

GOVERNMENTAL AFFAIRS REPORT

FEDERAL – Legislative

Congress to Reconvene for 2024 Legislative Session. Following the Dec. 2023 holiday recess, the U.S. Congress will reconvene for the 2024 regular session beginning this week. [Read more.](#)

FEDERAL – Regulatory

BLM Oil and Gas Lease Sale – Montana; North Dakota. On Dec. 28, 2023, the Bureau of Land Management (BLM) Montana-Dakotas State Office “opened a 30-day public scoping period to receive public input on 26 oil and gas parcels totaling 5,053 acres that may be included in a July 2024 lease sale in Montana and North Dakota. The comment period ends Jan. 29, 2024.” [Read more.](#)

BLM Lease Parcels Supplemental Analysis – New Mexico. On Dec. 20, 2023, the BLM New Mexico State Office “opened a 30-day public comment period to receive public input on supplemental analysis regarding lease parcels initially included in the February 2020 Rio Puerco Field Office (RPFO) and Farmington Field Office (FFO) Oil and Gas Lease Sales.” The supplemental analysis arose from numerous environmentalist legal challenges. The public comment period is open through Jan. 19, 2024. [Read more.](#)

BLM Oil and Gas Lease Sale – Wyoming. On Dec. 13, 2023, the BLM Wyoming State Office “announced an oil and gas lease sale scheduled for March 5, 2024, to offer 30 oil and gas parcels totaling 13,417 acres in Wyoming. The BLM completed scoping on these parcels in July 2023 and a public comment period in October 2023 on the parcels, potential deferrals, and the related environmental analysis. A 30-day public protest period to receive additional public input opened today and will close January 12, 2024.” [Read more.](#)

BLM Draft Environmental Impact Statement – Alaska. On Dec. 14, 2023, the BLM announced it “is seeking public comment on a draft environment[al] impact statement analyzing proposals developed by the previous administration to revoke long-standing protections on 28 million acres of public lands in Alaska. When finalized, this analysis will inform a decision by the Secretary of the Interior regarding whether to continue, alter, or end the protections.” [Read more.](#) As provided by the BLM, “The lands are often referred to as 17(d)1 lands, referencing [a section of the Alaska Native Claims Settlement Act \(ANCSA\)](#), and are protected [...] from mining claims and oil and gas development through a mineral withdrawal. The draft analysis considers whether opening the lands to development remains consistent with some of the purposes of ANCSA, which requires that ‘the public interest in these lands is properly protected,’ including factors such as subsistence hunting and fishing, habitat connectivity, protection of cultural resources, and protection of threatened and endangered species.” The public comment period is open through Feb. 14, 2024. [Read more.](#)

BLM Resource Management Plan Environmental Impact Statement – Colorado. On Jan. 4, the BLM announced it is “seeking public comment to inform the development of an environmental impact statement analyzing potential amendments to the April 2020 Uncompahgre Field Office Resource Management Plan. The plan covers about 678,400 acres of public lands and 973,300 acres of subsurface mineral estate in Delta, Gunnison, Mesa, Montrose, Ouray, and San Miguel counties.” [Read more.](#) On Jan. 5, the BLM formally published its *Notice of Intent To Amend the Resource Management Plan for the Uncompahgre Field Office and Prepare an Associated Environmental Impact Statement, Colorado* ([89 Fed. Reg. 807](#)). According to the BLM, “This analysis is limited to considering

alternative management approaches for oil and gas resources, lands with wilderness characteristics, and previously analyzed Areas of Critical Environmental Concern, consistent with two litigation settlement agreements. BLM will consider an alternative that corresponds with management actions previously analyzed in the 2019 Uncompahgre Field Office Proposed Resource Management Plan and associated final environmental impact statement and will strive for consistency with other BLM planning efforts for Gunnison sage-grouse and Colorado big game species.” The public comment period is open through Feb. 20, 2024. [Read more.](#)

