

GOVERNMENTAL AFFAIRS REPORT

Highlights At-A-Glance

FEDERAL – Legislative

S. 64 – Water Rights Protection Act of 2023. On February 8, official bill text was made available for [S. 64](#), known as the Water Rights Protection Act of 2023. Introduced by Sen. John Barrasso (R-WY), the bill would “prohibit the conditioning of any permit, lease, or other use agreement on the transfer of any water right to the United States by the Secretary of the Interior and the Secretary of Agriculture.” Sen. Barrasso said, “Our bill will stop Washington from bullying our ranchers, farmers, tribal members, and other water users. It will make sure unaccountable agency bureaucrats can’t force them to give up their rights. States and local communities have the best knowledge and expertise to manage this critical resource. The Water Rights Protection Act will allow Wyoming to continue successful management by stopping Washington’s power grab.” [Read more.](#)

H.R. 647 – Unlocking our Domestic LNG Potential Act of 2023. On February 16, official bill text was made available for [H.R. 647](#), known as the Unlocking our Domestic LNG Potential Act of 2023. Introduced by Rep. Bill Johnson (R-OH), the bill would “repeal restrictions on the export and import of natural gas.” According to Rep. Johnson, “We have abundant energy resources right here in the Marcellus and Utica shale plays here in Ohio and across the country. We have the opportunity to lead on the world stage as a global provider of clean and abundant U.S. natural gas. If other countries can rely on America for their energy, they can rely less on cruel, energy-rich dictators like Vladimir Putin.” [Read more.](#)

H.R. 591 – Strategic Production Response and Implementation Act. On February 13, official bill text was made available for [H.R. 591](#), known as the Strategic Production Response and Implementation

Act. Introduced by Rep. Andy Biggs (R-AZ), the bill would “provide for the development of a plan to increase oil and gas production under oil and gas leases of Federal lands under the jurisdiction of the Secretary of Agriculture, the Secretary of Energy, the Secretary of the Interior, and the Secretary of Defense in conjunction with a drawdown of petroleum reserves from the Strategic Petroleum Reserve.” [Read more.](#)

H.R. 484 – Natural Gas Tax Repeal Act. On February 6, official bill text was made available for [H.R. 484](#), known as the Natural Gas Tax Repeal Act. Introduced by Rep. August Pfluger (R-TX), the bill would repeal the new section added to the Clean Air Act under last year’s Inflation Reduction Act relating to the methane emissions and waste reduction incentive program for petroleum and natural gas systems that imposed a methane tax. According to Rep. Pfluger, “New fees or taxes on energy companies will raise costs for customers, creating a burden that will fall most heavily on lower-income Americans.” [Read more.](#)

House Natural Resources Committee Hearing. On February 8, the House Committee on Natural Resources and Subcommittee on Energy and Mineral Resources held a hearing, *Unleashing America’s Energy and Mineral Potential*. [Access a full video recording of the hearing and witness testimony.](#) The “witnesses testified on numerous angles of an all-of-the-above energy approach, including oil, natural gas, renewables and hardrock minerals.” Among the witnesses was Kathleen Sgamma, President of the Western Energy Alliance. According to the hearing notice, the “hearing was the first step of many that Republican members will take to open up access to domestic energy and minerals, streamline permitting processes and engage with Americans from coast to coast on ways to conserve our resources for

generations to come.” [Read more.](#)

House Energy & Commerce Committee Hearing.

On February 7, the House Energy & Commerce Committee Joint Energy, Climate, & Grid Security Subcommittee and Environment, Manufacturing, & Critical Materials Subcommittee held a hearing, *Unleashing American Energy, Lowering Energy Costs, and Strengthening Supply Chains*. The hearing focused on a number of bills and proposed legislation on host of energy-related issues. [Read more.](#) The hearing presented witness testimony from numerous industry stakeholders, including Jeffrey Eshelman, President and Chief Executive Officer of the Independent Petroleum Association of America. You may [access a full video recording of the hearing and witness testimony here.](#)

House Natural Resources Committee Field Hearing and Site Visits – New Mexico; Texas.

On February 13, the House Committee on Natural Resources Chairman Bruce Westerman (R-AR) led “a group of Republican members to Texas and New Mexico for site visits and a field hearing on how federal energy production supports local communities.” The event, which included a tour of an oil and natural gas rig and hydraulic fracturing site and a hearing on how onshore leasing revenues bolster rural communities, also included Subcommittee on Energy and Mineral Resources Chairman Pete Stauber (R-MN), Subcommittee on Federal Lands Chairman Tom Tiffany (R-WI), and Rep. August Pfluger (R-TX), who represents part of the Permian Basin. You may [access a video recording of the hearing and press event here.](#)

House Energy & Commerce Subcommittee Field Hearing –Texas.

