interior Secretary Deb Haaland (D). According to The Hill, “Stansbury, an environmental consultant who was elected to the state House in 2018, leaned heavily on her science background to cast herself as a champion for New Mexico’s natural resources.” New Mexico’s 1st District “has been in Democratic hands for more than a decade. Haaland won the seat

in 2018 but stepped down in March after she was confirmed to lead the Interior Department.” [Read more.](#)

FEDERAL – Regulatory

Arctic National Wildlife Refuge Oil and Gas Leasing Program. On June 1, at President Biden’s direction, [the Interior Department suspended all oil and gas leases and related activities in the Arctic National Wildlife Refuge](#). According to the Interior Department announcement, “[Secretarial Order 3401](#) directs the Department to initiate a comprehensive environmental analysis to review the potential impacts of the Program and to address legal deficiencies in the current leasing program’s environmental review under NEPA. The Department is notifying lessees that it is suspending oil and gas leases in the Arctic Refuge, pending the review, to determine whether the leases should be reaffirmed, voided, or subject to additional mitigation measures.” Under the Trump administration, “the Bureau of Land Management (BLM) established and began administering an oil and gas program in the Coastal Plain of the Arctic Refuge” which this order overturns. According to CNBC reporting, President Biden’s inauguration day executive order pausing federal oil and gas leasing “suggested a new environmental review was needed to address possible legal flaws in a drilling program approved by the Trump administration under a 2017 law enacted by Congress. After conducting a required review, Interior said it ‘identified defects in the underlying record of decision supporting the leases, including the lack of analysis of a reasonable range of alternatives’ required under the National Environmental Policy Act, a bedrock environmental law.” While neither the BLM nor the Interior Department has provided a deadline for their further environmental review, the Secretarial Order states that “Within 60 days of the issuance of this Order, the Assistant Secretary for Land and Minerals Management will, in coordination with the Assistant Secretary for Fish and Wildlife and Parks and the Solicitor’s Office, publish a notice of intent in the Federal Register to initiate the process to conduct a

comprehensive environmental analysis, complete necessary consultation, and correct the identified legal deficiencies.” We will continue to keep AAPL members informed as the environmental review progresses. [Read more.](#)

BLM Onshore Oil and Gas Operations Trespass Penalties. On June 9, the Bureau of Land Management published a final rule, *Onshore Oil and Gas Operations and Coal Trespass-Annual Civil Penalties Inflation Adjustments* ([86 Fed. Reg. 30548](#)), which takes immediate effect. According to the BLM, “This final rule adjusts the level of civil monetary penalties contained in the Bureau of Land Management’s (BLM) regulations governing onshore oil and gas operations and coal trespass as required by the Federal Civil Penalties Inflation Adjustment Act Improvements Act of 2015 and consistent with applicable Office of Management and Budget (OMB) guidance. The oil and gas operations penalty adjustments made by this final rule constitute the 2021 annual inflation adjustments, accounting for 1 year of inflation spanning the period from October 2019 through October 2020. The coal trespass inflation adjustments in this rule include the initial ‘catch-up’ adjustment for 2016, and the annual adjustments for years 2017 to 2021.” [Read more.](#)

BLM Director Confirmation Hearing. On June 8, President Biden’s pick to head the Bureau of Land Management (BLM) was subjected to tough questioning by Republican lawmakers at her Senate confirmation hearing. According to the Associated Press, “Republicans lambasted her role as treasurer and board member of the environmental group Montana Conservation Voters, which ran ads against [Sen. Steve] Daines. The Republicans also raised concerns she would impede energy development.” While Tracy Stone-Manning testified that she wanted to work in a bipartisan manner, she avoided answering questions about the BLM’s move to Grand Junction, Colorado, and failed to provide specifics on the current moratorium on federal oil and gas leasing. With a tight Senate vote looming on her nomination, Stone-Manning’s confirmation remains uncertain. [Read more.](#)

