GOVERNMENTAL AFFAIRS REPORT

Highlights At-A-Glance

FEDERAL – Legislative

S. 4227 – Bureau of Land Management (BLM) Mineral Spacing Act. On July 21, S. 4227, known as the "Bureau of Land Management (BLM) Mineral Spacing Act," was reportedly favorably out of the Senate Committee on Energy and Natural Resources following its initial May 2022 introduction. Introduced by Sen. John Hoeven (R-ND), the bill's purpose is to "streamline the oil and gas permitting process and to recognize fee ownership for certain oil and gas drilling or spacing units." According to Sen. Hoeven, "Our legislation is about alleviating the regulatory burden for energy developers and empowering private mineral holders to exercise their property rights. It doesn't make sense that the federal government can veto energy development when it's a minority mineral rights holder and has no surface rights. By eliminating the BLM permit requirement in these instances, our bill will enable greater domestic energy production, helping us to bring down inflation and strengthen U.S. economic and national security." Specifically, the bill removes the BLM permitting requirement in instances when less than half of the subsurface minerals within a drilling spacing unit are owned by the federal government and the federal government does not own or lease any surface rights within the impacted area. The bill allows the federal government to receive royalties from energy production within the particular drilling or spacing unit, and subjects energy producers to all state laws, regulations and guidance governing energy activity in each relevant jurisdiction. Read more.

Congressional Republicans Deliver Letter to President Biden Expressing Weakness of Administration Regarding Domestic Energy. On July 12, House Minority Leader, Rep. Kevin McCarthy (R-CA), joined by 68 colleagues, delivered a letter to President Biden in which they "express concern regarding your upcoming visit to the Middle East, where it is reported that you intend to ask the Kingdom of Saudi Arabia and other OPEC+ nations to export more oil to the United States. This confusing display of weakness is astounding considering that, just a few short years ago, the U.S. was producing more oil and natural gas than any country in the world." The lawmakers invited President Biden to visit domestic energy producers rather than Middle East tyrants and proposed numerous ways in which the United States could once again be energy dominant. "Both onshore and offshore, America has the resources to control our own energy security to help lower prices. It is time that your administration recognizes this and rolls back the destructive actions it has already taken before this crisis gets even worse." Read more.

FEDERAL – Regulatory

President Biden Announces Executive Action on Climate Change. On July 20, President Biden delivered a speech at a former Massachusetts coal-fired power plant to announce, "new executive steps to combat climate change" but stopped short of declaring a "climate emergency." This comes amid legislative efforts to pass widespread environmental legislation stalled in the U.S. Senate, mostly due to Sen. Joe Manchin's (D-WV) vocal opposition to the large budget package his Democrat colleagues and the President have proposed. In its place, the Biden administration is seeking to take certain actions by executive order, although these policies would be greatly limited without Congressional approval. Three key actions President Biden is taking are: (1) Protect Communities from Extreme Heat and Dangerous Climate Impacts; (2) Lower Cooling Costs for Communities Suffering from Extreme Heat; and (3) Expand Offshore Wind Opportunities and Jobs. These initiatives are available in a White House Fact Sheet available here. According to the announcement, President Biden's "actions will protect communities from climate impacts already here, including extreme heat conditions impacting more than 100 million Americans this week, and expand offshore wind opportunities and jobs in the United States." Read more.

Endangered Species Act; Critical Habitats Rule Rescission; Fish and Wildlife Service. On July 21, the U.S. Fish and Wildlife Service rescinded Trump administration rulemaking regarding the designation of critical habitats under the Endangered Species Act. The final rule, *Endangered and Threatened Wildlife and Plants; Regulations for Designating Critical Habitat* (87 Fed. Reg. 43433), reverts "certain decisions on critical habitats to the Interior Department. Under the Trump rule, the Fish and Wildlife Service was required to accept private landowners' claims that including an area in a protected habitat would result in economic harm. Under the pre-Trump rule, which the regulation restores, these exclusions are at the discretion of the Interior secretary." The Trump-era rule was considered more favorable to industry concerns and economic development. Read more.

