

# 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](mailto: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.](#)

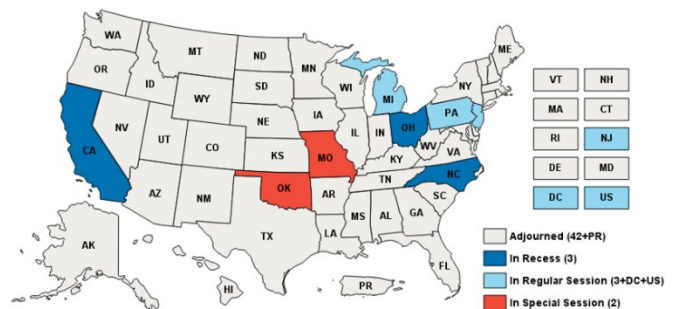
► **JPMorgan Chase CEO pushes back on calls to end fossil fuel financing.** During a September 21 U.S. House of Representatives Financial Services Committee hearing titled, *Holding Megabanks Accountable: Oversight of America’s Largest Consumer Facing Banks*, Rep. Rashida Tlaib (D-MI) called on banks 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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### 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

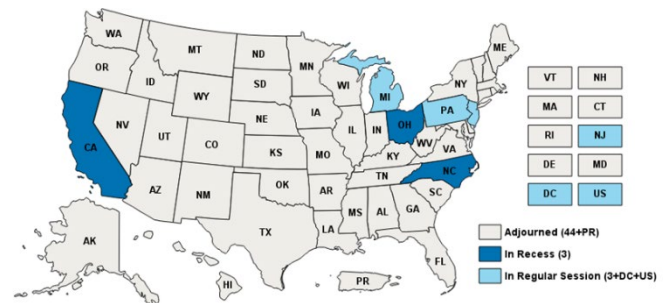
► **Drilled but uncompleted wells hit lowest level since 2013.** Drilled but uncompleted wells (DUCs) in all U.S. Energy Information Administration (EIA) Drilling Productivity Report regions “totaled an estimated 4,283 wells in August 2022, the least in any month since estimating started in October 2013.” 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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# GOVERNMENTAL AFFAIRS REPORT

## Highlights At-A-Glance

### FEDERAL – Legislative

**H.R. 9030 - Repealing the Ill-Conceived and Problematic (RIP) Book Minimum Tax Act.** On October 17, official bill text was made available for [H.R. 9030](#), known as the Repealing the Ill-Conceived and Problematic (RIP) Book Minimum Tax Act. Sponsored by Rep. Jodey Arrington (R-TX), the bill would repeal the minimum book tax included in the recently enacted Inflation Reduction Act which imposes a 15% minimum “book tax” on C corporations with annual profits in excess of \$1 billion in pre-tax income (based on a three-year income average). “The book minimum tax is disastrous policy at the worst possible time,” said Rep. Arrington. “With economic turbulence, historic inflation, and skyrocketing energy costs, Democrats have rolled out a tried-and-failed tax hike that will undermine domestic investment, job creation, and U.S. manufacturing.” Senate companion bill, [S. 5017](#), is sponsored by Sen. John Barrasso (R-WY). [Read more.](#)

**H.R. 9087 - Transparency and Production of American Energy Act.** On October 24, official bill text was made available for [H.R. 9087](#), known as the Transparency and Production of American Energy Act or the TAP American Energy Act. Sponsored by Rep. Bruce Westerman (R-AR), the bill would “restart onshore and offshore oil and gas leasing, streamline permitting for energy infrastructure, [and] ensure transparency in energy development on Federal lands.” According to Rep. Westerman, the bill specifically would: (1) Prevent any president from imposing bans on federal energy leasing and mineral withdrawals without congressional approval; (2) Require the Department of the Interior (DOI) to immediately resume quarterly lease sales on federal lands and require a minimum of four leases sales per year in each state with eligible lands; (3) Require a

minimum of two annual oil and gas lease sales in available federal waters in the Central and Western Gulf of Mexico Planning Area and in the Alaska Region of the Outer Continental Shelf; (4) Require the publication of the 2023-2028 plan for offshore oil and gas lease sales by Dec. 30, 2022, and that DOI meet certain deadlines for publishing future five-year plans; (5) Require Environmental Assessments and Environmental Impact Statements for all forms of energy development to be completed within one and two years, respectively; (6) Amend the Geothermal Steam Act to require a yearly lease sale for geothermal energy; (7) Streamline the environmental review process to allow pipeline, renewable energy and energy infrastructure projects to move forward efficiently and without compromising environmental protections; and (8) Eliminate requirements for duplicative review and analyses, reducing delays for important upgrades and improvements of our energy infrastructure. [Read more.](#)

**H.R. 9108 - Endangered Species Transparency and Reasonableness Act of 2022.** On October 21, official bill text was made available for H.R. 9108, known as the Endangered Species Transparency and Reasonableness Act of 2022. Sponsored by Rep. Tom McClintock (R-CA), the bill would “amend the Endangered Species Act of 1973 to require publication on the internet of the basis for determinations that species are endangered species or threatened species.” [Read more.](#)

**H. Res. 1445 – Strategic Petroleum Reserve.** On October 21, Rep. Randy Weber (R-TX) and 30 cosponsors introduced House Resolution 1445 ([H. Res. 1445](#)) “Recognizing that the irresponsible withdrawal of petroleum products from the Strategic Petroleum Reserve is a threat to the security of the United States.” According to Rep. Weber, “We are 639

days into Joe Biden's disastrous presidency, and it has been an all-out assault against American energy. One of the most alarming offensives is Biden's abuse of America's invaluable Strategic Petroleum Reserve (SPR). This resolution calls for President Biden to halt the sale of petroleum products from the SPR and to begin replenishing this critical emergency resource immediately. This is no longer about reducing gas prices for political gain; now he's recklessly gutting our energy defense." [Read more.](#)

## **FEDERAL – Regulatory**

**BLM Resource Development in the Thompson Divide – Colorado.** (*Update to 10/17/22 Report*) On October 17, the Bureau of Land Management (BLM) published a *Notice of Proposed Withdrawal and Public Meeting, Thompson Divide Area, Colorado* ([87 Fed. Reg. 62878](#)) which opens up the public comment period for the BLM's withdrawal of "approximately 224,793.73 acres, including approximately 200,518.28 acres of National Forest System lands, approximately 15,464.99 acres of BLM-managed public lands, and approximately 8,810.46 acres of reserved Federal mineral interest" from resource development in the Thompson Divide. As previously reported, on October 12, the Interior Department announced the Biden administration's proposal to protect the Thompson Divide 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. The Interior Department noted, "the Thompson Divide area 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." [Read more.](#) The public comment period is open through January 16, 2023, and the BLM will hold a public meeting on December 14, 2022, at the Carbondale & Rural Fire Protection District, 300 Meadowood Drive, Carbondale, CO 81623. [Read more.](#)

**BOEM Offshore Lease Sale – California.** On October 18, the Interior Department announced that the Bureau of Ocean Energy Management (BOEM) will hold an offshore wind energy lease sale on December 6, 2022, for areas on the Outer Continental Shelf (OCS) off central and northern California. [Read more.](#) According to the announcement, "This will be the first-ever offshore wind lease sale on America's west coast and the first-ever U.S. sale to support potential commercial-scale floating offshore wind energy development. This sale will be critical to achieving the Biden-Harris administration's deployment goals of 30 gigawatts (GW) of offshore wind energy by 2030 and 15 GW of floating offshore wind energy by 2035." [Read more.](#)

**BOEM 2023 Outer Continental Shelf Lease Sales in Alaska and the Gulf of Mexico.** (*Update to 10/17/22 Report*) On October 20, the Bureau of Ocean Energy Management (BOEM) published a notice for the *Gulf of Mexico Outer Continental Shelf Oil and Gas Lease Sale 259* to be held on March 29, 2023. [Read the notice here.](#) The BOEM also has 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. BOEM's announcement of Cook Inlet Lease Sale 258 will be made in a Final Notice of Sale and Record of Decision." AAPL will keep members notified once the notice of sale/record of decision is released by the BOEM. [Read more.](#) The lease sales, including additional Lease Sale 261 (Gulf of Mexico Outer Continental Shelf) to be held by September 30, 2023, were mandated in the recently enacted Inflation Reduction Act. [Read more.](#)

