

# GOVERNMENTAL AFFAIRS REPORT

## Highlights At-A-Glance

### FEDERAL – Legislative

#### **S. 337 – Replenishing Our American Reserves Act.**

On March 1, official bill text was made available for [S. 337](#), known as the Replenishing Our American Reserves Act or the ROAR Act. Sponsored by Sen. Dan Sullivan (R-AK), the bill amends “the Energy Policy and Conservation Act to require that the Strategic Petroleum Reserve contain petroleum products produced or refined in the United States.” According to Sen. Sullivan, “The ROAR Act requires the U.S. Department of Energy (DOE) to ensure that only petroleum products that have been produced or refined in the United States are acquired and injected into the SPR. It would establish limitations on importing petroleum products for the purpose of filling the SPR and prohibit the export of petroleum products from the SPR to a country that is designated as a country of particular concern for religious freedom, including China. Finally, it would require DOE to issue a study on the feasibility of establishing remote crude oil and natural gas reserves in Alaska and other regions of the country.” [Read more.](#)

#### **S. 319 – Protecting Our Wealth of Energy**

**Resources (POWER) Act.** On February 24, official bill text was made available for [S. 319](#), known as the Protecting Our Wealth of Energy Resources Act of 2023 or the POWER Act. Sponsored by Sen. Cynthia Lummis (R-WY), the bill would “prohibit the president or his secretaries of the Interior, Agriculture or Energy from blocking energy or mineral leasing and permitting on federal lands and waters without Congressional approval.” Sen. Lummis said, “President Biden’s executive orders and administrative actions taking aim at energy and mineral development on public lands hurt our economy, communities across the west and the environment by forcing our nation to rely on countries with lower environmental standards for

importing energy. We have borne witness to the negative impacts of these policies through record high gas prices and increased prices on goods and services we rely on every day. Not to mention, these efforts are illegal. It is time for Congress to take back its authority and to unleash American energy and mineral potential.” [Read more.](#)

**S. 293 – Fair Access to Banking Act.** On February 22, official bill text was made available for [S. 293](#), known as the Fair Access to Banking Act. Sponsored by Sen. Kevin Cramer (R-ND), the bill would “bar financial institutions from refusing or limiting services to constitutionally-protected industries” such as the oil and gas industry. According to Sen. Cramer, his “legislation is in response to United States banks and financial institutions increasingly using their economic standing to categorically discriminate against legal industries.” [Read more.](#)

**S. 282 – Arctic Refuge Protection Act of 2023.** On February 22, official bill text was made available for [S. 282](#), known as the Arctic Refuge Protection Act of 2023. Sponsored by Sen. Ed Markey (D-MA), the bill “will restore critical protections to the Arctic National Wildlife Refuge—home to the Gwich’in people and the nation’s largest national wildlife refuge—by designating the Coastal Plain ecosystem as wilderness under the National Wilderness Preservation System. This legislation would permanently halt any new oil and gas leasing, exploration, development, and drilling on the Coastal Plain, and would safeguard the subsistence rights of the Arctic Indigenous Peoples who depend upon the unique ecosystem within the Arctic Refuge.” Even if the bill passes the Senate, it is unlikely to advance in the Republican-controlled House. [Read more.](#)

**S.J. Res. 9 – Lesser Prairie-Chicken Joint Resolution of Disapproval.** On February 22, official text was made available for [S.J. Res. 9](#), a joint resolution of Congress that “would prevent the lesser prairie-chicken from receiving protected status under the Endangered Species Act (ESA).” The resolution would nullify the U.S. Fish and Wildlife Service rulemaking finalized on November 22, 2022, which determined threatened status for the Northern distinct population segments (DPS) and endangered status for the Southern DPS and “adds the DPSs to the List of Endangered and Threatened Wildlife.” (See [87 Fed. Reg. 72674](#)) According to the resolution sponsor, Sen. Roger Marshall (R-KS), “Placing the lesser prairie-chicken on the endangered species list should not be happening in the first place. Farmers, ranchers, and others in Kansas and the region have been instrumental in the recovery of the species to this point while the climate activists demanding this rule have no understanding of the threat it poses to Kansas’s economy, especially the energy and ag industries.” House companion resolution, [H.J. Res. 29](#) was introduced by Rep. Tracey Mann (R-KS). [Read more.](#)

**H.R. 923 – Protecting Our Wealth of Energy Resources Act of 2023.** On March 2, official bill text was made available for H.R. 923, known as the Protecting Our Wealth of Energy Resources Act of 2023 or the POWER Act of 2023. Sponsored by Rep. Harriet Hageman (R-WY), the bill would “prohibit the President from issuing moratoria on leasing and permitting energy and minerals on certain Federal land.” This is the companion bill to S. 319 noted above. [Read more.](#)

**H.R. 781 – Guaranteeing Independent Growth Act.** On March 1, official bill text was made available for [H.R. 781](#), known as the Guaranteeing Independent Growth Act or the GIG Act. Sponsored by Rep. Drew Ferguson (R), the bill provides for a favorable independent contractor test utilized under the Trump administration that sets a two “core” factor test: the nature and degree of the individual’s control over the work and the individual’s opportunity for profit or loss. [Read more.](#)

**H.R. 518 – Endangered Species Transparency and Reasonableness Act of 2023.** On February 21, H.R. 518, known as the Endangered Species Transparency and Reasonableness Act of 2023, was introduced by Rep. Tom McClintock (R-CA). The bill would “amend the Endangered Species Act of 1973 to require publication on the internet of the basis for determinations that species are endangered species or threatened species.” [Read more.](#)

**H.R. 356 – Unleashing American Energy Act.** On February 21, [H.R. 356](#), known as the Unleashing American Energy Act, was introduced by Rep. Jerry Carl (R-AL). The bill would “require the Secretary of the Interior to conduct a minimum number of oil and gas lease sales in certain areas, to prevent delays in oil and gas leasing.” According to Rep. Carl, his bill would “require a minimum of two oil and gas lease sales a year in the Gulf of Mexico and in the Alaska Region of the Outer Continental Shelf, and it prohibits future moratoriums or delays on oil and gas leasing.” [Read more.](#)