Interior Department Announces Offshore Wind Energy Areas in the Gulf of Mexico. On July 20, the U.S. Department of the Interior announced "it is seeking public comments on two draft Wind Energy Areas (WEAs) in the Gulf of Mexico. The first draft WEA is located approximately 24 nautical miles (nm) off the coast of Galveston, TX, covers a total of 546,645 acres, and has the potential to power 2.3 million homes with clean wind energy. The second draft WEA is located approximately 56 nm off the coast of Lake Charles, LA, covers a total of 188,023 acres, and has the potential to power 799,000 homes." Read more. The Bureau of Ocean Energy Management (BOEM) also "has prepared a draft Environmental Assessment (EA) covering the entire Call Area to consider the potential impacts from site characterization (e.g., marine mammal surveys) and site assessment (e.g. installation of meteorological buoys) activities expected to take place following lease issuance." Read more. Both the Interior Department and BOEM will be accepting public comments for 30 days from July 20, 2022 on the draft WEA and EA. During the comment period, BOEM will also hold two virtual public meetings where the public can learn more about the environmental review process. There will also be an opportunity for participants to ask questions and provide comments on the draft EA. Read more.

Federal Offshore Leasing Draft Plan. On July 8, the Department of the Interior (DOI) and Bureau of Ocean Energy Management (BOEM) formally announced the availability of its Proposed Program for the 2023-2028 National Outer Continental Shelf Oil and Gas Leasing Program (National OCS Program), as well as the Draft Programmatic Environmental Impact Statement for the 2023-2028 Program (Draft PEIS), through publication in the Federal Register, as the next step in determining future offshore lease sales and opening the draft plan to public comments. See the Notice of Availability here. The public comment period is open through October 6, 2022 and instructions are available at the above link. As part of the process, the BOEM will also be hosting four virtual meetings to obtain public input: August 23; August 25; August 29; and August 31. These meetings are open-house style where you can speak live with BOEM staff to get your questions answered, as well as to provide written comments. To attend/participate in these meetings, learn more here. For background, the DOI initially announced its planning in a July 1, 2022 press release. The DOI has noted that "The Proposed Program includes no more than ten potential lease sales in the Gulf of Mexico (GOM) and an option for one potential lease sale in the northern portion of the Cook Inlet of Alaska. No lease sales are proposed for the other Alaska planning areas, nor for the Atlantic or Pacific planning areas during the five-year period. Inclusion of an area in the Proposed Program is not a final indication that it will be included in the approved National OCS Program or offered in a lease sale. However, any area or sale not included in the Proposed Program will not be considered for inclusion in the 2023–2028 National OCS Program." Read more. Most recently, "the growing debate over the federal government's plans to either allow more oil and gas production to curb inflation or limit drilling to achieve climate goals spilled into a U.S. Senate spending panel's hearing." On July 13, a number of Democrat Senators questioned Interior Secretary Deb Haaland -- as part of an Appropriations Subcommittee hearing -- arguing against any offshore leases as part of the five-year proposal. However, Senate Energy and Natural Resources Committee Chairman Joe Manchin (D-WV) said, "I am disappointed to see that 'zero' lease sales is even an option on the table. I hope the Administration will ultimately greenlight a plan that will expand domestic energy production, done in the cleanest way possible, while also taking the necessary steps to get our offshore leasing program back on track to give the necessary market signals to provide price relief for every American." Read more. For further information on the five-year offshore leasing plan, read a detailed fact sheet article here: Read more.

Oil and Gas Trade Groups Weigh in on Possible EPA Regulation of Air Quality in Permian Basin. On July 21, a number of oil and gas industry groups led by the American Petroleum Institute sent a letter to the U.S. Office of Management and Budget and the Office of Information and Regulatory Affairs objecting to the possible release of a proposed rule by the Environmental Protection Agency (EPA) to regulate ozone air quality in the Permian Basin. No proposed rule has yet been officially released but rule planning is currently working its way through the Biden administration's regulatory affairs offices for review. Although the EPA has classified any such action as "nonsignificant" the letter writers said they "believe such a classification is inappropriate as this action is likely to be economically significant, raises novel energy policy issues at conflict with the President's recently stated priority for '[his] administration [to] us[e] every tool at our disposal to protect American businesses and consumers from rising prices at the pump' following the Russian invasion of Ukraine, and materially alters the budgetary impacts to the United States Treasury due to the impacts on onshore federal oil and natural gas production." To summarize their position, the groups stated that "the potential economic impacts and critical energy policy issues related to this action warrant regulatory review by you and your staff to avoid detrimental impacts, including the potential for increased operating expenses, decreased federal leasing revenues, permitting delays, and decreased oil and natural gas production in the nation's most productive basin. Regulatory review of this action in the Permian is even more important as we face rising geopolitical volatility and record high energy costs." Read more.