**EPA Greenhouse Gas Reduction Fund Request for Information.** On October 20, the U.S. Environmental Protection Agency (EPA) published a Request for Information from the public on funding included in the recently enacted Inflation Reduction Act. The EPA will also hold multiple "listening sessions" in November. [Read more.](#) Per the EPA, "The Greenhouse Gas Reduction Fund provides competitive funding for financial and technical assistance to enable zero-

emission technologies and projects that reduce or avoid greenhouse gas emissions and criteria air pollution, including in low-income and disadvantaged communities. Congress has appropriated \$27 billion in FY 2022 to implement this new program. These funds are available to EPA to award grants until September 30, 2024.” With the notice, the EPA “invites the public to comment on the Greenhouse Gas Reduction Fund program design and implementation. Responses may be used by the EPA to assist in developing program design and guidance.” The public comment period is open through December 5, 2022. [Read more.](#)

### **Non-Federal Oil and Gas Operations on National Wildlife Refuge System Lands Information**

**Collection.** On October 19, the Interior Department’s U.S. Fish and Wildlife Service (FWS) published a notice of information collection, *Agency Information Collection Activities; Submission to the Office of Management and Budget for Review and Approval; Non-Federal Oil and Gas Operations on National Wildlife Refuge System Lands (87 Fed. Reg. 63519)*, in which the FWS is seeking to revise an existing collection of information to “assess the impact of our information collection requirements and minimize the public’s reporting burden. It also helps the public understand our information collection requirements and provide the requested data in the desired format.” The public comment period is open through November 18, 2022. [Read more.](#)

### **SEC Delays Climate Disclosure Rulemaking.**

*(Update to 10/17/22 Report)* In a positive development for those opposing the Securities and Exchange Commission (SEC) proposed rulemaking that would mandate corporate reporting of climate risks and greenhouse gas (GHG) emissions, the SEC has delayed their final rulemaking – originally set for October 2022 – with no clear timeline for completion. As reported by *Bloomberg Law*, the SEC “continues to sift through thousands of public comments and factors in a June Supreme Court ruling that endangers the agency’s normally broad authority to regulate Wall Street.” Evan Williams, Senior Director at the U.S. Chamber of Commerce’s Center for Capital Markets Competitiveness, said he “doesn’t expect final rules to

be released until the first quarter of 2023.” [Read more.](#) Under the proposed rule, “for the first time, the agency plans to require companies to report climate change risks to their operations when they file registration statements, annual reports, and other filings. The 490-page [proposal](#) called for companies to adopt some climate disclosure requirements as early as 2023 and provide detail on the financial toll that a changing climate costs their business. Those adoption milestones are also likely to be delayed, giving companies more time to prepare for any rules.” AAPL has been reporting on this rulemaking during the year, and you may access a detailed [AAPL Governmental Affairs Fact Sheet here.](#)

### **Sen. Manchin Letter to President Biden Regarding Domestic Energy Production.**

On October 11, Sen. Joe Manchin (D-WV) delivered a letter to President Joe Biden, calling on his administration to take “all actions within your authority” to boost U.S. output of various energy sources. The letter comes in the wake of OPEC+ announcing they will be cutting oil production by 2 million-barrels-per-day starting in November. Specifically, Manchin’s letter calls for the administration to take the following actions: Identify any projects pending federal review that can bring new energy production online within the next year and expedite reviews for those projects; Direct federal agencies to prioritize the review of energy projects; Ensure permitting agencies are staffed appropriately; Finalize and implement the next offshore oil and gas leasing Five-Year Program as soon as possible; Address the permitting backlog at the National Marine Fisheries Service (NMFS) that is delaying seismic surveys and production on current Federal leases; Ensure that NEPA implementing regulations require efficient, legally compliant reviews; Ensure Clean Water Act implementing regulations are focused on compliance with water quality standards; Promptly process State applications to EPA for Class VI well primacy; and Encourage States to encourage responsible energy production. [Read the letter here.](#) Relatedly, the California Independent Petroleum Association (CIPA) has also called upon the Biden administration to support oil and gas production in the state in an October 14th letter. [Read the CIPA letter here.](#)

**Republicans Urge President Biden to Unleash Domestic Energy Production.** On October 25, a number of Republican congressmen sent a letter to President Biden urging his administration to unleash domestic energy production. The letter was sent in response to the administration's continued drawdown of the Strategic Petroleum Reserve. [Read more.](#)

**Republican House Oversight & Reform Committee Members Seek Information from the Energy Department.** On October 26, Republican members of the House Oversight & Reform Committee sent a letter to U.S. Secretary of Energy Jennifer Granholm requesting certain information and documents related to releases from the Strategic Petroleum Reserve. The letter requests a response by November 9, 2022. [Read more.](#)

**Michigan Congressional Delegation Urges Energy Secretary to Increase Domestic Production.** On October 24, Michigan's seven congressional Republicans [sent a letter to Energy Secretary Jennifer Granholm](#) calling on her "to describe any administration plans or efforts to increase domestic oil and gas production." The letter comes in response to the recent OPEC+ decision to cut oil production and seeks answers from Sec. Granholm by November 21, 2022 on a list of policy questions. [Read more.](#)

## FEDERAL – Judicial

**BLM Leasing – New Mexico.** On October 26, environmental groups filed a lawsuit against the Bureau of Land Management (BLM) for its approval of oil and gas leasing in the Greater Chaco region of northwest New Mexico greenlit under the Trump administration. "The groups claim the federal government agreed in April to reconsider the Trump-era leases given their proximity to homes and an area held sacred by Navajos." In [Diné Citizens Against Ruining Our Environment v. U.S. Bureau of Land Management](#) (Case No. 1:22-cv-00804-JHR-KK), the litigants challenge the "BLM's decisions to re-affirm the Trump Administration's flawed authorization and issuance of oil and gas leases on 42 parcels, covering nearly 45,000 acres of land administered by the BLM's

Rio Puerco Field Office and Farmington Field Office and BLM's approval of approximately 120 Applications for Permit to Drill (APDs) on 8 of these lease parcels." [The groups say](#) their "challenge faults the agency's failure to adequately analyze the effects this fracking will have on the climate, public health, environmental justice, and cultural resources. In addition, the groups are challenging the Bureau's failure to take steps to avoid unnecessary and undue degradation of public lands in the Greater Chaco landscape or even define the term in the context of climate." [Read more.](#)

## STATE – Legislative

**Setbacks; Health Protection Zones – California.** (*Update to 10/3/22 Report*) The California Geologic Energy Management Division (CalGEM) has announced it will hold a virtual public workshop on November 3, 2022 to "provide an overview of the requirements established by SB 1137, discuss the plan for implementation of early provisions, and provide the opportunity for public comments." [For instructions on attending read more here from CalGEM.](#) To follow up our prior reporting, SB 1137 establishes a 3,200-foot setback for well permitting and new oil and gas production facilities within a "health protection zone" of sensitive receptors and strict engineering controls to be implemented by existing operations within the health protection zone. Opponents of SB 1137 have begun the process of challenging the bill in a statewide ballot measure. For background, 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 ballot measure was filed just days after Gov. Newsom

signed [SB 1137](#) into law, which “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 keep AAPL members informed as the ballot referendum signature process continues.

[Read more.](#)

**Leasing; Royalty Payment and Deductions Information – Pennsylvania.** *(Update to 7/12/21 Report)* On October 26, SB 806, sponsored by Sen. Gene Yaw (R), passed both chambers and was transmitted to Gov. Tom Wolf (D) on October 27. The bill would amend current law to provide for better transparency regarding royalty payments and deductions. [Read complete bill summary here.](#) According to the sponsoring memo, the “legislation would not impact lease agreements, but it would require entities making payments to landowners to provide more description, clarity and uniformity on their royalty check statements. This proposal is designed to help ensure all parties feel their lease agreements are executed as intended, and it will help mitigate concerns that have developed in recent years.” [Read more.](#)

**Notaries Public – Pennsylvania.** SB 908 has passed both chambers and was transmitted to Gov. Tom Wolf (D) on October 26. Sponsored by Sen. Judy Ward (R), the bill amends current law “to eliminate the 50-cent fee for the registration of an official signature of a notary public, and to authorize the ‘Notary Register’ to be located in either the prothonotary’s office or the office of the recorder of deeds. The bill further authorizes the electronic transfer of the official signature to the prothonotary’s office.” [Read more.](#)