On February 16, the House Energy & Commerce Committee Subcommittee on Energy, Climate, and Grid Security held a field hearing in Midland, Texas, entitled *American Energy Expansion: Improving Local Economies and Communities’ Way of Life*. According to the notice, “The field hearing will examine the benefits, opportunities, and challenges to expanding American energy from the local energy community perspective.” Witnesses included Midland Mayor and President of Octane Energy Lori Blong,

Adrian Carrasco, Chairman of the Midland Hispanic Chamber of Commerce and President of Premier Energy Services, and Steven Pruett, President and CEO, Elevation Resources and Chairman of the Board for Independent Petroleum Association of America. You may [access a full video recording of the hearing and witness testimony here.](#)

FEDERAL – Regulatory

BLM Resource Advisory Council Meetings –

Colorado. On February 10, the Bureau of Land Management (BLM) announced a *Notice of Joint and Individual Colorado Resource Advisory Council Meetings (88 Fed. Reg. 8909)*. The BLM announcement provides the upcoming meeting dates for the Colorado Northwest Resource Advisory Council (RAC), Southwest RAC, and Rocky Mountain RAC. All of the meetings are open to the public and virtual participation options will be available. For background, the “Colorado RACs advise the Secretary of the Interior, through the BLM, on a variety of public land issues in Colorado.” Agenda items “may include recreation, land use planning, energy and minerals management, recreation, sage-grouse habitat management, and other issues as appropriate.” [Read more.](#)

BOEM Renewable Energy Modernization Proposed

Rule. On January 30, the Bureau of Ocean Energy Management (BOEM) published a notice of proposed rulemaking, *Renewable Energy Modernization Rule (88 Fed. Reg. 5968)*. According to the BOEM, “the Department has identified opportunities to modernize its regulations to facilitate the development of offshore wind energy resources to meet U.S. climate and renewable energy objectives. This proposed rule contains reforms identified by the Department and recommended by industry since 2010, including proposals for incremental funding of decommissioning accounts; more flexible geophysical and geotechnical survey submission requirements; streamlined approval of meteorological (met) buoys; revised project verification procedures; reform of BOEM's renewable energy auction process; and greater clarity regarding safety requirements. This proposed rule would

advance the Department of the Interior's (DOI) energy policies in a safe and environmentally sound manner that would provide a fair return to the U.S. taxpayer." According to law firm, Hunton Andrews Kurth LLP, "The proposed rule is intended to help jumpstart offshore wind development in the United States, supporting the Biden administration's goals of deploying 30 gigawatts of offshore wind energy by 2030 and 15 gigawatts of floating offshore wind energy by 2035." The public comment period is open through March 31, 2023. [Read more.](#)

EPA Greenhouse Gas Reduction Fund Guidance.

On February 14, the U.S. Environmental Protection Agency (EPA) "announced initial guidance on the design of the Greenhouse Gas Reduction Fund (GGRF) program, created by President Biden's Inflation Reduction Act. EPA published two Federal Assistance Listings outlining key parameters of the grant competitions that will ultimately award nearly \$27 billion to leverage private capital for clean energy and clean air investments across the country. Federal Assistance Listings are the first public notice requirement to implement a federal grant program." The EPA provided that they "will hold two competitions to distribute grant funding under the Greenhouse Gas Reduction Fund: [a \\$20 billion General and Low-Income Assistance Competition](#) and [a \\$7 billion Zero-Emissions Technology Fund Competition](#). EPA will implement these programs in alignment with President Biden's Justice40 Initiative, which directs that 40% of the overall benefits of certain Federal investments flow to disadvantaged communities, including those facing disproportionately high and adverse health and environmental impacts. EPA expects to open competitions for funding under the Greenhouse Gas Reduction Fund by summer 2023." [Read more.](#)

Federal Greenhouse Gas Emissions Policy. (*Update to 1/23/23 Report*) On February 16, the White House Council on Environmental Quality (CEQ) extended the public comment period on its greenhouse gas and climate change guidance for 30 days, now closing on April 10, 2023 (See [88 Fed. Reg. 10097](#)). For background, on January 9, the CEQ issued guidance for federal agencies "to consider mitigation measures

for greenhouse gases to the greatest extent possible when permitting new projects." [Read more.](#) While the guidance, pursuant to the National Environmental Policy Act review process, is not a rulemaking, its purpose, according to the White House is "to help Federal agencies better assess and disclose climate impacts as they conduct environmental reviews, delivering more certainty and efficiency in the permitting process for clean energy and other infrastructure projects." [Read more.](#) The notice of interim guidance, *National Environmental Policy Act Guidance on Consideration of Greenhouse Gas Emissions and Climate Change* ([88 Fed. Reg. 1196](#)), originally published in January, communicated that the CEQ intends "to either revise the guidance in response to public comments or finalize the interim guidance." The public comment period was originally open through March 10, 2023. [Read more here to submit a comment.](#) As reported by the *Oil & Gas Journal*, the "Biden administration is reversing a Trump administration decision that withdrew a 2016 guidance on greenhouse gases (GHGs) issued under President Obama. The Biden CEQ couches its new guidance in the rhetoric of crisis that activists used on global warming." [Read more.](#) You may also access a detailed analysis of the CEQ guidance from law firm Vinson & Elkins [here](#).