**H.R. 248 – Promoting Local Management of the Lesser Prairie Chicken Act.** On February 21, [H.R. 248](#), known as the Promoting Local Management of the Lesser Prairie Chicken Act was introduced by Rep. Ron Estes (R-KS). The bill would “amend the Endangered Species Act of 1973 to exclude certain populations of the lesser prairie chicken from the authority of such Act” to remove the species from the lists of threatened species and endangered species in Kansas, Oklahoma, Texas, Colorado, or New Mexico. [Read more.](#)

**H.R. 99 – Less Imprecision in Species Treatment Act of 2023.** On February 24, H.R. 99, known as the Less Imprecision in Species Treatment Act of 2023 or the LIST Act of 2023, was introduced by Rep. Andy Biggs (R-AZ). The bill “revises the process for removing a species from the endangered or threatened species lists. A species must be removed from the endangered or threatened species lists if the Department of the Interior produces or receives substantial scientific or commercial information demonstrating that the species is recovered or that

recovery goals set for the species have been met. The publication and notice of a proposed regulation to remove a species from the lists must consist solely of a notice of the removal. The bill establishes a process for removing species from the lists if they were erroneously or wrongfully listed. The bill prohibits a person from submitting a petition to list a species as a threatened or endangered species for 10 years if the person knowingly submitted a petition with information that was inaccurate beyond scientifically reasonable margins of error, fraudulent, or misrepresentative.”

[Read more.](#)

**H.J. Res. 30 - Climate Change and Other Environmental, Social, and Governance Factors in Retirement Plans.** On March 2, Congress passed Republican-backed H.J. Res. 30. This joint resolution of disapproval under the Congressional Review Act would nullify “a Department of Labor rule concerning the fiduciary duties with respect to employee benefit plans. Under the rule issued on December 1, 2022, plan fiduciaries may consider climate change and other environmental, social, and governance factors when they make investment decisions and when they exercise shareholder rights, including voting on shareholder resolutions and board nominations.” President Biden is expected to veto the measure.

[Read more.](#)

**House Natural Resources Committee Hearings.** On February 28, the House Natural Resources Committee held a hearing to consider a package of energy bills moving through committee which AAPL has been tracking for members. Among those testifying were Dan Naatz, Chief Operating Officer and Executive Vice President of the Independent Petroleum Association of America. You may [access a full video recording of the hearing and witness testimony here.](#) The committee also held an infrastructure-related hearing the same day, which focused on discussion draft legislation that would “reform and streamline permitting, reduce litigation, and focus environmental reviews” to improve the federal permitting process. You may [access a full video recording of the hearing and witness testimony here.](#)

## **FEDERAL – Regulatory**

**BLM Oil and Gas Lease Sale – New Mexico; Oklahoma.** On February 17, the Bureau of Land Management (BLM) New Mexico State Office announce the start of “a 30-day scoping period to receive public input on 12 parcels totaling 915.59 acres that may be included in an upcoming lease sale. Scoping ends on March 20.” With this notice, the BLM is considering parcels for lease in New Mexico and Oklahoma. [Read more.](#)

**BLM Resource Advisory Council Meeting – Idaho.** On February 27, the BLM published a *Notice of Public Meeting of the Idaho Resource Advisory Council* ([88 Fed. Reg. 12404](#)) announcing the Idaho Resource Advisory Council (RAC) will host a meeting on March 17, 2023. The Idaho RAC meeting will be held virtually on the Zoom platform and is open to the public.

[Read more.](#)

**BLM Resource Advisory Council Meeting – New Mexico.** On February 27, the BLM published a *Notice of Public Meeting, Southern New Mexico Resource Advisory Council, New Mexico* ([88 Fed. Reg. 12403](#)) announcing the Southern New Mexico Resource Advisory Council (RAC) will host an in-person meeting, with a virtual participation option, on March 29, 2023. RAC meetings are open to the public.

[Read more.](#)

**BLM Annual Oil and Gas Operations Civil Penalty Inflation Adjustments.** On February 24, the Bureau of Land Management published its annual final rule, *Onshore Oil and Gas Operations and Coal Trespass-Annual Civil Penalties Inflation Adjustments* ([88 Fed. Reg. 11818](#)), which “adjusts the level of civil monetary penalties contained in the Bureau of Land Management’s (BLM) regulations governing onshore oil and gas operations and coal trespass as required by the Federal Civil Penalties Inflation Adjustment Act Improvements Act of 2015.” [Read more.](#)

**BLM Information Collection for Oil and Gas Leasing in the National Petroleum Reserve – Alaska.** On February 28, the BLM published a

notice of information collection, *Agency Information Collection Activities; Oil and Gas Leasing: National Petroleum Reserve-Alaska* ([88 Fed. Reg. 12697](#)) that “covers paperwork requirements for operators and operating rights owners in the National Petroleum Reserve—Alaska (NPRA).” The comment period is open through May 1, 2023. [Read more.](#)

**BLM Oil and Gas Statistics.** Last week, the BLM released its Fiscal Year 2022 oil and gas related statistics. As noted by the American Exploration & Production Council, “Notably, a figure long touted by the Administration that the industry was sitting on 9,000 approved permits was revised significantly down to about 6,600 permits. BLM’s statement referenced a reporting discrepancy that resulted from its transition to a new database in 2020 as the reason for the error.” [Read more.](#)

