

# GOVERNMENTAL AFFAIRS REPORT

## Highlights At-A-Glance

### FEDERAL – Legislative

**H.R. 8992 - Methane Super-Emitter Strategy Act of 2022.** On October 12, official bill text was made available for [H.R. 8992](#), known as the Methane Super-Emitter Strategy Act of 2022. Sponsored by Rep. Don Beyer (D-VA), the bill would “direct NASA to commission a report from the National Academies regarding a science-based strategy for the Federal government to detect and monitor methane super-emitters.” The legislation arose from the House Committee on Science, Space, and Technology “investigation into oil and gas sector methane leaks” that “determined that oil and gas companies are failing to address super-emitting leaks, the primary driver of methane emissions from oil and gas operations.” [Read more.](#)

**H.R. 8991 - Methane Emissions Research Act of 2022.** On October 11, official bill text was made available for [H.R. 8991](#), known as the Methane Emissions Research Act of 2022. Sponsored by Eddie Bernice Johnson (D-TX), the bill would “direct the Administrator of the Environmental Protection Agency to conduct a measurement-based national methane research pilot study to quantify methane emissions from certain oil and gas infrastructure.” According to Rep. Johnson, “The Methane Emissions Research Act is an important step towards improving our understanding of oil and gas sector methane emissions. Achieving rapid and large-scale reductions in methane emissions from oil and gas operations is vital for America’s ability to confront the climate crisis and reach its emission reduction goals for the next decade. This pilot study will tell us a great deal about the size and characteristics of oil and gas methane emissions today, while creating a foundation for broader methane measurement activities by the Federal Government in the future.” [Read more.](#)

**H.R. 8989 - Buy Low and Sell High Act.** On October 7, official bill text was made available for [H.R. 8989](#), known as the Buy Low and Sell High Act. Sponsored by Rep. Frank Pallone (D-NJ), the bill “creates an Economic Petroleum Reserve designed to continue the trend of falling gasoline prices and make money for American taxpayers by empowering the Department of Energy (DOE) to buy oil when prices are low and sell oil when prices are high.” The bill also prohibits barrels stored within the Strategic Petroleum Reserve “from being exported or sold to entities owned, controlled, or influenced by China, Russia, Iran, North Korea, or any other country under U.S. sanctions” and also “[r]educes our reliance on foreign oil and empowers states to lead the transition to electric vehicles (EVs) by investing profits from oil sales in state EV infrastructure programs.” According to Rep. Pallone, “Not only does this bill grant DOE the flexibility it needs to keep prices falling, but it also recognizes that our reliance on fossil fuels makes us weaker, and uses the proceeds from oil sales to build out electric vehicle infrastructure. This is what a win-win looks like.” [Read more.](#)

### FEDERAL – Regulatory

**BLM Resource Management Plans – Montana; Wyoming.** On October 3, the Bureau of Land Management (BLM) published a *Notice of Intent To Amend the Resource Management Plans for the Buffalo Field Office, Wyoming, and Miles City Field Office, Montana, and Prepare Associated Supplemental Environmental Impact Statements* ([87 Fed. Reg. 59818](#)). According to the BLM notice announcing changes to Resource Management Plans, “Wyoming and Montana/Dakotas State Directors each intend to prepare Resource Management Plan (RMP) amendments with associated Supplemental Environmental Impact Statements (EIS) for the

Supplemental EIS and Potential RMP for the Buffalo Approved RMP and the Supplemental EIS and Potential RMP Amendment for the Miles City Approved RMP and by this notice are announcing the beginning of the scoping periods to solicit public comments and identify issues, and are providing the planning criteria for public review.” The public comment period is open through November 2, 2022. [Read more.](#)

**BLM Leasing – Kansas; New Mexico; Wyoming.** On October 6, “the BLM announced it will begin scoping for the next onshore oil and gas lease sales in New Mexico and Wyoming, under a strategy that includes onshore lease sales consistent with the terms of the law.” The lease sales are being held under directives mandated in the recently enacted Inflation Reduction Act. “The [BLM's New Mexico](#) office has posted for public comment a review of 45 parcels totaling 10,123 acres and the [BLM's Wyoming](#) office is making available for public comment a review of 209 parcels totaling 251,087 acres. Scoping notices from other states to evaluate additional potential sale parcels will be posted in the coming weeks.” The New Mexico lease sale is scheduled for May 2023. The Wyoming lease sale is expected to take place between April and June 2023. The public scoping comment period for both lease sales is open through November 7, 2022. The BLM has also [posted an oil and gas lease sale notice for Kansas to be held in May 2023](#). Public comments will also be accepted for that sale notice through November 7, 2022. [Read more.](#)

