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## Arkansas

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## ARKANSAS



*Andraeh Riedel\**

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### *I. Introduction*

There were only minor changes in Arkansas oil and gas law between August 1, 2020, and July 31, 2021. Most notably, a proposed bill would grant mineral interest owners a lien in any oil and gas they agree to sell. Additionally, the state retains an interest in federal legal developments that could affect the industry.

### *II. Statutory Law*

#### *A. Proposed Arkansas House Bill Would Grant Oil and Gas Lien to Mineral Interest Owners*

A proposed Arkansas House Bill, known as the “Oil and Gas Owners’ Lien Act of 2021”, would grant oil and gas liens to mineral interest owners in their oil and gas interests upon an agreement to sell with a first purchaser.<sup>1</sup> The purpose behind the law is to enforce the obligation of first purchasers to pay the agreed sales price.<sup>2</sup> The lien established would exist until the interest owner receives the sales price, would perfect automatically without filing documentation, and would survive comingling with other oil and gas.<sup>3</sup> The lien also takes priority over other liens or security interests.<sup>4</sup> However, the proposed law would not otherwise affect certain aspects of title, including: the time at which legal title to oil and gas may pass by agreement or by operation of law subject to an oil and gas lien; the rights of a first purchaser to take or receive oil and gas under the terms of a lease; or the right of a first purchaser to take or receive oil and gas under an agreement to sell.<sup>5</sup> There are also special provisions that must be followed for a waiver of an oil and gas lien to be valid.<sup>6</sup> The lien lasts for five years, but certain tolling provisions apply.

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1. H.R. 1273, 93rd Gen. Assemb., Reg. Sess. (Ark. 2021).

2. *Id.*

3. *Id.*

4. *Id.*

5. *Id.*

6. *Id.*

### III. Administrative Law

#### A. U.S. Forest Service Rule Streamlining Oil & Gas Leasing Process Published

A U.S. Forest Service rule streamlining approval of oil and gas development has now been published.<sup>7</sup> The rule seeks to make management of federal oil and gas activities more efficient, to clarify requirements of operators, and to revise procedures for monitoring compliance.<sup>8</sup> The rule only affects National Forest System Lands.<sup>9</sup>

### IV. Common Law

#### A. Arkansas Joins Federal Lawsuit Challenging Moratorium on Oil/Gas Leasing on Public Lands

The State of Arkansas has recently joined a federal lawsuit filed by a coalition of state attorneys general seeking to enjoin an executive order<sup>10</sup> that places a moratorium on oil and gas leasing activities on federal lands.<sup>11</sup> Arkansas joined the suit arguing that the moratorium harms the state through an increase in energy prices and loss of revenue.<sup>12</sup> The Biden administration argues that the moratorium cannot be reviewed under the Administrative Procedure Act (“APA”), the vehicle for the suit, because the moratorium originates from an executive order and is therefore unreviewable under the APA.<sup>13</sup> The states argue that the moratorium violates statutory obligations imposed by the Outer Continental Shelf Lands Act (“OCSLA”) and Mineral Leasing Act (“MLA”).<sup>14</sup> Under those statutes, the Secretary of the Interior must facilitate the development of energy resources, which has historically been done via leases of oil and gas on public lands and offshore waters.<sup>15</sup> The states therefore allege that the order

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7. Oil and Gas Resources, 85 Fed. Reg. 54311-01 (proposed Sept. 1, 2020) (to be codified at C.F.R. pt. 214, 228, 261).

8. *Id.*

9. *Id.*

10. Exec. Order No. 14008

11. Louisiana et al. v. Biden et al., No. 2:21CV00778 (W.D. La. Mar. 24, 2021); See MELISSA ANGELL, BIDEN ADMIN. TEARS INTO RED STATES OVER OIL LEASE PAUSE (LAW 360, May 20, 2021), <https://www.law360.com/articles/1386954/biden-admin-tears-into-red-states-over-oil-lease-pause>

12. Compl. ¶ 11, Louisiana et al. v. Biden et al., 2021 WL 1135160.

13. Angell, *supra*.

14. Compl., *supra*, ¶ 2.

15. *Id.*

violates the constraints of the APA, the OCSLA, and the MLA. Thus, they are seeking an injunction of the leasing moratorium.<sup>16</sup>

#### *IV. Conclusion*

Outside of the potential implementation of the oil and gas lien statute, there have not been significant developments in Arkansas oil and gas law on the state level. Nevertheless, the state is committed to protecting its interests which could be affected by federal law.

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16. *Id.* ¶¶ 5-7.