AXPC and Trade Groups Deliver Letter to President Biden. On July 20, the American Exploration & Production Council (AXPC) was joined by 18 other oil and gas industry trade groups in delivering a letter to President Biden stating they "are troubled by reports that certain groups have urged your administration to declare a climate emergency for the purpose of advancing false climate solutions, such as banning crude exports or halting new domestic oil and gas development on federal lands and waters. This action stands in stark contrast to your administration's clear recognition of the need for greater global supply of oil and natural gas, as demonstrated by your recent trip to Saudi Arabia to encourage OPEC to produce more oil and gas to meet growing global energy needs and help lower prices here at home." The letter writers call upon the administration "to come see American-made energy production and learn about how we are already part of the climate solution. We hope you will reject these ill-conceived policies and work with American energy producers to meet this dual challenge." Read more.

FEDERAL – Judicial

Hydraulic Fracturing Emissions – Colorado. On July 12, an environmental group sued the U.S. Environmental Protection Agency (EPA) in federal court "to force it to require Colorado to limit pollution from drilling and hydraulic fracturing for oil and methane gas in the Metro Denver area and the Denver Julesburg basin." In *Center for Biological Diversity v. United States Environmental Protection Agency* (Case No. Not Yet Docketed), the suit challenges the EPA's approval of a smog plan by the state's Air Pollution Control Division — a branch of the Colorado Department of Public Health & Environment — which was required to submit plans to the EPA detailing smog cleanup strategies. Although the EPA authorized that plan, the environmental litigants argue "that a potential loophole could allow for unlimited pollution from drilling and fracking." The EPA has yet to respond to the lawsuit. Read more.

Leasing; Shut-In Royalty – Pennsylvania. On July 7, in *Salevsky v. Seneca Resources Company, LLC* (Case No. 4:19-CV-02180), the U.S. District Court for the Middle District of Pennsylvania addressed a dispute over the shut-in royalty provision of a lease and its effect on the operation of that lease. The Salevskys argued that the lease expired because Seneca did not satisfy the lease's provisions, but the court disagreed because the lessee “timely paid shut-in royalties.” The Salevskys countered that “the royalties did not continue the lease because the wells were not shut-in.” But the court held that the “shut-in royalty provision applies when the wells ‘are shut-in, suspended or otherwise not producing for any reason whatsoever. . . ’ [and] Because this broad language does not require the wells to be shut in, the shut-in royalty provision still applies.” The Salevskys further countered that the shut-in royalties did not relieve Seneca of “its duties to develop, produce, and market hydrocarbons.” But the court held that "there is absolutely nothing in the language of the Shut-In Royalty provision that requires that [the] wells in question must produce paying quantities of gas. So Seneca did not breach the lease's duties.” The court also rejected the Salevskys’ failure to unitize argument as well as its abandonment argument. Read more.

STATE – Legislative

Hydraulic Fracturing – Arizona. (*Update to 2/14/22 Report*) HB 2829 died in session upon adjournment. Sponsored by Rep. Myron Tsosie (D), the bill would have prohibited hydraulic fracturing in the state. This piece of legislation is introduced every session in recent years and always fails to advance in the Republican-led legislature. Read more.

Hydraulic Fracturing – Arizona. (*Update to 1/31/22 Report*) SB 1430 died in session upon adjournment. Sponsored by Sen. Juan Mendez (D), the bill would have banned hydraulic fracturing in the state and provided for penalties. With Republican control of both the state House and Senate, the bill was unlikely to receive consideration. Read more.