**Interior Department Resource Development in the Thompson Divide – Colorado.** On October 12, the Interior Department announced that the Biden administration is beginning steps to protect the Thompson Divide in Colorado from mineral and oil and gas leasing and development. Under the proposal, after a two-year analysis, the Thompson Divide could be subject to a 20-year withdrawal. However, according to the Interior Department, “the Thompson Divide area [already] has not been available to oil and gas leasing for several years, and there is no current or planned oil exploration or production in the area. Pre-existing natural gas leases in the area would be unaffected by this proposed mineral withdrawal. These pre-existing

and unaffected natural gas-related leases in the Thompson Divide area constitute less than 1% of the more than 3,000 active federal leases in the state of Colorado.” Interior Secretary Haaland would first need to issue a notice in the Federal Register which “will initiate a two-year segregation that will prohibit new mining claims and the issuance of new federal mineral leases on approximately 224,794 acres in the Thompson Divide area. During this time, the Forest Service and the BLM will seek public comment and conduct a science-based environmental analysis.” Once the notice is published it will initiate a 90-day public comment period on the proposed withdrawal. We will keep AAPL members informed once the administration publishes the notice. [Read more.](#) The Thompson Divide announcement coincided with President Biden’s visit to Colorado in which he announced an executive action that designates the area surrounding Camp Hale as a national monument and will be off-limits to any possible resource development. According to reporting by *Axios*, “The Biden administration will create a management plan in coming months for allowable uses of the land surrounding Camp Hale, but made clear it wouldn’t affect existing public uses, such as skiing, hiking, camping and snowmobiling.” [Read more.](#)

**BLM Resource Advisory Council Nominations.**

On October 5, the BLM published a *National Call for Nominations for Resource Advisory Councils (87 Fed. Reg. 60411)*. Per the BLM, “The purpose of this notice is to request public nominations for 13 of the Bureau of Land Management’s (BLM) statewide and regional Resource Advisory Councils (RAC) that have vacant positions or members whose terms are scheduled to expire. These RACs provide advice and recommendations to the BLM on land use planning and management of the National System of Public Lands within their geographic areas.” RAC membership includes those stakeholders who “represent energy and mineral development” and you can self-nominate. This is a great opportunity for AAPL members to help shape public policy decisions regarding oil and gas leasing and development on federal lands. The nomination period is open through November 4, 2022. [Read more.](#) At present, individual RAC nomination notices have been posted by the BLM for: [Alaska RAC](#); [Arizona RAC](#);

[Idaho RAC](#); [Montana/Dakotas RAC](#); [Northern California RAC](#); [Northwest, Rocky Mountain and Southwest RACs](#); [Mojave-Southern Great Basin RAC](#); [Wyoming RAC](#); as well as the [Monument Advisory Committee](#).

**BLM Resource Advisory Council Public Meeting – Idaho.** On October 6, the BLM announced that the “Idaho Resource Advisory Council will meet to discuss a variety of public land management topics from 9 a.m. to 5 p.m. Mountain Daylight Time on Wednesday, Oct. 19, 2022, at the BLM Twin Falls District Office, 2878 Addison Ave. E, Twin Falls, ID 83301 and virtually via Zoom. The public is invited and there will be a comment period at 4 p.m. Agenda items will include BLM updates, Bipartisan Infrastructure Law implementation, [a] statewide renewable energy strategy discussion and the proposed Lava Ridge Wind Project.” [Read more.](#)

**BLM Resource Advisory Council Public Meeting – Utah.** On October 4, the BLM announced that the Utah Resource Advisory Council “will hold a public meeting on Oct. 19, 2022, at the BLM Utah West Desert District Office located at 491 North John Glenn Road, Salt Lake City, Utah 84116. The meeting will take place from 8 a.m. to 5 p.m., and the public is welcome to attend. A virtual participation option is also available.” Agenda items will “include a discussion on BLM Utah priorities, district planning efforts, BLM Utah advisory councils, [and] monument planning efforts,” among other topics. [Read more.](#)

