

GOVERNMENTAL AFFAIRS WEEKLY REPORT

Weekly Highlights At-A-Glance

FEDERAL – Legislative

S. 2393 – Fracturing Regulations are Effective in State Hands (FRESH) Act. On July 29, official bill text was made available for [S. 2393](#), known as the Fracturing Regulations are Effective in State Hands Act, or FRESH Act. Sponsored by Sen. Jim Inhofe (R-OK), the bill clarifies “that a State has the sole authority to regulate hydraulic fracturing on Federal land within the boundaries of the State.” According to Sen Inhofe, “[t]he bill states explicitly a state is the only authorized entity to regulate hydraulic fracturing on any land located within its borders. This takes the federal nexus away. The exclusivity of regulation also applies to all federal lands located in the state.” [Read more.](#)

S. 2394 – Federal Land Freedom Act of 2021. On July 29, official bill text was made available for [S. 2394](#), known as the Federal Land Freedom Act of 2021. Sponsored by Sen. Jim Inhofe (R-OK), the bill’s purpose is to “achieve domestic energy independence by empowering States to control the development and production of all forms of energy on all available Federal land.” According to Sen. Inhofe, the bill “gives each state the right to develop all of the energy resources on the federal lands located within that state’s borders. Federal lands that will not apply: Indian lands, national parks, units of the National Wildlife Refuge System and Congressionally designated wilderness areas. The bill allows a state to develop a regulatory program governing the leasing and permitting of energy activities on its federal land. None of the actions taken by a state to lease or permit lands would be subject to judicial review. Further, the act will exempt the activities under the ‘program’ from the requirements of [National Environmental Policy Act] [Endangered Species Act] and National Historic

Preservation Act. It will also not be subject to the Administrative Procedures Act. The bill retains the current royalty share between states and the federal government under the Mineral Leasing Act (essentially 50–50); it does, however, reverse the flow of cash. Operators will now pay royalties to states, which will then send the federal government’s share to the treasury.” [Read more.](#)

H.R. 4334 – American Energy First Act. On July 30, official bill text was made available for [H.R. 4334](#), known as the American Energy First Act and which will “empower States to manage the development and production of oil and gas on available Federal land, to distribute revenues from oil and gas leasing on the Outer Continental Shelf to certain coastal States, to promote alternative energy development.” Sponsored by Rep. Steve Scalise (R-LA), the bill specifically allows the Interior Department to delegate to states the authority for permitting and regulation of oil and gas activities on federal land within that state. The bill would also establish revenue sharing for the states on the Atlantic Ocean and Alaska for oil and gas production off their coastlines. H.R. 4334 also increases the state share of oil and gas production revenues in the Gulf of Mexico from 37.5% to 50% and removes a \$500 million per year cap on the funds received by the states under the Gulf of Mexico Energy Security Act. “For decades, America has been a world leader in energy production and exploration by embracing an all-of-the-above energy strategy, yet due to President Biden’s disastrous policies, we have witnessed an all-out assault on American energy that jeopardizes our security,” said Rep. Scalise. “The American Energy First Act invests in America’s energy future by opening up more areas to energy exploration, encouraging alternative sources of energy like wind, solar, and geothermal, and cutting

red tape to lower the cost of energy for hard-working families." [Read more.](#)

H.R. 4153 – Clean Energy Future through Innovation Act of 2021. On August 4, official bill text was made available for bipartisan legislation, [H.R. 4153](#), known as the Clean Energy Future through Innovation Act of 2021. Sponsored by Reps. David McKinley (R-WV) and Kurt Schrader (D-OR), the bill will “boost innovation of clean energy technologies and reduce emissions from the power sector while preserving affordability and reliability.” ([Read Section-by-Section fact sheet here](#)) This comprehensive bill “calls for a decade of public and private investments in clean energy innovation and infrastructure development, followed by new regulatory standards to ensure environmental and energy goals are met.” Widely supported by stakeholders on both sides of the aisle, including Richard Jackson, President, Operations, U.S. Onshore Resources and Carbon Management, Occidental, who said of H.R. 4153, “The Clean Energy Future Through Innovation Act of 2021 is an incredibly impactful proposal that will invest in technology and incentivize emission reductions, and Occidental is proud to support it. Last year, Occidental announced our Pathway to Net-Zero before 2040 for operational and energy use emissions, and before 2050 for emissions associated with our products.” [Read more.](#)