U.S. Fish and Wildlife Service Survival and

Incidental Take Permits. On February 9, the U.S. Fish and Wildlife Service (FWS) published a proposed rule, *Endangered and Threatened Wildlife and Plants; Enhancement of Survival and Incidental Take Permits* ([88 Fed. Reg. 8380](#)), which "propose to revise the regulations concerning the issuance of enhancement of survival and incidental take permits under the Endangered Species Act of 1973, as amended. The purposes of these revisions are to clarify the appropriate use of enhancement of survival permits and incidental take permits; clarify our authority to issue these permits for non-listed species without also including a listed species; simplify the requirements for enhancement of survival permits by combining safe harbor agreements and candidate conservation agreements with assurances into one agreement type; and include portions of our five-point policies

for safe harbor agreements, candidate conservation agreements with assurances, and habitat conservation plans in the regulations to reduce uncertainty. We also propose to make technical and administrative revisions to the regulations. The proposed regulatory changes are intended to reduce costs and time associated with negotiating and developing the required documents to support the applications. We anticipate that these improvements will encourage more individuals and companies to engage in these voluntary programs, thereby generating greater conservation results overall.” The public comment period is open through April 10, 2023. [Read more.](#)

U.S. Fish and Wildlife Service Petition Regulations Information Collection. On February 9, the U.S. Fish and Wildlife Service (FWS) published a notice of information collection, *Agency Information Collection Activities; Implementing Regulations for Petitions* ([88 Fed. Reg. 8451](#)), which seeks to renew an information collection regarding public “submissions of petitions to decisions on listing, delisting, or changing the status of a listed species, or revising critical habitat.” For background, “Any interested person may submit a written petition to the Services requesting to add a species to the Lists of Endangered and Threatened Wildlife and Plants (Lists), remove a species from the Lists, change the listed status of a species, or revise the boundary of an area designated as critical habitat.” The FWS invites the public to comment on the information collection used by the agency regarding this petition process. The public comment period is open through April 10, 2023. [Read more.](#)

FEDERAL – Judicial

BLM Leasing – North Dakota. On February 9, a group of environmental litigants filed a brief “responding to a federal lawsuit brought by North Dakota seeking to force the federal government to hold more oil and gas lease sales in the state.” In [State of North Dakota v. U.S. Dept. of Interior](#) (Case No. 1:21-cv-00148-DMT-CRH), the State of North Dakota sued the Interior Department for the BLM failing to hold quarterly oil and gas lease sales. The litigants argue that North Dakota

“seeks to compel BLM to hold oil and gas lease sales, and apparently to issue new leases, every three months while this litigation is ongoing. Courts have repeatedly ruled that they cannot order BLM to do so.” [Read more.](#)

BLM Leasing – Wyoming. On February 8, a number of environmental groups sought to intervene in a BLM leasing case in the U.S. District Court for the District of Wyoming “to defend the Biden administration’s 2021 postponement of several oil and gas lease sales.” In the case, [Wyoming v. U.S. Dept. of Interior](#) (Case No. 1:22-cv-00247-SWS), the State of Wyoming had challenged the Biden administration’s postponement of the leases. For background, in September 2022, the Wyoming court “affirmed the administration’s ability to postpone lease sales.” [Read more.](#) According to the intervenors, “The federal government holds broad authority over whether, when, and how to lease public lands for oil and gas development.” [Read more.](#)

Nuclear Waste Storage – New Mexico. On February 10, the U.S. Court of Appeals for the Tenth Circuit lost its challenge to the Nuclear Regulatory Commission’s decision to grant a license to store nuclear waste in the state. In *State of New Mexico v. U.S. Nuclear Regulatory Commission* (Case No. 21-9593), the State challenged the grant of the license to a private company to store spent nuclear fuel near the New Mexico border. The court held that New Mexico lacked jurisdiction for its petition “because New Mexico didn’t participate in the licensing proceeding or qualify as an aggrieved party. To the contrary, New Mexico just commented to the Commission about its draft environmental impact statement. Commenting on the environmental impact statement didn’t create status as an aggrieved party, so jurisdiction isn’t triggered under the combination of the Hobbs Act and Atomic Energy Act.” [Read more.](#)

STATE – Legislative

Carbon Offset Program – Alaska. On January 27, HB 49 was introduced by the House Rules Committee (R). “This bill establishes a statewide carbon offset

program within the Department of Natural Resources. The proposed offset program has the potential to generate an additional revenue stream for the State of Alaska through biologic carbon storage projects that can mitigate a portion of the carbon dioxide emitted by activities around the State, nation, and world. This offset program will allow private parties to lease state land in order to undertake carbon offset and management programs and would allow the Department of Natural Resources to implement its own carbon offset projects on State lands.”

