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## ARKANSAS



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### *Table of Contents*

I. Introduction .....	332
II. Statutory Law .....	332
III. Administrative Law .....	332

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IV. Common Law ..... 332  
 A. Supreme Court of Arkansas Interprets Statute-of-Limitations  
 for Royalty Payments ..... 332  
 V. Other ..... 333  
 A. The Federal Government Restarting Drilling on Federal Lands May  
 Affect Arkansas ..... 333  
 VI. Conclusion ..... 333

*I. Introduction*

There were only minor changes in Arkansas oil and gas law between August 1, 2021, and July 31, 2022. Most notably, the Arkansas Supreme Court addressed the statute-of-limitations period regarding monthly royalty payments. Additionally, Arkansas may take interest in the federal government’s decision to resume oil drilling on federal land.

*II. Statutory Law*

There were not any notable statutory developments in Arkansas during the time period of August 1, 2021, to July 31, 2022.

*III. Administrative Law*

There were not any notable administrative developments in Arkansas during the time period of August 1, 2021, to July 31, 2022.

*IV. Common Law*

*A. Supreme Court of Arkansas Interprets Statute-of-Limitations for Royalty Payments*

In the case of *Pennington v. BHP Billiton Petroleum (Fayetteville) LLC*,<sup>1</sup> the Supreme Court of Arkansas held that a separate statute-of-limitations period began as each monthly royalty payment became due.<sup>2</sup> This case arose when oil-and-gas royalty holders sued the lessees of an oil and gas lease for breach of contract, alleging the lessees were incorrectly calculating their royalty payments.<sup>3</sup> The defendants raised the affirmative defense that Arkansas’s five-year statute of limitations barred the plaintiff

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1. *Pennington v. BHP Billiton Petroleum (Fayetteville) LLC*, 4:20-CV-00178-LPR, 2021 WL 1396299 (E.D. Ark. Apr. 12, 2021), *certified question answered*, 631 S.W.3d 555 (Ark. 2021).

2. *Id.* at \*6.

3. *Id.* at \*2.

from bringing a breach of contract claim. The defendants argued that any alleged breach began when the first underpayment occurred, which was more than five years prior to the plaintiffs filing their complaint.<sup>4</sup> The court rejected the defendant's argument and held that each monthly payment is a separate and singular breach.<sup>5</sup> In doing so, the court reasoned that the provisions of the oil and gas lease required the defendants to remit payment based on a monthly calculation; therefore, the alleged breach happened during the time of each monthly calculation and payment remittance.<sup>6</sup> The court held the monthly royalty payment reset each month, akin to monthly installments in a debtor-creditor relationship.<sup>7</sup>

#### V. Other

##### A. *The Federal Government Restarting Drilling on Federal Lands May Affect Arkansas*

On April 15, 2022, the Biden Administration provided notice that it will resume selling leases to drill for oil and gas on federal lands.<sup>8</sup> However, the government will offer limited acreage and companies will have to pay increased royalties to drill.<sup>9</sup> The federal government currently owns 3.2 million acres, or 9.4%, of the land in Arkansas.<sup>10</sup>

#### VI. Conclusion

Outside of the case of *Pennington v. BHP Billiton Petroleum (Fayetteville), LLC*, Arkansas has seen minimal substantive developments in oil and gas law from August 1, 2021, to July 31, 2022. However, it will be interesting to see if the resumed federal drilling makes its way to Arkansas in the near future.

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4. *Id.* at \*2-3.

5. *Id.* at \*5-6.

6. *Id.*

7. *Id.* at \*5.

8. Josh Lederman & Zoe Richards, *Biden administration to resume leasing for oil and gas drilling on federal lands*, NBC NEWS (Jun. 30, 2022, 3:43 PM), <https://www.nbcnews.com/politics/politics-news/biden-administration-resume-leasing-oil-gas-drilling-federal-lands-rcna24646>.

9. *Id.*

10. See how much land in Arkansas is owned by the federal government, STACKER (Jun. 30, 2022), <https://stacker.com/arkansas/see-how-much-land-arkansas-owned-federal-government>.