FEDERAL – Regulatory

ANWR Leasing Program. On August 4, the Bureau of Land Management (BLM) published a “Notice of Intent To Prepare a Supplemental Environmental Impact Statement for the Coastal Plain Oil and Gas Leasing Program, Alaska” ([86 Fed. Reg. 41989](#)) the purpose of which is “to prepare a Supplemental Environmental Impact Statement (EIS) to the September 2019 Coastal Plain Oil and Gas Leasing Program EIS. The Supplemental EIS will provide a comprehensive analysis of the potential environmental impacts of the Program.” The Notice formally announces the Biden administration’s review of the Trump administration’s opening of the

Arctic National Wildlife Refuge (ANWR) to drilling which the new administration claims had “legal deficiencies” related to the oil and gas leasing program in the Arctic’s Coastal Plain. According to the BLM, “The supplemental EIS ordered by the department will analyze the potential effects of leasing on surface waters, wetlands and vegetation, as well as wildlife such as caribou, birds and polar bears and the greenhouse gas emissions caused by leasing activity.” The public comment period is open through October 4, 2021. [Read more.](#)

Federal Oil and Gas Leasing Pause. On July 27, during a U.S. Senate Energy Committee hearing regarding the Interior Department’s fiscal 2022 budget, Interior Secretary Deb Haaland was grilled on the status of the Biden administration’s ongoing moratorium on new oil and gas leases on public lands. Committee Chairman Joe Manchin (D-WV) forcefully pushed Haaland on the status of the pause. “While I’ve supported administration’s desire to pause lease sales to make sure the American people are getting fair returns for our shared resources, we are now well — now into the early summer timeline when we were told the review would be completed,” said Manchin. “We need a plan to move forward for responsible oil and gas leasing both onshore and offshore.” As always, Haaland was evasive in answering questions about timelines saying, “the review is being finalized internally and should be out very soon.” Sen. Lisa Murkowski (R-AK) was also frustrated with the delay and told Haaland, “I’m not going to ask you when you think it’s coming. I hope you can sense the frustration in anticipating this and wondering when we will be able to expect you’ll be in compliance with the judge’s order,” she said, which referenced a June federal court injunction lifting the pause, and with which the Biden administration has yet to comply. [Read more.](#)

Joint Employer Rule; U.S. Department of Labor. (Update to 3/22/21 Weekly Report) On July 30, the U.S. Department of Labor (DOL) Wage and Hour Division rescinded the Trump-era rule titled “Joint Employer Status Under the Fair Labor Standards Act.” [Read more.](#) The DOL rescission published at

“Rescission of Joint Employer Status Under the Fair Labor Standards Act Rule;” [86 Fed. Reg. 40939](#), “removes the regulations established by that rule.” For background, on March 12, the Biden administration issued a notice of proposed rulemaking to rescind the Trump administration’s DOL joint employer rule. The notice, [Rescission of Joint Employer Status Under the Fair Labor Standards Act Rule; 86 Fed. Reg. 14038](#), sought to rescind the rule, which had already been mostly vacated by the U.S. District Court for the Southern District of New York in a September 8, 2020 decision. The Trump rule provided consideration under the Fair Labor Standards Act (FLSA) as to whether companies are classified as joint employers of workers and thereby can be held responsible for labor violations including requirements on minimum wage and overtime pay, and could affect franchising companies, contractors, and temporary staffing companies, and was much more favorable to businesses than the Obama-era DOL policies were. The Trump DOL rule provided a four-factor “balancing test” for determining FLSA joint employer status in situations where an employee performs work for one employer that simultaneously benefits another entity or individual. [Read more.](#)

Lesser Prairie-Chicken; U.S. Fish and Wildlife Service. (Update to 6/14/21 Weekly Report) On July 28, Sen. Jim Inhofe (R-OK), joined by 14 other members of Congress, [sent a letter to the U.S. Fish and Wildlife Service \(FWS\)](#) urging them to extend the public comment period for the proposed rule seeking to list two Distinct Population Segments (DPSs) of the Lesser Prairie-Chicken (LPC) under the Endangered Species Act (ESA) by at least six months. The original public comment period for the proposed rule had an August 2, 2021, end date. [Read more.](#) For background, on June 1, the 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 DPSs of the LPC. 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.” [Read more.](#)

