

GOVERNMENTAL AFFAIRS REPORT

FEDERAL – Legislative

S. 5198 – Well Remediation Tax Incentives.

On September 26, Sen. Roger Marshall (R-KS) was joined by Sen. James Lankford (R-OK) in introducing [S. 5198](#). The bill is aimed at supporting “small oil producers and help better utilize resources when closing wells after production.” The bill “offers a tax incentive that allows producers to deposit funds into a tax-free account. The principal and any gains can be realized without tax if the money is spent on capping and remediating wells.” According to Sen. Marshall, “Kansas and Oklahoma are known for their small, independent ‘stripper wells’ that produce vital energy for the region. These wells pose financial challenges when they reach the late stages of operations and must be capped and removed. This bill is designed to proactively incentivize and encourage producers to save for these future expenses, promoting responsible stewardship of our natural resources.” [Read more.](#)

FEDERAL – Regulatory

BLM Bears Ears National Monument Resource

Management Plan. On October 4, the Bureau of Land Management (BLM) published a *Notice of Availability of the Proposed Resource Management Plan and Final Environmental Impact Statement for Bears Ears National Monument in Utah* ([89 Fed. Reg. 80916](#)). The notice provides for a Proposed Resource Management Plan (RMP) and Final Environmental Impact Statement (EIS) for the Bears Ears National Monument which starts a 30-day protest period of the Proposed RMP. According to the BLM, “The proposed plan, if approved, would ensure lasting protections for the monument’s cultural and natural resources, including ancestral cliff dwellings and culturally significant landscapes, while providing continued opportunities for outdoor recreation such as hiking, camping, and hunting.

The plan incorporates Tribal input, feedback from cooperators, stakeholders, and the public, and is informed by the best available science, including Indigenous Knowledge, to ensure balanced use and protection of important resources.” [Read more.](#)

EPA Methane Emissions Rule. To follow up our reporting since 2022, the American Exploration & Production Council reports that the U.S. Environmental Protection Agency (EPA) has “quietly released a Frequently Asked Questions (FAQ) document for the implementation of OOOObc. The guidance includes additional descriptions and details on provisions in the final rule; for example, what constitutes modification for certain sources.” EPA Subpart OOOOb relates to “Standards of Performance for Crude Oil and Natural Gas Facilities for Which Construction, Modification or Reconstruction Commenced After December 6, 2022.” That subpart “establishes emission standards and compliance schedules for the control of the pollutant greenhouse gases (GHG). The greenhouse gas standard in this subpart is in the form of a limitation on emissions of methane from affected facilities in the crude oil and natural gas source category that commence construction, modification, or reconstruction after December 6, 2022.” [Read more about OOOOb here.](#) Subpart OOOOc relates to “Emissions Guidelines for Greenhouse Gas Emissions From Existing Crude Oil and Natural Gas Facilities.” According to the EPA, that subpart “establishes emission guidelines and compliance schedules for the control of greenhouse gas (GHG) emissions from designated facilities in the crude oil and natural gas source category as defined.” [Read more about OOOOc here.](#) The EPA’s new FAQ webpage is [available here.](#)

NLRB General Counsel Non-Compete Internal

Memorandum. On October 7, the National Labor Relations Board (NLRB) General Counsel Jennifer