[Read more.](#)

Oil and Gas Leasing and Development – Alaska.

On January 27, SJR 7 was introduced by the Senate Resources Committee (R). The purpose of this joint resolution is “Supporting oil and gas leasing and development within the National Petroleum Reserve in Alaska; and urging President Biden and the United States Department of the Interior to approve the Willow Master Development Plan.” [Read more.](#)

Solar and Wind Projects – Arizona. On February 7, HB 2702 was introduced by Rep. Quang Nguyen (R). Relating to solar or wind energy projects, the bill sets forth that “a business may not contract or subcontract with a resident of this state or a business in this state to construct a solar or wind energy project that reduces the size of a grazing lessee’s grazing operation unless the business compensates the grazing lessee” as provided. [Read more.](#)

Business Franchise Tax Repeal – Arkansas.

On January 24, HB 1239 was introduced by Rep. Kendon Underwood (R). HB 1239 would repeal the Arkansas Corporate Franchise Tax Act of 1979. “Under current law, a business formed in the state or transacting business in the state must file an annual report and pay an annual franchise tax to the Secretary of State. The first \$8,000,000 of franchise tax and penalty collected is General Revenue and any amount exceeding \$8,000,000 is transferred to the Educational Adequacy Fund. HB1239 repeals the Act so that the franchise tax, including all payment and reporting requirements, would cease.” [Read more.](#)

Underground Gas Storage – Arkansas. On February 16, SB 210 passed both chambers of the legislature. Sponsored by Sen. Missy Irvin (R), the bill amends the underground storage of gas law to include certain other gases. [Read more.](#)

Repeal Of Infrequently Used Tax Expenditures – Colorado. HB23-1121 passed the House on February 13. Introduced by Rep. Shannon Bird (D), the bill would repeal “infrequently used tax expenditures” which includes The oil shale excess percentage depletion income tax deduction; the mining and milling impact assistance corporate income tax credit; the oil shale equipment and machinery severance tax deduction; the oil shale processing severance tax deduction; the oil shale severance tax rate reductions; the oil shale noncommercial production severance tax exemption; and the mineral and mineral fuels impact assistance severance tax credit. [Read more.](#)

Clean Energy Resources – Idaho. On February 7, HB 96 was introduced by the House Committee on Environment, Energy, and Technology (R). The bill would amend “existing law to provide for the promotion and development of clean energy resources for declared purposes, to revise provisions regarding powers of the Idaho Energy Resources Authority, and to provide for clean energy generation projects.” [Read more.](#)

Oil and Gas Amendments – Idaho. On February 10, HB 210 was introduced by the House Committee on Resources and Conservation (R). The bill “Amends and repeals existing law to revise provisions regarding the Oil and Gas Conservation Commission, spacing units, oil and gas wells, the integration of tracts, reporting requirements, public data, confidentiality of well and trade information, rules, and royalties and to provide for minimum surface use bonds.” [Read more.](#)

Trusts; Estates; Testamentary Documents –

Illinois. On February 14, HB 2269 was introduced by Rep. Margaret Croke (D). The bill amends the Electronic Wills and Remote Witnesses Act and changes the short title of the Act to the Electronic Wills, Electronic Estate Planning Documents, and

Remote Witnesses Act. The bill defines various estate, trust, and testamentary terms and provides for electronic estate-related documents and signatures.

[Read more.](#)

Carbon Sequestration – Illinois. On February 10, SB 2421 was introduced by Sen. Laura Fine (D). The bill creates the Carbon Dioxide Transport and Storage Protections Act and defines certain terms. The bill provides “that (i) title to pore space belongs to and is vested in the surface owner of the overlying surface estate, (ii) a conveyance of title to a surface estate conveys title to the pore space in all strata underlying the surface estate, and (iii) title to pore space may not be severed from title to the surface estate. Notwithstanding any other provision of law, prohibits the amalgamation of pore space under the Eminent Domain Act.” The bill also makes other amendments to the law related to carbon sequestration, including requirements and permits. [Read more.](#)

Lesser Prairie-Chicken – Kansas. *(Update to 2/6/23 Report)* On February 9, SCR 1602 was adopted by the Kansas legislature. This measure, while not a law, is a “concurrent resolution disapproving the designation of the lesser prairie chicken as a threatened species in Kansas by the United States Fish and Wildlife Service and supporting efforts to remove such designation.” [Read more.](#)

Foreign Citizen Property Ownership – Montana. On February 2, SB 256 was introduced by Sen. Carl Glimm (R). The bill would prohibit ownership of private property within the state by citizens of enemy states. [Read more.](#)

Revise Court Cost Related to Natural Resources – Montana. On February 3, SB 271 was introduced by Sen. Steve Fitzpatrick (R). The bill would revise court costs related to natural resources. [Read more.](#)

Carbon Emissions – Montana. On February 7, HB 431 was introduced by Rep. Ed Stafman (D). Relating to carbon emissions, the bill provides “for limitations on certain carbon emissions” and provides for related rulemaking authority. [Read more.](#)

Stripper Oil Production Taxation – Montana.