**BOEM Offshore Oil and Gas Lease Sale – Gulf of Mexico.** On February 27, the Bureau of Ocean Energy Management (BOEM) published its final notice of sale for the Gulf of Mexico (GOM) Regionwide Outer Continental Shelf (OCS) Oil and Gas Lease Sale 259 that will open and publicly announce bids on March 29, 2023. As noted by the BOEM, the “Inflation Reduction Act of 2022 requires BOEM to hold GOM Lease Sale 259 by March 31, 2023. The GOM Lease Sale 259 Final Notice of Sale (NOS) package contains information essential to potential bidders and comprises this notice, Information to Lessees, and Lease Stipulations.” [Read more.](#)

**EPA Methane Emissions Proposed Rulemaking.** (*Update to 12/12/22 Report*) On March 2, Texas Attorney General Ken Paxton announced he “sent a West Virginia-led comment letter to Environmental Protection Agency (EPA) Administrator Michael Regan, urging the agency to drop a new rule that directly targets the oil and natural gas industry with crippling regulations.” [Read the letter here.](#) The rulemaking, which is still in the proposed rulemaking stage, would, according to Paxton, “crack down on oil and gas facilities with unprecedented and drastic emission guidelines. To enforce these cumbersome new rules, EPA’s rule would cut out the states in certain instances and empower

third-party interest groups to identify large methane emitters and notify them, which would require substantial actions by the owner receiving the notice. The compliance costs of the supplemental rule and its enforcement, which have the potential to bankrupt thousands of energy producers, would be in the billions. The rule’s costs would inevitably fall on the shoulders of the American people, all while being implemented in the name of achieving ambiguous and unreasonable emissions goals.” [Read more.](#)

**Oil and Gas Leasing Letter to Interior Secretary.** (*Update to 12/12/23 Report*) On February 27, a group of environmental and conservation groups delivered a letter to the Interior Secretary urging the department “to finalize new regulations for the federal onshore oil and gas program.” [Read the letter here.](#) The letter writers list policy areas with recommendations for regulatory implementation, some based off Bureau of Land Management instruction memoranda issued in November 2022. [Access the instruction memoranda here.](#) In short, the groups are calling for multiple regulatory reforms as federal oil and gas leasing has resumed this year. [Read more.](#)

**IRS Guidance for Eligible Qualifying Advanced Energy Projects.** On February 22, the Internal Revenue Service (IRS) issued [Notice 2023-18, Initial Guidance Establishing Qualifying Advanced Energy Project Credit Allocation Program Under Section 48C\(e\)](#), to announce a program “to allocate \$10 billion of credits (\$4 billion of which may be allocated only to projects located in certain energy communities) for qualified investments in eligible qualifying advanced energy projects.” [Read more.](#) As noted by law firm Greenberg Traurig, LLP, “The goal of the program is to expand U.S. manufacturing capacity and quality jobs for clean energy technologies, to reduce greenhouse gas emissions in the United States, and to secure domestic supply chains for critical materials that serve as inputs for clean energy technology production.” [Read more.](#) The forthcoming process will begin with applicants submitting “concept papers to the Department of Energy (DOE) through the eXCHANGE portal between May 31 and July 31, 2023.” We will keep AAPL members informed once the application process is active. [Read more.](#)

**Carbon Capture; Department of Energy.** On February 23, the U.S. Department of Energy (DOE) announced “\$2.52 billion in funding for two carbon management programs to catalyze investments in transformative carbon capture systems and carbon transport and storage technologies. Funded by President Biden’s Bipartisan Infrastructure Law, the two programs—Carbon Capture Large-Scale Pilots and Carbon Capture Demonstration Projects Program—aim to significantly reduce carbon dioxide (CO<sub>2</sub>) emissions from electricity generation and hard-to-abate industrial operations, an effort critical to addressing the climate crisis and meeting the President’s goal of a net-zero emissions economy by 2050.” To learn more about the DOE carbon capture, transport, and storage program funding opportunities, [Read more](#).

**Offshore Wind Lease Sale – Gulf of Mexico.** On February 22, the Interior Department and Bureau of Ocean Energy Management (BOEM) announced it “is proposing the first-ever offshore wind lease sale in the Gulf of Mexico. The announcement is part of the Administration’s latest actions to expand offshore wind opportunities to more regions of the country, building on investments in the President’s Inflation Reduction Act and Bipartisan Infrastructure Law to spur offshore wind deployment and create good-paying jobs for American workers.” According to the Interior Department, “The proposed sale is part of the leasing path announced by Secretary Haaland in 2021 to meet the Biden-Harris administration’s goal to deploy 30 gigawatts (GW) of offshore wind energy capacity by 2030 and follows the Department’s approval of the nation’s first two commercial scale offshore wind projects.” The Proposed Sale Notice announcement “includes a 102,480-acre area offshore Lake Charles, Louisiana, and two areas offshore Galveston, Texas, one comprising 102,480 acres and the other comprising 96,786 acres. BOEM is seeking public comments on which, if any, of the two lease areas offshore Galveston should be offered in the Final Sale Notice.” [Read more](#).

**SEC Climate Disclosure Rulemaking.** As a follow up to our ongoing reporting, on February 22, a group of Republican congressional lawmakers [delivered a](#)

[letter to the Chair of the U.S. Securities and Exchange Commission](#) requesting the SEC “turn over documents and answer questions about the agency’s ongoing effort to write a new regulation that would force public companies to disclose detailed climate-related information.” The letter asserts that, “This sweeping rule exceeds the SEC’s mission, expertise, and authority and, if finalized in any form, will unnecessarily harm consumers, workers, and the U.S. economy. Congress created the SEC to carry out the mission of protecting investors, maintaining fair, orderly, and efficient markets, and facilitating capital formation—not to advance progressive climate policies. Instead of pursuing its clear statutory mission, the SEC, under your leadership, has chosen to flout the democratic process and pursue its progressive social agenda through the promulgation of this extraordinarily expansive climate disclosure rule.” The lawmakers provided the SEC with a March 8, 2023 deadline to answer their questions. [Read more](#).