**BOEM Releases Draft Supplemental Environmental Impact Statement for 2023 Lease Sales.** On October 6, “the Department of the Interior announced that the Bureau of Ocean Energy Management (BOEM) has prepared a Draft Supplemental Environmental Impact Statement (EIS) for two Gulf of Mexico oil and gas lease sales: Lease Sales 259 and 261, which are being held pursuant to the Inflation Reduction Act.” According to the BOEM, the “Draft Supplemental EIS analyzes the potential impacts of the proposed actions on the marine, coastal, and human environments.” According to the Interior Department, “Congress directed that Lease Sale 259 be held by March 31, 2023, and Lease Sale 261 by September 30, 2023.” [Read more.](#)

### **Energy Department Request for Information.**

On October 3, the U.S. Department of Energy (DOE) announced it is seeking information from the public on its plans “to accelerate domestic production of key technologies, strengthen U.S. power grid reliability, and deploy clean energy.” [Read more.](#) The request responds to President Biden’s June authorization under the Defense Production Act to “speed up the production of solar, electric grid, heat pump and other technologies.” According to Energy Secretary Jennifer Granholm, “DOE is eager to continue hearing ideas from industry, labor, environmental, energy justice, and state, local and Tribal stakeholders about how we can best use this powerful new authority to support the clean energy workforce and technologies needed to combat climate change.” The public input deadline is November 30, 2022. [Read more.](#)

### **EPA Greenhouse Gas Reporting Rulemaking**

**Revisions.** To follow up our prior reporting, on October 6, the American Petroleum Institute, the American Exploration & Production Council (AXPC), and the Independent Petroleum Association of America delivered a letter to the U.S. Environmental Protection Agency (EPA) regarding the proposed rule, *Revisions and Confidentiality Determinations for Data Elements Under the Greenhouse Gas Reporting Rule* ([87 Fed. Reg. 42988](#); [87 Fed. Reg. 36920](#)). With the rulemaking, the EPA is proposing “revisions to improve the quality of the data collected and to establish or amend confidentiality determinations” for the existing [Greenhouse Gas Reporting Program](#). According to the AXPC, “the letter supported those revisions that clarify, streamline, or otherwise reduce burden associated with reporting. Additionally, the letter seeks clarity on the sources of some of the proposed revisions and in some cases may disagree with EPA’s assessment of the supporting information or approach to improving the program.” The letter writers state, “We have participated as key collaborative stakeholders throughout the process of developing the EPA Greenhouse Gas Reporting Program (GHGRP) by contributing expertise and proposing solutions that address EPA’s policy goals while reflecting the reality of the industry and its evolving day-to-day operating practices. The Industry Trades have directed our efforts toward seeking a balance

between the burden of data collection and reporting, the need to protect sensitive information and ensure that reporting requirements are placed on the correct reporters, and the need for providing the highest quality data that will help inform decision makers and the public.” They further state, “While it is necessary to have prescriptive approaches for estimating emissions from industry operations to ensure consistency, we encourage EPA to continue to explore and take advantage of opportunities like the GHGRP to incorporate new optional methods of monitoring and data collection.” With the comment period now closed, AAPL will be monitoring the EPA rulemaking process for final rule release in the coming months. [Read more.](#)

**SEC Reopens Comment Period on Climate Disclosure Rulemaking Due to a Technological Error.** (*Update to 5/31/22 Report*) As an update to our prior reporting and notice to submit public comments regarding the Securities and Exchange Commission (SEC) proposed rulemaking that would mandate corporate reporting of climate risks and greenhouse gas (GHG) emissions (see *The Enhancement and Standardization of Climate-Related Disclosures for Investors*; [87 Fed. Reg. 21334](#)), the SEC has reopened the comment period. Although the comment period closed in June (after an extension from May), the SEC has just reported that they had a technological error in their online comment portal that affected many of their rulemakings and may have resulted in submitted comments not being recorded. One of those affected is the above GHG rulemaking. [Read the SEC notice here.](#) To that end, the SEC has reopened the public comment period for 14 days from October 7, 2022. You can search the SEC database to see if your public comment was received. [You may access that search resource here.](#) If it was received you do not need to resubmit anything. If you do need to resubmit a comment, you may do so on the SEC Proposed Rule webpage ([Access here](#)) and search that page for Release Number “33-11061” ([Also accessible here](#)) and then click on “Submit comments on S7-10-22” to resubmit your comment. For background, on April 26, AAPL joined 35 other trade groups and industry associations in a letter spearheaded by the Western