Interior Department Finalizes 5-Year Offshore Oil and Gas Leasing Program. On Dec. 15, 2023, the Department of the Interior “published the final 2024–2029 National Outer Continental Shelf Oil and Gas Leasing Program (Program) with the fewest oil and gas lease sales in history.” [Read more.](#) According to the announcement, “The Program schedules three oil and gas lease sales in the Gulf of Mexico Program Area in 2025, 2027 and 2029. These three lease sales are the minimum number that will enable the Interior Department’s offshore wind energy program to continue issuing leases in a way that will ensure continued progress towards the Administration’s goal of 30 gigawatts of offshore wind by 2030. The reduction of the next National OCS Program to three lease sales meets the IRA’s requirements for future offshore renewable energy leasing. The areas considered for leasing and number of lease sales in the 2024-2029 Final Program have been significantly narrowed from the previous Administration’s original proposal of 47 lease sales off all coastal areas in the United States.” [Access the Interior Department Final Program and Final Programmatic Environmental Impact Statement here.](#) As reported by S&P Global Commodity Insights, “Despite heavy pushback from the oil and gas industry, the final 2024-2029 National Outer Continental Shelf Oil and Gas Leasing Program maintains a Sept. 29 proposal that called for a total of three auctions to be held in 2025, 2027 and 2029, all for acres in the Gulf of Mexico. No auctions are contemplated off the coast of Alaska.” [Read more.](#) “The Department of the Interior (DOI) said the reduction is needed to meet offshore wind area

sales required by the Inflation Reduction Act (IRA). An IRA provision prioritizing fossil fuels requires that total acres offered in offshore oil and gas lease sales in the year till the issuance of any lease for offshore wind development must reach 60 million acres.” The DOI’s “final program still needs to be reviewed by Congress within 60 days.” We will continue to keep AAPL members updated. [Read more.](#)

Clean Hydrogen Energy Tax Credits. On Dec. 26, 2023, the Internal Revenue Service released a proposed rule, *Section 45V Credit for Production of Clean Hydrogen; Section 48(a)(15) Election To Treat Clean Hydrogen Production Facilities as Energy Property (88 Fed. Reg. 89220)*, that “contains proposed regulations relating to the credit for production of clean hydrogen (clean hydrogen production credit) and the energy credit, as established and amended by the Inflation Reduction Act of 2022, respectively. The proposed regulations would provide rules for: determining lifecycle greenhouse gas emissions rates resulting from hydrogen production processes; petitioning for provisional emissions rates; verifying production and sale or use of clean hydrogen; modifying or retrofitting existing qualified clean hydrogen production facilities; using electricity from certain renewable or zero-emissions sources to produce qualified clean hydrogen; and electing to treat part of a specified clean hydrogen production facility instead as property eligible for the energy credit. The proposed regulations would affect all taxpayers who produce qualified clean hydrogen and claim the clean hydrogen production credit, elect to treat part of a specified clean hydrogen production facility as property eligible for the energy credit, or produce electricity from certain renewable or zero-emissions sources used by taxpayers or related persons to produce qualified clean hydrogen.” Public comments will be accepted through Feb. 26, 2024. The notice also provides for a public hearing on March 25, 2024. Access a full analysis and summary of the rulemaking from law firm Weil, Gotshal & Manges LLP, [available here](#), and from law firm Troutman Pepper Hamilton Sanders LLP, [available here](#).