## **FEDERAL – Judicial**

**Wage and Hour; Day Rates; FLSA – U.S. Supreme Court** (*Update to 3/22/21 Report*) On February 22, the U.S. Supreme Court delivered its long-awaited opinion in [Hewitt v. Helix Energy Solutions, Inc.](#) (Case No. 21–984) after granting the petition for review on appeal from the U.S. Court of Appeals for the Fifth Circuit (Texas). For background, in this case a worker engaged in offshore oil rig work sued for alleged unpaid overtime under the Fair Labor Standards Act (FLSA) against an oil and gas services company. According to Hewitt, this was a violation of the FLSA. The Fifth Circuit panel addressed the question of whether a daily rate employee could be regarded as being paid on a salary basis and therefore exempt from overtime pay under the FLSA. The trial court agreed “with Helix’s view that Hewitt was compensated on a salary basis and granted the company summary judgment. The Court of Appeals for the Fifth Circuit panel reversed, deciding that Hewitt was not paid on a salary basis and therefore could claim the FLSA’s protections.” Here, the Supreme Court affirmed that ruling, holding that “Hewitt was not an executive exempt from the FLSA’s



overtime pay guarantee; daily-rate workers, of whatever income level, qualify as paid on a salary basis only if the conditions are met” under the FLSA regulations which the Supreme Court found were not met in this case. In other words, “a highly compensated employee who is paid solely on a day-rate basis is not exempt from the overtime provisions of the Fair Labor Standards Act,” and thus could be eligible for overtime pay under such a pay arrangement even though Hewitt was a highly compensated employee who under conditions in which his compensation was considered a “salary” would normally be excluded from overtime pay under the FLSA. [Read more](#). National employment law firm Jackson Walker LLP said, the case determines “what constitutes a ‘salary.’ Specifically, the Court answered whether a ‘daily rate’ pay structure can be a ‘salary.’ The Supreme Court’s decision is one that could have a significant impact, particularly in the oil and gas industry where many workers are paid a ‘daily rate.’” Further, “as Justice Kagan mentioned in *Helix*, there is a way to satisfy the salary basis test for those employers wanting to pay an employee for days in addition to the normal workweek. They must pay the employee a defined weekly amount, along with a day rate for extra days, so long as there is a reasonable relationship between the weekly guarantee and the total amount actually paid. The remaining open question is what constitutes a reasonable relationship? There is no regulation on the issue, only Department of Labor guidance. The absence of a regulation means the assurance of litigation, so companies with a daily rate compensation system should consult with counsel regarding that practice.” [Read more](#). For further legal analysis of the case, [Read more here](#).

#### **Employment Arbitration Agreements – California.**

On February 15, the U.S. Court of Appeals for the Ninth Circuit, on appeal from the U.S. District Court for the Eastern District of California, ruled that the “Federal Arbitration Act preempts state laws that inhibit parties from entering into arbitration agreements.” The case, [Chamber of Commerce v. Bonta](#) (Case No. 20-15291), arose from a challenge to “California’s Assembly Bill 51 (AB 51), which was enacted to protect employees from ‘forced arbitration’

by making it a criminal offense for an employer to require an existing employee or an applicant for employment to consent to arbitrate specified claims as a condition of employment.” As reported by law firm Pillsbury Winthrop Shaw Pittman LLP, “In an effort to avoid preemption under the Federal Arbitration Act (FAA), an Act which bars states from treating arbitration agreements differently than other contracts, AB 51 included a provision stating that if the parties mutually entered into an arbitration agreement, it would be enforceable. Thus, an employer could be subject to criminal prosecution for *requiring* an employee to enter into an arbitration agreement, but if the employee signed the arbitration agreement, it would be enforced.” Here, the court held “that AB 51’s scheme of making it a criminal offense if an employer required an employee or applicant to consent to arbitrate claims as a condition of employment, discriminated against the formation of arbitration agreements.” The effect of this holding is that “Prior to this ruling, many employers continued to include arbitration agreements as part of their offers of employment but made the agreement to arbitrate voluntary. Now California employers can again require arbitration as a condition of employment for new hires.” [Read more](#).

#### **Enforcement of Local Moratorium on Carbon**

**Sequestration Project – Louisiana.** On December 22, 2022, the U.S. District Court for the Middle District of Louisiana granted a preliminary injunction in favor of a carbon sequestration company and rejected an attempt by a local parish to halt the project work under its year-long moratorium ordinance. In [Air Products Blue Energy, LLC v. Livingston Parish Government](#) (Case No. 22-809-SDD-RLB), the court “granted Air Products Blue Energy, LLC’s motion for a preliminary injunction prohibiting the enforcement of a moratorium on drilling Class V wells. Air Products, a hydrogen supplier, seeks to build a carbon sequestration facility beneath Lake Maurepas that will inject and store carbon dioxide underground. Without this injunction, the moratorium would have prohibited construction of the wells necessary for this carbon sequestration facility.” Air Products had entered into a Carbon Dioxide Storage Agreement with the State of

Louisiana and intended to build a carbon sequestration facility but the Parish challenged the action. Here, the court rejected the Parish's arguments that the plaintiff lacked standing to challenge the moratorium and that the claims were unripe. The court further found that Air Products had shown a likelihood of success on the merits because the Parish moratorium was preempted "due to its encroachment on the field of underground injection control, an area in which the Louisiana Legislature granted the State pervasive authority to regulate." The court also held that Air Products would face irreparable harm if their project work could not proceed and concluded that "because State law preempted the moratorium, a preliminary injunction to enjoin the moratorium's enforcement would serve the public interest and would not cause harm." [Read more.](#)

## **STATE – Legislative**

**Oil and Gas Leasing – Alaska.** On February 10, HJR 6 was introduced by Rep. Josiah Patkotak (R). The joint resolution expresses, "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.](#)