Energy Alliance calling on the SEC to extend the comment period for their climate disclosure proposed rulemaking. [Read the letter here.](#) The SEC published their proposed rulemaking on April 11 ([See SEC Press Release here](#)) but their proposal already attracted industry attention when first released as a draft at the end of March. *Bloomberg News* called it “a major shift in how corporations must show they are dealing with climate change.” Further, “For the first time ever, the agency plans to require businesses to outline the risks a warming planet poses to their operations when they file registration statements, annual reports or other documents. Some large companies will have to provide information on emissions they don’t make themselves but come from other firms in their supply chain.” As reported by the *Oil & Gas Journal*, the proposed rule, “would require disclosures of information about climate-related risks that are reasonably likely to have a material impact on their business, results of operations, or financial condition. The SEC suggested its plan would require commonly used metrics that would make it easier for investors to assess the relative risk profiles of different companies. The risks cited by the SEC proposal include not only what the public might imagine — changes in weather, for example — but regulatory, technological, and market risks driven by a transition to a lower-GHG intensive economy. The proposed rule would require a company to disclose information about the company’s governance or high-level oversight and management policies for climate-related risks. Such disclosures would be part of the environmental, social, and governance reporting that many people have begun demanding from businesses.” [Read more.](#) As noted by the SEC, “companies will be required to calculate these potential costs from data they already compile for regular disclosures to investors.” [Read more.](#) You may also access a detailed [AAPL Governmental Affairs Fact Sheet here.](#)

**Treasury Department Seeks Public Input on Inflation Reduction Act Climate and Renewable Energy Tax Incentives.** On October 5, the U.S. Department of the Treasury and Internal Revenue Service announced they are seeking public input on climate and renewable energy tax incentives included in the recently enacted Inflation Reduction Act. [Read more.](#) The announcement

includes six notices on specific programs for which public input is sought. [Access the notices here](#). “The Inflation Reduction Act tackles the climate crisis head on and strengthens President Biden’s historic effort to incentivize the energy sector to drive investment and dynamic economic growth while lowering costs for American families,” said Treasury Secretary Janet Yellen. “The Treasury Department stands ready to meet the responsibility that comes with implementing this legislation and looks forward to engaging with stakeholders and the public who will benefit from the law’s provisions.” The public comment period is open through November 4, 2022. [Read more](#).

**U.S. Department of Labor Independent Contractor Rulemaking.** To follow up prior reporting, the U.S. Department of Labor (DOL) Wage and Hour Division finally published its proposed independent contractor (IC) rule, *Employee or Independent Contractor Classification Under the Fair Labor Standards Act (87 Fed. Reg. 62218)*, on October 13. According to the DOL, the 58-page rulemaking “is proposing to modify Wage and Hour Division regulations to revise its analysis for determining employee or independent contractor classification under the Fair Labor Standards Act (FLSA or Act) to be more consistent with judicial precedent and the Act’s text and purpose.” According to law firm Locke Lord, publisher of the Independent Contractor Misclassification and Compliance legal blog, “Once finalized, the regulation would alter the test for IC status under the FLSA as last articulated by the Trump Administration, which had likewise changed the FLSA test for IC status previously issued by the Obama Administration. What does this mean legally for both workers and businesses who are currently classified as ICs? Not much, [per Locke Lord] ... since it is the courts that create law on this subject, not regulatory agencies.” For background, in the final days of the Trump Administration, the DOL issued a new regulation “regarding the test used to determine independent contractor status under the FLSA.” That test was interpreted as providing a more flexible and permissive interpretation to support independent contractor status under the FLSA rather than a determination that a worker was an employee in circumstances in which disputes arose. The Biden administration sought to