FEDERAL – Judicial

Regulatory Taking – Texas. On Nov. 7, 2023, in *Midas Resources, Inc. v. United States* (Case No. 21-1198L), the U.S. Court of Federal Claims addressed a claim against the United States for an “alleged physical taking of Midas’s mineral estate.” The claim arose a little more than a decade after Midas entered into its lease when the federal government “built a border wall on and adjacent to the surface estate, under which Plaintiffs lease the mineral estate.” Here, “Midas’s claim is that the government’s border wall has resulted in a compensable physical taking, thus requiring the government to pay Plaintiffs just compensation” under applicable law. The court, however, held that the claim was “devoid of facts to support” a claim of physical taking. Further, the court held that nowhere in the complaint does Midas allege “facts amounting to an ouster from its mineral rights, and the only allegation approaching a claim of complete ‘deprivation’ comes in the form of a conclusory statement that is unsupported by any factual allegations.” As such, the complaint was dismissed. [Read more.](#)

STATE – Legislative

Carbon Market Disclosures – California. (*Update to 10/30/23 Report*) As an update to our 2023 reporting, on Jan. 1, 2024, the new California carbon offset disclosure law, [AB 1305](#), took effect. As reported by law firm Pillsbury Winthrop Shaw Pittman LLP, the law requires “businesses marketing or selling voluntary carbon offsets (VCOs) or marketing products as having significantly reduced emissions within California to disclose on their website certain information concerning the projects that generated the VCOs and emission reductions. Additionally, AB 1305 requires the disclosure of certain information supporting any business activity or product purported to achieve net-zero emissions, carbon neutrality or a reduction in greenhouse gas (GHG) emissions. This law represents California’s latest attempt to reduce ‘greenwashing,’ hold[ing] businesses accountable for claims concerning GHG emission reductions and intensify transparency within the VCO market.”

Businesses will be required to update their disclosures at least annually. The Act also provides penalties for violations. [Read more.](#)

STATE – Regulatory

CalGEM CEQA Rework Exemptions Process

Guidance to Operators – California. On Dec. 29, 2023, the [California Environmental Quality Act \(CEQA\) Unit](#) of the California Geologic Energy Management Division (CalGEM) issued a guidance document on CEQA review for Notices of Intent for reworking of wells. According to the guidance, “This document provides guidance regarding review of Notices of Intent (NOIs) for the reworking of wells (Reworks) by the California Geologic Energy Management Division (CalGEM) CEQA Program. Its purpose is to provide general information about the process when CalGEM is conducting an initial review of a Notice of Intention or preparing a Preliminary Review (PR) of a proposed project that includes the rework of an existing oil and gas well(s). This document provides general guidance that applies to the review of all proposed reworks and more details on certain groups of reworks, including sample outcomes that tend to apply in typical situations. The guidance concludes with a summary of information operators may include in NOI submissions to facilitate efficient environmental review.” CEQA also notes that, “Scenarios described in this document are for illustrative purposes only, and are not determinative of any expected outcome, and should not be relied on by rework permit applicants as a guarantee of the sufficiency of an application prior to the issuance of a permit. CalGEM disclaims any responsibility for any such reliance. The guidance herein is not exhaustive and subject to revision and modification. Review of projects will proceed on a project-by-project basis.” [Read more.](#)

Department of Conservation Cost Estimate

Regulations for Oil and Gas Operations – California.

On Jan. 2, the California Department of Conservation announced that they have “made modifications to the text of the proposed regulations in the rulemaking action entitled *Cost Estimate Regulations for Oil and Gas Operations*” which AAPL provided to members last year.

With his announcement, the Department has provided a new proposed regulation document that clearly provides the original text and new, proposed text, [which can be accessed here](#). According to the California Independent Petroleum Association, “Based on staff review, the primary change is the acknowledgement of the potential use of land after decommissioning and that cost estimates may be lowered depending on what that land use might be. However, to make this reduction, operators are required to provide a signed letter from the landowner/mineral rights owner attesting to the planned future use of the land.” The modification to the proposed regulations opens up an extended public comment that runs through Jan. 17, 2024. [Read more](#).