UPDATE: As a result of the congressional outreach, on July 30, the FWS announced in the Federal Register (“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. 41000](#)) that they are extending the public comment period from the original closing date of August 2, 2021, to September 1, 2021. [Read more.](#)

Paycheck Protection Program Loan Forgiveness. Continuing with our ongoing COVID-19 resource information regarding the federal Paycheck Protection Program (PPP), [as reported by the American Society of Association Executives \(ASAE\) on July 29](#), the Small Business Administration (SBA), which administered the PPP, issued new guidance designed to accelerate the end of the program “by streamlining the process for millions of small businesses and nonprofit employers to have their emergency payroll loans forgiven. The PPP was one of the largest and most popular federal relief programs created last year to help small businesses and nonprofit organizations survive the COVID-19 pandemic.” The issued SBA guidance “simplifies loan forgiveness for loans of \$150,000 or less, which account for more than 90 percent of all outstanding PPP loans,” according to the SBA. “In its guidance

this week, the SBA said it has notified banks that the agency is setting up its own online forgiveness platform that will accept applications from borrowers directly. In addition, the SBA will announce plans to spare certain borrowers who received second-draw PPP loans worth less than \$150,000 from having to supply documentation proving that they suffered a 25 percent revenue reduction in 2020 that was a condition of the loans." [Read more.](#)

FEDERAL – Judicial

Leasing – North Dakota. On June 10, the North Dakota Supreme Court affirmed a lower court determination against lessors that oil and gas leases with Continental Resources had not expired and remained in effect. The plaintiff-lessors in *Pennington, Steven Nelson, Donald Nelson, and Charlene Bjornson, Plaintiffs and Appellants, v. Continental Resources, Inc.* (Case No. 20200318), argued that the district court erred in concluding the leases had not expired. Here, the Supreme Court, affirmed, concluding the issues the plaintiffs raised on appeal were “precluded under the law of the case doctrine and mandate rule.” In the case, the plaintiffs had argued that Continental’s delay in obtaining regulatory approval to drill did not extend the lease term. However, the district court held that the regulation and delay paragraph of the leases extended the leases until regulatory approval could be obtained to begin drilling operations. Under the case doctrine and mandate rule, as the Court explained, the plaintiffs could no longer bring claims already adjudicated in earlier proceedings for which the appeal was based, thus ruling in favor of Continental in the present appeal. [Read more.](#)

STATE – Legislative

Notarial Acts; Real Property Recordation – Illinois. On July 23, Gov. J.B. Pritzker (D) signed SB 2664 into law. The Act, sponsored by Sen. Linda Holmes (D), amends the Illinois Notary Public Act and provides requirements concerning electronic notarization and electronic notaries public; amends the Uniform Real Property Electronic Recording Act;

provides that a paper or tangible copy of an electronic document that a notary public has certified to be a true and correct copy satisfies specified recording requirements; provides further requirements concerning the certification of electronic documents by notaries public; and defines certain terms. The Act is effective on the later of: (1) January 1, 2022; or (2) the date on which the Office of the Secretary of State files with the Index Department of the Office of the Secretary of State a notice that the Office of the Secretary of State has adopted the rules necessary for implementation; except that, the changes made to specified provisions of the Illinois Notary Public Act take effect July 1, 2022. [Read more.](#)

Electronic Court Records – Louisiana. On August 6, a Joint Task Force hearing was held regarding Senate Resolution 202, which was enacted in the regular session and which created a “Task Force on Statewide Standards for Clerks of Court Electronic Filing and Records Retention.” Sponsored by Sen. Jay Morris (R), the measure “Requests a task force to study the feasibility and propriety of the clerk of court creating electronic records of original paper documents, and the maintenance, preservation, and disposition of original paper documents once converted to electronic record, and to propose recommendations for legislation by written report to the legislature no later than February 15, 2022.” The resolution also provides that the task force terminates on June 30, 2022. [Read more.](#)

STATE – Regulatory

Adams County Setback Regulations – Colorado. On July 27, the [Adams County Board of County Commissioners voted 3-1 in favor of new oil and gas regulations at their public hearing.](#) The new regulations “increase setback distances to 2,000 feet from homes, schools, daycares, environmentally sensitive areas, and parks and open spaces. The text amendments also expand the definition of environmentally sensitive areas and require closer monitoring of nuisance impacts.” According to public reporting, “Industry proponents said the new

regulations effectively ban drilling in the county, while county commissioners said the text amendments were necessary to address the growing concern over air quality and pollution. According to the Adams County Commissioners, staff has “until August 10 to make minor grammatical and formatting changes before final posting.” [Read more.](#)

Simultaneous Operations Draft Rule – Ohio.