Abruzzo issued an internal staff memorandum (GC 25-01) urging the NLRB Board to “find certain non-compete provisions unlawful but also, as fully as possible, to remedy the harmful effects on employees when employers use and apply them. In addition, I believe that certain ‘stay-or-pay’ provisions, under which an employee must pay their employer if they separate from employment, infringe on employees’ [Section 7 rights](#) in many of the same ways that non-compete agreements do and that such provisions therefore also violate [Section 8\(a\)\(1\) of the Act](#) unless narrowly tailored to minimize that infringement. Part II of this memo sets forth my proposed framework for assessing the lawfulness of such provisions, the remedies I intend to seek before the Board, and the circumstances under which I will decline to issue complaint against preexisting stay-or-pay arrangements.” [Read the NLRB General Counsel memorandum here](#). Although NLRB actions are primarily enforced against unionized employees (see [NLRB FAQ on who is covered by the National Labor Relations Act here](#)), as noted by law firm Steptoe & Johnson, “According to a prior memorandum from Abruzzo’s office in May of 2023, non-compete clauses — except in limited circumstances — often violate [Section 7 of the NLRA](#), regardless of whether a unionized workforce is present in the workplace.” [Read more](#). Further, Steptoe & Johnson notes that “The latest memorandum announces that the NLRB will be seeking substantial ‘make-whole’ remedies in enforcement actions against employers that maintain what the GC’s office considers to be unlawful non-compete restrictions. These remedies can include compensating current and former employees for wages and benefits allegedly lost due to restrictions on their job mobility, even if they did not apply for a job as a result of the non-compete restriction, as well as their costs for any retraining efforts to become eligible for a position in a different industry, relocation costs to avoid a restrictive area, and even legal fees.” Additionally, “this latest memorandum also targets what it calls ‘stay-or-pay’ provisions, which require employees to pay their employer if they leave their job voluntarily or involuntarily within a certain time frame. Examples include training repayment agreement provisions (TRAPs), sign-on bonuses, and penalties for early resignation. The GC has now proclaimed that, like

non-compete agreements, ‘stay-or-pay’ provisions limit employee mobility and discourage workers from exercising their rights under the NLRA, such as organizing or seeking better working conditions, and thus violate the NLRA. Only programs that 1) offer optional and voluntary benefits, 2) have reasonable and narrow terms for repayment, and 3) are not enforced against employees terminated without cause will escape scrutiny. The GC has also stated that employers with existing ‘stay-or-pay’ programs have a 60-day window from the date of this memorandum to ‘cure’ their programs in order to meet this test.” Law firm Fisher & Philipps notes that “While GC Memos like this one don’t represent the official legal position of the entire agency, they do represent the policy and guidance for all Regional Offices investigating and prosecuting charges against employers.” For a detailed legal analysis of the memo and its implications, [Read more](#). Additional resources are [available here](#) and [here](#) and [here](#).

[FEDERAL – Judicial](#)

EPA Methane Emissions Rule – U.S. Supreme Court.

As an update to our reporting since 2023, on October 4, the U.S. Supreme Court declined to stay the U.S. Environmental Protection Agency’s (EPA) methane emissions rule while a case is pending in lower courts. [Read more about the rule here](#). As reported by the *Oil & Gas Journal*, the rule “requires companies to curb methane emissions from oil and gas production and storage and many processing and pipeline operations. EPA says the rule would slash methane emissions by 80% between 2024 and 2038 by minimizing the size and frequency of gas leaks. The regulations also target the routine flaring of natural gas.” [Read more](#). The decision by the high court not to intervene “allowed the Biden administration to continue enforcing, for the time being, a new rule that aims to curb emissions of the greenhouse gas methane from new and existing oil and gas facilities. The high court rejected a request from nearly half of the states and industry groups to put the measure from the Environmental Protection Agency on hold while proceedings over its legality continue. There were no noted dissents.” We will keep AAPL members updated as the lower court proceedings continue. [Read more](#).

STATE – Legislative

Independent Contractor Protections – California.

On September 28, Gov. Gavin Newsom (D) signed SB 988, known as the Freelance Worker Protection Act, into law. The bill imposes minimum requirements, commencing January 1, 2025, relating to contracts between a hiring party and a freelance worker (i.e. independent contractor) for an amount equal to or greater than \$250. “Specifically, the bill would require a hiring party to pay a freelance worker the compensation specified by a contract for professional services on or before the date specified by the contract or, if the contract does not specify a date, no later than 30 days after completion of the freelance worker’s services. The bill would require a contract between a hiring party and a freelance worker to be in writing and would require a hiring party to retain the contract for no less than 4 years. The bill would prohibit a hiring party from discriminating or taking adverse action against a freelance worker for taking specified actions relating to the enforcement of these provisions. The bill would authorize an aggrieved freelance worker or a public prosecutor to bring a civil action to enforce these provisions.” [Read more.](#)