Carbon Sequestration Wells and Operations Regulatory Authority – Louisiana. On Dec. 28, 2023, Gov. John Bel Edwards (D) and Louisiana Department of Natural Resources (DNR) Commissioner of Conservation Monique M. Edwards announced that the U.S. Environmental Protection Agency (EPA) “has formally granted Louisiana state primacy in the permitting and regulation of wells and projects involving the underground sequestration of carbon dioxide (CO2).” [Read the EPA announcement here](#). For background, “Permitting of such wells and operations, known as Class VI permits, is generally directly regulated by the EPA, though the EPA can grant primary regulatory authority to individual states that develop a regulatory framework that matches or exceeds the EPA’s Class VI standards, as is now the case in Louisiana’s Office of Conservation.” [Read more](#).

STATE – Judicial

Marketable Title Act; Leasing; Royalties – Ohio. On Dec. 20, 2023, the Ohio Seventh District Court of Appeals reversed a trial court judgment in [Kemp v. Rice Drilling D, LLC](#) (Case No. 2023-Ohio-4732) centered on the withholding of royalties based upon disputed mineral rights dating back to a 1917 deed. At issue in the case was the application of the Marketable Title Act and root of title to determine which parties owned the mineral interests subject to the oil and gas lease. The court concluded that “Appellants correctly argue on appeal that the trial

court should have determined that the oil and gas rights from the 1917 deed were extinguished by the Marketable Title Act (‘MTA’) because the reference to those rights was merely a general reference in the 1975 root title deed. Appellants also argue that Appellees should not have tried to recoup prior payments based on a provision of their lease strictly prohibiting recoupment, nor should they have purchased the questionable oil and gas rights and instead should have attempted to clear Appellants’ title. This second issue is not ripe for review because the trial court did not reach those issues once it erroneously decided against Appellants based on its interpretation of the MTA.” The court further explained that the “1975 deed was a proper root of title notwithstanding the recital of prior royalty reservation language because it still purported to convey mineral interest claimed” and a “royalty interest is not the same thing as a fee mineral interest, and as such, the 1975, 1992, and 1999 deeds’ reference to a prior reservation of a royalty interest was not a specific reference” to the interest in question. As noted by law firm Frost Brown Todd LLP, “On this last point, the Seventh District discussed the argument that the word ‘royalty’ could mean a fee mineral interest itself, but, after discussing recent jurisprudence acknowledging that a royalty can be an interest in real property, the appeals court rejected it as irrelevant because the Moore Interest doesn’t mention ‘royalty.’” [Read more](#).

Deed Reservations; Quiet Title – Pennsylvania. On Nov. 28, 2023, in *Lodge v. Hoyt* (Case Nos.1294 MDA 2022, 1363 MDA 2022), the Pennsylvania Superior Court addressed the following issues on appeal related to a tax deed and quiet title action: (1) Can the invalidity of a recorded tax claim bureau deed for property never assessed or sold for taxes be challenged through a quiet title or similar action filed over six or twenty-one years from the deed’s recording; (2) Did the trial court err in its application of the summary judgment review standard in that, by not reaching the merits of the parties’ motions, the trial court presumed the validity of the recorded tax claim bureau deed, although the burden of proving such validity rested upon the tax claim purchaser who offered no undisputed evidence of the deed’s validity?;

and (3) Did the trial court err in its application of the summary judgment review standard in that, by not getting to the merits of the parties' motions, the Court ignored the existence of genuine issues of material fact about the invalidity of the recorded tax claim bureau deed? Here, the court noted that the trial court barred the appellants "from attacking the validity" of the appellees' "Tax Claim Deed and the underlying tax sale in their quiet title actions by the statute of limitations" [...] However, in reaching this conclusion, the trial court did not address the Hoyt Appellants' and Lodge Appellants' challenges to the validity of the tax sale itself." As such, the court found that the trial court relied on a case that was not applicable to "cases raising a jurisdictional challenge to a void tax sale and accompanying deed" and thus were not precluded from challenging the claim of ownership. Further, the court found there were genuine issues of material fact that had not been assessed, thus the grant of summary judgment was made in error at trial.