rescind that rule since early 2021 but faced various setbacks imposed by court challenges as detailed in our prior reporting and documented within the proposed rule. According to the Society for Human Resource Management (SHRM), with this rulemaking, the DOL is proposing to rescind the Trump-era rule “in which two core factors—control over the work and opportunity for profit or loss—carried greater weight in determining the status of independent contractors.” Under the new rule, which takes into account a greater number of factors, “employers would use a totality-of-the-circumstances analysis, in which all the factors do not have a predetermined weight.” According to Scott Mirsky, an employment attorney with Paley Rothman, “With the proposed rulemaking, the pendulum shifts more towards a pro-employee definition of employment, [but] it does not swing all the way in that direction.” [Read more](#). In short, “the new regulation focuses on ‘the totality-of-the-circumstances’ analysis in which the economic reality factors are not assigned a predetermined weight and each factor is given full consideration.” Specifically, the biggest difference between the 2021 Trump Rule and the 2022 Biden Rule “appears to be the latter Administration’s effort to place more weight on one of the three ‘non-core’ factors: whether the work is integral to the employer’s business. This factor almost universally favors employee status, thereby causing many courts over the past decade to give it less weight than the other factors under consideration. The Biden Rule seeks to make that factor more important going forward, but it remains to be seen if the courts will change their view as to the less significance given to that factor.” [Compare the Trump Rule and Biden Rule here](#). Legal analysts believe the proposed rule is not as extreme as some initially expected and “does little more than formally undo the Trump 2021 Rule and restore a totality-of-the-circumstances approach to determining IC status.” Those seeking to retain independent contractor status may also be reassured by the DOL’s own language in the rulemaking, noting that “the test for whether the worker is an employee or independent contractor under the FLSA remains the same. This proposed rulemaking is not intended to disrupt the businesses of independent contractors who are, as a matter of economic reality, in business for themselves.” The public comment period is open through November

28, 2022. [Access information and directions for submitting public comments here](#). AAPL will also continue providing members with additional resources and analysis as the rulemaking process proceeds. [Read more](#).

## STATE – Legislative

### **Windfall Profits and Gas Tax Petition – California.**

On October 11, the California Assembly Republican Caucus “launched [a public petition](#) asking for constituents’ help in urging Governor Newsom and Capitol Democrats to cancel the [Special Legislative Session the Governor called](#) for December 5th to impose a new windfall tax. In an [additional letter](#) to Governor Newsom and Democrat leadership, the Caucus renewed their call to suspend the state’s \$.54 cent gas tax and requested an audit of where our gas tax money is going after it was [recently reported](#) that California’s roads are the least maintained in all fifty U.S. states.” AAPL members in California can sign onto that petition at the above link. [Read more](#).

### **Orphaned and Abandoned Wells – California.**

*(Update to 9/6/22 Report)* On September 29, Gov. Gavin Newsom (D) signed SB 1295 into law. Sponsored by Sen. Monique Limón (D), the bill relates to hazardous or deserted wells, and provides “that all work undertaken or paid for by the [California] Geologic Energy Management Division (CalGEM) using outside contractors is a public work and requires prevailing wages to be paid, requires the California Workforce Development Board to develop and implement the Oil and Gas Well Capping Pilot initiative, and increases the amount that CalGEM can potentially expend in the next fiscal years to plug-and-abandon wells, among other things Assembly Amendments require the California Workforce Development Board to develop and implement the Oil and Gas Well Capping Pilot Initiative, revise the labor provisions, extend certain deadlines, remove the sunset on the CalGEM idle well report, and revise the calculation formula for the amount to be spent on plugging-and-abandoning wells annually, among other things.” [Read more](#).

### **Noncompete Agreements; Employment**

**Restrictions – Colorado.** Restrictive employment agreements bill, [HB22-1317](#), which was signed into law by Gov. Jared Polis (D) in June, is now in effect. The bill “voids noncompete and customer nonsolicitation covenants with certain Colorado employees, depending on their compensation level. The new law places significant penalties upon noncompliant employers and will void any provision that violates the law.” [Read more](#).

**Employee Misclassification – Pennsylvania.** On September 16, Rep. John Galloway (D) introduced HB 2810. The bill would enact recommendations made by the 2020 Joint Task Force on Misclassification of Employees to provide various provisions related to reporting and notice requirements, the regulation of labor brokers, and penalties related to employee misclassification. The bill is unlikely to advance in the Republican controlled legislature. [Read more](#).

### **Business Property Taxes Ballot Measure – West Virginia.**

West Virginia Republican lawmakers have come out in support of [Amendment 2](#), a ballot measure that “would change the state Constitution to give the Legislature the ability to alter property tax rates.” According to analysts, Amendment 2 would allow businesses operating in West Virginia to deduct property taxes paid “on their machinery, equipment and inventory.” Gov Jim Justice (R), however, opposes Amendment 2 saying, “We’re taking away an income stream and betting on good times forever and putting at risk our schools, our EMS, our firemen, our police and whatever it may be. We have to step back and think about what we are doing.” [Read more](#). Justice also said this loss of revenue would eliminate the possibility of removing the state’s personal income tax. Voters will have their say on the measure in the November 8 general election. [Read more](#).