Lesser Prairie-Chicken; U.S. Fish and Wildlife Service. On June 1, the U.S. Fish and Wildlife Service (FWS) published a proposed rule, *Endangered and Threatened Wildlife and Plants; Lesser Prairie-Chicken; Threatened Status With Section 4(d) Rule for the Northern Distinct Population Segment and Endangered Status for the Southern Distinct Population Segment* ([86 Fed. Reg. 29432](#)), which seeks to list two Distinct Population Segments (DPSs) of the Lesser Prairie-Chicken. According to the FWS, the DPSs would be added “to the List of Endangered and Threatened Wildlife and extend the Act’s protections to them.” The rulemaking would cover species population living in Texas and New Mexico, whose range overlaps with the Permian Basin. According to The Washington Post, “The agency stopped short of awarding the same protections to the birds’ northern population, in Oklahoma and Kansas, on the grounds that their numbers had declined less drastically.” Regarding the DPSs, “The southern population of about 5,000 birds living along the New Mexico-Texas border would be considered endangered, while a northern group would be listed as threatened, a less-restrictive designation. After taking input from the public, the agency will make a final decision on these listings within a year.” The public comment period is open through August 2, 2021. [Read more.](#)

Office of Natural Resources Revenue; Royalties. On June 11, the Office of Natural Resources Revenue (ONRR) published a proposed rule, *ONRR 2020 Valuation Reform and Civil Penalty Rule: Notification of Proposed Withdrawal* ([86 Fed. Reg. 31196](#)), which would withdraw a Trump-era rule that lowered some companies’ royalty payments to the federal government for oil, gas, and coal extracted from federal lands. The withdrawal of the royalty valuation regulation, which was finalized five days before President Biden took office, contains at least 15 potential defects, according to the ONRR. The ONRR stated that the “the process used for its adoption” did not follow legally required procedures, and the regulation may have exceeded the agency’s statutory authority. The public comment period is open through August 10, 2021. [Read more.](#)

FEDERAL – Judicial

Sage-Grouse Habitat; BLM Leasing – Idaho.

(Update to 5/11/20 Weekly Report) On June 9, a federal judge ruled that environmental plaintiffs had standing to challenge BLM Wyoming and Montana lease sales in the ongoing case, [Western Watersheds Project v. Zinke](#) (Case No. 1:18-cv-00187). The court also found the “BLM (1) failed to consider the reasonable alternative of deferring priority sage-grouse habitat; (2) failed to take a hard look at the direct and indirect impacts to greater sage-grouse; and (3) failed to take a hard look at the cumulative impacts on greater sage-grouse.” The Court has ordered the BLM to “address the deficiencies identified by the Court” and until those concerns are “sufficiently addressed” the “BLM may not authorize new drilling/surface disturbing activities on the leased parcels.” The environmentalists have argued that the BLM should have considered deferring parcels in the sage-grouse priority habitat management areas. For background, on February 27, in [Western Watersheds Project v. Zinke](#) (Case No. 1:18-cv-00187), the U.S. District Court for the District of Idaho addressed a dispute over BLM policy changes promulgated under the Trump administration. The case involves a lengthy history of procedural moves which resulted in a number of oil and gas lease sales being set aside in 2018 and subsequent review by the BLM to comply with certain court orders. However, this case “applies only to oil and gas lease sales contained in whole or in part within sage-grouse habit management areas.” At issue was BLM Instruction Memorandum (IM 2018-034) which implemented new procedures for the handling of leasing oil and gas rights on certain federal lands. The environmentalist plaintiffs claim that IM 2018-034 “unlawfully restricts public participation in and environmental review of BLM oil and gas lease decisions that affect and threaten sage-grouse populations and habitats across the western United States.” Here, the Court agreed, holding the “BLM inescapably intended to reduce and even eliminate public participation in the future decision-making process. Regardless of the reasons for doing so, the fact of doing so in the manner

pursued by BLM cannot be reconciled with [the Federal Land Policy and Management Act and National Environmental Policy Act] overarching mandates. IM 2018-034 is therefore substantively invalid.” [Read more.](#)

Hydraulic Fracturing Ban; Delaware River Basin – Pennsylvania.