**Oil Imports – California.** On February 17, California Special Session bill [ABX1-3](#) was introduced by Asm. Jasmeet Bains (D), whose district includes part of the Bakersfield region. The bill would require California refineries to increase the amount of oil from within the state that they buy and process rather than importing the majority from out of the country. As reported, "If passed, 50 percent of all oil refined in California would be required to originate within the Golden State by 2035." For background, "Over 30 years ago California was sourcing over 60 percent of its crude oil from within the state, with only about five percent originating internationally. But the state is now importing 56 percent from other countries, while supplying under 30 percent from within the state, according to the California Energy Commission." According to Asm. Bains, "California's policies are directly responsible for

financing human rights violations in the Middle East and the deforestation of the Amazon rainforest. My bill maintains all of California's strict environmental and labor protections, while also ensuring we buy American. Protecting California's premier oil industry is one of the most environmentally friendly things we can do." [Read more.](#)

**Foreign Ownership – Idaho.** On February 20, HB 173 was introduced by the House Committee on State Affairs (R). This "legislation prohibits a foreign government or foreign government controlled entity from purchasing, acquiring or holding a controlling interest in agricultural land, water rights, mining claims or mineral rights in the state of Idaho." [Read more.](#)

**Independent Contractors – Illinois.** On February 17, HB 3441 was introduced by Rep. Suzanne Ness (D). The bill would amend the Employee Classification Act and "Provides that in making a determination of a worker's classification under this Act, the Department of Labor shall consider any guidance provided by the Internal Revenue Service of the United States Department of the Treasury." [Read more.](#)

**Carbon Sequestration and Storage – Illinois.** On February 17, HB 3119 was introduced by Rep. Ann Williams (D). The bill would create the Carbon Dioxide Transport and Storage Protections Act and provides multiple provisions related to carbon sequestration and storage as provided. [Read more.](#)

**Carbon Sequestration and Storage – Illinois.** On February 8, HB 2202 was introduced by Rep. Jay Hoffman (D). The bill would create the Underground Carbon Dioxide Storage Act. The bill specifically provides "that the Act applies to the underground storage of carbon dioxide but does not apply to extractable mineral resources, and the rights and requirements of the Act are subordinate to the rights pertaining to oil, gas, and coal resources. Provides that a storage operator may not operate a storage facility without a storage facility permit issued by the Department of Natural Resources. Includes provisions regarding: pore space ownership; integration of

ownership interests; fees; requirements for drilling near a storage facility; the applicability of certain tort claims; certificate of project completion; and rulemaking.” [Read more.](#)

**Independent Contractors – Illinois.** On January 12, HB 1122 was introduced by Rep. Marcus Evans (D). The bill creates the Freelance Worker Protection Act and provides “that freelance workers must be compensated by hiring parties for their services in a timely manner. Provides that whenever a hiring party retains the services of a freelance worker, the contract between the hiring party and the freelance worker shall be reduced to writing,” among related provisions. [Read more.](#)

**Enforcement Actions; Recording– Indiana.** On February 27, SB 412 passed the Senate. Sponsored by Sen. Sue Glick (R), the “bill authorizes the Division of Water of the Department of Natural Resources (DNR) to file, in the deed records of a county recorder’s office, an affidavit stating that a violation or deficiency that is the subject of an enforcement action exists on a particular property in the county.” [Read more.](#)

**Lessee Costs; Transport Expenses – Montana.** On February 17, HB 634 was introduced by Rep. Josh Kassmier (D). The bill revises existing law related to oil and gas leases, specifically “clarifying that the lessee pays the costs of production from the working interest; [and] requiring the state to share the expense of transporting the oil to the nearest market based on the state’s proportional share of the royalty interest.” [Read more.](#)

**Water Use – Montana.** On February 16, HB 537 was introduced by Rep. John Fitzpatrick (R). The bill would provide “a water right permit exception for beneficial use of water produced by oil and gas operations.” [Read more.](#)

**Well Taxation – Montana.** On February 10, HB 469 was introduced by Rep. Larry Brewster (R). The bill would revise taxation of horizontally recompleted wells as provided. [Read more.](#)

**Natural Gas Definition – Montana.** On February 21, SB 426 was introduced by Sen. Jason Small (R). The bill would revise the definition of natural gas. [Read more.](#)

**State Trust Lands – Montana.** On February 21, SB 418 was introduced by Sen. Brad Molnar (R). The bill would provide “preference to lessees of state trust land who provide public access across private land.” [Read more.](#)

**Eminent Domain; Regulatory Takings – Montana.** On February 7, SB 287 was introduced by Sen. Steve Fitzpatrick (R). The bill amends existing law to include additional types of property that may exist regarding a regulatory taking. The additions would include mineral rights, real property and fixtures, and water rights, among others. [Read more.](#)

**Severance Tax Exclusion New Mexico.** On February 14, SB 443 was introduced by Sen. Ron Griggs (R). The bill provides “for an exclusion to the Oil and Gas Severance Tax for oil and natural gas severed from a stripper well and sold from a production compliance project during the first 10 years of production following the completion of the project, or until the date the total amount of tax that would have been imposed but for this exemption equals the cost of the production compliance project, whichever occurs first.” The bill also defines “production compliance project” and its applicability. [Read more.](#)

**Land Purchase Approval – New Mexico.** On February 14, SB 439 was introduced by Sen. William “Bill” Sharer (R). The bill would “require the State Game Commission to get approval from the Legislature for the purchase of any land appraised at over \$1 million.” [Read more.](#)