**Well Plugging – Pennsylvania.** *(Update to 5/9/22 Report)* HB 2528 has passed both chambers and was transmitted to Gov. Tom Wolf (D) on October 27. Sponsored by Rep. James Struzzi (R), the bill would require that regarding the plugging of oil and gas wells, the state ensure that well plugging contracts awarded are going to Pennsylvania companies as a first priority. [Read more.](#)

## STATE – Regulatory

**Oil & Gas Conservation Commission Orphan Well Mitigation Fee Enterprise Rules – Colorado.** *(Update to 7/11/22 Report)* The Colorado Oil and Gas Conservation Commission (COGCC) has announced “that it is pushing back the deadline for companies (or operators) to submit a plan that’s intended to prevent abandoned oil and gas wells from needing to be plugged by the state if the company goes bankrupt. These financial assurance plans require oil and gas operators in Colorado to pledge money upfront for plugging the wells they drill at the end of their useful life.” [Read more.](#) As previously reported, in [March](#), the COGCC “passed more stringent financial assurance plan requirements that they trumpeted as among the ‘strongest in the nation.’” On June 30, the COGCC followed this with the final adoption of the Orphan Well Mitigation Fee Enterprise Rules. The “rulemaking is the necessary follow through to March’s Financial Assurance Rulemaking to establish this first-ever enterprise fund for orphan wells that ensures the creation of an industry funded orphan well program with the highest level of environmental protections,” said COGCC Chair Jeff Robbins. The rulemaking establishes a fee paid by industry that is expected to initially generate \$10M annually and is responsive to address orphan wells in the state of Colorado. The fee will be revisited annually, allowing the funding to increase or decrease depending on the needs and anticipated scale of future orphan well work. This robust orphan well funding mechanism needed the legislature to create the Enterprise Fund. This fund is in addition to the \$10-15 million Colorado expects to receive and spend annually for the next ten years from the Federal Infrastructure Investment and Jobs Act. In total, the federal funds and the orphan well funds will likely total \$100-\$115 million over the next 5 years, which is unprecedented and will be totally paid for by industry and the federal government. The rule became effective August 1, 2022. [Read more.](#)

**COGCC Petition for Cumulative Impacts – Colorado.** On October 13, the Colorado Oil and Gas Conservation Commission (COGCC) announced that it is taking public comments and will hold a hearing

on a petition from multiple environmental groups seeking the COGCC to issue rulemaking “to address and evaluate cumulative impacts from oil and gas operations.” The public comment deadline is December 2, 2022, and the public hearing will be held December 9, 2022. [Read the notice here](#). This is not a rulemaking initiated by the COGCC but an outside petition. Under state law, the COGCC is not obligated to promulgate any rulemaking based on a petition but is required to maintain a public hearing and comment process. [Read the petition here](#). In the petition, the groups say they “demand the COGCC make rules to address the regional and state cumulative impacts of ozone and climate change and to increase local protections against air pollutants, especially in disproportionately impacted communities.” Chelsie Miera, Executive Director of the West Slope Colorado Oil and Gas Association, “has previously said in response to the petition that Colorado environmental lobbyists ‘continue their crusade to ban oil and natural gas development by any means necessary’ even as families in the state continue to struggle with high gasoline prices, increasing utility costs and high inflation.” [Read more](#).

#### **Regulation of Class II Injection Wells – Ohio.**

Multiple citizen and environmental groups have launched a petition calling on the U.S. Environmental Protection Agency (EPA) to regulate the Ohio Department of Natural Resources (ODNR) by revoking its authority over Ohio's Class II injection wells and related “fracking waste.” [Access the petition here](#). The group’s petition claims that “EPA’s intervention is needed to ensure that the Class II program in Ohio complies with the Safe Drinking Water Act. ODNR’s management of its program has already endangered underground sources of drinking water, enabling multiple out of zone migrations and surface expressions in recent years, and establishing a culture of permissiveness, where operators can repeatedly violate permit terms without fear of enforcement action.” The petitioners “request that EPA initiate procedures to revoke Ohio’s Class II injection well program and initiate a rulemaking to implement a program that protects the people of Ohio and the environment and addresses the systematic public

participation and environmental justice issues raised by this Petition.” [Read more](#).

#### **STATE – Judicial**

**Centerline Presumption; Mineral Interests; Rights of Way – Colorado.** On September 15, in [Great Northern Properties, LLLP v. Extraction Oil and Gas, Inc.](#) (Case No. 2022COA110), the Colorado Court of Appeals (Division IV) in a quiet title action “resolves an issue of first impression in Colorado: Does the common law centerline presumption apply to convey the mineral interests beneath a dedicated right-of-way to the owners of abutting parcels?” As described by the court, “The centerline presumption is a common law rule of conveyance, which generally provides that ‘a conveyance of land abutting a road or highway is presumed to carry title to the center of that roadway to the extent the grantor has an interest therein, unless a contrary intent appears on the face of the conveyance.’” Here, the appellate court held that “Applying settled principles of property law, the division concludes, as a matter of first impression, that when the centerline presumption applies, it applies to convey all interests a grantor possesses in the property underlying a right-of-way, including mineral interests. The division also clarifies the conditions that must be met before the centerline presumption applies.” According to Colorado law firm, Welborn Sullivan Meck & Tooley, P.C., “Ultimately, the outcome of *Great Northern* benefits those who own land abutting a road. Landowners conveying property that abuts a road must expressly reserve the minerals interests if that is their intention. Otherwise, a grantee will take possession of the mineral interests underneath the property and underneath the abutting road. This outcome is certainly noteworthy for title attorneys, but it is also important for state and local governments, oil and gas operators, and other owners who may be under the impression that they hold an interest in the minerals under a right-of-way.” [Read more](#).

**Climate Change Lawsuit – New Jersey.** On October 18, the state of New Jersey filed a complaint “against five oil and gas companies and a petroleum trade association, alleging they knowingly made false claims

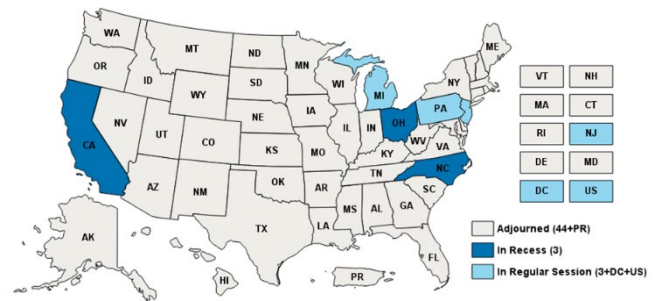
to deceive the public about the existence of climate change and the degree to which their fossil fuels products have been [ex]acerbating anthropogenic global warming.” In [Platkin v. ExxonMobil Corp.](#) (Case No. not yet docketed), the Attorney General Matthew J. Platkin and the New Jersey Division of Consumer Affairs say the state “is seeking to hold the defendants accountable for systematically concealing and denying their knowledge that fossil fuel consumption could have a catastrophic impact on the climate, causing the devastating consequences of fossil fuel overconsumption: the significant sea level rise, flooding, and extreme weather that have battered New Jersey’s citizens and businesses, requiring the State and its residents to shoulder the enormous costs of rebuilding, hardening New Jersey’s defenses against severe weather and making the necessary transition away from reliance on fossil fuels to a more sustainable clean-energy future.” The state has also named the American Petroleum Institute as a defendant. As of this reporting, the defendants have not yet answered the complaint. [Read more.](#)

## INDUSTRY NEWS FLASH

► **U.S. Permian oil production forecast to hit record in November.** According to the latest U.S. Energy Information Administration (EIA) productivity report, oil output in the Permian in Texas and New Mexico, the biggest U.S. shale oil basin, is forecast to rise by about 50,000 barrels per day (bpd) to a record 5.453 million bpd in November. U.S. crude oil output in other major U.S. shale basins, including the Bakken and Eagle Ford, are also projected to rise according to the EIA report. [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 October session on October 20. The next session is scheduled for November 15.

**California** Democratic Gov. Gavin Newsom is scheduled to call the legislature into a special session on December 5, as previously reported, to attempt passage of a windfall tax on oil industry profits, reports [PBS](#).

**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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# GOVERNMENTAL AFFAIRS REPORT



## AAPL MIDTERM ELECTION RESULTS ROUNDUP

Following are key midterm election results called as of this report. In particular, party control of Congress remains unknown as a number of states have yet to call election results although it appears Republicans will take control of the House with a narrow majority. Party control in the Senate is still uncertain and may hinge upon a runoff election in Georgia next month. For a deeper dive, please see the links provided in this special section for access to multiple election reports available only to AAPL members.

