

# GOVERNMENTAL AFFAIRS REPORT

## Highlights At-A-Glance



**Please Note:** Governmental Affairs reports are not published during the holidays and will resume with the January 9, 2023 issue.



Wishing you a safe, merry, and joyous holiday season and a very happy new year!

### FEDERAL – Legislative

**Senate Committee on Energy & Natural Resources Pending Legislation Hearing.** On December 1, the Senate Committee on Energy & Natural Resources held a comprehensive hearing to receive testimony on a multitude of energy-related bills that AAPL has been tracking for members. Witnesses included representatives from the Department of Energy and Bureau of Land Management. A full archive of the hearing, access to all bills under consideration, and witness testimony can be found on the committee website. No vote action was yet taken on the bills following the hearing. [Read more.](#)

### FEDERAL – Regulatory

**BLM Waste Prevention Rulemaking.** On November 30, the Bureau of Land Management (BLM) published a proposed rule, *Waste Prevention, Production Subject to Royalties, and Resource Conservation* ([87 Fed. Reg. 73588](#)), “to reduce the waste of natural gas from venting, flaring, and leaks during oil and gas production activities on Federal and Indian leases. The proposed regulations would be codified in the Code of Federal Regulations and would replace the BLM’s current requirements governing venting and flaring, which are more than four decades old.” [Read more.](#) According to the BLM, this “gas is lost during oil and gas exploration and production activities through venting, flaring, and leaks. Although some losses of gas may be unavoidable, the law requires that operators take reasonable steps to prevent the waste

of gas through venting, flaring and leakage. The proposed rule describes the reasonable steps that operators of Federal and Indian oil and gas leases must take to avoid the waste of natural gas. The proposed rule would also ensure that, when Federal or Indian gas is wasted, the public and Indian mineral owners are compensated through royalty payments.” [Read the BLM Press Release here.](#) *Natural Gas Intelligence* says of the proposed BLM rule, it would “require operators to strengthen methane mitigation efforts and would impose monthly limits on royalty-free flaring of natural gas.” The public comment period is open through January 30, 2023. [Read more.](#)

**BLM Instruction Memoranda Affecting Federal Onshore Oil and Gas Leasing Policies.** In late November, the BLM issued a series of Instruction Memoranda related to federal oil and gas leasing on public lands as directed by the Biden administration. [Access all the IM here.](#) According to the BLM notice, the agency “has issued updated guidance to its field professionals, through a series of Instruction Memoranda, that will enable consistent implementation of the Inflation Reduction Act’s changes to the agency’s oil and gas programs.” According to reporting, “The guidelines reflect Biden’s and the larger Democratic caucus’s intent to reform the oil and gas leasing program and limit its expansion, which many in the party consider contrary to prudent climate and environmental policy.” [Read more.](#)

**BLM Renewable Energy Development Resource Management Plans.** On December 8, the BLM published a *Notice of Intent To Prepare a Programmatic Environmental Impact Statement To Evaluate Utility-Scale Solar Energy Planning and Amend Resource Management Plans for Renewable Energy Development* ([87 Fed. Reg. 75284](#)). According to the notice, the BLM “intends to prepare resource

management plan (RMP) amendments with an associated programmatic environmental impact statement (EIS) for the BLM's utility-scale solar energy planning and by this notice is announcing the beginning of the scoping period to solicit public comments and identify issues and is providing the planning criteria for public review." The BLM also "requests that the public submit comments concerning the scope of the analysis, potential alternatives, and identification of relevant information, and studies by February 6, 2023. To afford the BLM the opportunity to consider comments in the Draft programmatic EIS/RMP amendments, please ensure your comments are received prior to the close of the 60-day scoping period or 15 days after the last public meeting, whichever is later." [Read more.](#)

**BLM Solar and Wind Leasing.** On December 5, the BLM published an information collection, *Agency Information Collection Activities; Competitive Processes, Terms, and Conditions for Leasing Public Lands for Solar and Wind Energy Development* ([87 Fed. Reg. 74442](#)), which "enables the BLM to collect the necessary information to authorize the use of public lands for solar and wind energy, pipelines, and electric transmission lines" with certain capacities. The public comment period is open through February 3, 2023. [Read more.](#)