## STATE – Regulatory

### **Louisiana Divests State Investments from BlackRock over ESG Anti-Fossil Fuel Policies.**

On October 5, Louisiana State Treasurer John M. Schroder [delivered a letter to the BlackRock](#)

[investment firm CEO](#) informing the company that the state will divest all Treasury funds for a total of \$794 million due to the firm's ESG policies. Per the letter, "Your blatantly anti-fossil fuel policies would destroy Louisiana's economy. Therefore, Louisiana Treasury will liquidate all BlackRock investments by the end of 2022." The letter continues, "This divestment is necessary to protect Louisiana from actions and policies that would actively seek to hamstring our fossil fuel sector. In my opinion, your support of ESG investing is inconsistent with the best economic interests and values of Louisiana. I cannot support an institution that would deny our state the benefit of one of its most robust assets. Simply put, we cannot be party to the crippling of our own economy." A major pillar of the Environmental, Social and Governance (ESG) movement "is to utilize publicly-traded funds to incentivize a 'net-zero' transition from fossil fuels to clean energy alternatives like wind and solar" and oftentimes financial institutions use ESG policies as a means to defund the fossil fuel industry. [Read more.](#)

**New Mexico and Texas Memorandum of Agreement on Cross Border Wells.** On October 3, the Oil Conservation Division of the New Mexico Energy, Minerals, and Natural Resources Department (OCD) and the Texas Railroad Commission (RRC) announced a finalized Memorandum of Agreement (MOA) "governing the development, operation, and maintenance of oil and gas wells that cross the border between New Mexico and Texas and produce minerals from each state using the same wellbore." [Read the MOA here.](#) The MOA, which was signed by the respective parties in September 2022, "arose out of a case before the New Mexico Oil Conservation Commission (OCC) which sought to permit a cross-border well in September of 2021. The OCC issued a conditional approval (OCC Order No. R-21831-A) for the well, finding that the proposal was consistent with its obligation to prevent the waste of oil and gas resources and protect correlative rights but found that before such a well could be developed OCD and the RRC had to enter into an MOA governing the development of such facilities." Per the joint announcement, the "MOA satisfies all the

requirements of OCC's order and is intended to facilitate the collaboration and coordination necessary between the OCD and RRC to properly oversee their respective authority over the drilling, completing and production from cross-border wells." [Read more.](#)

**Ozone Precursor Rule – New Mexico.** (*Update to 9/19/22 Report*) On October 11, the New Mexico Environment Department (NMED) announced that it has updated its Ozone Precursor Rule resources webpage, specifically the Frequently Asked Questions document, in response to questions they received from industry to reflect the most recent answers to questions submitted. [Read more.](#) For background, on September 15, the NMED announced that the first resources for compliance with the new Ozone Precursor Rule were available on the NMED website. The resource links on that webpage include: the presentation slides and recording from the industry meeting held in Farmington on September 1, 2022; the final rule as published in the New Mexico Register on August 5, 2022; an initial compliance guidelines document; a compliance timelines document (chronological); and a Frequently Asked Questions document. [Read more.](#) According to the NMED, their "goal is to provide industry with helpful information to assist in compliance with the new rule. Additional compliance guidelines, focused on specific sections of the rule, will be forthcoming. Additionally, application forms and a pre-approved technologies list will appear" once available. For more information about the NMED regulatory programs, [Read more.](#)

**Virginia Governor Releases 2022 Energy Plan.** The Virginia Energy Department under Gov. Glenn Youngkin (R) has released the [2022 Virginia Energy Plan](#). According to the announcement, the plan will take an "all-of-the-above" approach that "will be informed by energy affordability, reliability, capacity, competition, environmental stewardship, choice and innovation." As directed by the Virginia General Assembly, every four years the state develops a comprehensive plan and for 2022 the plan envisions "to develop a data-driven roadmap that considers all energy sources and is transparent with Virginians about the opportunities and costs each energy source

presents while recognizing new information will continue to guide the process and decision making over time.” [Read more.](#)