### KEY GOVERNOR RACES

**Arizona:** The tight governor's race between Democrat Katie Hobbs and Republican Kari Lake is too close to call as is the Senate race between incumbent Democrat Mark Kelly and Republican challenger Blake Masters. The governor's race is an open seat due to the term limit of Republican Gov. Doug Ducey. On November 10, Arizona election officials announced they will continue counting votes into the week of November 14.

**California:** Incumbent Democrat Gavin Newsom won reelection against Republican challenger California State Sen. Brian Dahle.

**Maryland:** Democrat Wes Moore defeated Republican challenger Dan Cox to become the state's first Black governor. Moore succeeds outgoing Republican Gov. Larry Hogan who was term limited.

**Michigan:** Incumbent Democrat Gov. Gretchen Whitmer defeated Republican challenger, Tudor Dixon, who supported pipeline approvals opposed by Whitmer as well as traditional oil and gas development in the state.

**New Mexico:** Incumbent Democrat Gov. Michelle Lujan Grisham won reelection against her Republican challenger, Mark Ronchetti. According to the Albuquerque Journal, "This year's contest was much closer than four years ago, when Lujan Grisham easily beat Republican Steve Pearce to win election as governor."

**New York:** Republican challenger Rep. Lee Zeldin was unable to unseat sitting Democrat Governor Kathy Hochul. This was Gov. Hochul's first race as she previously held the office by way of Gov. Andrew Cuomo's resignation amid multiple scandals. Zeldin vowed to open New York to oil and gas development and lift the moratorium on hydraulic fracturing had he won the election.

**Oklahoma:** Incumbent Republican Gov. Kevin Stitt won reelection against Democrat challenger Joy Hofmeister by double digits.

**Pennsylvania:** Republicans failed to flip the governor's seat, with Democrat Doug Shapiro defeating his Republican challenger, Doug Mastriano. The seat was an open race due to Gov. Tom Wolf's (D) term limit.

**Texas:** Incumbent Republican Gov. Greg Abbott handily won reelection by double digits, holding back a challenge from Democrat Beto O'Rourke.

For more governor's race information, see the AAPL Executive Election Results Report: [click here](#).

## CONGRESSIONAL RACES

### U.S. Senate

As noted above, party control of the Senate is still undetermined as of this report.

**Alaska:** This race has not yet been called. Incumbent Republican Sen. Lisa Murkowski, an influential member of the Senate Energy Committee, and Republican opponent Kelly Tshibaka both failed to win 50% of the vote so the count will continue under the state's new ranked choice voting system. Regardless of the next count, the seat will remain in GOP hands.

**Arizona:** Not called. Please see the note above regarding this race.

**Georgia:** There will be a runoff election as neither candidate, incumbent Democrat Sen. Raphael Warnock nor Republican challenger, Herschel Walker, was able to secure the 50% threshold needed to avoid a runoff election which will take place on December 6.

**Nevada:** In a potential seat flip, incumbent Democrat Catherine Cortez Masto is trailing her Republican challenger, former Nevada State Attorney General Adam Laxalt.

**North Carolina:** In an open race, Republican Rep. Ted Budd defeated former North Carolina Supreme Court Justice Cheri Beasley. The seat was previously held by retiring three-term Republican Sen. Richard Burr.

**Ohio:** In the open Ohio race, Republican J.D. Vance was able to hold the GOP seat previously held by retiring Sen. Rob Portman (R) to defeat Democrat Rep. Tim Ryan.

**Oklahoma:** Republicans retained the seat held by six-term Sen. James Inhofe who retired this year. Republican Markwayne Mullin defeated his Democrat challenger Kendra Horn by more than 25 points.

**Pennsylvania:** Democrat Lieutenant Governor John Fetterman defeated Republican challenger Dr. Mehmet Oz to flip a seat previously held by retiring three-term Republican Sen. Pat Toomey.

**Wisconsin:** In a tight race, Wisconsin incumbent Republican Sen. Ron Johnson won reelection against Democrat challenger, Wisconsin Lt. Governor Mandela Barnes.

### U.S. House of Representatives

As noted above, party control of the House has not yet been called but it appears that Republicans will take the majority once all votes are tallied.

**Alaska:** A historically Republican seat may flip Democrat as former Alaska governor and 2008 vice-presidential running mate Sarah Palin is trailing her Democrat challenger Mary Peltola by nearly 20 points as of this report. Because neither candidate reached the 50% threshold, that race will be subject to the same ranked choice count as the Senate race. The seat was previously held for 49 years by GOP Rep. Don Young – Alaska's longest-serving congressman – who died earlier this year at age 88. According to Alaska Public Radio, "The outcome of both Alaska congressional races won't be certain until second- and third-choice rankings are applied on Nov. 23. The Division of Elections is only counting first place votes this week. On Nov. 23, once all the mailed ballots are in, the division will eliminate the third- and fourth-place finishers and reallocate those ballots according to their voters' rankings."

**Colorado:** Although not yet called, incumbent Republican Rep. Lauren Boebert, a member of the House Natural Resources Committee, is slightly ahead of her Democrat challenger, Adam Frisch.

**New Mexico:** Incumbent Republican Rep. Yvette Herrell is trailing Democratic opponent Gabriel Vasquez. Rep. Herrell is currently the Vice Ranking Member of the House Energy and Mineral

Resources Subcommittee and a strong oil and gas advocate serving a district covering a large part of the state's section of the Permian Basin.

**Montana:** Former Trump Interior Secretary Ryan Zinke defeated his Democrat challenger Monica Tranel in Montana's newly created congressional seat.

For more state election information, see the AAPL Legislative Election Results Report: [click here](#).

### Other State Issues

**Texas Railroad Commission:** Wayne Christian, Chairman of the Texas Railroad Commission, has been reelected, defeating Democratic challenger Luke Warford. "Christian, who has served on the Texas Railroad Commission since 2016 and is the chair of the three-member board, said his top three priorities during this term are to increase domestic production of oil and natural gas, fight back against what he calls 'the Biden administration's overreach' and secure U.S. energy independence."

[Read more](#).

**California Proposition 30:** "California voters on Tuesday rejected a measure that would have imposed an additional tax on the rich in order to fund electric vehicle subsidies and charging stations. Funds from the ballot initiative, known as Proposition 30, also would have gone to support wildfire response in the Golden State. Under the proposal, residents who make more than \$2 million each year would pay an additional 1.75 percent personal income tax on earnings above \$2 million. The Associated Press called the ballot initiative race just before 2:30 a.m. With 41 percent of the votes counted, votes for the measure trailed those against it, standing at 59 percent to 41 percent as of Wednesday morning." [Read more](#).

For a deeper state-by-state look at all ballot initiatives, see the AAPL Ballot Measures Report: [click here](#).

## FEDERAL – Legislative

**H.R. 9025 - Determination of NEPA Adequacy Streamlining Act.** On October 31, official bill text was made available for [H.R. 9025](#), known as the Determination of NEPA Adequacy Streamlining Act. Sponsored by Rep. David Valadao (R-CA), the bill "would streamline the approval process for energy production by allowing the Secretaries of the Interior and Agriculture to use previously conducted Environmental Assessments or Environmental Impact Statements under the National Environmental Policy Act (NEPA) for the approval of projects with similar environmental impacts." According to Rep. Valadao, "Streamlining the slow, bureaucratic approval process by allowing Secretaries to use previously conducted and scientifically sound environmental reviews under NEPA will help move these unnecessarily tied up projects across the finish line. At a time when energy prices are soaring for Central Valley families, this commonsense reform will allow us to increase our supply of safe, clean, and affordable energy." [Read more](#).

**H.R. 9024 - Directing Responsibility to Interior for Leases and Licenses Act.** On November 1, official bill text was made available for [H.R. 9024](#), known as the Directing Responsibility to Interior for Leases and Licenses Act or the DRILL Act. The bill would "require the Department of Interior (DOI) to publish information online and report to Congress regarding the processing of onshore and offshore drilling and exploration permits, the status of federal leases, and usage of applications for permits to drill (APD) fees." The bill would also "require the DOI and the Department of Agriculture (USDA) to submit a yearly report to Congress detailing staffing capacity and planning to ensure the timely processing of permits and planning for lease sales." [Read more](#).