**Oil and Gas Act Changes – New Mexico.** On February 13, [SB 418](#) was introduced by Sen. Leo Jaramillo (D). Relating to the environment, the bill would amend the Oil and Gas Act, including “organizing and amending definitions; adding members to the oil conservation commission; changing the qualifications of the director of the oil



conservation division of the energy, minerals and natural resources department; authorizing the oil conservation division to promulgate rules to protect the environment and to promote health, safety and the involvement of environmental justice communities; changing the name of the 'state petroleum engineer' to the 'state oil conservation director'; authorizing the oil conservation division to establish minimum setbacks for the siting of new wells; changing the requirements for financial assurance; removing venue requirement for actions to compensate for costs of oil and gas well remediation; [and] removing the limit on civil penalties; establishing the environmental justice advisory council." According to the Fiscal Note Bill Summary, SB 418 "makes sweeping changes to the existing Oil and Gas Act Sections 70-2-1 through 70-2-39 NMSA 1978. That act is amended to require the oil conservation division's protection of health and the environment; promotion of the public interest, health, safety, general welfare; and the fair treatment and meaningful involvement of the public, including environmental justice communities." [Read a complete bill analysis summary here.](#)

**Tax Assessment Affidavits – New Mexico.** On February 3, SB 338 was introduced by Sen. Steven Neville (R). Governing tax assessment affidavits to be filed for real property transfers, the bill "requires that an affidavit be filed with the county assessor for a deed transferring all real property; including nonresidential property. It also amends Subsection D to state that an affidavit is not required for: A deed, patent or contract for sale or transfer of real property in which the property was valued pursuant to Section 7-36-20 NMSA 1978 in the prior tax year; or an instrument delivered to convey solely the mineral or subsurface estate of real property." [Read more.](#)

**Geothermal Tax Credits – New Mexico.** On January 23, SB 173 was introduced by Sen. Gerald "Jerry" Ortiz y Pino (D). The bill would "create deductions and tax credits to assist in developing the technology to generate electricity from deep geothermal formations." [Read more.](#)

**Notarial Acts – New Mexico.** On March 2, SB 246

passed the Senate and has been transmitted to the House. Sponsored by Sen. Daniel Ivey-Soto (D), the bill makes numerous amendments to existing notarial acts law. [Read more.](#)

**Residential Home Solar Energy – New Mexico.** On February 22, SB 77 passed the Senate following its introduction by Sen. William Soules (D). The bill provides for the installation of solar cells on residential homes for new residential construction. The original bill, prior to amendment, would have required, rather than "offered" in the amended version, "all new residential construction after July 1, 2023, to have photovoltaic systems installed that are designed to supply usable solar power to residences and be tied to the grid, a hybrid grid, or off-grid system." [Read more.](#)

**Distributed Energy Facility Caps – New Mexico.** On February 13, SB 56 passed the Senate following its introduction by Sen. William Soules (D). The bill "amends Section 62-13-13.1 NMSA 1978 to remove the cap on the size of a distributed energy facility, facilities that generate electricity at or near where it will be used, such as residential solar panels. The cap is currently set at 120 percent of the average annual consumption of electricity at the host site." [Read more.](#)

**Severance Tax Exemption – New Mexico.** On February 16, HB 450 was introduced by Rep. Joseph Sanchez (D). The bill would add a new section to the Oil and Gas Severance Tax Act to provide for an oil and gas severance tax exemption for re-stimulation wells. [Read more.](#)

**Gross Receipts Tax – New Mexico.** On February 15, HB 439 was introduced by Rep. Cathrynn Brown (R). The bill provides "an exception to the destination-based sourcing rules for reporting gross receipts tax (GRT) under Section 7-1-14 NMSA 1978 for oil and gas production services performed in New Mexico. This exception reverts those services to origin-based sourcing for gross receipts. In other words, the business location of the service provider will be used to determine gross receipts tax liability rather than the location of where the service is performed. The bill

also defines oil and gas production services as those services necessary for the production or severance of products, as that term is used in the Oil and Gas Emergency School House Tax Act, including services conducted in preparation for such severance, field operations, transfer of the products off a lease site, operation monitoring, operation maintenance, and workover drilling." [Read more.](#)

**Geothermal Resources – New Mexico.** On February 14, HB 365 passed committee following its introduction by Rep. Patricia Roybal Caballero (D). The bill would "create a new Center for Excellence at the New Mexico Institute of Mining and Technology focused on developing and promoting innovation in Geothermal Resources" and provides appropriations. [Read more.](#)

**Local Bans on Natural Gas – North Carolina.** On February 15, HB 130 was introduced by Rep. Charles Miller (R). The bill would forbid localities from adopting an ordinance that prohibits or has the effect of prohibiting "connection, reconnection, modification, or expansion of an energy service based upon the type or source of energy to be delivered to an individual or any other person as the end-user of the energy service." [Read more.](#)

**Triggered Oil Extraction Tax Rate – North Dakota.** (*Update to 1/23/23 Report*) On February 16, [HB 1286](#) passed the House and has been transmitted to the Senate. Sponsored by Rep. Craig Headland (R), the bill "will repeal the triggered 6% oil extraction tax rate that would be imposed during a time of sustained high oil prices for wells located outside the exterior boundaries of a reservation. Wells located within the exterior boundaries of a reservation, on trust properties outside reservation boundaries, or straddle wells located on reservation trust land may still be subject to the triggered 6% oil extraction tax rate. A tribe may opt-out of the increased rate of tax by providing written notice to the tax commissioner." As reported by *Prairie Public Broadcasting*, "The trigger was part of a compromise to lower oil taxes from 11 and a half percent to 10 percent. That mechanism was added so that if oil prices went above

a target price, the tax would go back to 11 percent. That happened in 2022 – and lasted for about four months." [Read more.](#)

**Post-Production Royalty Oversight Program – North Dakota.** On February 20, SB 2009 quickly passed the Senate by unanimous vote following its introduction by the Senate Committee on Appropriations (R). The bill would establish a post-production royalty oversight program that would provide "technical assistance and support to mineral owners, lease owners, and mineral companies relating to royalty payment issues" as detailed. [Read more.](#)

**Franchise Tax – Oklahoma.** On February 6, HB 2695 was introduced by Rep. Gerrid Kendrix (R). As introduced, the bill would end the assessment of franchise tax and any associated reporting beginning in tax year 2024. [Read more.](#)