**BOEM Cook Inlet, Alaska Lease Sale.** (*Update to 10/31/22 Report*) On November 29, the Interior Department Bureau of Ocean Energy Management (BOEM) published a final notice of sale, *Cook Inlet Planning Area Outer Continental Shelf Oil and Gas Lease Sale 258* ([87 Fed. Reg. 73323](#)), that will be held on December 30. The lease sale of 958,202 acres off Alaska's south-central coast was mandated under the recently enacted Inflation Reduction Act – a concession to Sen. Joe Manchin (D-WV) to gain his necessary support for the bill. [Read more.](#) For background, in October, the BOEM released a *Final Environmental Impact Statement* (EIS) for the Cook Inlet Planning Area Oil and Gas Lease Sale 258 In Cook Inlet, Alaska (Alaska Outer Continental Shelf). According to the BOEM, "This Final EIS contains analyses of the potential environmental impacts that could result from

a Cook Inlet lease sale." [Read more.](#)

#### **EPA Methane Emissions Proposed Rulemaking.**

On December 6, the U.S. Environmental Protection Agency (EPA) announced that registration has opened for their "virtual public hearing on the Agency's [supplemental proposal](#) to strengthen its proposed standards to cut methane and other harmful air pollution from oil and natural gas operations. The updates would provide more comprehensive requirements to reduce climate and health-harming air pollution, including from hundreds of thousands of existing oil and gas sources nationwide. It would promote the use of innovative methane detection technologies and other cutting-edge solutions, many of which are being developed and deployed by small businesses providing good-paying jobs across the United States." The virtual hearing will be held on January 10 and 11, 2023. To attend the hearings [read more here](#). Although the proposed regulations have yet to be formally published, the EPA announced they will accept public comments on the proposal until February 13, 2023. [Read more.](#)

#### **Lesser Prairie-Chicken Interior Department**

**Rulemaking.** (*Update to 8/9/21 Report*) To update our prior reporting and resource availability for public comment, on November 25, the Interior Department's U.S. Fish and Wildlife Service (FWS) issued a final rule "listing two Distinct Population Segments (DPS) of the lesser prairie-chicken under the Endangered Species Act (ESA)." According to the FWS 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* ([87 Fed. Reg. 72674](#)), "We determine threatened status for the Northern DPS and endangered status for the Southern DPS. This rule adds the DPSs to the List of Endangered and Threatened Wildlife. We also finalize a rule under the authority of section 4(d) of the Act that provides measures that are necessary and advisable to provide for the conservation of the Northern DPS." As reported by the *Carlsbad Current Argus*, "The lesser prairie chicken was to be listed under the highest class of protections 'endangered' in a southern population

segment covering southeast New Mexico and West Texas, the announcement read, and ‘threatened’ in the northern segment covering parts of northern Texas, Colorado, Oklahoma and Kansas. Industrial development like oil and gas extraction in the Permian Basin region, an area known as the U.S.’ busiest oilfield, along with agricultural land uses were known as primary threats to the bird and led to the listing.” *Natural Gas Intelligence* quoted an FWS official who said, the Southern DPS, which includes eastern New Mexico and the southwestern Texas Panhandle, “is in danger of extinction.” And the Northern DPS, which encompasses southeastern Colorado, south-central to western Kansas, western Oklahoma and the northeastern Texas Panhandle “is likely to become endangered in the foreseeable future.” Further, “A rule also is being finalized by USFWS to conserve the Northern DPS habitat for lesser prairie-chicken ‘while allowing greater flexibility for landowners and land managers.” [Read more](#). The FWS also said it “continues to work with stakeholders to develop voluntary conservation agreements that will protect the lesser prairie-chicken and the native grasslands on which it depends while assuring that oil and gas and renewable energy development, ranching, agriculture and other activities continue.” The rule is effective January 24, 2023. [Read more](#).