**H.R. 9006 – Environmental Reviews.** On October 31, official bill text was made available for [H.R. 9006](#). Sponsored by Rep. Yvette Herrell (R-NM), the bill would "provide greater certainty to the federal permitting process for energy development, forest management, and building of critical infrastructure"

by setting a two-year time frame for “National Environmental Policy Act (NEPA) reviews on federal projects, which under current law can take over a decade.” According to Rep. Herrell, “By placing an explicit timeline for NEPA reviews, New Mexico businesses who must go through the NEPA process will have the certainty that they need to embark on projects that better the lives of New Mexicans.”

[Read more.](#)

**H.R. 8966 - Simplify Timelines and Assure Regulatory Transparency Act.** On October 31, official bill text was made available for H.R. 8966, known as the Simplify Timelines and Assure Regulatory Transparency Act or the START Act. Sponsored by Rep. Mike Kelly (R-PA), the bill would codify National Environmental Policy Act and Water Pollution Control Act regulations put in place during the Trump administration; prohibit the use of the social cost of greenhouse gas estimates that may raise gasoline prices; expedite permitting and review processes; provide states with regulatory authority over federal lands within their borders; provide for new source review permitting; prohibition of retroactive permit vetoes; and sets certain directives for environmental impact of proposed legislation.

[Read more.](#)

**House Republican Report on Domestic Energy.** On November 7, the Republicans on the House Committee on Oversight and Reform issued a report, [Democrats’ War on Domestic Energy Production and its Impact on the American People](#), “outlining how the Biden Administration and Oversight Committee Democrats have demonized domestic oil and gas production, promoted anti-American energy policies, and failed to produce a comprehensive plan to address high energy prices and ongoing marketplace shortages impacting the American people.” According to the Committee Ranking Member Rep. James Comer (R-KY), “One-party Democrat rule in Washington has created an energy crisis for the American people. Democrats have weaponized their unchecked power to wage a war against American-made energy production and push radical, far-left Green New Deal policies that jeopardize Americans’

ability to power their homes. In the last two years, Democrats diverted substantial resources into a partisan investigation of America’s oil and gas industry. At the same time, President Biden shut down the Keystone XL pipeline, implemented a moratorium on oil and gas production on federal lands, drained U.S. oil reserves, and enacted energy policies that increased costs for Americans. Instead of demonizing an industry that provides good-paying jobs and affordable energy for all Americans, Republicans are committed to promoting policy solutions that unleash domestic energy production and put the interests of the American people first.” The report contains key findings and “ten measures Biden Administration officials could consider that would unleash U.S. domestic energy potential and protect American energy independence.” [Read more.](#)

## FEDERAL – Regulatory

**BLM Greenhouse Gas Leasing Analysis.** On November 9, the Bureau of Land Management (BLM) published a notice “[t]o ensure consistency in responding to court challenges to greenhouse gas emissions analysis in its leasing program, the Bureau of Land Management has released an updated environmental assessment for public comment.” According to the BLM, “The additional review analyzes greenhouse gas emissions that may result from reasonably foreseeable development of 3,600 oil and gas leases that were sold in 74 lease sales between February 2015 and December 2020 that were the subject of litigation. The leases span approximately 3,433,615 acres in Colorado, Montana, New Mexico, Utah, Wyoming, North Dakota, and South Dakota. The environmental analysis looks at the development activity that would result in greenhouse gas emissions due to well development and production operations, as well as the end-use of the petroleum products produced from oil and gas leases.” The public comment period is open through December 27, 2022. [Read more.](#)

**BLM Chaco Area Withdrawal – New Mexico.** On November 10, the BLM announced that the “Farmington Field Office has released the proposed Chaco Area Withdrawal Environmental Assessment for a 30-day

public review and comment period. The environmental assessment analyzes impacts associated with withdrawing federal minerals from leasing in a ten-mile buffer surrounding Chaco Culture National Historical Park for 20 years. The proposed withdrawal is an important part of the Interior Department's efforts to protect the Chaco Canyon and the greater connected landscape, and to ensure that public land management better reflects the sacred sites, stories, and cultural resources in the region. The BLM is committed to continued engagement with diverse stakeholders and looks forward to ongoing collaborative discussions through the Honoring Chaco Initiative." The BLM will host in-person public meetings on Nov. 14 and 15 "that will include an open-house, presentation, a question-and-answer session, and opportunities for the public to provide oral comments." The public comment period is open through December 10, 2022. [Read more.](#)

**Council on Environmental Quality Congressional Letter.** On October 31, Rep. Bruce Westerman (R-AR), ranking member of the House Natural Resources Committee, sent a letter to Brenda Mallory, Chair of the Council on Environmental Quality (CEQ), "to underscore the implications of [West Virginia v. EPA](#) and to remind you of the limitations on your authority." Referring to that recent U.S. Supreme Court case, Rep. Westerman noted the court's finding on the "major questions doctrine" which rejected the U.S. Environmental Protection Agency's attempt to broaden the scope of its regulatory authority. Rep. Westerman stated that as a member of the Natural Resources Committee with oversight of the CEQ, he will "ensure the Biden administration does not continue to exceed Congressional authorizations." The letter also seeks responses regarding pending and expected CEQ rulemakings. [Read more.](#)

**EPA Announces Draft Proposal for Methane Emissions Reductions.** On November 11, the U.S. Environmental Protection Agency (EPA) "announced it is strengthening its proposed standards to cut methane and other harmful air pollution." The announcement came at the United Nations Climate Change Conference COP27 in Sharm el Sheikh, Egypt. [Read more.](#) According to the EPA, "If finalized, these critical,

commonsense standards will protect workers and communities, maintain and create high-quality, union-friendly jobs, and promote U.S. innovation and manufacturing of critical new technologies, all while delivering significant economic benefits through increased recovery of wasted gas. The updates, which supplement proposed standards EPA released in November 2021, reflect input and feedback from a broad range of stakeholders and nearly half a million public comments. 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 new proposal also includes a ground-breaking 'Super-Emitter Response Program' that would require operators to respond to credible third-party reports of high-volume methane leaks. The agency estimates that in 2030, the proposal would reduce methane from covered sources by 87 percent below 2005 levels." And as a follow up to our prior reporting, the EPA will hold a training on November 30, 2022, "to provide an overview of the supplemental proposal for communities, Tribal Nations and small businesses, along with information about how to effectively engage in the regulatory process." [Learn more here.](#) As of this report, the EPA has not formally published any proposed rulemaking pursuant to their November 11 COP27 announcement. [Read more.](#)

## STATE – Legislative

**LNG Export Taskforce – Pennsylvania.** (*Update to 4/11/22 Report*) On November 3, Gov. Tom Wolf (D) signed HB 2458 into law. Rep. Martina White (R), the bill sponsor, stated that Pennsylvania is a "state with both an abundant supply of natural gas and a port in Philadelphia, we are perfectly positioned to become a leader in exporting liquefied natural gas (LNG) to supply the energy needs of our allies around the world." The bill will "create a taskforce to study how to make this happen and what obstacles are currently preventing Philadelphia from becoming a leader in

exporting LNG. The taskforce will be charged with creating a report and recommendations to be presented to the General Assembly and the Administration including any actions that should be taken to facilitate this. The taskforce will be made up of people representing the General Assembly, natural gas industry, Philadelphia building trades, and PhilaPort.” The Act takes immediate effect. [Read more.](#)

**Well Plugging – Pennsylvania.** (*Update to 10/31/22 Report*) On November 3, Gov. Tom Wolf (D) signed HB 2528 into law. Sponsored by Rep. James Struzzi (R), the bill requires that regarding the plugging of oil and gas wells, the state ensure that well plugging contracts awarded are going to Pennsylvania companies as a first priority. The Act is effective 60 days after signing. [Read more.](#)

**Leasing; Royalty Payment and Deductions Information – Pennsylvania.** (*Update to 10/31/22 Report*) On November 3, Gov. Tom Wolf (D) signed SB 806 into law. Sponsored by Sen. Gene Yaw (R), the bill amends current law to provide for better transparency regarding royalty payments and deductions. [Read complete bill summary here.](#) According to the sponsoring memo, the “legislation would not impact lease agreements, but it would require entities making payments to landowners to provide more description, clarity and uniformity on their royalty check statements. This proposal is designed to help ensure all parties feel their lease agreements are executed as intended, and it will help mitigate concerns that have developed in recent years.” The Act is effective 120 days after signing. [Read more.](#)