**State Chambers of Commerce Call Upon Biden Administration to Support Domestic Energy Production.** On October 4, more than 200 Chambers of Commerce representing 47 states and 14 national associations wrote a letter to President Biden, calling upon the administration to support domestic energy production. [Read the letter here.](#) The groups have “specifically called for ending the ban on new oil and natural gas exploration on federal lands and waters, restoring cancelled lease sales, and adopting a 5-Year Plan for offshore oil and gas development that allows the U.S. to fully leverage its offshore energy potential.” According to the U.S. Chamber of Commerce’s Global Energy Institute, “The letter from the Chambers comes as the Administration missed the deadline to finalize a new Five-Year Plan for offshore oil and gas development—the first time in history that a lapse has occurred. The Department of Interior’s proposed plan includes an option for zero lease sales, effectively banning all new offshore energy production. The Department has also failed to maintain the onshore leasing schedule that federal law requires.” [Read more.](#)

## **STATE – Judicial**

**Overriding Royalties; Assignments; Leasing; Estoppel by Deed – Texas.** On September 29, in *Armour Pipe Line Co. v. Sandel Energy, Inc.* (Case No. 14-20-00412-CV), the Texas Fourteenth Court of Appeals (Houston) affirmed a trial court’s judgment because the appellants failed to show error. In this case, “in an assignment of interests in oil and gas leases, the assignors purported to reserve an overriding royalty interest in some of the leases in favor of one assignor. A dispute arose as to the validity of that attempted reservation. The trial court granted the assignee’s summary-judgment motion because the assignor was merely a lienholder and did not possess title to the leases at the time of the assignment.” Because the trial court found that the assignor was a “stranger to title” in respect to the leases, the “court

determined that the attempted reservation of the overriding royalty interest was void. On appeal, the assignor asserts that the trial court erred based on the doctrine of estoppel by deed and because no summary-judgment ground challenged its promissory-estoppel claim.” On appeal, the assignor contended “that the trial court erred in denying its motion for summary judgment as to the assignee’s claims.” The assignor “also asserted that the trial court erred in granting interpleader relief to the party who deposited funds attributable to the disputed interest into the registry of the court.” Further, “[s]isters claiming to be the successors of the other assignors argue that the trial court erred in granting summary judgment as to their claims because if the attempted reservation was void, then they argue the purported royalty remained with the other assignors rather than passing to the assignee.” As to the latter issue, the court also concluded that the sisters “have not shown that if the attempt to reserve or except the Purported Royalty was void or invalid, title to the Purported Royalty would stay with the Assignors rather than pass to Sandel Energy.” [Read more.](#)

## **Netback Valuation; Reservation Fees – Wyoming.**

On August 24, the Wyoming Supreme Court determined “whether and to what extent WPX Energy Rocky Mountain, LLC (WPX) is entitled to deduct a certain type of expense known as a ‘reservation fee’ under the ‘netback’ severance tax valuation method” in *WPX Energy Rocky Mountain, LLC v. Wyoming Dept. of Revenue* (Case No. 2022 WY 104). “The Wyoming Board of Equalization (Board) concluded WPX was entitled to deduct some of its reservation fees. WPX and the Wyoming Department of Revenue (DOR) each petitioned the district court for review.” Specifically, the court addressed the following issues: (1) Does the netback valuation method allow WPX to deduct only the portion of its reservation fees that is directly tied to the volume of gas it shipped on each pipeline; (2) Did the Board misinterpret the netback statute when it concluded WPX was not entitled to deduct its Bison Pipeline reservation fees for months when it shipped no gas; and (3) Did the Board incorrectly conclude the netback statute precludes WPX from deducting any portion of its Bison Pipeline reservation fees the



pipeline company used to recoup its pipeline construction costs.” The court held that “we conclude the legislature intended the netback valuation statute to allow producers to fully deduct their pipeline reservation fees so long as they moved some gas on the pipeline system. The statutory language imposes no quantitative or capacity-based restrictions. Nor does it expressly limit or otherwise condition which transportation expenses are deductible. We therefore affirm the Board’s decision that WPX may deduct its pipeline reservation fees for months when it transported some but less than its reserve capacity of gas on each pipeline. We also affirm the Board’s conclusion that WPX’s Bison Pipeline reservation fees are not deductible for those months when it transported no gas on the Bison Pipeline. However, we reverse the Board’s decision that WPX could not deduct any portion of its Bison Pipeline reservation fees the pipeline company used to recoup pipeline construction costs” and the court remanded the case back to the trial court for “the DOR to issue a new assessment of WPX’s 2013-2015 production.”