## **FEDERAL – Judicial**

**Federal Leasing.** On December 1, the state of Wyoming filed suit against the Biden administration for the “cancellation of the Second Quarter 2021, Third Quarter 2021, and Third Quarter 2022 federal lease sales in Wyoming and the Secretary’s adoption of an unwritten policy that stopped quarterly oil and gas leasing.” In *Wyoming v. U.S. Dept. of Interior* (Case No. 1:22-cv-00247-SWS), the Wyoming Attorney General’s Office argues that the Interior Department, Bureau of Land Management and U.S. Forest Service collectively “unlawfully canceled quarterly federal oil and gas lease sales in Wyoming. After three decades of identifying federal land for leasing and holding regularly scheduled quarterly lease sales, the Secretary exercised some ‘newfound’ discretion that brought the federal oil and gas leasing program in

Wyoming to a sudden halt. The Secretary, however, did not adequately explain her actions and disregarded her statutory obligations. The Secretary also deviated from longstanding policy and provided no written justification for the pause on federal oil and gas leasing. Instead of engaging in reasoned decision-making, the Secretary simply acted without explaining the basis for her purported discretion. The Secretary’s cancellation of quarterly federal oil and gas lease sales in Wyoming was arbitrary, capricious, an abuse of discretion, and not in accordance with law.” The Biden administration has not yet responded to the complaint. [Read more](#).

**Puerto Rico Climate Change Class Action.** On November 22, a number of Puerto Rican municipalities filed a federal class-action lawsuit against major oil companies, “alleging companies like ExxonMobil, Shell and Chevron colluded to suppress evidence of climate change that has devastated the island, including 2017’s Hurricane Maria.” In *Municipality of Bayamón v. ExxonMobil Corp.* (Case No. 3:22-cv-01550), “the municipalities accused the defendants, who include ExxonMobil, Royal Dutch Shell, Chevron, BP, ConocoPhillips and Arch Coal, of conspiring to conceal fossil fuels’ role in climate change. The lawsuit alleges the companies spent billions of dollars on a ‘fraudulent marketing scheme to convince consumers that their fossil fuel-based products did not—and would not—alter the climate, knowing full well the consequences of their combined carbon pollution on Puerto Rico.” The oil and gas company defendants have not yet answered the complaint. [Read more](#).

## **STATE – Legislative**

**Price Gouging – California.** On December 6, Gov. Gavin Newsom (D) introduced a proposal that seeks to penalize oil companies for “excessive profits” and is dubbed a “price gouging penalty.” This comes as part of the special session Gov. Newsom called in hopes that lawmakers will pass his initiative. [Read the proposal here](#). As reported by *The Hill*, “if approved by state lawmakers, the proposal would make it illegal for companies to charge excessive prices, and excessive refiner margins would be punishable by a civil penalty

from the California Energy Commission. The definition of excessive — including the maximum margin and penalty amounts — would be determined through the legislative process, according to the proposal. Any penalties collected would go to a ‘Price Gouging Penalty Fund’ that would be redistributed to Californians.” [Read more.](#)

## **STATE – Regulatory**

**Los Angeles Oil and Gas Drilling Ordinance – California.** (*Update to 10/3/22*) On December 2, the Los Angeles City Council voted unanimously to ban oil and gas drilling within the city limits, “finalizing steps toward a ban that were first made at the beginning of the year. Council members approved 12-0 a resolution enacting an immediate ban on all new oil and gas drilling. The city will also decommission existing oil wells and operations within 20 years.” [Read more.](#) For background, on November 22, the Los Angeles City Council voted in favor of requesting that the city attorney prepare an ordinance amending the Los Angeles Municipal Code (LAMC) to prohibit new oil and gas extraction and phase out all oil drilling activities in the city. [Read the ordinance here.](#) The city attorney adopted the ordinance as written. The Los Angeles County Board of Supervisors also approved a similar ordinance earlier in October. [Read more.](#) As reported by the California Independent Producers Association, “the LA City Attorney will use the draft ordinance to craft a formal amendment to the LAMC. Once this is completed the LA City Council members will vote for the final implementation. The ordinance becomes effective 30 days after the vote.” For background, on September 15, Los Angeles City Planning 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.](#)

**Delaware River Basin Commission Rulemaking.** On December 7, the Delaware River Basin Commission (DRBC) voted in favor of regulations that “limit the gas industry’s ability to draw water from the river and its tributaries for hydraulic fracturing outside the region. The new rules also ban the disposal of drilling wastewater within a vast watershed that includes portions of Pennsylvania, New Jersey, New York and Delaware.” [Read the final rule here.](#) You can also access the complete [DRBC rulemaking docket and summary information here.](#) Steve Tambini, the DRBC’s Executive Director said, “Taken together, these strong safeguards will protect the basin’s water resources from the risks posed by high-volume hydraulic fracturing.” [Read more.](#)

