

GOVERNMENTAL AFFAIRS REPORT

Highlights At-A-Glance

FEDERAL – Legislative

H.R. 8437 - Budgeting for Renewable Electrical Energy Zone Earnings Act. On September 21, official bill text was made available for [H.R. 8437](#), known as the Budgeting for Renewable Electrical Energy Zone Earnings Act, or BREEZE Act. Sponsored by Rep. Steve Scalise (R-LA), the bill would increase Gulf states' share of federal oil and gas wind revenues to 50% — matching the interior states' share — and removes the annual cap. The bill also establishes a revenue-sharing structure for offshore wind leases in federal waters. According to Rep. Scalise, "Louisiana receives funding each year from offshore energy production that directly contributes to vital coastal restoration and hurricane protection projects, which provide greater security for our coastal communities. For years, however, we've lagged behind interior states that receive far greater funding from energy leases on public lands. Under current law, Gulf states only receive 37.5% of offshore oil and gas revenues collected by the federal government, and revenues allocated to coastal states are capped. Meanwhile, interior states get 50% of revenues from their energy leases, without being subject to an annual cap like ours in Louisiana. It's only fair that Louisiana families and communities receive the same percentage of energy revenues generated off our coast." [Read more.](#)

Hearing on Climate and Reducing Pollution under the Inflation Reduction Act. On September 29, the House Select Committee on the Climate Crisis held a hearing titled, *A Big Climate Deal: Lowering Costs, Creating Jobs, and Reducing Pollution with the Inflation Reduction Act*. The hearing examined "how the climate investments in the Inflation Reduction Act will help lower electric and fuel bills for American families, create jobs, and expand investments in U.S. manufacturing of clean

energy, clean vehicles, and climate solutions." You may [access all witness testimony and a recording of the hearing here.](#)

Hearing on H.R. 8802 - Public Lands and Waters Climate Leadership Act of 2022. (*Update to 9/19/22 Report*) On September 20, the House Natural Resources Committee held a hearing in consideration of [H.R. 8802](#), known as the Public Lands and Waters Climate Leadership Act of 2022. For background, on September 13, Rep. Raul Grijalva (D-NM) introduced this legislation that would prohibit new federal fossil fuel leasing and permitting until the U.S. Department of the Interior (DOI) and the U.S. Forest Service (USFS) "demonstrate that lifecycle emissions from additional oil, gas, and coal development are consistent with the Biden administration's 2030, 2035, and 2050 climate change targets. The bill also requires DOI and USFS to develop, publish, implement, and regularly update a comprehensive strategy to guide the agencies' efforts to reduce GHG emissions and to keep the public informed of the progress." [Read more.](#) You may [access all witness testimony and a recording of the hearing here.](#)

FEDERAL – Regulatory

BLM Minerals Management Cost Recovery Fees. (*Update to 10/25/21 Report*) On September 21, the Bureau of Land Management (BLM) announced their final rule, *Minerals Management: Adjustment of Cost Recovery Fees* ([87 Fed. Reg. 57637](#)). According to the BLM, "This final rule updates the fees set forth in the Department of the Interior's onshore mineral resources regulations for the processing of certain minerals program-related actions. It also adjusts certain filing fees for minerals-related documents. These updated fees include those for actions such as lease renewals, mineral patent adjudications, and

Applications for Permits to Drill (APDs).” The final rule provides a table of all oil and gas related fees and changes to those fees. The rule is effective as of October 1, 2022. [Read more.](#)

BLM Land Use Information Collection. On September 22, the BLM published a notice of information collection, *Agency Information Collection Activities; Land Use Application and Permit* ([87 Fed. Reg. 57920](#)). The BLM is seeking information pertaining to its use in determining “whether private citizens, State and local governments, and businesses are qualified to use, occupy, or develop the public lands under certain conditions. The land uses that may be authorized are agricultural development, residential, recreation concessions, business, industrial, and commercial.” The comment period is open through November 21, 2022. [Read more.](#)