**Eminent Domain – Oklahoma.** On February 20, a committee substitute version of HR 2191 was adopted. Sponsored by Rep. Rick West (R), the bill would limit the use of eminent domain. Specifically, the committee substitute version provides, "that government authorities may not take or damage private property unless it is necessary for public use and the property owner is justly compensated. Economic development, including an increase in tax base, tax revenues, employment, and general economic health do not constitute public use. The measure also requires courts to construe eminent domain statutes in favor of the property owner and against the condemning authority." [Read more.](#)

**Carbon Sequestration – Oklahoma.** On February 6, SB 852 was introduced by Sen. Dave Rader (R). The bill "provides that the Corporation Commission, not the Oklahoma Conservation Commission, shall oversee the provisions of the Oklahoma Carbon Sequestration Enhancement Act." [Read more.](#)

**Oklahoma Energy Resources Board – Oklahoma.** On March 2, SB 514 passed committee following its introduction by Sen. Julie Daniels (R). The bill "modifies the membership of the Oklahoma

Energy Resources Board. The measure increases membership on the board from 18 to 23 members and provides that each member shall serve a term of 3 years. The measure also provides that a majority of the 3 appointing authorities may vote to remove appointed members of the Board who are independent oil and/or gas producers. The remaining members of the Board may be removed by a majority vote of the then serving Board members. The Board is empowered to elect its own chair and vice-chair, who shall serve a term of 2 years. The Board is also directed to provide site reclamation services in addition to its other duties." [Read more.](#)

**Corporate Tax – Oklahoma.** On February 6, SB 210 was introduced by Sen. Nathan Dahm (R). The bill "exempts newly constructed establishments primarily engaged in the refining of crude petroleum into refined petroleum from the corporate income tax for the first 5 years of service beginning in tax year 2024 and ending in tax year 2034. Such establishments must employ at least 100 FTE and pay wages that equal or exceed wage requirements established in the Oklahoma Quality Jobs Program Act. Eligibility shall be determined by the Oklahoma Tax Commission." [Read more.](#)

**Carbon Sequestration; Injection Wells – Oklahoma.** On February 6, SB 200 was introduced by Sen. Dave Rader (R). The bill "requires any state environmental agency, the Corporation Commission, and Department of Environmental Quality, that is required to comply with the federal Safe Drinking Water Act to evaluate the regulatory and statutory framework that governs the agency and identify and report any areas in which modifications may be needed to the Secretary of Energy and Environment to provide for the development of Underground Injection Control Class VI wells. Agencies are directed to consult with the Secretary and work in conjunction with the Office of Energy and Environment to ensure timely analysis. Findings from the report shall be submitted in a report to the Governor, Secretary of Energy and Environment, President Pro Tempore of the Senate, and the Speaker of the House no later than August 1, 2023." [Read more.](#)

#### **Oil and Gas Produced Water – Oklahoma.**

On February 6, SB 18 was introduced by Sen. Dave Rader (R). The bill "expands the Oil and Gas Produced Water and Waste Recycling and Reuse Act to include hydrogen sulfide and carbon oxides emissions produced as a byproduct of natural gas production. The act also exempts a person from liability in tort for consequences or subsequent use of recycled water or treated constituents if that person captures or sequesters hydrogen sulfides and carbon oxides in connection with natural gas production for the purpose of protecting the environment." [Read more.](#)

**Franchise Tax Exemption – Texas.** On February 21, SB 1061 was introduced by Sen. Charles Schwertner (R). The bill amends existing law "relating to the computation of and total revenue exemption for the franchise tax." [Read more.](#)

**Texas Produced Water Consortium – Texas.** On February 21, SB 1047 was introduced by Sen. Charles Perry (R). The bill provides for funding and activities of the Texas Produced Water Consortium. [Read more.](#)

**Energy Source Choices – Texas.** On February 17, [SB 1017](#) was introduced by Sen. Brian Birdwell (R). As reported by the Texas Oil & Gas Association, "This legislation would protect energy choice by preventing political subdivisions from adopting or enforcing ordinances, orders, regulations, or similar measures which would limit access to specific fuel sources or prohibit the sale of engines based on their fuel source." House companion bill [HB 2374](#) was introduced on February 15 by Rep. Brooks Landgraf (R). [Read more.](#)

**High-Cost Gas Tax Reduction – Texas.** On February 17, SB 678 was introduced by Sen. Nathan Johnson (D). The bill relates "to phasing out the tax reduction for certain high-cost gas." [Read more.](#)

#### **Severance Tax Revenue Amendments – Utah.**

On February 17, SB 256 was introduced by Sen. David Hinkins (R). This bill modifies provisions related to the deposit of severance tax revenue into state

agency accounts. [Read more.](#)

**Carbon Capture and Offset – West Virginia.** On February 9, SB 595 was introduced by Sen. Eric Tarr (R). The bill provides multiple provisions including taxation related to carbon offset agreements and also provides for certain forest carbon capture and sequestration covenants and restrictions that are void and unenforceable. [Read more.](#)

**State Lands Exchange – Wyoming.** (*Update to 1/23/23 Report*) On February 27, SF 128 was signed into law by Gov. Mark Gordon (R). Sponsored by Sen. Larry Hicks (R), relating to state lands, the bill removes the requirement that state and federal lands be equal in size when exchanged by the state and the federal government; and requires that federal and state land exchanges be subject to the orders, rules and regulations related to the exchange of lands. The Act is effective on July 1, 2023. [Read more.](#)

**State Lands; Land Exchange Notice – Wyoming.** (*Update to 2/6/23 Report*) On February 21, HB 20 was signed into law by Gov. Mark Gordon (R). Sponsored by the House Agriculture Committee (R), the bill relates to land exchange notices regarding state lands and provides for “requiring notice and opportunity to comment before completing an exchange; and specifying applicability.” The Act takes immediate effect. [Read more.](#)