On February 10, HB 485 was introduced by Rep. Joshua Kassmier (R). The bill would revise tax rates for stripper oil production. [Read more.](#)

Electronic Notarizations – Montana. On February 14, SB 330 was introduced by Sen. Greg Hertz (R). The bill would require county clerks to accept electronic notarizations. [Read more.](#)

Independent Contractors – Montana. On February 16, SB 22 passed the Senate. Introduced by Sen. Shane Morigeau (D), the bill provides an independent contractor analysis and provides that a person who does not have an independent contractor exemption certificate but is required to have one is conclusively presumed to be an employee. The bill also amends the independent contractor penalty provision. [Read more.](#)

Regulatory Taking; Property – Montana. On February 8, SB 287 was introduced by Sen. Steve Fitzpatrick (R). The bill provides for instances considered a regulatory taking related to property, including real property interests. [Read more.](#)

Tax Reform Bill – New Mexico. On January 17, SB 38 was introduced by Sen. William “Bill” Sharer (R). According to the official bill fiscal note and summary, [SB 38](#) “is a comprehensive, sweeping tax reform bill that eliminates most gross receipts tax (GRT) exemptions, deductions, and credits, significantly broadening the gross receipts tax base, lowers the GRT rates for the state but allows local governments to retain all local option GRT and compensating tax rates and changes the rates and brackets for personal and corporate income taxes. The bill repeals a number of tax acts, including the insurance premium tax and the motor vehicle excise tax, instead taxing these items through the GRT. In short, it turns the state’s current hybrid of a pure GRT and a conventional sales tax into a true GRT or turnover tax.” [Read a complete bill provision summary here.](#)

Nuclear Waste Storage – New Mexico. On February 7, [SB 53](#) passed committee following its introduction by Sen. Jeff Steinborn (D). Regarding nuclear waste

storage within the state, the bill “would expand the scope of an existing task force to negotiate with the federal government over disposal facilities. It would also prohibit the disposal of nuclear waste in New Mexico without the state’s consent.” [Read more.](#)

Tax Code Amendments – New Mexico. On January 19, [SB 147](#) was introduced by Sen. Benny “Junior” Shendo (D). The bill “is a Taxation and Revenue Department (TRD) agency bill that makes several small but significant administrative changes to the tax code.” [Read a full bill summary here.](#)

Oil & Gas Permit Applications – New Mexico. On February 1, HB 276 was introduced by Rep. Andrea Romero (D). The bill would amend the Oil and Gas Act in “authorizing the oil conservation division of the energy, minerals and natural resources department to require proof of insurance and fiscal solvency when submitting a permit application; [and] providing that a permit application may be denied based on poor compliance history.” [Read more.](#)

Flat Corporate Tax Rate – New Mexico. On February 6, HB 322 was introduced by Rep. Jason Harper (R). The bill would create a flat corporate tax rate. [Read more.](#)

Operator Income Tax Credits – New Mexico. On February 8, [HB 350](#) was introduced by a group of Republican lawmakers. The bill would “establish an ‘oil and gas emission reduction corporate income tax credit.’ A taxpayer that, on or after January 1, 2023, installs a purchased or leased vapor recovery unit that reduces emissions from oil and gas activity may apply for, and the New Mexico Taxation and Revenue Department (TRD) may allow, a credit against the taxpayer’s tax liability imposed pursuant to the Corporate Income and Franchise Tax Act.” As reported by the *Carlsbad Current Argus*, “If applied to all the about 110,000 oil and gas wells in New Mexico, according to the Energy Information Administration, that could equate to an about \$1.3 billion credit to the industry.” [Read more.](#)

Economic Transition Division – New Mexico.

On February 6, [HB 188](#) was reported favorably out of committee following its introduction by Rep. Angelica Rubio (D). “The bill appropriates a total of \$13.385 million from the general fund to the Economic Development Department for the purpose of creating an Economic Transition Division. The new division would be tasked with providing programmatic, funding, administrative, and logistical support for communities and workers in economic transition. The Division’s support would be targeted to aid disproportionately impacted communities and workers transitioning from natural resource extraction industries. The division is also responsible for preparing and publishing an economic transition action plan with 15 components.” As reported, the bill is being described as creating a “new state agency to shift New Mexico away from its dependence on oil and gas.” [Read more.](#)

Electronic Execution of Testamentary Documents; Notaries Public – Ohio.