Well Plugging – Pennsylvania. On July 19, HB 2644 was enacted without the governor’s signature. The bill was presented to Gov. Tom Wolf (D) on July 8, but he took no action. Under Pennsylvania law, the governor must sign or veto legislation within 10 days after transmittal, or it becomes law without his/her signature. Sponsored by Rep. Martin Causer (R), the bill allocates designated federal funding to support the Commonwealth’s well plugging efforts and update bond amounts “so we can both protect our environment and support Pennsylvania energy production.” This bill specifically “instructs the Department of Environmental Protection to use federal funds to create a grant program to target orphaned wells that are unlikely to be chosen for plugging through the department’s existing procurement-oriented well plugging program. A portion of the federal funding would be made available for the existing well plugging program as well. Further, the legislation would provide consistency and predictability for conventional oil and gas well operators by fixing the bond amounts as determined by the General Assembly, rather than allowing the Environmental Quality Board to implement bonding increases via regulation.” The Act takes immediate effect. Read more.

STATE – Regulatory

Wyoming Gas and Diesel Price Working Group. Gov. Mark Gordon (R) has assembled a group of stakeholders to start looking at how to address high gas prices in the state. The Wyoming Gas and Diesel Price Working Group will hold a series of public meetings with the goal for the group to provide a recommendation to the governor. "These meetings will be an opportunity for the working group to receive information as we seek recommendations for reducing the price of fuel at the pump. We have a lot of work to do and greatly appreciate ideas from the public as we move forward," said Brenda Henson, Wyoming Director of the Department of Revenue. The latest meeting, on July 22, was made available for AAPL members through AAPLConnect and the Member News email digests sent to members. Read more.

STATE – Judicial

Leasing; Post-Production Costs; Royalties – Pennsylvania. On April 29, the Pennsylvania Superior Court addressed a dispute regarding deduction of post-production costs from royalties based upon disputed lease interpretation. In *Dressler Family, LP v. PennEnergy Resources* (Case No. 2022 PA Super 77), the issue before the court was whether a lease provision — setting royalties to be one-eighth (1/8th) of "gross proceeds received from the sale of [gas] at the prevailing price for gas sold at the well" permitted PennEnergy to deduct post-production costs from the royalties. The parties agreed that gas is not, in fact, "sold at the well." The trial court concluded that "the royalty provision was plain and unambiguous, and it permitted the deduction of post-production costs." On appeal the appellant argued that "the trial court erred in this interpretation, and in the alternative, that the lease was ambiguous." Here, the court concluded that "the lease terms are ambiguous" and remanded the case back to the trial court. Read more.

Deeds; Ownership – West Virginia. On May 27, the Supreme Court of Appeals of West Virginia addressed an ownership dispute regarding the underlying mineral rights. In *Cofield v. Anteros Resources Corp.* (Case No. 21-0164), the plaintiffs asserted that they jointly owned a one-quarter interest in the minerals underlying a fifty-acre tract of land in Tyler County, obtained in a sale of delinquent tax properties by deed. "The parties' dispute arose when the Cofields approached Antero after obtaining the deed and offered to lease mineral rights, but Antero informed them that it already produces natural gas from the tract (as well as from the two-hundred-fifty-acre tract also mentioned in the Riggs deed) under a lease granted to it by the Beems, who are successors-in-interest to the Riggs deed grantees" and the plaintiffs sought clarification of ownership. Here, the court noted that where the conveyance described "reserves in and under property hereby reserved[,]" without qualification, and the conveyance went on to use the conjunctive "and" to link the fifty-acre tract and the two-hundred-fifty-acre tract when describing the reserves, it concluded that "it is apparent that the deed intended to create a reservation of certain mineral rights under all of the surface property conveyed." Read more.

INDUSTRY NEWS FLASH

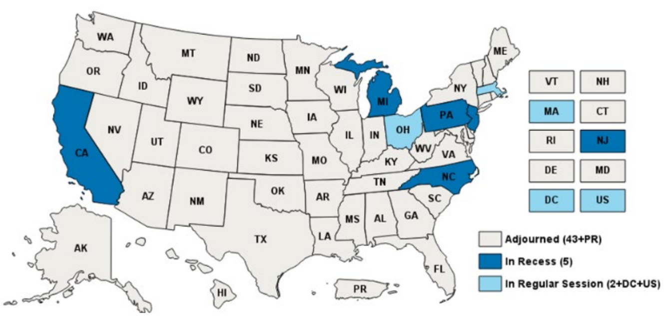
▶ **API releases video urging President Biden to visit American energy sites.** On July 14, the American Petroleum Institute (API) released a new video inviting President Biden "to visit American energy sites and support the American producers who are poised to meet the growing demand for affordable, reliable energy and lead in this global crisis instead of turning to foreign governments for increased supply." API President and CEO Mike Sommers said in the video, "Instead of meeting with foreign governments to ask them to increase energy production, look to reliable U.S. energy sources here at home." This follows the June 23 API and energy association letter urging the same. Read more.