Climate Disclosure Reporting – California. To follow up our prior reporting on [SB 219](#), signed into law by Gov. Gavin Newsom (D) on September 27, law firm Covington & Burling LLP recently provided a detailed summary and analysis of this climate disclosure legislation. The firm notes that “Companies that do business in California and meet certain revenue thresholds should continue to prepare to comply with the state’s landmark climate disclosure laws that impose reporting deadlines starting in 2026, even as a newly enacted state law gives California regulators more time and flexibility in promulgating implementing regulations.” SB 219 amended existing state climate disclosure laws, but “did not eliminate or alter substantive reporting requirements under either of the California climate disclosure laws. Nor did SB 219 delay the years in which reporting requirements begin. However, the new law did modify the 2023 statutes in several respects that are relevant for companies that will be subject to the climate

disclosure laws.” Notable changes to existing law reflected in SB 219 include those related to California Air Resources Board rulemaking timelines; timing of Scope 3 emissions disclosures deadlines; and consolidated reporting at a parent company level. [Read more.](#)

Personal Income Tax Cuts – West Virginia.

On October 8, special session bill, [SB 2033x](#), passed both chambers and is awaiting signature from Gov. Jim Justice (R). The bill provides that beginning January 1, 2025, the personal income tax rate for certain individuals, joint filings, households, estates and trusts will be reduced by up to two percent adjusted for income. [Read more.](#)

For all 600+ bills AAPL is currently monitoring and tracking for members, please see the continuously updated member-exclusive AAPL Governmental Affairs Bill Tracking Summary spreadsheet, available through the AAPLConnect LANDNEWS and Governmental Affairs Network member forums [here](#) or on the AAPL website [here](#).

STATE – Regulatory

Methane Task Force – California. The California Department of Conservation has announced it will hold its next Methane Task Force public meeting on October 16, 2024. As provided by the Department, “The virtual public meeting ‘will cover the finalized expenditure plan for Phase 2 of the State Oil and Gas Well Abandonment Program, an update on CARB’s Oil and Gas Regulation Amendment, and information about the rulemaking timeline and process for Leak Detection and Response. The meeting will include time for public comments.’” [Read more.](#)

City of Los Angeles Oil Well Bonding – California.

On September 27, the Energy and Environment Committee of the City of Los Angeles City Council considered an amendment proposed by the Board of Fire Commissioners to increase bonding requirements for oil wells within the city limits. The California Independent Petroleum Association (CIPA) opposed the amendment and reportedly met with each member

of the committee. CIPA sent a letter to the committee pointing out “that the amendment is illegal since it is preempted by state law, is arbitrary, fails to take into account the state’s programs for idle and orphan wells, and failed to do the required CEQA analysis.” In the end, the committee did not adopt the amendment and agreed that the issue needed further study.

[Read more.](#)

Energy & Carbon Management Commission Class VI Rulemaking – Colorado. On October 9, the Colorado Energy & Carbon Management Commission (ECMC) announced it will host a remote virtual stakeholder meeting for its Class VI rulemaking on October 21, 2024. According to the ECMC, the agency will be considering additions and amendments to commission rules of practice and procedure for multiple rule series as indicated. [Read more.](#) According to the ECMC, the rulemaking is to begin on December 2, 2024. To request party status – which in Colorado means stakeholders can submit comments, participate in discussions, or attend official proceedings – which is due by October 16, 2024, you may [access the ECMC online form here](#). For more information on ECMC Class VI rulemaking including the purpose, details, and timelines, [Read more here](#).

Community Solar Development – New Mexico.

The New Mexico Public Regulation Commission (PRC) has announced the adoption of “amendments to New Mexico’s Community Solar Rule ([17.9.573 NMAC](#)) that will bring significant developments to the state’s solar energy landscape. Importantly, the PRC raised the statewide solar capacity cap from 200 MW to 500 MW, authorizing an additional 300 MW to New Mexico’s Community Solar program cap effective November 1, 2024.” [Read more about the amendments here](#). The original proposed rule (Utility - 24-00094-UT - IN THE MATTER OF POTENTIAL AMENDMENTS TO THE COMMUNITY SOLAR RULE, 17.9.573 NMAC) is [available here](#). According to law firm Beatty & Wozniak, “The capacity increase demonstrates New Mexico’s commitment to expanding solar power, encourages more investment in solar infrastructure, and aligns with both state renewable energy goals and federal funding opportunities. New Mexico was

recently awarded \$156 million under the EPA’s Solar for All program, which emphasizes solar access for low-income communities. This increase will enable New Mexico to optimize the benefits of such funding by expanding solar project availability in the years ahead.” [Read more.](#)