**Notarial Acts – Pennsylvania.** (*Update to 11/22/21 Report*) On November 3, Gov. Tom Wolf (D) signed SB 807 into law. Sponsored by Sen. Judy Ward (R), regarding notarial acts, the bill amends current law by eliminating the 50-cent fee for the registration of an official signature of a notary public and would also provide greater flexibility for county officers to register the signature of a notary public to authorize the “Notary Register” to be located in either the

prothonotary’s office or the office of the recorder of deeds. The bill also authorizes the electronic transfer of the official signature to the prothonotary’s office. The Act is effective 60 days after signing. [Read more.](#)

## STATE – Regulatory

### **Air Quality Standards Bulletin – New Mexico.**

On November 14, the New Mexico Environment Department (NMED) announced the Air Quality Bureau “has completed a draft exceptional events demonstration for periods exceeding federal air quality standards for particulate matter in southern New Mexico during calendar year 2021. This document demonstrates to the U.S. Environmental Protection Agency that dust storms generated by high winds, rather than man-made sources, caused exceedances of the national standard for particulate matter in the air. Without this demonstration, certain areas of the state would be in violation of federal standards and subject to stricter air quality rules and requirements designed to meet and maintain the standard in the future. The level of the federal air standards for particulate matter is protective of public health.” The NMED is accepting [public comment](#) on the draft document through December 8, 2022. The document is available for review at the Environment Department’s field offices and on their [website](#) under the Luna and Doña Ana Counties tabs or by searching “2021 Draft Exceptional Events Demonstration Open Comment Period” on the webpage, or by contacting the NMED at 505-629-3242. [Read more.](#)

### **Railroad Commission Rulemaking – Texas.**

(*Update to 9/6/22 Report*) On November 1, the Texas Railroad Commission (RRC) announced their adoption of amendments to 16 Texas Administrative Code (TAC) §3.65, relating to Critical Designation of Natural Gas Infrastructure. [Read the RRC notice here.](#) The rulemaking takes effect November 21, 2022. [Read more.](#) For background, the RRC announced the proposed amendments in August, noting that the “amendments simplify the rule language and process for designating certain natural gas facilities and entities critical during energy emergencies as specified in House Bill 3648 and Senate Bill 3 (87th Legislature,

Regular Session). Specifically, “16 TAC §3.65(a) — Provide more certainty regarding the definition of ‘energy emergency;’ 16 TAC §3.65(b)(1) — Amend the list of critical gas suppliers; and 16 TAC §3.65(c), (e) and (f) — Revise requirements triggered by a critical gas supplier’s inclusion on the electricity supply chain map produced by the Texas Electricity Supply Chain Security and Mapping Committee.” [Read more.](#)

**Sunset Advisory Commission – Texas.** The Texas Sunset Advisory Commission has released decision material for their November 10 meeting. [Read more.](#) Specifically, the Commission released decisions related to the Texas Commission on Environmental Quality and Texas Low-Level Radioactive Waste Disposal Compact Commission. The decision material contains various recommendations and management actions on each issue. [Read more.](#)

**Texas Commission on Environmental Quality’s Public Participation Plan Requirements – Texas.** “Requirements associated with the Texas Commission on Environmental Quality’s (TCEQ’s) new Public Participation Plan became effective on November 1, 2022.” [Read more.](#) As reported by Texas law firm Morgan Lewis, “The plan, which is intended to enhance TCEQ’s compliance with Title VI of the Civil Rights Act of 1964, requires applicants for certain new permits, registrations, or activities, as well as applicants seeking to make certain changes to existing permits, registrations, or activities, to complete a Public Involvement Plan Form and possibly develop a Public Involvement Plan.” [Read more.](#)

## STATE – Judicial

**Kern County Oil Permitting – California.** (*Update to 3/22/21 Report*) On November 2, the Kern County Superior Court issued a ruling that “allows [the] Kern government to resume oilfield permitting — a big win for an industry that has seen a significant slowdown in local activity after a local judge identified problems with an extensive environmental assessment undergirding the county’s review process.” In the case, [Committee for a Better Arvin v. County of Kern](#) (Case No. BCV-15-101679), “Judge Gregory A. Pulskamp discharged

a writ that in October 2021 removed the county’s authority to approve projects and returned it to state officials who local oil producers complained were taking too long to issue permits.” The ruling ends a years-long battle between industry stakeholders and environmental groups. “After years of litigation, the court’s decision is an important milestone that allows production permitting to resume in Kern County in a manner that is fully protective of human health and the environment,” said Western States Petroleum Association President and CEO Catherine Reheis-Boyd. [Read more.](#)

**Anti-Washout Provisions; Overriding Royalties – Ohio.** On October 19, in [Marquette ORRI Holdings, LLC v. Ascent Resources-Utica, LLC](#) (2022-Ohio-3786), the Ohio Court of Appeals, Seventh District, addressed the enforceability of “anti-washout” provisions in assignments of overriding royalty interests. The Court “held that an “anti-washout” provision found in multiple assignments of overriding royalty interests covering leases that subsequently expired was not binding on the original lessee’s assignees, which had taken new leases to those same lands, as there was no privity of contract.” According to law firm Vorys, “This case marked the first time that an Ohio court considered whether an ‘anti-washout’ provision in an assignment of overriding royalty interests was binding on subsequent lessees.” [Read more.](#)

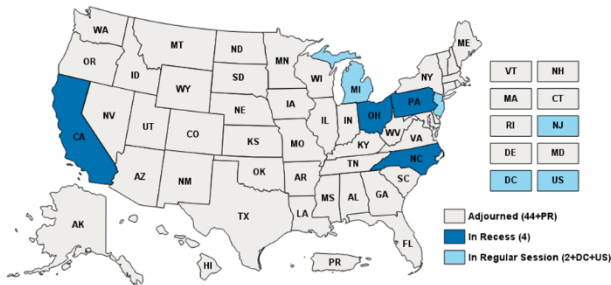
## INDUSTRY NEWS FLASH

► **Domestic oil production forecast cut for 2023.** On November 8, the U.S. Energy Information Administration (EIA) released its monthly report which cut its oil production forecast for 2023. According to *Rigzone*, “The [EIA] projection suggests the pace of U.S. shale growth, one of the few sources of major new supply in recent year, is slowing despite oil prices hovering at around \$90 a barrel, about double most domestic producers’ breakeven costs.” [Read more.](#)



## LEGISLATIVE SESSION OVERVIEW

### States in Session



**Session Notes:** Michigan is in regular session. The U.S. Congress is also in session.

The following are in recess until the dates provided: the **Pennsylvania** House (November 14), the **Pennsylvania** Senate (November 15), **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 October session on October 20. The next session is scheduled for November 15.

**California** Democratic Gov. Gavin Newsom may attempt to call the legislature into a special session on December 5 to seek passage of a new tax on oil and gas industry profits, reports [PBS](#).

**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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# GOVERNMENTAL AFFAIRS REPORT

## Highlights At-A-Glance

### FEDERAL – Legislative

**S. 5124/H.R. 9344 – Chaco Cultural Heritage Area Protection Act.** On November 17, U.S. Senators Ben Ray Luján (D-NM) and Martin Heinrich (D-NM), and U.S. Representatives Teresa Leger Fernández (D-NM) and Melanie Stansbury (D-NM) introduced companion bills [S. 5124](#) and [H.R. 9344](#), called the Chaco Cultural Heritage Area Protection Act, “to protect Chaco Canyon and the greater landscape surrounding the Chaco Culture National Historical Park. This legislation will prevent future leasing and development of oil, gas, and minerals on federal lands that are located within a 10-mile buffer zone around the park. This proposed Chaco Protection Zone will preserve the ancestral sites and cultural patrimony within Chaco Canyon and the surrounding landscape.” [Read more.](#) As noted by Sen. Luján, “Recently, the Biden administration has moved forward with an Administrative Withdrawal of the 10-mile buffer zone. This legislation would provide urgently needed permanent protections by banning oil, gas, and mineral development on federal lands in the Greater Chaco Region. Additionally, this legislation would codify protections for private, state, and Tribal entities, including Navajo allottees, ensuring that existing rights are preserved as the area is protected.” [Read more.](#)

**Incoming House Natural Resources Committee Chair to Impact Biden’s Climate Change Agenda.** With Republicans taking control of the U.S. House of Representatives majority in January, incoming House Natural Resources Committee Chairman Rep. Bruce Westerman (R-AR) “outlined his priorities for a Republican-majority committee on a call with reporters [...] identifying potential areas of bipartisan agreement but saying he did not believe climate change to be the House panel’s sole charge.” As reported by *The Hill*, Westerman, who will succeed Rep. Raúl Grijalva (D-