On February 7, SB 46 was introduced by Sen. Kristina Roegner (R). The bill makes various amendments to existing law regarding the electronic execution of wills and other instruments and provides additional requirements regarding notaries public. [Read more.](#)

Transfer-on-Death Deeds; Beneficiaries – Oklahoma. On February 6, SB 298 was introduced by Sen. Brent Howard (R). The bill relates to transfer-on-death deeds and amends existing law relating to “acceptance of property; clarifying ability of grantee beneficiary to accept certain property; [and] clarifying effect of beneficiary affidavit executed prior to certain date.” [Read more.](#)

Bitcoin Mining Program – Oklahoma. On February 6, [SB 443](#) was introduced by Sen. John “Jim” Montgomery. The bill establishes the Orphaned Well Bitcoin Mining Partnership Program under the Corporation Commission and provides for related provisions to implement the program as detailed. [Read a complete bill summary here.](#)

State Strategic Petroleum Reserve – Oklahoma.

On February 6, SB 205 was introduced by Sen.

Nathan Dahm (R). The bill “creates the State Strategic Petroleum Reserve and directs the Legislature to appropriate any surplus funds that are not constitutionally required to be deposited into the Constitutional Reserve Fund or otherwise encumbered to the maintenance of the newly created Reserve. The measure specifies that the Reserve must contain at least 15 million barrels of oil. The measure provides that oil may be released from the Reserve by executive order of the Governor or by direction of the Legislature if certain conditions outlined in the measure are met.” [Read more.](#)

Pipeline Siting – South Dakota. On January 31, HB 1188 was introduced by Rep. Karla Lems (R). The bill provides “for property owner inclusion in the pipeline siting application and condemnation process.” [Read more.](#)

Eminent Domain; Pipeline Landowner Consent – South Dakota. On February 1, HB 1224 was introduced by Rep. Liz May (R). Regarding eminent domain by a pipeline company, the bill amends existing law to require “written consent of at least ninety percent of the landowners whose property may be subject to an easement for the proposed pipeline, and shall file a verified statement of the required landowner consent with the application for a permit.” [Read more.](#)

Sunset Law; Oil and Gas Regulation – Tennessee. On February 13, SB 58 unanimously passed both chambers of the Tennessee General Assembly. Sponsored by Sen. Kerry Roberts (R), the bill extends the termination date of the Tennessee Board of Water Quality, Oil, and Gas to June 30, 2028. Otherwise, under the Tennessee Governmental Entity Review Law, the board would terminate on June 30, 2023. [Read more.](#)

County Recorders – Utah. On February 2, HB 351 was introduced by Rep. Jordan Teuscher (R). The bill “modifies provisions related to county recorders.” Specifically, the bill “defines terms; establishes the County Recorder Oversight Board for the purpose of: establishing statewide standards and requirements for

county recorders and hearing and deciding appeals from decisions of county recorders; requires a county recorder to comply with the standards and requirements established by the board; describes the membership and appointment of board members; requires the Department of Commerce to provide staff support to the board; allows the board to require certain county recorders to remit a portion of collected fees to offset the board's administrative expenses; requires the board to report annually to the Legislature; and makes technical changes.” [Read more.](#)

Carbon Sequestration; Carbon Offset Agreements; Taxation; Covenants – West Virginia. On February 3, HB 3294 was introduced by Del. Bill Anderson (R). “The purpose of this bill is to balance the interests of current landowners and future landowners to ensure surface, minerals, and forest land may be developed for future economic gain by limiting use restrictions for forest carbon capture and sequestration to a maximum term of 20 years.” The bill provides various taxation, reporting, agreement, and covenant provisions related to the purpose of the bill. [Read more.](#)

Office of Oil and Gas in the Department of Environmental Protection – West Virginia. On February 20, HB 3110 advanced to its final reading in the House following its introduction by Del. Bill Anderson (R). “The purpose of this bill is to ensure that the WVDEP Office of Oil and Gas has sufficient money to inspect the oil and gas wells of the State of West Virginia in an efficacious and diligent manner that protects the people and environment of the State from degradation related to violations of the West Virginia oil and gas production laws.” [Read more.](#)

Royalties; Leasing – West Virginia. On February 13, SB 611 was introduced by Sen. Randy Smith (R). Regarding penalties for nonpayment of royalties under the terms of oil and natural gas leases during production from conventional vertical wells, “The purpose of this bill is to provide for enhanced damages for nonpayment of royalties due from oil, natural gas, or natural gas liquids production under the terms of a lease or other agreement.” House companion bill [HB 3335](#) was introduced on February 8. [Read more.](#)

STATE – Regulatory

Setbacks and Health Protection Zones Ballot Measure – California. *(Update to 1/9/23 Report)*