New Mexico Environment Department Regional Haze Planning – New Mexico. On October 4, the New Mexico Environment Department (NMED) announced that the Environmental Improvement Board scheduled a hearing beginning on December 18, 2024 “to consider NMED’s petition to adopt New Mexico’s proposed Regional Haze plan and new companion rule [20.2.68 NMAC](#) – Regional Haze Requirements.” [Read more.](#) According to the NMED, “The hearing will last as long as required to hear all testimony, evidence, and public comment and is expected to last approximately three days.” [Read more.](#) According to the NMED, “The goal of the rulemaking to establish enforceable emission limitations, 24 compliance schedules, and other measures that are necessary to make reasonable progress during the second 25 regional haze implementation period, and provisions to make these measures practicably enforceable, including 26 averaging times, monitoring requirements, and recordkeeping and reporting requirements.” To learn more about NMED Regional Haze Planning, including numerous resources, information about public hearings, and the public comment process, [Read more here](#).

Oklahoma Corporation Commission Oil and Gas Proposed Rulemaking – Oklahoma. On September 24, the Oklahoma Corporation Commission (OCC) proposed two rulemakings amending Chapter 5 Rules of Practice for the OCC and amending Chapter 10 regarding Oil and Gas Conservation. [Access the Chapter 5 proposed rulemaking here](#). The OCC has also provided multiple dates and access information for technical conferences, hearings, and public comment deadlines. [Access that OCC notice here](#). The Chapter 10 proposed rulemaking provides definitions for disposal wells, producing leases, and production, among other provisions. [Access the](#)

[Chapter 10 proposed rulemaking here](#). The OCC has also provided multiple dates and access information for technical conferences, hearings, and public comment deadlines. [Access that OCC notice here](#).

Texas Commission on Environmental Quality Emissions Standards Rulemaking – Texas. The Texas Commission on Environmental Quality (TCEQ) has announced upcoming public stakeholder meetings for forthcoming rulemaking for U.S. Environmental Protection Agency (EPA) “emission guidelines for existing crude oil and natural gas facilities and published updated New Source Performance Standards (NSPS) for new and modified crude oil and natural gas facilities” [...] for which states “are required to prepare and submit state plans to implement federal [Clean Air Act Section 111\(d\)](#) emission guidelines adopted by EPA.” The proposed rulemaking is expected to be published by TCEQ in August 2025. According to the TCEQ, the rulemaking is to “ensure that the State of Texas maintains the authority to regulate these sources.” The TCEQ stakeholder meetings – which are open to the public – will be held on November 6, 14, and 20, 2024. For stakeholders wishing to ask questions at the meetings, registration is required by TCEQ with a deadline date of November 4, 2024. [Read more](#).

STATE – Judicial

Leasing; Post-Production Costs – Ohio. On September 11, in *EAP Ohio, LLC v. Sunnydale Farms, LLC* (Case Nos. 24 CA 0974, 24 CA 0975), the Ohio Court of Appeals, Seventh District, addressed a dispute involving the interpretation of the royalty provision in the parties' oil and gas lease agreements, and specifically post-production cost deductions from royalties. Here, the court determined that there were genuine issues of material fact regarding those lease terms and their meaning that required the case to be sent back to the trial court for further determinations. The court held that “the trial court erred by weighing competing definitions of the words ‘transportation’ and ‘gathering’ when addressing summary judgment. The court also erred to the extent it considered custom and usage evidence or testimony in its analysis and by

considering the testimony in an effort to understand technical terms.” Further, the court held that the “lease language is ambiguous” and “genuine issues of material fact exist regarding the meaning of the lease term transportation and whether it encompasses gathering and fuel costs associated with or incurred during gathering.” Additionally, the court concluded “that it is unclear based on a plain reading of the oil royalty provision whether Appellee [leaseholder and operator] was permitted to deduct its trucking expenses.” [Read more](#).