Chaco Canyon Oil and Gas Leasing – New Mexico. On September 15, tribal groups and environmentalists [delivered a letter to U.S. Interior Secretary Deb Haaland](#) in which they condemned the Bureau of Land Management (BLM) “decision to uphold oil and gas leases from the era of former President Donald Trump on 45,000 acres in the Chaco Canyon area.” The leases were initially paused in April for environmental reconsideration by the BLM but then were allowed to move forward on July 31. The letter writers state that, “Ending the continued sacrifice of the Greater Chaco Landscape to the oil and gas industry and ameliorating legacies of broken promises is what honoring Chaco means. The Department of the Interior must exercise some semblance of balance and restraint.” The Interior Department has not yet publicly responded to the letter. [Read more.](#)

BOEM Cook Inlet Oil and Gas Lease Sale – Alaska. In keeping with requirements mandated in the recently enacted Inflation Reduction Act, the Interior Department announced that the Bureau of Ocean Energy Management (BOEM) will hold [Lease Sale 258](#) in Cook Inlet, Alaska by December 31, 2022. According to the notice, “BOEM will propose to offer up to 224 blocks toward the northern part of the Cook Inlet Planning Area, from roughly Kalgin Island in the north to Augustine

Island in the south, in water depths ranging from 33 to 260 feet. BOEM released the Draft Environmental Impact Statement for Lease Sale 258 in October 2021, and a final EIS and Record of Decision will be published later this fall. A Final Notice of Sale will be published at least 30 days prior to the date of the sale.” [Read more.](#)

ONRR Royalty Audits. On September 30, the Interior Department’s Office of Natural Resources Revenue (ONRR) published a proposed rule, *Electronic Provision of Records During an Audit* ([87 Fed. Reg. 59350](#)), “to amend its regulations to allow ONRR and other authorized Department of the Interior (‘Department’) representatives the option to require that an auditee use electronic means to provide records requested during an audit of an auditee’s royalty reporting and payment.” The public comment period is open through November 29, 2022. [Read more.](#)

FEDERAL – Judicial

Leasing; Easements; Gas Gathering Agreements – New York. On September 12, the U.S. District Court for the Western District of New York addressed disputes involving leases, easements, and gas-gathering agreements. In *K. Petroleum, Inc. v. Lenape Gathering Corp.* (Case No. 22-CV-334-LJV), an oil and gas producer sought to construct and operate a pipeline under its lease rights. The opposing party operated their own pipeline on the lands and disputed those rights. Here, the court held that the oil and gas producer’s leases granted surface rights that predated the gathering company’s easements and therefore was within their right to construct and operate their own pipeline on the same surface lands. The court noted that “the Ellery leases do not simply give the lessee the right to drill for oil and gas on the Ellery lots; they also grant the lessee an easement to construct and maintain pipelines on those lots.” The court also held that “the plaintiffs’ right to construct a pipeline under the Ellery leases is superior to the defendants’ later-recorded easements.” The court also dismissed the argument that the gathering agreements stood in the plaintiffs’ way. [Read more.](#)

Hydraulic Fracturing Ban; Delaware River Basin – Pennsylvania. (*Update to 7/26/21 Report*) On September 16, the U.S. Court of Appeals for the Third Circuit ruled against Republican Pennsylvania lawmakers, losing their bid to overturn a hydraulic fracturing ban within the Delaware River Basin in [Yaw v. Delaware River Basin Commission](#) (Case No. 21-2315). The court held that “In our view, the state senators and under well-established Supreme Court caselaw, ‘individual members lack standing to assert the institutional interests of a legislature.’” [Read more.](#) For background, on June 11, 2021, the [U.S. District Court for the Eastern District of Pennsylvania](#) [dismissed the lawsuit](#) by state lawmakers seeking to overturn the ban, ruling that the plaintiffs lacked standing to sue. In dismissing the suit, the Court stated that the dispute “is primarily partisan and is best resolved through the political process.” Originally filed on January 12, 2021, two Republican Pennsylvania state senators, along with the Pennsylvania Senate Republican Caucus and relevant counties and townships, sued the Delaware River Basin Commission (DRBC) in [Yaw v. Delaware River Basin Commission](#) (Case No. 2:21-cv-00119), “claiming [the DRBC] 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 argued 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.” [Read more.](#)

STATE – Legislative

Setbacks; Health Protection Zones – California. (*Update to 9/19/22 Report*) On September 19, a law firm representing parties seeking to overturn a “new California law establishing distance minimums between new oil wells and certain areas” [submitted](#)