## **STATE – Regulatory**

**COGCC Rulemaking – Colorado.** On March 1, the Colorado Oil & Gas Conservation Commission (COGCC) announced a notice of rulemaking regarding its “High Priority Habitat Map.” Per the COGCC, as part of a series of rulemakings in 2020 that implemented a 2019 law, “As part of those rulemakings, the Commission adopted a definition of High Priority Habitat. The Commission’s definition of High Priority Habitat includes those habitat areas identified by Colorado Parks and Wildlife on maps included as Appendix VII to the Commission’s Rules. The definition of High Priority Habitat also provides that ‘on a periodic but no more frequent than

annual basis and will be modified only through the Commission’s rulemaking process described in Rule 529. Notice of such rulemaking proceeding will be provided by February 28 of each year.’ The proposed High Priority Habitat map updates are a result of inventories and monitoring to determine the status and extent of high priority habitat areas. The following High Priority Habitat areas have been identified by CPW as needing maps modifications: raptor nests and roost sites, grouse and prairie chicken lek sites and occupied ranges, bat hibernacula, migration corridors, production areas, severe winter ranges, winter concentration areas, aquatic, and winter ranges. These updates also reflect changes to any CPW owned State Wildlife Areas and State Parks within the State of Colorado.” The COGCC will hold a hearing on June 14, 2023 regarding the above. [Access hearing information here.](#) To be a party to the rulemaking, the COGCC has set a deadline of March 24, 2023. To register, [access the COGCC party form here.](#) [Read more.](#)

## **STATE – Judicial**

**Oil and Gas Leasehold Taxation – Colorado.** On February 21, the Colorado Supreme Court considered “whether nonoperating fractional interest owners in a unitized oil and gas operation have standing to independently challenge a county’s retroactive property tax increase.” In *Colorado Property Tax Administrator v. CO2 Committee, Inc.* (Case No. 2023 CO 8), the court held that under Colorado law a unique representative system is created “in which a unit operator is the sole entity with standing to protest a retroactive assessment on the unit it operates. Because a unit operator is the sole point of contact throughout the reporting, notice, and taxpaying process, the court holds that nonoperating fractional interest owners do not have a legally protected interest in the valuation and taxation of their oil and gas leaseholds and lands, and therefore, lack standing to challenge a retroactive assessment and property tax increase.” [Read more.](#)

## INDUSTRY NEWS FLASH

► **IEA Global Methane Tracker.** On February 21, the International Energy Agency (IEA) released their Global Methane Tracker 2023 report. According to the IEA, the “Global Methane Tracker shows [how] the oil and gas sector could slash emissions of potent greenhouse gas using only a fraction of its bumper income from the energy crisis.” But according to the Independent Petroleum Association of America, “The IEA report’s United States data shows a success story. We’ve all but eliminated flaring from oil and natural gas production, while increasing production at the same time. The Permian basin is driving both of these trends.” [Read more.](#)

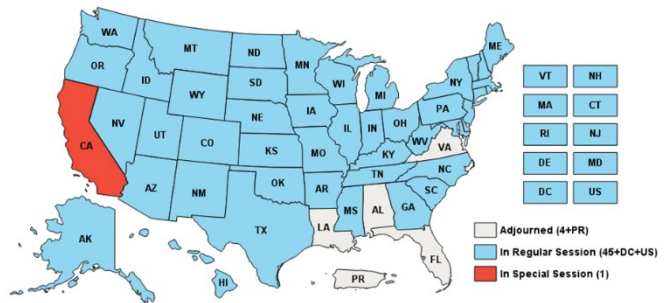
► **Permian Basin Water in Energy Conference.**

Last week, members of the oil and gas industry attended the Permian Basin Water in Energy Conference to discuss produced water. “Industry leaders gathered at the Midland County Horseshoe to bounce ideas off of each other and discuss new technology when it comes to produced water.” [Read more.](#)

► **Oil & Gas Day in West Virginia.** On February 22, “More than 20 companies and organizations across the state’s natural gas and oil sector, along with lawmakers and students, participated in Oil & Gas Day” at the state capitol building. “We constantly talk about the positive impacts our industry delivers that stretch far beyond the state’s core producing counties,” said Maribeth Anderson, board president of the Gas and Oil Association of West Virginia. “Today, our elected officials were able to see it firsthand and truly understand the work GO-WV and our members — as America’s 5th largest energy producing state — do to create long-term growth opportunities for West Virginia and all of us who live here.” [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, Pennsylvania, Rhode Island, South Carolina, South Dakota, Tennessee, Texas, Utah, Vermont, Washington, West Virginia, Wisconsin and Wyoming are in regular session. The U.S. Congress is also in session.

**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.

The following states are scheduled to adjourn their 2023 legislative sessions on the dates provided: **Utah** and **Wyoming** (March 3), **West Virginia** (March 11) and **New Mexico** (March 18).

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 **Pennsylvania** Democrat-controlled House passed [new rules](#) for the session that raise the threshold to amend a bill from a simple majority to two-thirds support



and limits speakers to five minutes, reports [Spotlight PA](#). On February 28, House Speaker Mark Rozzi (D) resigned saying he felt his work as speaker was done. Former Democratic Leader Joanna McClinton (D) was immediately elected by a [vote](#) of 102-99, making her the first female African American House speaker. Speaker McClinton was previously named by the Democratic Party to be House speaker before Rozzi was surprisingly backed by Republicans in January, reports [FOX 43](#). In her opening statement, McClinton said she was “confident that we can replace our shortsighted political game with sincere and productive cooperation.”

**Signing Deadlines:** Virginia Republican Gov. Glenn Youngkin has until March 27 to act on legislation or it becomes law without signature.

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

[Florida](#) is currently posting 2023 bill drafts, pre-files and interim studies. ■

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