(Update to 1/25/21 Weekly Report) On June 11, a federal court dismissed a lawsuit by Republican state lawmakers that sought to overturn a ban on gas drilling and hydraulic fracturing in the Delaware River Basin, ruling that the plaintiffs lacked standing to sue. In dismissing the suit, which was first filed in January, the Court stated that the dispute “is primarily partisan and is best resolved through the political process.” However, the Court did allow the Pennsylvania municipal plaintiffs representing Carbon and Wayne counties and Damascus and Dyberry Townships to proceed, giving them permission to refile the suit by July 1, 2021, to give them a chance to “articulate how the moratorium has actually injured them.” For background, on January 12, two Republican Pennsylvania state senators, along with the Pennsylvania Senate Republican Caucus and the counties and townships sued the Delaware River Basin Commission (DRBC) in [Yaw v. Delaware River Basin Commission](#) (Case No. 2:21-cv-00119), seeking to overturn the DRBC ban on gas drilling and hydraulic fracturing in the Delaware River basin, “claiming it has usurped the state’s legislative power by declaring a de facto moratorium on the construction and operation of wells for natural gas production in the parts of the Marcellus Shale formation encompassed by the basin.” The litigants contended that the ban had deprived private landowners of the right to drilling royalties, and has prevented Pennsylvania from leasing public lands to the gas industry and collecting fees from gas development. The suit further argued the ban’s “deleterious effects” have “been magnified by the COVID-19 pandemic and resulting economic downturn, with the state and local governments facing significant budget shortfalls.” According to the Associated Press, the senators wanted the federal court to invalidate the ban, “potentially opening a

sliver of northeastern Pennsylvania to what their suit describes as \$40 billion worth of natural gas.” [Read more.](#)

Federal Oil and Gas Leasing Moratorium – Wyoming. (*Update to 3/22/21 Weekly Report*) On June 7, the Biden administration responded to the Western Energy Alliance and Petroleum Association of Wyoming’s lawsuit and motion for preliminary injunction regarding the government’s current moratorium on federal onshore oil and gas leasing. In its [Opposition to Motions for Preliminary Injunction](#), government lawyers argued that these “are not typical petitions for review of agency action. Petitioners Western Energy Alliance et al. (WEA) and Wyoming do not challenge a published agency action. Instead, they ask the Court to infer that the Secretary of the Interior has adopted a *de facto* moratorium on all oil and gas leasing in order to implement the leasing pause directive of President Biden’s Executive Order 14,008. The Court, in Petitioners’ view, should: overlook that the agency’s decision documents identify compliance with the National Environmental Policy Act (NEPA)—not the Executive Order—as the basis for the deferrals; ignore that the agency has not yet announced how it will address future lease sales like the third- and fourth-quarter Wyoming sales; and disregard that the Secretary has continued to issue and sell oil and gas leases since the issuance of the Executive Order. Simply put, Petitioners request that the Court ignore the record and deduce the existence of a *de facto* agency moratorium from several website postings.” The federal court is currently weighing whether to issue a preliminary injunction that would force the Interior Department to resume lease sales that had been postponed. Government lawyers, however, argued that “compelling the permanent disposal of federal property now would frustrate Interior’s ongoing process of determining how best to manage those resources under its governing statutes.” For background, the Western Energy Alliance filed a federal lawsuit on January 27 in [Western Energy Alliance v. Biden](#) (Case No. 0:21-cv-00013) in the U.S. District Court for the District of Wyoming challenging the government action from the Acting

Secretary of the Interior, acting at the President’s direction, to suspend “indefinitely the federal oil and gas leasing program. The suspension is an unsupported and unnecessary action that is inconsistent with the Secretary’s statutory obligations.” According to Western Energy Alliance President Kathleen Sgamma, “Presidents don’t have authority to ban leasing on public lands. Drying up new leasing puts future development as well as existing projects at risk,” adding that the move will cost tens of thousands and perhaps millions of jobs. According to Bloomberg Law, the administration’s moratorium “buys time for a broad review of whether fossil fuels should be extracted from lands under the U.S. government’s control. Environmentalists want President Joe Biden to make the suspension of leasing permanent. But even if he doesn’t, future leasing could encompass far less terrain and come with higher costs and environmental limits.” As always, we will keep AAPL members updated as this case progresses. [Read more.](#)