[a proposed statewide referendum to the California Attorney General](#) as a first step in putting the issue on the election ballot. Proponents of [Initiative 22-0006](#) will then have 90 days from the statute’s enactment (on September 16) to collect and submit over 623,000 signatures to potentially qualify the measure for the 2024 election ballot. According to news reports, “It is not immediately clear what organization is behind the referendum, though Gov. Gavin Newsom asserted that it’s ‘big oil’ during a speech at Climate Week NYC.” The referendum was reportedly signed by Jerome Reedy, a board member of the California Independent Petroleum Association and Treasurer of the California Natural Gas Producers Association. The referendum proponents could begin collecting signatures by the end of this month. The proposal was filed just days after Gov. Gavin Newsom signed [SB 1137](#) into law. “The measure bans new oil wells within 3,200 feet of schools, homes and hospitals and requires pollution controls for existing oil wells within 3,200 feet of these zones.” We will continue to keep AAPL members informed once the referendum signature process begins. [Read more.](#)

State Offshore Lease Buyouts – California. (*Update to 4/11/22 Report*) On September 28, Gov. Gavin Newsom (D) signed AB 2257 into law. Sponsored by Asm. Tasha Horvath (D), the bill “Requires the States Lands Commission (SLC) to develop a cost study that measures the fiscal impact of a voluntary buy-out of any lease interests remaining, in actively producing state offshore oil and gas leases in state waters.” [Read more.](#)

Trusts and Estates Administration – California. On September 27, Gov. Gavin Newsom (D) signed SB 1024 into law. The bill, sponsored by Sen. Brian Jones (R), provides that “commencing January 1, 2024, [the bill] authorizes, a conservator, agent under a power of attorney, representative of the estate, trustee of a trust, or interested person to petition for the appointment of a professional fiduciary practice administrator to act as a temporary professional fiduciary when a professional fiduciary either becomes incapacitated or dies, and a vacancy exists.” [Read more.](#)

Emergency Well Orders – Michigan. (*Update to 6/27/22 Report*) On September 21, HB 6187 passed the House and has been transmitted to the Senate. Sponsored by Rep. Daire Rendon (R), the bill would repeal [Section 62507](#) of the Natural Resources and Environmental Protection Act which provides that the “supervisor of mineral wells, acting directly or through his or her deputy or authorized representative, may issue emergency orders without a public hearing to implement this part.” [Read more.](#)

Marketable Record Title Act – Michigan. On September 28, HB 6370 passed the House following its introduction at the beginning of September and has been transmitted to the Senate. Sponsored by Rep. Roger Hauck (R), the bill would amend the state “marketable record title act to provide that the act must not be applied to bar or extinguish certain kinds of easements or land and resource use restrictions.” [Read more.](#)

STATE – Regulatory

Los Angeles Oil and Gas Drilling Ordinance – California. (*Update to 9/19/22*) On September 22, Los Angeles City Planning (LACP) voted unanimously in favor of a recommendation to the LA City Council to adopt a proposed ordinance that will prohibit all new oil and gas drilling in the City of Los Angeles. [Read more.](#) According to the California Independent Petroleum Association, the next steps “in this process will be for the City to review comments on the [California Environmental Quality Act] documents and if there is nothing substantial the ordinance will be reviewed by an additional City committee or two, then to the City Attorney’s office, then to the City Council for a vote. The ordinance, if enacted, will more than likely become effective in January 2023.” [Read more.](#) For background, on September 15, the LACP announced it “has taken significant steps this week to advance the Oil Ordinance, releasing an [updated version](#) of the draft proposed Oil Ordinance [CF17-0447], a [Mitigated Negative Declaration](#) (please see Environmental Case Number ENV-2022-4865-MND) which analyzes potential impacts on the environment, and a [staff recommendation report](#) to the City Planning