In a positive development for the oil and gas industry, on February 5, California Secretary of State Shirley Weber announced “that opponents of Senate Bill 1137 gathered more than 623,000 valid voter signatures and met the threshold to put the measure on the ballot as a referendum for next year’s general election on November 5, 2024. Voters will then weigh in on whether to approve or reject the measure.” As a result, the “California law banning the installation of new oil and gas wells near homes, schools, and other community facilities has been put on hold as voters will get a chance to vote on the measure through a referendum next year.” [Read more.](#) For background, on December 13, 2022, industry proponents of a ballot referendum seeking to overturn [SB 1137](#), which banned drilling within 3,200 feet of homes and other sensitive sites known as “health protection zones” announced they gathered more than enough signatures to put the measure on the November 2024 ballot asking voters whether to uphold the recently enacted state law. According to reporting, “Even if county registrars across the state were to confirm only about 64 percent of the signatures gathered are valid, it would still be just enough to at least delay implementation of Senate Bill 1137 for almost two years — a win for the industry.” [Read more.](#) Opponents of SB 1137 began the process of challenging the law’s implementation in September 2022 ([See Initiative 22-0006 here.](#)) The ballot measure was initially filed just days after Gov. Newsom signed SB 1137 into law in late 2022. [Read more.](#)

South Coast AQMD Proposed Rulemaking – California. On February 3, the South Coast Air Quality Management District (SCAQMD) published Proposed Amended Rule (PAR) 1148.2 (2023 Amendment) regarding Notification and Reporting Requirements for Oil and Gas Wells and Chemical Suppliers. [Read more.](#) The purpose of this AQMD proposed rule amendment “is to gather air quality-related information on oil and gas, and injection wells for drilling, well completion, rework, and acidizing.” A staff report for

the proposed rule amendment was released in January and [may be accessed here](#). According to the California Independent Petroleum Association (CIPA), “It is estimated that the written notification requirement to residences within 1500’ of a well being treated with acid could cost up to \$10,000 per project. Costs of this magnitude would cause delays or even prohibit work on wells that would allow production or injection to occur in a more efficient and environmentally advantageous manner. SCAQMD Staff estimates that this requirement will cost operators almost half-million dollars annually in compliance costs.” CIPA also reports, “The [SCAQMD] Governing Board voted unanimously to adopt the PAR with the caveat that the written notification requirement will be studied further to determine if a more cost effective and efficient method is available. The amended Rule will become effective in July 2023.” [Read more.](#)

Pension Fund Divestment from Firms Boycotting Oil and Gas Industry – Texas. On February 7, the Texas Tribune reported that the “Teacher Retirement System of Texas has divested part of its massive pension fund from 10 financial firms that the state comptroller singled out for ‘boycotting’ the oil and gas industry.” The state teacher’s pension fund has almost 2 million Texas educators and retirees who participate in the fund, “which is worth about \$173 billion” and reportedly “the sixth-largest such pension fund in the U.S.” For background, “in 2021, Texas lawmakers [prohibited state funds](#) from contracting with or investing in companies that divest from oil, natural gas and coal companies. In August 2022, Comptroller Glenn Hegar released [a list of 10 investment firms](#) and several funds that would be blocked from doing business with the state due to their climate-change-conscious investment strategies.” [Read more.](#)

Disposal Well Monitoring – Texas. On February 6, the Texas Railroad Commission (RRC) issued an advanced operator notice regarding “Disposal Well Monitoring and Reporting Requirements in the Permian Basin.” [Read more.](#) According to the notice, the RRC “will begin adding additional requirements to new disposal well permits in the Permian Basin to assist the agency and industry in monitoring and

responding to injection and reservoir conditions that may be conducive to induced seismicity.” The new permit language “will require the operator of the well to report daily injection data monthly” according to the provided criteria. [Read more.](#)

STATE – Judicial

Marketable Title Act – Ohio. On January 23, in [Chartier v. Rice Drilling D., L.L.C.](#) (Case No. 2023-Ohio-272), the Ohio Court of Appeals (Seventh District) addressed a dispute over the quantum of oil and gas interests the various litigants held based upon the history of the conveyances at issue. Here, the court agreed with the trial court that the mineral severance in a 1944 deed was extinguished because references in 1951 and 1976 deeds were ambiguous, which made them “general references” and thus held “that if the reference to the interest is general, it is insufficient to preserve a mineral rights reservation.” As noted by law firm Frost Brown Todd LLP, “Chartier highlights that there are two types of references that will be considered specific (or not ‘general’): (1) those that are very detailed (deed book, page, grantor, grantee, and interest severed), and (2) those that are identical, or nearly identical, to the original language. If the reference is somewhere in between, all bets are off because a determination of ambiguity becomes possible.” [Read more.](#)

Mineral Interest Reservations; Deeds – Texas.