▶ **Texas oil and gas production taxes hit new monthly record.** The Texas Comptroller's office reported in June that the oil production tax came in at $679 million, which was up 87 percent from June 2021, while the natural gas production tax was $439 million, which was up 176 percent from June 2021. As reported by *Rigzone*, both figures were the highest monthly collections on record. The Texas Oil and Gas Association (TXOGA) described June's oil and gas taxes as "remarkable" and TXOGA said "All Texans benefit from a robust oil and natural gas industry that provides hundreds of thousands of good-paying jobs and pays billions towards our state's economy, essential services and public education whether you live in the oil patch or not." Read more.

▶ **Natural gas producers join the Oil and Gas Methane Partnership 2.0 Initiative.** Pioneer Natural Resources, Devon Energy and ConocoPhillips will join 80 other oil and gas producing companies in the Oil and Gas Methane Partnership (OGMP) 2.0, "a reporting program aimed at making methane emissions more transparent in the global oil and gas sector. The companies' participation in the predominantly European OGMP program speaks to growing support for decarbonization among U.S. oil and gas companies that have thus far lagged European peers in setting hard-and-fast climate commitments." [Read more](#).

LEGISLATIVE SESSION OVERVIEW

States in Session



Session Notes: **Massachusetts** and **Ohio** are in regular session. The **U.S.** Congress is also in session.

The following states will adjourn their 2022 legislative sessions on the dates provided: **California** (August 31), **Michigan** (August 17), the **Pennsylvania** House (September 12) and the **Pennsylvania** Senate (September 19).

North Carolina was scheduled to adjourn on July 1, however, the adjournment resolution calls for the regular session to reconvene on July 26 and for additional mini sessions over the following months.

The **Michigan** legislature met on July 20, where Democratic Gov. Gretchen Whitmer signed a record $76 billion budget, according to the governor's press release. Both the House and the Senate recessed again until August 17.

Indiana Republican Gov. Eric Holcomb postponed his scheduled special session of the legislature to July 25. The session will now address an abortion ban as well as the state's budget surplus, reports WTHR. Legislators anticipate the session will span multiple weeks rather than the few days expected from the original call.

West Virginia Republican Gov. Jim Justice has called for a special session of the legislature on July 25, reports WV Public Broadcasting. The only item on the special session agenda is Governor Justice's proposal to reduce the state's personal income tax.

Arkansas Republican Gov. Asa Hutchinson scheduled a special session for the week of August 8 to "reduce the rate of our tax collection," as stated in the governor's press release. The special session comes in response to the record state surplus and will include tax relief as well as other issues items that will be announced at a future date.

Signing Deadlines (by date): **Missouri** Republican Gov. Mike Parson had until July 14 to act on legislation or it became law without signature. **Alaska** Republican Gov. Mike Dunleavy has 20 days from presentment, Sundays excluded, to act on legislation or it becomes law without signature. **Delaware** Democratic Gov. John Carney has 10 days from presentment, Sundays excepted, to act on legislation or it becomes law without signature. **Louisiana** Democratic Gov. John Bel Edwards has 20 days from presentment to act on legislation or it becomes law without signature. **New Hampshire** Republican Gov. Chris Sununu has five days from presentment to act on legislation or it is pocket vetoed. **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. **Rhode Island** Democratic Gov. Daniel McKee has six days from presentment, Sundays excepted, to act on legislation or it becomes law without signature. **South Carolina** Republican Gov. Henry McMaster has two days after the next meeting of the legislature to act on legislation or it becomes law without signature. **Wisconsin** Democratic Gov. Tony Evers has six days, Sundays excepted, 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**, **Georgia**, **Idaho**, **Illinois** House and Senate, **Indiana**, **Iowa**, **Kansas**, **Kentucky**, **Louisiana**, **Maine**, **Maryland**, **Missouri** House and Senate, **Minnesota**, **Mississippi** House and Senate, **Montana**, **Nevada**, **New Hampshire** House and Senate, **New Mexico**, **North Dakota**, **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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