AZ) as Chairman, “suggested the committee would push back on Biden administration energy policies, particularly pertaining to fossil fuels, but named issues he saw as opportunities for bipartisanship as well.” One such area is reforms to environmental and energy permitting, such as pipeline infrastructure, in which common ground could be found with Sen. Joe Manchin (D-WV) and other lawmakers. Throughout President Biden’s term, Rep. Westerman has been a vocal supporter of traditional energy development and the need for greater domestic production. [Read more.](#)

### FEDERAL – Regulatory

#### **BLM Oil and Gas Lease Sales – Nevada; Utah.**

On November 21, the Bureau of Land Management (BLM) announced, “In accordance with congressional direction in the Inflation Reduction Act, the Bureau of Land Management is initiating 30-day scoping periods to receive public input on potential oil and gas lease sales on 35 parcels in Nevada totaling 63,603.89 acres and 18 parcels in Utah totaling nearly 31,808 acres.” The announcement also provides information on parcels that the BLM will analyze, as well as maps and instructions on how to comment. [Read more.](#) As reported by *The Hill*, “Under the updated regulations, minimum bids would be set at \$10 per acre, a fivefold increase from the previous minimum of \$2 per acre. This marks the first increase in the minimum in 35 years. The sales will also reflect updated royalty rates for oil and gas leasing, with minimum rates increasing from 12.5 percent to 16.7 percent. Meanwhile, while rental rates before the act were \$1.50 per acre for five years and \$2 per year thereafter, the new rates will increase to \$3 per acre for the initial two years, \$5 an acre for the third through eighth years and \$15 in the ninth and tenth years.” [Read more.](#)

### **BLM Information Collection; Measurement of Oil.**

On November 15, the Bureau of Land Management (BLM) published a notice, *Agency Information Collection Activities; Measurement of Oil* ([87 Fed. Reg. 68516](#)). According to the BLM, this “collection of information enables the BLM to ensure compliance with standards for the measurement of oil produced from Federal and Indian (except Osage Tribe) leases and compliance with pertinent statutes.” The public comment period is open through January 16, 2023. [Read more.](#)

### **BLM Information Collection; Measurement of Gas.**

On November 15, the Bureau of Land Management (BLM) published a notice, *Agency Information Collection Activities; Measurement of Gas* ([87 Fed. Reg. 68516](#)). According to the notice, the “BLM is requesting renewal of a control number that pertains to the accurate measurement and proper reporting of all natural gas removed or sold from Federal and Indian leases, units, unit participating areas, and areas subject to communitization agreements.” The public comment period is open through January 16, 2023. [Read more.](#)

### **BLM Information Collection; Oil and Gas Facilities.**

On November 15, the Bureau of Land Management (BLM) published a notice, *Agency Information Collection Activities; Oil and Gas Facility Site Security* ([87 Fed. Reg. 68517](#)). According to the BLM, “this control number enables the Bureau of Land Management (BLM) to collect information about Federal and Indian (except Osage Tribe) onshore oil and gas leases. The information facilitates accurate measurement of oil and gas, production accountability, payment of royalties that are due, and prevention of theft and loss.” The public comment period is open through January 16, 2023. [Read more.](#)

### **BLM Habitat Connectivity on Federal Lands.**

On November 15, the Bureau of Land Management (BLM) issued an Instruction Memorandum on “Habitat Connectivity on Public Lands” (IM 2023-005). According to the BLM, this IM helps the BLM “fulfill aspects of its multiple use and sustained yield mandate by ensuring habitats for native fish, wildlife,

and plant populations are sufficiently interconnected. As part of that work, this policy directs the BLM state offices to consult with state fish and wildlife agencies and Tribes to assess habitat connectivity in order to manage as best as possible for intact, connected habitat.” The IPAA has reported that it “believes there will be land use planning implications for APD’s but it remains to be seen exactly how BLM will apply the new IM.” [Read more.](#)

### **BLM Grand Staircase-Escalante National Monument Advisory Committee.**

On November 14, the Bureau of Land Management (BLM) announced it “will host a virtual public meeting of the Grand Staircase-Escalante National Monument Advisory Committee on Dec. 13, 2022, from 9 a.m. to 4:30 p.m., with public comments accepted at 1:45 p.m. This meeting will be held via Zoom.” Part of the agenda will “include discussion of the revised alternatives for the new resource management plan.” If you would like to attend, the BLM asks that you register in advance. [Read more.](#)

### **BLM Resource Development in the Thompson Divide – Colorado.** (*Update to 10/31/22 Report*)

UPDATE: On November 16, the Bureau of Land Management (BLM) published a correction ([87 Fed. Reg. 68726](#)) to its notice below adding a time for the public meeting to be held on December 14 that they failed to provide in their initial publishing. [Read more.](#) For background, on October 17, the BLM published a *Notice of Proposed Withdrawal and Public Meeting, Thompson Divide Area, Colorado* ([87 Fed. Reg. 62878](#)) which opened up the public comment period for the BLM’s withdrawal of “approximately 224,793.73 acres, including approximately 200,518.28 acres of National Forest System lands, approximately 15,464.99 acres of BLM-managed public lands, and approximately 8,810.46 acres of reserved Federal mineral interest” from resource development in the Thompson Divide. As previously reported, on October 12, the Interior Department announced the Biden administration’s proposal to protect the Thompson Divide 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. The

Interior Department noted, “the Thompson Divide area 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.” [Read more.](#) The public comment period is open through January 16, 2023, and the BLM will hold a public meeting on December 14, 2022 from 5 p.m. to 7 p.m, at the Carbondale & Rural Fire Protection District, 300 Meadowood Drive, Carbondale, CO 81623. [Read more.](#)

**Interior Department Bonding and Financial Assurance Petition for Rulemaking.** On November 16, environmental and conservation groups filed a petition with the Interior Department and Bureau of Land Management (BLM) requesting “to immediately promulgate regulations and policies to update the bonding and financial assurance requirements for federal onshore oil and gas leasing and development.” [Read the petition here.](#) According to the filing, “Petitioners call on BLM to complete its work to ensure the taxpayers who own these resources are not left paying for reclamation and cleanup and to better fulfill the agency’s broader obligations as stewards of our public lands and minerals. BLM is long overdue in acting to update bonding requirements and should issue updated policies and commence rulemakings to address these major inadequacies in its onshore oil and gas program.” [Read more.](#)

## STATE – Legislative

**Notarial Acts – Ohio.** (*Update to 3/28/22 Report*) On November 16, SB 300 passed the Senate. Sponsored by Sen. Steve Wilson (R), the bill would make several changes to existing notary law. Specifically, the measure: (1) Amends requirements to the notary’s oath of office, allowing a notary to either take the oath in person or certify that the notary will abide by the oath; (2) Redefines “acknowledgment” to mean an individual’s declaration before a notary that the individual has signed a record for the purpose stated

in the record, and if the record is signed in a representative capacity, that the individual signed the record with proper authority and signed it as the act of the person identified in the record; (3) Requires notaries seeking to replace lost or destroyed commissions or to amend an existing commission to file an electronic form, as opposed to a paper form; (4) Imposes new requirements with regard to notaries verifying the identification of persons making an acknowledgment or a jurat; (5) Prohibits a notary from performing a notarial act for a person with whom the notary cannot communicate without the assistance of an interpreter or translator; (6) Adds a new form of acknowledgment for limited liability companies; (7) Expands the list of county government officials that are required to accept electronically notarized documents to include clerks of courts of record and deputy registrars; and (8) Removes the requirement that the notarial certificate for an acknowledgement or jurat indicate the type of notarization being performed. [Read more.](#)

**Carbon Sequestration – Pennsylvania.** On November 14, SB 1361 was introduced by Sen. Gene Yaw (R). Known as the Carbon Dioxide Geologic Sequestration Primacy Act, the bill would establish “the legal and regulatory framework for potential carbon dioxide capture, utilization and sequestration (CCUS) in Pennsylvania.” Further, the bill would provide for “primary enforcement authority from the U.S. Environmental Protection Agency for carbon dioxide underground injection wells (referred to as Class VI wells).” According to Sen. Yaw, “my legislation would ensure that Pennsylvania does not adopt standards which are any more stringent than those required by the U.S. EPA. Several other states seeking to facilitate CCUS and its associated jobs and investment have already secured primacy, which is critical to streamlining and removing redundancies from the permitting process.” [Read more.](#)