Independent Contractors – New Mexico; Texas. On May 28, in [Hargrave v. Aim Directional Services, LLC](#) (Case No. 2:18-cv-00449), the U.S. District Court for the Southern District of Texas, Corpus Christi, provided a “big win for the energy industry, and in particular the energy-service industry,” according to Texas law firm Kane Russell Coleman Logan. The oil and gas directional drilling company defendant prevailed in a worker misclassification case in which the federal court granted its motion for summary judgment, holding that the plaintiff, who worked as a directional driller, was an independent contractor and not an employee. Here, that worker was hired through a third-party staffing agency and the company engaged his services as an independent contractor in New Mexico and Texas. The plaintiff, however, later brought suit against the company alleging that he was denied overtime compensation in violation of the Fair Labor Standards Act (FLSA) and the New Mexico Minimum Wage Act as a result of his misclassification as an independent contractor. The Court applied the economic realities test, which relies upon a multi-factor analysis, and held that among other factors, the control issue

weighed towards finding the plaintiff was an independent contractor, as did the opportunity for profit and loss, the skill and initiative factor, and the business relationship was not only short-lived but was also non-exclusive. [Read more.](#)

STATE – Legislative

Royalties; Leasing – Alaska. *(Update to 3/8/21 Weekly Report)* On May 14, HB 81 passed the House and has now been referred to the Senate. The bill, sponsored by the House Rules Committee (R) at the request of the governor, relates to net profit share leases, and allows the Commissioner of the Department of Natural Resources to adjust the Net Profit Share rate through royalty modification. “This will incentivize additional resource development which may otherwise be expected to be uneconomic, potentially generating revenues to the State in the form of royalties, taxes, or net profit share payments that would not otherwise occur.” This legislation is limited to existing leases that are Net Profit Share Leases. Any changes from this legislation are presumed to only impact payments on a forward basis only, not retroactively. [Read more.](#)

Environmental Justice – Colorado. HB 1266 has been referred to the Senate after passing the House on May 13. The bill, known as the Environmental Justice Act and sponsored by Rep. Dominique Jackson (D), provides for environmental justice strategies, planning, and reporting. The bill creates the Environmental Justice Action Task Force within the Department of Public Health and Environment, and requires the Air Quality Control Commission to engage with disproportionately impacted communities on proposed state actions and includes enforcing emissions reductions in oil and gas and industrial sectors. [Read more.](#)

Notaries Public – Louisiana. On June 1, Gov. John Bel Edwards (D) signed HB 307 into law. The Act, sponsored by Rep. Rodney Schamerhorn (R), repeals the reporting requirement of providers of notary public examination study courses. The Act takes immediate effect. [Read more.](#)

Oil and Gas Taxation – Louisiana. On June 3, House Concurrent Resolution, HCR 98, was enacted by the legislature. Sponsored by Rep. Beau Beaulieu (R), the measure, while not a law, “expresses the opposition of the Louisiana Legislature to disproportionately increasing the tax burden on natural gas, oil, and fuel industries.” [Read more.](#)

Risk Charges; Nonparticipating Mineral Owners – Louisiana. *(Update to 5/17/21 Weekly Report)* On June 3, Senate Concurrent Resolution, SCR 44, was enacted by the legislature. Sponsored by Sen. Bob Hensgens (R), the measure, while not a law, creates “the Risk Charge Commission to study current [R.S. 30:10](#), relative to risks and cost of drilling in a compulsory unit and to submit recommendations to the Senate Committee on Natural Resources and the House Committee on Natural Resources and Environment no later than February 4, 2022. The commission terminates upon the date of submission of such report or February 4, 2022, whichever occurs first.” SCR 44 had been introduced in place of [SB 59](#) which did not advance and would have provided for the risk charge against nonparticipating mineral owners in drilling units, and among other amendatory provisions, set forth the obligations owed by the lessee and drilling owner with respect to the payment of any lessor royalty and overriding royalty due. [Read more.](#)

Notaries Public – Nevada. On May 29, Gov. Steve Sisolak (D) signed AB 245 into law. The Act, sponsored by Asm. Edgar Flores (D), makes certain changes to existing notarial law regarding fees that may be charged by a notary public. The Act is effective July 1, 2021. [Read more.](#)

Estates; Testamentary Instruments – Nevada. *(Update to 5/31/21 Weekly Report)* On May 29, Gov. Steve Sisolak (D) signed AB 318 into law. The Act, sponsored by Asm. Elaine Marzola (D), amends existing law regarding certain procedures and processes related to the administration of testamentary instruments and estates. The Act is effective October 1, 2021. [Read more.](#)