INDUSTRY NEWS FLASH

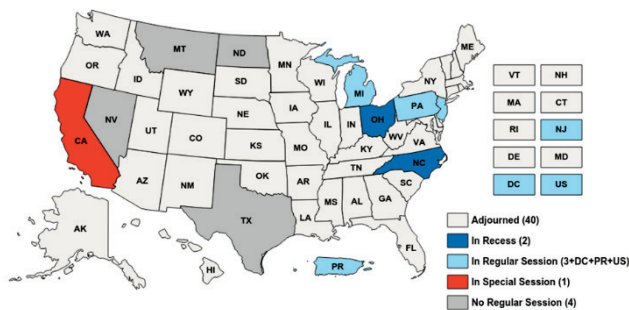
► **Biden administration funds \$1.5 billion in electric power projects including a connection to the Texas power grid.** On October 3, the Biden administration announced it “is putting \$1.5 billion toward four electric power projects, including a connection to the Southeast for Texas’s isolated grid.” According to the U.S. Department of Energy, “The four projects are expected to improve grid reliability and improve energy access.” Importantly, “One of the projects will, for the first time, connect the isolated Texas power grid with power markets in the southeastern U.S. That grid’s lack of connection came into focus after 2021’s Winter Storm Uri, which caused severe power outages and ultimately killed hundreds of people.” [Read more](#).

► **Colorado Oil and Gas Association head steps down.** On September 27, Dan Haley, CEO and President of the Colorado Oil and Gas Association, announced his resignation after more than 9 years at the association. Haley said he will step down later this year or early next year. Haley told reporters that the industry has become more highly regulated in Colorado and “it is more difficult for small operators to navigate the rules.” And now “We have fewer upstream producers in Colorado than we did when I started. Those companies need to scale in order to meet that high threshold set by those regulations.” [Read more](#).

► **U.S. oil demand hits highest seasonal level since 2019.** On September 30, *Reuters* reported that “U.S. oil demand rose in July to the highest seasonal level since 2019 while output declined for the second time in three months, data from the U.S. Energy Information Administration showed.” According to the data, “Total oil consumption rose 1.2% from June to 20.48 million barrels per day in July, the highest for that month since 2019.” [Read more.](#)

LEGISLATIVE SESSION OVERVIEW

States in Session



Session Notes: Michigan and Pennsylvania are in regular session. The U.S. Congress is in regular session.

Ohio is in recess until November 13.

North Carolina passed an [adjournment resolution](#) that calls for the regular session to reconvene periodically through December. The legislature adjourned a session on October 9 and is scheduled to reconvene on October 24.

California Democratic Gov. Gavin Newsom [called](#) the legislature into a special session immediately following its adjournment on August 31. According to the [Associated Press](#), Governor Newsom called the session to debate measures that would reduce gas prices. Newsom said the special session is necessary to “prevent price spikes next year and beyond.”

Louisiana Republican Gov. Jeff Landry announced that he will call a special session in November to consider

tax reforms. According to [Yahoo News](#), Governor Landry hopes to overhaul the state’s current tax system by reducing income tax and charging sales tax on more items. In explaining his plan, Landry said it would “provide an immediate increase in take-home pay for every Louisiana taxpayer.” If the legislature approves of the tax reforms, they would then need to be ratified by voters next March before becoming law.

The following states are currently holding interim committee hearings or studies: [Alabama](#), [Alaska](#), [Arizona](#), [Arkansas](#), [California House](#) and [Senate](#), [Colorado](#), [Connecticut](#), [Georgia](#), [Idaho](#), [Illinois House](#) and [Senate](#), [Indiana](#), [Kansas](#), [Kentucky](#), [Louisiana](#), [Maryland](#), [Minnesota](#), [Mississippi House](#) and [Senate](#), [Missouri House](#) and [Senate](#), [Montana](#), [Nebraska](#), [Nevada](#), [New Hampshire House](#) and [Senate](#), [New Mexico](#), [New York Assembly](#), [North Dakota](#), [Oklahoma House](#) and [Senate](#), [Oregon](#), [Rhode Island](#), [South Carolina](#), [South Dakota](#), [Tennessee](#), [Texas House](#), [Utah](#), [Virginia](#), [Washington](#), [West Virginia](#) and [Wyoming](#).

The following states are currently posting 2025 bill drafts, pre-files and interim studies: [Alabama](#), [Florida](#), [Iowa](#), [Nebraska](#), [Nevada](#), [North Dakota](#), [Montana](#), [Oklahoma House](#) and [Senate](#) and [Utah](#). ■

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