**Electronic Submissions – Ohio.** On November 17, HB 524 was heard in the House Government Oversight Committee. The committee took no action on the bill and no one signed up to testify. Sponsored by Rep. Thomas Hall (R), the bill provides that “(A)

Notwithstanding any other provision of law to the contrary and other than a statement of production, the chief of the division of oil and gas resources management may require the electronic submission of any application, report, test result, fee, or document that is required to be submitted under this chapter. The chief shall require the submission of statements of production to be made electronically regardless of well type and the number of wells owned.” The bill also provides, “For good cause, a person may request to be excluded from any requirement to make an electronic submission under division (A) of this section other than the requirement to submit a statement of production electronically. The chief shall establish the procedure and form by which a person may request such exclusion.” [Read more.](#)

**Federal Regulation of Oil and Gas Production – Texas.** Although the Texas legislative session does not begin until January, some lawmakers have started the early process of filing bills for introduction. Rep. Brooks Landgraf (R) has filed [HB 33](#). The bill would “prevent the implementation of any federal regulations on oil or gas production in Texas.” As reported, the bill “will not allow any Texas state agencies the ability to provide assistance to or contracting with any federal agencies looking to put forth any federal statute regulating oil and gas operations if the regulation is not already existing law.” [Read more.](#)

## STATE – Regulatory

**California Greenhouse Gas and Oil Usage Plan.** On November 16, Gov. Gavin Newsom (D) announced that the California Air Resources Board (CARB) has released an ambitious roadmap to “combat climate change and transition to clean energy [...] cut air pollution by 71%, reduce fossil fuel consumption by 86%, and reach carbon neutrality by 2045.” The plan also includes “a 94% drop in demand for oil.” [Read more about the proposal here.](#) According to Gov. Newsom, the CARB plan would “implement the most ambitious climate action of any jurisdiction in the world, taking unprecedented steps to drastically slash pollution and accelerate the transition to clean energy.” [Read more.](#) You can also access the CARB

“2022 Scoping Plan for Achieving Carbon Neutrality” [documents and plan updates here.](#)

### **Kern County Oil and Gas Permits – California.**

On November 16, the California Geologic Energy Management Division issued a Notice to Operators (2022-06) addressing the lifting of a previous court order that required Kern County to cease reviewing and approving oil and gas permits unless and until the court determines that the Ordinance complies with the California Environmental Quality Act (CEQA) requirements. As stated in the Notice, “Kern County may resume permitting of oil and gas operations as CEQA lead agency in unincorporated Kern County. With validity of Kern County’s Final Supplemental Recirculated Environmental Impact Report (SREIR) restored, the California Geologic Energy Management Division (CalGEM) will now be a responsible agency.” [Read more.](#)

### **New Mexico Environment Department Electronic Applications and Permits.**

On November 17, the New Mexico Environment Department (NMED) Air Quality Bureau (AQB) announced the *Electronic Submittal Requirement for GCP-Oil and Gas and Notice of Intent Applications*. According to the NMED/AQB announcement, “Beginning Monday, January 9<sup>th</sup>, 2023, applicants will be required to submit two types of applications electronically through the ePermitting Portal. 1. Notice of Intent (NOI) applications for oil and gas facilities, and 2. General Construction Permit applications for Oil and Gas Facilities (GCP-O&G). Hard copy submittals that are postmarked on or before January 9<sup>th</sup>, 2023, will be accepted and processed. All other non-oil and gas permit and NOI applications should be mailed according to the instructions on those forms.” [Read more.](#)

**Orphan Wells Plugging – Wyoming.** On November 15, it was reported that the Wyoming Oil and Gas Conservation Commission (WOGCC) “has about 1,500 orphaned wells remaining, oil and gas wells that have been drilled but abandoned without being plugged. With \$25 million in funding from the federal Infrastructure Investment and Jobs Act (IIJA),

it's possible the state will plug the last of those.” According to Tom Kropatsch, WOGCC Supervisor, “So as far as where Wyoming is at, I think we’re a leader in addressing those orphan wells, and have been, even before this [IIJA] money became available. As far as how much methane emissions have been stopped as a result of the work isn’t [yet] known.” [Read more.](#)

## INDUSTRY NEWS FLASH

### ► Donald Trump announces 2024 presidential run.

On November 15, former President Donald Trump announced that he is running for president in 2024. Focusing part of his speech on climate change and energy, Trump told a packed Mar-a-Lago audience, “The Green New Deal, and the environment, which they say may affect us in 300 years is all that is talked about.” Trump also criticized President Biden for calling on adversarial foreign nations to pump more oil. “There are lots of nations that hate us gravely. And that’s the problem when they look at us in disarray like we are right now when we go to them begging for oil and we have more liquid gold under our feet than they have. It’s crazy what’s happening.” [Read more.](#)

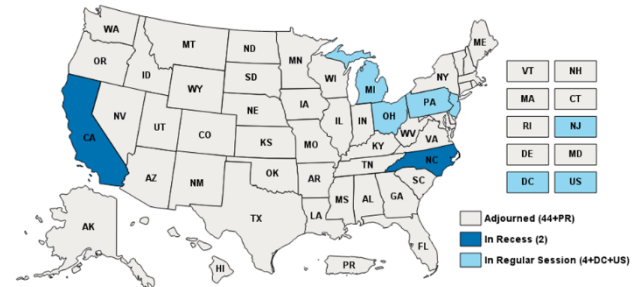
► **Louisiana to gain 3,500 oil and gas jobs by mid-2023.** A new report from Louisiana State University’s Center for Energy Studies “predicts Louisiana will regain thousands of jobs in the oil and gas industry by the middle of 2023. Research professor Greg Upton says, “this year Louisiana has already gained 2,500 jobs that involve extracting oil and gas from the ground” and added that the Center is forecasting that the state will regain an additional 3,500 jobs “within the upstream oil and gas extraction services sectors by about sometime mid next year before that levels off.” [Read more.](#)

► **In New Mexico, despite 1,400% increase in renewables, oil and gas still top earner on state lands.** As reported on November 14, “Despite recent efforts to expand income from renewable resources,

the latest numbers from the state’s Land Office show that the bulk of the state’s income from land-owning comes from oil and gas.” As noted by the state agency, “when it comes to income these renewables create for the state versus the income from oil and gas, there’s still no comparison. In the fiscal year 2022, royalties from oil and gas totaled \$2.3 billion — that’s 96% of the State Land Offices earnings that year, according to numbers presented to legislators.” [Read more.](#)

## LEGISLATIVE SESSION OVERVIEW

### States in Session



**Session Notes:** Michigan, New Jersey, Ohio, and Pennsylvania are in regular session. The 117th U.S. Congress is in the final days of its lame-duck session prior to the 118th Congress convening on January 3, 2023 with a Republican majority in the House.

**California** is in recess but Democratic Gov. Gavin Newsom may attempt to call the legislature into a special session on December 5 to seek passage of a new tax on oil and gas industry profits, reports [PBS](#).

**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 their November session on November 17. The next and last mini session of the year is scheduled for December 13.

**Signing Deadlines** (by date): **New York** Democrat Gov. Kathy Hochul has 10 days from presentment,

Sundays excepted, to act on legislation or it becomes law without signature. **North Carolina** Democrat 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](#), [Florida](#), [Georgia](#), [Kentucky](#), [Massachusetts](#), [Montana](#), [Nevada](#), [New Hampshire](#), [North Dakota](#), [Oklahoma](#), [Tennessee](#), [Texas](#), [Utah](#), [Virginia](#), [West Virginia](#) and [Wyoming](#). ■

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# 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

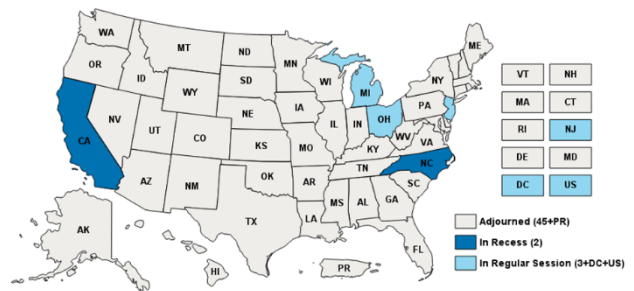
**Well Approvals – California.** On December 1, environmental group, the Center for Biological Diversity, filed suit against the state oil and gas regulator acting on behalf of the administration of Gov. Gavin Newsom (D) for “approving more than a dozen new oil and gas wells in Los Angeles and Kern counties, 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](#).

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