Well Setbacks – Pennsylvania. On June 7, Sen. Steve Santarsiero (D) introduced SB 650. The bill would increase existing well setbacks of 500 feet from a building or private water well, and within 1000 feet of a public water supply well, surface water intake, reservoir, or other water supply extraction point used by a water purveyor without the consent of the owner in either case, to increase the distance from buildings and water wells to 2,500 feet and 5,000 feet from reservoirs, schools, and hospitals. [Read more.](#)

Offset Wells – Texas. On June 7, Gov. Greg Abbott (R) signed SB 1258 into law. The Act was sponsored by Sen. Brian Birdwell (R). According to the legislative analysis, “S.B. 1258 amends three outdated Texas statutes that currently require an operator producing oil from state land that is overseen by University Lands and the General Land Office (GLO) to drill an offset well if a well or wells are drilled on non-university lands within 1,000 feet of the premises or are otherwise draining the university lands or state lands managed by GLO leased by the operator. This requirement does not make sense in the context of more modern production methods, otherwise known as horizontal drilling and fracking. This is because natural porosity and permeability are not at issue with modern horizontal drilling and hydraulic fracturing in tight shale formations with low permeability. S.B. 1258 changes the requirement to drill an offset well when an operator drills a horizontal well to the greater of the applicable lease-line spacing distance requirement of the Railroad Commission of Texas, or a perpendicular distance of 330 feet for GLO-managed lands; and the greater of the applicable lease-line spacing distance requirement of the Railroad Commission of Texas, or a perpendicular distance of 400 feet for University Lands. S.B. 1258 amends current law relating to the duty of a lessee or other agent in control of certain state land to drill an offset well, pay compensatory royalty, or otherwise protect the land from drainage of oil or gas by a horizontal drainhole well located on certain land.” The Act is effective September 1, 2021. [Read more.](#)

Oil and Gas Liens – Texas. (Update to 4/5/21 Weekly Report) On June 4, Gov. Greg Abbott (R) signed HB 3794 into law. The Act, sponsored by Rep. Charlie Geren (R), amends existing law regarding provisions related to oil and gas liens by repealing the existing first purchaser statute. According to the bill sponsor’s statement, “There are concerns that, unless the first purchaser statute is amended, the security interests of Texas oil and gas interest owners are likely to continue to be interpreted as unsecured and subordinate to other perfected security interests in cases where the first purchaser is organized or incorporated out of state.” The Act is effective September 1, 2021. [Read more.](#)

Severance Tax Refunds – Texas. (Update to 3/8/21 Weekly Report) On May 30, Gov. Greg Abbott (R) signed SB 833 into law. The Act, sponsored by Sen. Donna Campbell (R), authorizes “certain oil and gas producers who already file severance tax returns, but who do not hold sales tax permits, to file refund claims for overpaid sales and use taxes directly with the comptroller.” The Act is effective September 1, 2021. [Read more.](#)

STATE – Judicial

Lease Terms; Habendum Clauses – Colorado. On May 13, in *Board of County Commissioners of Boulder County v. Crestone Peak Resources Operating LLC* (Case No. 2021-CO-A67), the Colorado Court of Appeals considered the meaning of “production” as that term is used in oil and gas leases in an appeal that “centers on one question: What constitutes ‘production’ under an oil and gas lease?” The Board of County Commissioners of Boulder County sued Crestone regarding a temporary cessation in extraction, “alleging that wells subject to two of Crestone’s oil and gas leases had stopped producing, and therefore that the leases had terminated.” However, the district court disagreed and granted summary judgment in favor of Crestone. In affirming the lower court decision, the appellate court concluded that “We hold that production means capable of producing oil or gas in commercial quantities. Thus, the district court

correctly concluded that Crestone's wells never stopped producing and, consequently, the leases never lapsed." [Read more.](#)

Leasing; Arbitration – Ohio. (Update from 2/22/21 Weekly Report) On April 27, the Ohio Supreme Court [accepted the case](#), *French v. Ascent Resources-Utica, L.L.C.* (Case No. 2020-Ohio-6828), for review. For background, on December 22, 2020, the Ohio Court of Appeals, Seventh District, rejected a landowner's attempt to circumvent mandatory arbitration in a lease dispute regarding whether leases had terminated for a lack of production. ([See the original appeal and case facts here.](#)) In the appeal, the Court held that the exception to mandatory arbitration under state code ([R.C. 2711.01\(B\)\(1\)](#)) "did not apply to the oil and gas lease provisions and the matter was subject to arbitration." The Court "determined that in this case even though oil and gas leases create an interest in real estate, they are not issues concerning title to or possession of real estate." The lessors argued that "an oil and gas lease is more than a license because it creates a vested estate in the lands for the purposes named in the lease. They further argued that an oil and gas lease[s] creates an interest in real estate." The Court rejected these arguments. [Read more.](#)