Commission. The [recommended ordinance](#), dated September 2022, includes revisions made since the release of the August 2022 draft ordinance. These revisions clarify or correct language originally presented in the prior draft and reflect comments received from the public. The revised ordinance retains conditions listed in Los Angeles Municipal Code Sections 13.01 E and F, which apply to existing oil operations. It also incorporates language to allow actions that prevent or respond to threats to public health, safety, or the environment.” [Read more.](#) For background, “Pursuant to a Mayoral and City Council directive, Los Angeles City Planning drafted a proposed citywide ordinance that would prohibit new oil and gas extraction and make existing extraction activities a nonconforming use in all zones. Upon Council adoption and Mayoral signature, the ordinance would immediately ban new oil and gas drilling and put an end to existing operations after a 20-year amortization period.” [Read more.](#) The Mitigated Negative Declaration for the Oil Ordinance is available for public review and comment and can be accessed on the NMED [website](#) (please see Environmental Case Number ENV-2022-4865-MND). The 30-day comment period will end on October 17, 2022. You may submit written comments (and include “Environmental Case No. ENV-2022-4865-MND”) via email or mail by 5 p.m. on October 17, 2022 to the following addresses: Jennifer Torres, City of Los Angeles Department of City Planning, 200 North Spring Street, Room 701, Los Angeles, CA 90012 or at planning.oildrilling@lacity.org. According to the LACP, “Beyond the Mitigated Negative Declaration comment period, general public comments are also welcome continually until the Oil Ordinance is adopted by [the] City Council.” [Read more.](#)

RRC Emergency Weather Preparedness

Rulemaking – Texas. (*Update to 9/6/22 Report*) As an update to our prior reporting, on September 19, the Texas Railroad Commission (RRC) announced the official adoption “of [16 Texas Administrative Code \(TAC\) §3.66](#), relating to Weather Emergency Preparedness Standards. The new rule implements changes made by Senate Bill 3, the 87th Legislature’s sweeping response to the February 2021 Winter

Weather Event ('Winter Storm Uri') in Texas, and generally creates a new law related to preparing for, preventing, and responding to weather emergencies and power outages." The rule applies to operators of gas supply chain facilities and operators of gas pipeline facilities as described. [See the complete rulemaking here](#). The rule is effective as of September 19, 2022. [Read more](#).

STATE – Judicial

Pore Space; Takings – North Dakota. On August 4, the North Dakota Supreme Court invalidated a state statute as an unconstitutional taking in [Northwestern Landowners Association v. State of North Dakota](#) (Case No. 2022 ND 150). The case focuses on North Dakota SB 2344, enacted in 2019, that authorized oil and gas operators to utilize pore space without owner compensation or consent "relating to pore space, which is defined as 'a cavity or void, whether natural or artificially created, in a subsurface sedimentary stratum.'" Specifically, SB 2344 "(1) allowed unrestricted use of pore space by oil and gas operators, (2) excluded pore space from the definition of 'land' in the North Dakota Oil and Gas Production Damage Compensation Act, such that landowners were not automatically entitled to compensation for a producer's use of subsurface pore space, and (3) barred tort claims altogether for injection or migration of substances into pore spaces." In its analysis, the Supreme Court "first reviewed the historical scope of landowner rights to pore space and determined that North Dakota law long established that surface owners had a property interest in pore space. Historically, North Dakota surface owners were entitled to compensation for a mineral developer's use of pore space for disposal of saltwater. Also, prior to the enactment of SB 2344, surface owners could sue a mineral developer for trespass for use of the surface estate that was not 'reasonably necessary' to develop the mineral estate." The Court held that the legislation "constituted a per se physical-invasion taking because it permitted operators to 'physically invade a landowner's property by injecting substances into the landowner's pore space.'" The Court also held that the legislation "effectively removed landowners' rights to

exclude operators from trespassing and disposing waste into their pore space and that '[s]urface owners have a right to compensation for the use of their pore space for disposal and storage operations.' Relatedly, the court rejected an argument that the 'dominant mineral estate' saved the legislation from a takings violation, because it barred landowners from bringing tort actions for 'disposal operations beyond the scope of the implied easement [that] would otherwise be considered a trespass.' As such, the Court upheld the fundamental finding that SB 2344 was facially unconstitutional and struck down the offending portions of the legislation." As noted by law firm Haynes Boone, "While the decision does not prohibit use of pore space by oil and gas operators, the decision emphasizes the need for surface-owner consideration prior to use of pore space."

[Read more](#).