[Read more.](#)

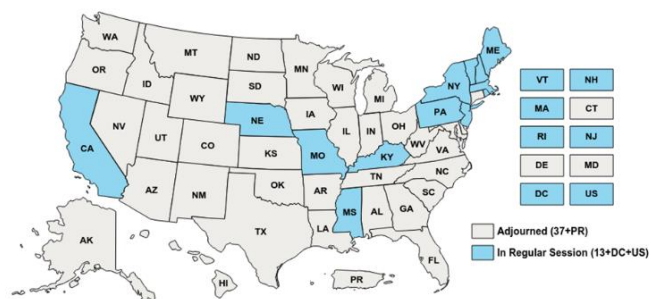
INDUSTRY NEWS FLASH

► **Domestic Natural Gas Production Forecast to Grow, led by Permian Basin.** The U.S. Energy Information Administration has released their Short-Term Energy Outlook, which "estimated that U.S. natural gas production in the Lower 48 states" would grow by 2% in 2024. According to the EIA, "More natural gas is produced in Texas than any other state" and Permian gas production is forecast to increase by another 6% this year. [Read more.](#)

► **New Mexico Governor Proposes 10% Spending Increase in New Fiscal Year Resulting from Oil and Gas Production Windfall.** Last week, New Mexico Gov. Michelle Lujan Grisham (D) announced a \$10.5 billion budget plan for the coming fiscal year. As reported, the "No. 2 oil-producing state anticipates a multibillion-dollar surplus for the coming fiscal year, driven largely by oil and natural gas production in the Permian Basin that underlies southeastern New Mexico and western Texas." [Read more.](#)

LEGISLATIVE SESSION OVERVIEW

States in Session



Session Notes: California, Kentucky, Mississippi, Missouri, Nebraska, New York, and Pennsylvania are in regular session.

The following states are expected to convene for the 2024 legislative session on the dates provided: **Arizona, Georgia, Idaho, Iowa, Kansas, and Washington** (January 8), **Delaware, Florida, Indiana, New Jersey, South Carolina, South Dakota, and Tennessee** (January 9), **Colorado, Illinois, Maryland, Michigan, Ohio, Virginia, and West Virginia** (January 10), and **New Mexico** (January 16).

Bill Signing Deadlines: **Michigan** Democratic Gov. Gretchen Whitmer has 14 days from presentment to act on legislation or it is pocket vetoed. **Ohio** Republican Gov. Mike DeWine has 10 days to act on legislation or it becomes law. **Pennsylvania** Democratic Gov. Josh Shapiro has 30 days from adjournment to act on legislation or it becomes law. **Wisconsin** Democratic Gov. Tony Evers has six days from presentment, Sundays excluded, to act on legislation or it becomes law.

The following states are currently holding interim committee hearings or studies: [Alabama](#), [Alaska](#), [Arizona](#), [Arkansas](#), [Colorado](#), [Connecticut](#), [Delaware](#), [Florida House](#) and [Senate](#), [Georgia](#), [Hawaii](#), [Idaho](#), [Illinois House](#) and [Senate](#), [Indiana](#), [Iowa](#), [Kansas](#), [Louisiana](#), [Maryland](#), [Minnesota](#), [Montana](#), [Nevada](#), [New Mexico](#), [North Dakota](#), [Oklahoma House](#) and [Senate](#), [Oregon](#), [South Carolina House](#) and [Senate](#), [South Dakota](#),

[Tennessee](#), [Texas House](#), [Utah](#), [Virginia House](#), [Washington](#), [West Virginia](#) and [Wyoming](#).

The following states are currently posting 2024 bill drafts and pre-files: [Alabama](#), [Arizona](#), [Delaware](#), [Florida](#), [Georgia](#), [Illinois House](#) and [Senate](#), [Indiana](#), [Iowa](#), [Kansas](#), [Maryland](#), [Nevada](#), [New Mexico](#), [North Carolina](#), [Oklahoma House](#) and [Senate](#), [South Carolina](#), [Tennessee](#), [Utah](#), [Virginia](#), [Washington](#) and [Wyoming](#). ■

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