**Oil and Natural Gas Sources of VOC Emissions Rulemaking – Pennsylvania.** To follow up our prior reporting on the Pennsylvania Department of Environmental Protection (DEP) emergency rulemaking process for regulation of conventional oil and natural gas sources of volatile organic compound (VOC) emissions, on November 29, the state Independent Regulatory Review Commission posted joint comment from the Pennsylvania Independent Oil & Gas Association, Pennsylvania Independent Petroleum Producers, and the Pennsylvania Grade Crude Oil Coalition on the regulation affecting conventional sources that was approved by the state Independent Regulatory Review Commission in July 2022 and on November 30 by the Pennsylvania Environmental Quality Board. Although the rulemaking has been finalized, the groups call upon the DEP to undertake “separate and independent” rulemaking. [See the comment here.](#) The rulemaking must still be approved by the U.S. Environmental Protection Agency (EPA) before it takes effect. [See the complete regulatory docket here.](#) The DEP regulatory process

was conducted under emergency rulemaking due to a complex set of factors including a legislative review requirement and a need for the state to submit air quality plans to the EPA to avoid federal funding cutoffs. [Read more](#). We will keep members informed as the EPA approval process continues. [Read more](#). For a deeper dive into the Pennsylvania VOC emissions rulemaking, [read more here](#). A presentation from the DEP is also [available here](#).

## STATE – Judicial

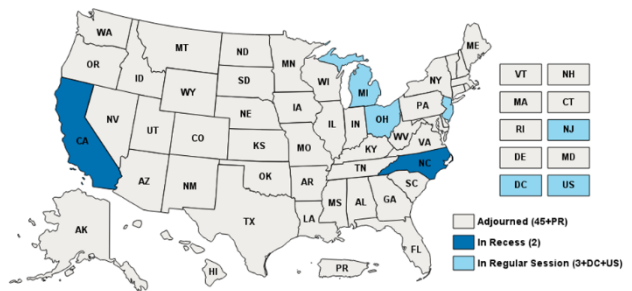
**Well Approvals – California.** On December 1, environmental group, the Center for Biological Diversity, filed suit against the state oil and gas regulator acting on behalf of the administration of Gov. Gavin Newsom (D) for “approving more than a dozen new oil and gas wells in Los Angeles and Kern counties, some near homes and schools, without conducting a required review intended to protect public health and the environment.” In [Center for Biological Diversity v. California Geologic Energy Management Division](#) (Case No. not yet docketed), the group claims that “the number of approved wells in the oilfields already exceeds the number originally covered in the decades-old environmental reviews, making the new well approvals invalid.” The complaint asks the court to set aside the approvals as well as declaring certain environmental regulation violations by the California Geologic Energy Management Division. [Read more](#).

## INDUSTRY NEWS FLASH

► **Maryland county becomes first on East Coast to ban natural gas hookups.** On November 29, the Montgomery County Council voted to “ban natural gas as a source of heat in new buildings.” The new regulations are slated to go into effect by the end of 2026 as part of local building codes. The unanimous approval will have wide-ranging effects as “About 1.1 million people live in Montgomery County, which adjoins the District of Columbia and is the state’s largest county.” [Read more](#).

## LEGISLATIVE SESSION OVERVIEW

### States in Session



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

**California** lawmakers went into recess until January 4. Democratic Gov. Gavin Newsom convened the December 5 special session on the same day set by the [Joint Rules of the California State Senate and Assembly](#) to convene the 2023 organizing session and for newly elected lawmakers to be sworn into office. Governor Newsom finally unveiled his controversial [proposed price gouging penalty](#) designed to deter excessive price increases in the state, but lawmakers did not take substantive action, deferring all proposals until they reconvene in January.

The following are scheduled to adjourn their 2022 legislative sessions on December 31: **Michigan** and **Ohio**.

### Signing Deadlines (by date): Pennsylvania

Democratic Gov. Tom Wolf has until December 30 to act on legislation or it will become 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: [Arizona](#), [Arkansas](#), [California](#), [Florida](#), [Georgia](#), [Indiana](#), [Kentucky](#), [Massachusetts](#), [Missouri House](#) and [Senate](#), [Montana](#), [Nevada](#), [New Hampshire](#), [North Dakota](#), [Oklahoma](#), [South Carolina House](#) and [Senate](#), [Tennessee](#), [Texas](#), [Utah](#), [Virginia](#), [Washington](#) and [Wyoming](#). ■

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