Leasing; Post-Production Costs – Texas. On September 28, the Texas Fourth Court of Appeals (San Antonio) ruled in favor of an oil and gas producer regarding fuel gas royalties and post-production costs pursuant to the gas royalty and free-use provisions in the subject oil and gas leases. In *EnerVest Operating, LLC v. Mayfield* (Case No. 04-21-00337-CV), the lessors contended that they were due royalties on fuel gas and that "EnerVest had been misconstruing the gas royalty provision in their leases, improperly deducting fuel gas as a post-production cost from their total royalties, and consequently, miscalculating their royalties." EnerVest contended "it does not owe Mayfield and Ingham royalty on fuel gas under the plain terms of the leases. According to EnerVest, because the gas royalty provision in the leases contains the phrase 'market value at the mouth of the well,' Mayfield and Ingham must bear their share of post-production costs, and fuel gas is a post-production cost. Therefore, for Mayfield and Ingham to bear their share of post-production costs, it does not owe them royalty on fuel gas." The Court agreed with EnerVest's interpretation, holding no royalties would be owed under the lease terms. The Court also determined that "the free-use clause in this case does not alter the gas royalty provision's requirement for Mayfield and Ingham to bear their share of post-

production costs.” In so doing, the appeals court reversed the trial court’s judgment. [Read more.](#)

INDUSTRY NEWS FLASH

► **New Mexico reports more than \$2 billion in oil and gas royalties.** Greg Bloom, Assistant Commissioner for Mineral Resources in the New Mexico State Land Office, announced that the state has “earned more than \$2 billion over the past 12 months in just oil and gas royalties.” According to Bloom, “We’re now doing in three weeks what we used to bring in in one year. It’s due to increased production, but also due to a favorable price environment (in part triggered by) the unfortunate war in Ukraine.” [Read more.](#)

► **First public global database of fossil fuels launches.** On September 19, Carbon Tracker and Global Energy Monitor in coordination with the United Nations launched the first-ever global registry of oil and gas reserves, production, and emissions with data for more than 50,000 fields. The Global Registry of Fossil Fuels ([access here](#)) “covers 75% of global reserves, production and emissions, and is available for public use, a first for a collection of this size.” [Read more.](#)

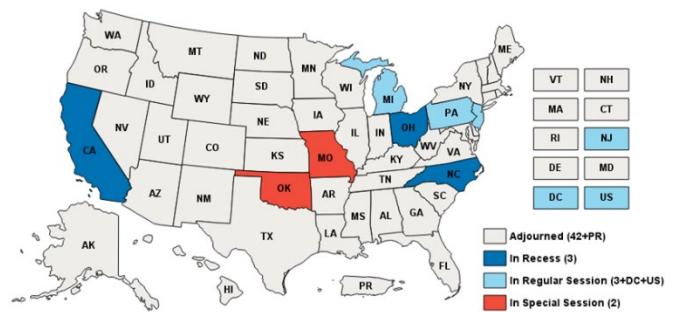
► **JPMorgan Chase CEO pushes back on calls to end fossil fuel financing.** During a September 21 U.S. House of Representatives Financial Services Committee hearing titled, *Holding Megabanks Accountable: Oversight of America’s Largest Consumer Facing Banks*, Rep. Rashida Tlaib (D-MI) called on banks to commit to divesting in oil and gas but JPMorgan Chase & Co President and CEO Jamie Dimon pushed back, saying slamming the brakes on new oil and gas production “would be the road to hell for America” after. [Read more.](#)

► **Oil and gas group releases 2022 Annual Report.** As reported on September 27 by the Independent Petroleum Association of America, the Environmental Partnership – a group of 100 oil and gas companies – has released their [2022 Annual Report](#) which

spotlights “practices to reduce methane emissions that are available to companies” and highlights industry successes. [Read more.](#)

LEGISLATIVE SESSION OVERVIEW

States in Session



Session Notes: Michigan 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.

The Missouri General Assembly approved [SB 3](#), individual tax cut legislation, on September 29 during their ongoing special session called by Republican Gov. Mike Parson on September 14. Governor Parson also issued a [special message](#) to the legislature that modifies the call to include small changes within the original subjects of agriculture and income tax cuts. The legislature still needs to approve tax incentives for agriculture business and the special session is expected to continue through October 4.

Oklahoma Republican Gov. Kevin Stitt reconvened the legislature on September 28 for a three-day special session aimed at allocating American Rescue Plan Funds as well as \$250 million from a new fund intended

to bolster rural economic development, reports [The Oklahoman](#).

Signing Deadlines (by date): **California** Democratic Gov. Gavin Newsom had until September 30 to sign or veto legislation or it becomes law without signature. **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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