On July 26, the Ohio Department of Natural Resources (DNR), Division of Oil and Gas Resources Management announced it will hold a public hearing to accept testimony on proposed changes to Ohio Administrative Code rules [1501:9-1-05](#) and [1501:9-1-06](#) and the rescission of Ohio Administrative Code rules [1501:9-3-10](#), [1501:9-5-08](#), [1501:9-7-13](#), and [1501:9-9-07](#). The Division proposes to rescind 1501:9-1-05 of the Administrative Code and replace it with a rule governing simultaneous operations. The Division has developed a draft rule regulating simultaneous oil and gas operations. The rule defines simultaneous operations as activities happening concurrently on a well site, such as the drilling or hydraulic fracturing of a new well in close proximity to a well that is producing oil and gas. The draft rule establishes minimum standards operators must follow and requires the operator to develop a simultaneous operations plan that will be reviewed by the Division and either accepted or rejected before the simultaneous operations can begin. The rule provides for modification procedures and requires the Division to verify operations are conducted according to the accepted plans. In order to simplify rules under Ohio Administrative Code 1501:9-1 through 1501:9-12, the Division proposes to maintain a single severability rule (1501:9-1-06) that will cover the enumerated chapters, while rescinding the multiple, independent severability clauses currently contained throughout Ohio Administrative Code 1501:9-3 through 1501:9-12. For more information about the proposed rules, visit oilandgas.ohiodnr.gov. Those with questions may contact Mark Bruce at (614) 265-6920 or mark.bruce@dnr.ohio.gov. The public hearing will be held August 23, 2021 starting at 1:00 p.m. Any

person affected by the proposed rule may present their comments in-person, in writing, virtually, or via telephone. For those wishing to participate, please choose from the following options: In-person: The hearing will be held at 2045 Morse Road, F-1 Conference Room, Columbus, OH 43229. Written may be submitted by 5:00 p.m. August 23, 2021. Written comments may be submitted to DOGRM.Rules@dnr.ohio.gov or mailed to Ohio Department of Natural Resources, Division of Oil and Gas Resources Management, Attn: Mark Bruce, Building F-2, 2045 Morse Road, Columbus, OH 43229. For participants wishing to stream the meeting see the [DNR website](#) for more information or participate by telephone at 1-614-721-2972 and enter the phone conference ID: 895 035 938#. [Read more.](#)

Railroad Commission Regulatory Webinars –

Texas. As previously reported, the Texas Railroad Commission (RRC) announced a series of regulatory webinars available to the public. The series continues with webinars on topics including Statewide Rule 32 regarding the venting and flaring of casinghead and gas well gas; Statewide Rule 101 regarding Certification for Severance Tax Exemption or Reduction for Gas Produced from High-Cost Gas Wells; Underground Injection Control (UIC) Permitting; creation of the RRC State Tracking and Reporting system, or LoneSTAR; and Drilling Permits, among other topics. The RRC has also made available a video on the LoneSTAR system, which you can view the video on the [RRC's YouTube channel here](#). For more information on the RRC webinars and a full schedule, [Read more.](#)

STATE – Judicial

Leasing; Pooling; Royalties – Texas. On June 11, in *BPX Operating Co. v. Strickhausen* (Case No. 19-0567), the Texas Supreme Court addressed a case where a lease required BPX to obtain the lessor's “express written consent” before pooling her tract with others. If the consent was not given, then “pooling for oil or gas is expressly denied and shall not be allowed under any circumstances.” Here,

Strickhausen never gave her express written consent, which meant her interests could not be pooled. However, BPX argued that Strickhausen “nevertheless impliedly ratified an unauthorized pooling agreement by depositing royalty checks calculated on a pooled basis.” Here, the Court explained that “whether Strickhausen impliedly ratified the pooling depends on whether she exhibited an objective intent to do so. As always, determining objective intent requires an examination of all the relevant circumstances. While the circumstances here include Strickhausen's acceptance of royalties calculated on a pooled basis, they also include many other objective manifestations of her rejection of the pooling and her intention to assert her contractual anti-pooling rights.” As such, the Supreme Court held that on the issue of ratification the evidence did not “conclusively establish as a matter of law” the intention “giving validity to the earlier act of pooling” sending the case back to the trial court for further determinations. [Read more.](#)