On February 17, the Texas Supreme Court reversed an appellate decision involving the interpretation of a deed mineral reservation. In *Van Dyke v. The Navigator Group* (Case No. 21-0146), the appellant-plaintiffs – various successors in interest to original grantors of a 1924 deed – argued that the deed language reserving in the grantors “one-half of one-eighth of all minerals and mineral rights” reserved a one-half mineral interest. The defendant-appellees argued that the deed instead reserved only one-sixteenth of the minerals, conveying the remaining fifteen-sixteenths. In other words, the plain language of the deed provides the clear reading that “one-half of one-eighth” is one-sixteenth. However, the Van Dyke group of litigants argued that the “legacy of the 1/8”

and “estate misconception” doctrines required the court to conclude that the use of a double fraction always creates an ambiguity and established that the grantors actually only reserved one-half of the minerals. Here, the Supreme Court held, “This is not our first case involving double fractions, and it is likely not our last. But building on our precedents, and focused on our duty to faithfully interpret any legal text, we anticipate at least substantially reducing the frequency of disputes about double fractions. We conclude that an accurate construction of the 1924 text requires us to accept that the equation ‘one-half of one-eighth’ equals one-half of the mineral estate. Even if this were not so, nearly a century of the parties’ unbroken understandings and representations would require us to recognize that allocation of present day ownership by applying the presumed-grant doctrine.” Accordingly, the court reversed the judgment of the Court of Appeals and remanded the case back to the trial court for further proceedings. [Read more.](#)

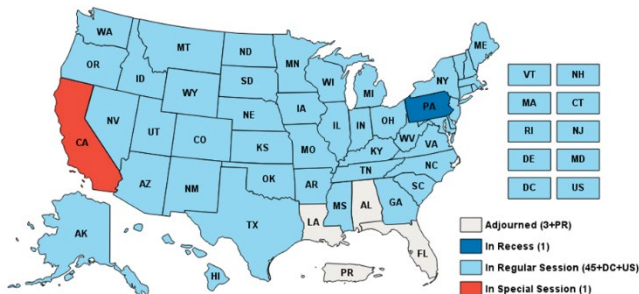
Assignments; Leasing – Texas. In *Mark S. Hogg, LLC v. Blackbeard Operating, LLC* (Case No. 08-20-00199-CV), the Texas Court of Appeals, Eighth District (El Paso), upheld a trial court judgment in favor of the operator in addressing a dispute involving a “broad assignment of numerous oil-and-gas-related property interests. Specifically, we decide whether the assignment conveyed—among other interests—the assignor’s interest in a 1998 oil-and-gas lease.” The party bringing the appeal argued certain interests were not included in the assignment. The court held that the assignment at issue “uses clear, plain language to convey broad interests in the properties described, including detailed definitions where necessary. At issue is simply the interpretation of the language used.” Here, the court determined that read together, “the eight subparagraphs under the granting clause make clear that the Assignors intended to transfer all of their interests in the Assets described.” In sum, the court agreed with prior precedent finding that “we interpret the Assignment ‘to confer upon the grantee the greatest estate that the terms of the instrument will permit.’” [Read more.](#)

INDUSTRY NEWS FLASH

► **Biden acknowledges oil and gas here to stay during State of the Union address.** During an unscripted moment in President Biden's State of the Union address on February 7, the president acknowledged, "We're still going to need oil and gas for a while." Discussing American energy policy, President Biden "said oil executives he'd pressed on the issue had told him bluntly: 'We're afraid you're going to shut down all of the oil wells and all the oil refineries anyway so why should we invest in them?' Biden offered his answer. "We're going to need oil for at least another decade," he said, quickly adding, "and beyond that." [Read more.](#)

LEGISLATIVE SESSION OVERVIEW

States in Session



Session Notes: Alaska, Arizona, Arkansas, California, Colorado, Connecticut, Delaware, Georgia, Hawaii, Idaho, Illinois, Indiana, Iowa, Kansas, Kentucky, Maine, Maryland, Massachusetts, Michigan, Minnesota, Mississippi, Missouri, Montana, Nebraska, Nevada, New Hampshire, New Jersey, New Mexico, New York, North Carolina, North Dakota, Ohio, Oklahoma, Oregon, Rhode Island, South Carolina, South Dakota, Tennessee, Texas, Utah, Vermont, Virginia, Washington, West Virginia, Wisconsin and Wyoming are in regular session. The U.S. Congress is in recess from February 20 to February 26.

Pennsylvania lawmakers in both the House and Senate are in recess. The razor-thin partisan split in the House has brought the chamber to a complete halt. Currently, the House has no rules of procedure in place to operate this session, no legislative days scheduled to conduct business on the House floor and no committees or chairmanships assigned, reports [CNHI News](#). The next scheduled session day is February 27. Senate Majority Leader Joe Pittman, R-Armstrong, adjourned the Senate on January 18 citing the ongoing stalemate in the House and a [potential appeal](#) to the [court ruling](#) that delayed the planned impeachment trial of Philadelphia District Attorney Larry Krasner. The next scheduled session day for the Senate is also February 27.

Arkansas lawmakers are scheduled to recess on March 16 and reconvene on March 27 according to [SCR 2](#) which passed both chambers on February 6.

Virginia is scheduled to adjourn their legislative session on February 25 and their special session on February 28.

The following states are scheduled to convene their 2023 legislative sessions on the dates provided: **Alabama** and **Florida** (March 7) and **Louisiana** (April 10).

The following states are currently holding interim committee hearings: [Alabama](#), [Florida House](#) and [Senate](#) and [Louisiana](#). ■

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