Joint Operating Agreements; Operator Willful Misconduct – Texas. On May 11, in [Apache Corp. v. Castex Offshore, Inc.](#) (Case No. 14-19-00605-CV), the Texas Court of Appeals, Fourteenth District (Houston), addressed "the main question presented" in a breach of contract case arising from several joint operating agreements of "whether the non-operator produced sufficient evidence that its damages resulted from the operator's willful misconduct. To answer that question, we must first determine the meaning of 'willful misconduct.'" The Court held "that willful misconduct means deliberate mismanagement committed without regard for the consequences." Here, the Court found "there is sufficient evidence that the operator engaged in such willful misconduct with respect to one of the non-operator's counterclaims, but not both of them." According to law firm, Adams and Reese LLP,

"Apache represents a significant development in Texas oil-and-gas law because it lowers the burden of proof for non-operators who claim that an operator has engaged in willful misconduct. Non-operators no longer have to prove intent to cause substantial harm. Evidence that an operator was indifferent to cost overruns and was 'hiding the ball' on its financial mismanagement is enough." [Read more.](#)

Force Majeure; Leasing – Texas. On April 28, in *MRC Permian Co. v. Point Energy Partners Permian LLC* (Case No. No. 08-19-00124-CV), the Texas Court of Appeals, Eight District (El Paso), addressed in context of competing oil and gas leases covering certain acreage "(1) whether the original leases were perpetuated in their entirety by the operation of their force majeure clauses, (2) if the original leases terminated, what acreage was retained in Production Units under those leases, and (3) if the leases did not terminate, whether the original lessee had valid claims of tortious interference against certain defendants." The Court held that "there is a genuine issue of material fact as to whether the original leases were perpetuated in their entirety by the operation of their force majeure clauses, such that the trial court's summary judgment ruling on this issue in favor of the defendants was error." The Court did not rule on the second question "because it is not ripe for decision due to the factual dispute arising in the first question." And regarding the third question, the Court stated that "we similarly determine there are genuine issues of material fact as to the original lessee's claims of tortious interference, except to the extent those claims are made against a mineral owner for allegedly interfering with its own lease." As such, the Court remanded the case back to the trial court for further determinations consistent with its decision. [Read more.](#)

INDUSTRY NEWS FLASH

► **Keystone XL Pipeline Officially Terminated.**

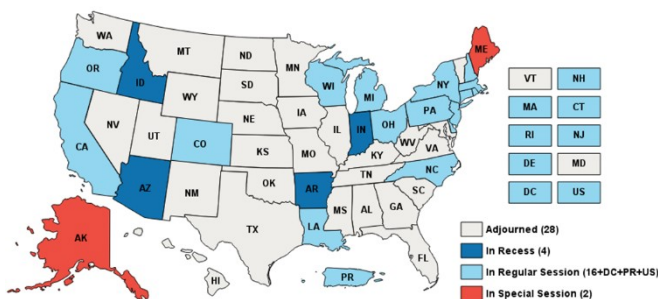
On June 9, TC Energy announced that after "a comprehensive review of its options, and in consultation with its partner, the Government of Alberta, it has terminated the Keystone XL Pipeline Project." The decision comes after President Biden killed a border-crossing permit for the pipeline on his first day in office. [Read more.](#)

► **OPEC+ agrees to continue raising oil output levels through July.**

On June 1, the Organization of the Petroleum Exporting Countries and its allies (OPEC+) agreed to continue raising output levels "to maintain the current pace of gradual easing of supply curbs through July, signaling confidence in improving oil demand and a drop in the global supply glut." Following the OPEC+ meeting, "Saudi Energy Minister Prince Abdulaziz bin Salman said he saw a good recovery in demand in the U.S. and China. OPEC+ forecasts a 6-million b/d jump in oil demand in 2021 as the world recovers from the COVID-19 pandemic." [Read more.](#)

LEGISLATIVE SESSION OVERVIEW

States in Session



Session Notes (by date): California, Colorado, Connecticut, Delaware, Louisiana, Massachusetts, Michigan, New Hampshire, New Jersey, New York, North Carolina, Ohio, Oregon, Pennsylvania, Rhode Island, and Wisconsin are in regular session. The U.S. Congress is also in session.