INDUSTRY NEWS FLASH

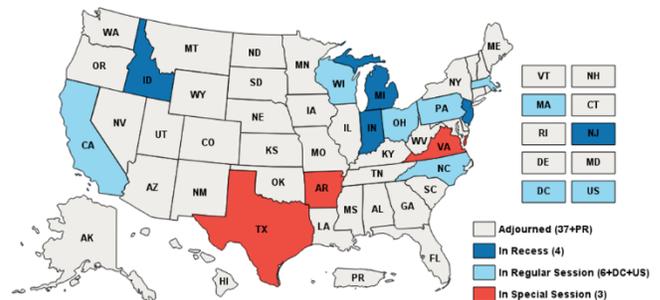
► **EIA forecasts rise in August shale formation output.** Crude output from seven major shale formations is expected to rise by 42,000 bpd in August, to 7.907 million bpd, compared with a 28,000 bpd rise in July, according to the U.S. Energy Information Administration's (EIA) latest monthly drilling productivity report. According to the EIA, the “forecast is led by growing production in the largest formation, the Permian Basin, where crude output is estimated to rise 53,000 bpd in the month, offsetting falling output expected from the Bakken formation of North Dakota.” [Read more.](#)

► **New Mexico oil production surged to a record in May.** According to an August 2 report by Rigzone, “New Mexico’s oil production surged to a record in May highlighting the Permian Basin’s role as the shale industry sees some recovery from the pandemic.” The state “produced about 4% more crude in the month to reach a record 1.22 million

barrels a day” and “also topped North Dakota, to become America’s second-biggest onshore oil supplier.” [Read more.](#)

LEGISLATIVE SESSION OVERVIEW

States in Session



Session Notes: California, Massachusetts, North Carolina, Ohio, Pennsylvania, and Wisconsin are in regular session. The U.S. Senate is also in session.

The following legislatures are in recess until the dates provided: **Michigan** House (August 17), **Michigan** Senate (August 25), **U.S. House** (September 20), **Indiana** and **New Jersey** (TBD) and **Idaho** House (call of the speaker).

Texas Republican Gov. Greg Abbott convened a second special session on August 7 with 17 agenda items identified for consideration. The second special session is set to last up to 30 days. The first special session failed to deliver on legislation after Texas Democrats fled the state house for Washington, DC to protest bills they disagreed with and thereby stalling the session due to the absence of a quorum. According to Gov. Abbott, the second special session is set to address bail reform, election integrity, education, border security, radioactive waste, and social media censorship, among other agenda items. [Read more.](#)

Virginia convened for a special session on August 2 to fill judicial vacancies and allocate more than \$4.3 billion in federal relief funding, reports [WDBJ7.](#)

Arkansas Republican Gov. Asa Hutchinson convened the legislature for a special legislative session on August 4 to discuss amending [Act 1002](#), which prohibits state governments from requiring face masks from most entities, reports [Kark 4 News](#).

Alaska Republican Gov. Mike Dunleavy is scheduled to call the legislature into a third special session on August 16 to fix the yearlong fiscal conflict over the Permanent Fund dividend, reports the [Associated Press](#). The original start date of August 2 was delayed following a request from legislative leaders.

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. **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. **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. **New York** Democratic Gov. Andrew Cuomo has 10 days from presentment, Sundays excluded, to sign or veto legislation or it is pocket vetoed. **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: [Alabama](#), [Alaska](#), [Colorado](#), [Connecticut](#), [Delaware](#), [Georgia](#), [Hawaii](#), [Illinois](#), [Indiana](#), [Kentucky](#), [Louisiana](#), [Maine](#), [Maryland](#), [Mississippi House](#) and [Senate](#), [Nebraska](#), [New Hampshire House](#) and [Senate](#), [New Mexico](#), [North Dakota](#), [Oregon](#), [Rhode Island](#), [South Carolina House](#) and [Senate](#), [Tennessee](#), [Utah](#), [Vermont](#), [Virginia](#), [Washington](#), [West Virginia](#) and [Wyoming](#).

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

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