[Read more.](#)

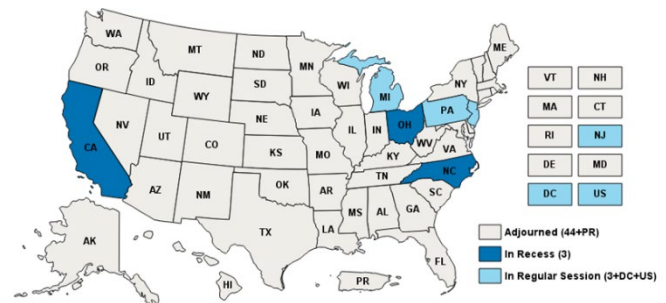
## INDUSTRY NEWS FLASH

► **Drilled but uncompleted wells hit lowest level since 2013.** Drilled but uncompleted wells (DUCs) in all U.S. Energy Information Administration (EIA) Drilling Productivity Report regions “totaled an estimated 4,283 wells in August 2022, the least in any month since estimating started in October 2013.” The EIA “said that the decline in DUCs in most major U.S. onshore oil- and natural gas-producing regions indicated that more wells were being completed and fewer new wells were being drilled.” [Read more.](#)

► **OPEC+ agrees to cut oil production by 2 million b/d.** On October 5, OPEC+ nations voted to cut oil production by 2 million b/d starting in November. “The move comes despite calls from the U.S. to boost output to help [...] ease inflation and boost the global economy and represents a reversal in the alliance’s production policy.” [Read more.](#)

## LEGISLATIVE SESSION OVERVIEW

### States in Session



**Session Notes:** Michigan, New Jersey, and Pennsylvania are in regular session. The U.S. Congress is also in session.

The following are in recess until the dates provided:  
**Ohio** (November 16) and **California** (November 30).

**North Carolina** was scheduled to adjourn on July 1; however, the [adjournment resolution](#) calls for the regular session to reconvene for monthly mini sessions through December. The legislature completed the last day of their September session on September 22. The next session is scheduled for October 18.

**California** Democratic Gov. Gavin Newsom is scheduled to call the legislature into a special session on December 5 to pass a new tax on oil industry profits, reports [PBS](#). (And see information on an opposing petition under the **STATE — Legislative** section on page 6 of this report.)

**Signing Deadlines** (by date): **New York** Democratic Gov. Kathy Hochul has 10 days from presentment, Sundays excepted, to act on legislation or it becomes law without signature. **North Carolina** Democratic Gov. Roy Cooper has 10 days from presentment to act on legislation or it becomes law without signature.

The following states are currently holding 2022 interim committee hearings: [Alabama](#), [Alaska](#), [Arizona](#), [Arkansas](#), [Colorado](#), [Connecticut](#), [Delaware](#), [Florida House](#) and [Senate](#), [Georgia](#), [Hawaii](#), [Idaho](#), [Illinois House](#) and [Senate](#), [Indiana](#), [Iowa](#), [Kansas](#), [Kentucky](#),

[Louisiana](#), [Maine](#), [Maryland](#), [Massachusetts](#), [Minnesota](#), [Mississippi House](#) and [Senate](#), [Missouri House](#) and [Senate](#), [Montana](#), [Nebraska](#), [Nevada](#), [New Hampshire House](#) and [Senate](#), [New Mexico](#), [North Dakota](#), [Ohio](#), [Oklahoma House](#) and [Senate](#), [Oregon](#), [Rhode Island](#), [South Carolina House](#) and [Senate](#), [South Dakota](#), [Tennessee](#), [Texas House](#) and [Senate](#), [Utah](#), [Vermont](#), [Virginia](#), [Washington](#), [West Virginia](#), [Wisconsin](#) and [Wyoming](#).

The following states are currently posting 2023 bill drafts, pre-files and interim studies: [Florida](#), [Kentucky](#), [Massachusetts](#), [Montana](#), [Nevada](#), [New Hampshire](#), [North Dakota](#), [Utah](#), [Virginia](#), [West Virginia](#) and [Wyoming](#). ■

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