The following legislatures are in recess until the dates provided: **Arizona** (June 10), **Arkansas** and **Indiana** (TBD) and **Idaho** House (call of the speaker).

Alaska convened for a special session on May 20 to address the state's operating budget. The current special session is scheduled to end on June 19. Republican Gov. Mike Dunleavy is also scheduled to call the legislature into a second special session on August 2 to fix the yearlong fiscal conflict over the Permanent Fund dividend, reports the [Anchorage Daily News](#).

West Virginia Republican Gov. Jim Justice called the legislature into a special session on June 7 to appropriate funds from President Joe Biden's American Rescue Plan to the Department of Health and Human Resources and the Department of Education, reports [The Inter-Mountain](#).

South Carolina lawmakers returned for a special session on June 8 to allocate as much as \$5 billion in recurring or one-time money, reports [The Center Square](#).

The following states adjourned their 2021 legislative sessions on the dates provided (by date): **Louisiana** (June 10), **Connecticut** (June 9), **Colorado** (June 8), **Nevada** (June 1), **Illinois** and **Texas** (May 31), and **Nebraska** and **Oklahoma** (May 27).

Signing Deadlines (by date): **Minnesota** Democratic Gov. Tim Waltz had until May 31 to sign or veto legislation or it was pocket vetoed. **Maryland** Republican Gov. Larry Hogan had until June 1 to sign or veto legislation or it became law without signature. **Oklahoma** Republican Gov. Kevin Stitt had until June 11 to sign or veto legislation or it is pocket vetoed. **Nevada** Democratic Gov. Steve Sisolak had until June 12 to sign or veto legislation or it becomes law without signature. **Iowa** Republican Gov. Kim Reynolds has until June 18 to sign or veto legislation or it is pocket vetoed. **Texas** Republican Gov. Greg Abbott has until June 20 to sign or veto legislation or it becomes law without signature. **Missouri** Republican Gov. Mike Parson has until June 28 to sign or veto legislation or it becomes law without signature. **Hawaii** Democratic

Gov. David Ige has until July 1 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. **Florida** Republican Gov. Ron DeSantis has 15 days from presentment to sign or veto legislation or it becomes law without signature. **Illinois** Democratic Gov. J.B. Pritzker has 60 days from presentment to sign or veto legislation or it becomes law without signature. **Indiana** Republican Gov. Eric Holcomb has seven days from presentment to sign or veto legislation, or it becomes law without signature. **Kansas** Democratic Gov. Laura Kelly has 10 calendar days from presentment, not including the day it was presented, to sign or veto legislation or it becomes law without signature. **Kentucky** Democratic Gov. Andy Beshear has 10 days from presentment, except Sundays, 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. **Mississippi** Republican Gov. Tate Reeves has 15 days from presentment, except Sundays, to sign or veto legislation or it becomes law without signature. **Montana** Republican Gov. Greg Gianforte has 10 days from presentment to act on 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. **New Jersey** Democratic Gov. Phil Murphy has 45 days from presentment to act on legislation or it becomes law without signature. **North Dakota** Republican Gov. Doug Burgum has 15 days from presentment, Saturdays and Sundays excepted, to sign or veto legislation or it becomes law without signature. **South Carolina** Republican Gov. Henry McMaster has five days from presentment, excluding Sundays, to act on legislation or it becomes law without signature. **Tennessee** Republican Gov. Bill Lee has 10 days starting the day after presentment, Sundays excluded, to sign or veto legislation or it becomes law without signature. **Vermont** Republican Gov. Phil Scott has five days from presentment,

excluding Sundays, to act on legislation or it will become law without signature.

The following states are currently holding 2022 interim committee hearings: [Kentucky](#), [Minnesota](#), [New Mexico](#), [Utah](#), [Virginia](#), and [Wyoming](#).

The following states are currently posting 2022 bill drafts, pre-files, and interim studies: [Alabama](#), [Kentucky](#), and [Utah](#). ■

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