

GOVERNMENTAL AFFAIRS REPORT

Highlights At-A-Glance

FEDERAL – Legislative

S. 1863 – Providing Reliable, Objective, Verifiable Emissions Intensity and Transparency Act of 2023. On June 14, bill text was made available for [S. 1863](#), known as the Providing Reliable, Objective, Verifiable Emissions Intensity and Transparency Act of 2023, or the PROVE IT Act of 2023. This bipartisan bill, sponsored by Sen. Chris Coons (D-DE) and Sen. Kevin Cramer (R-ND), “would direct the Department of Energy (DOE) to conduct a comprehensive study comparing the emissions intensity of certain goods produced in the United States to the emissions of those same goods produced in the other countries.” The bill provides that “After the study’s publication, DOE is directed to update data every five years. Under the legislation, covered products include aluminum, articles of aluminum, articles of cement, articles of iron and steel, articles of plastic, biofuels, cement, crude oil, fertilizer, glass, hydrogen, iron and steel, lithium-ion batteries, natural gas, petrochemicals, plastics, pulp and paper, refined strategic and critical minerals, refined petroleum products, solar cells and panels, uranium, and wind turbines.” According to Sen. Cramer, “Comprehensive data on product emissions intensity is an important step to addressing climate through trade policy and leveling the playing field for domestic producers and manufacturers who are forced to compete against rivals with little to no standards.” [Read more.](#)

S. 1923 – Protect Our Power Plants Act of 2023. On June 12, [S. 1923](#), known as the Protect Our Power Plants Act of 2023, or the POPP Act of 2023, was introduced by Sen. Shelley Moore Capito (R-WV). The bill would block the EPA from forcing fossil fuel power plants to reduce their carbon emissions significantly by 2040. In short, the bill would nullify the EPA proposed rule, “New Source Performance

Standards for Greenhouse Gas Emissions From New, Modified, and Reconstructed Fossil Fuel-Fired Electric Generating Units; Emission Guidelines for Greenhouse Gas Emissions From Existing Fossil Fuel-Fired Electric Generating Units; and Repeal of the Affordable Clean Energy Rule” ([88 Fed. Reg. 33240](#); May 23, 2023). According to the bill sponsor, this proposed rule “is intended to completely reshape the electricity grid and therefore has vast economic and political significance.” [Read more.](#)

S. 2002 – Carbon Removal, Efficient Agencies, Technology Expertise (CREATE) Act. On June 14, bipartisan legislation, [S. 2002](#), known as the Carbon Removal, Efficient Agencies, Technology Expertise (CREATE) Act, was introduced. The bill “boosts research and development of carbon removal technologies that advance global sustainability by removing harmful greenhouse gas emissions from the air.” Sen. Shelley Moore Capito (R-WV), one of the bill cosponsors said, “In order to advance carbon capture, utilization, and storage technologies, we need an informed effort from the federal level, and that’s exactly what the CREATE Act seeks to accomplish. Our local economies, workers in energy-producing states, and the protection of our environment all stand to benefit from this bipartisan legislation, which lays the foundation for commonsense carbon capture policy in the future.” [Read more.](#)

S.J.Res. 11 – Control of Air Pollution From New Motor Vehicles: Heavy-Duty Engine and Vehicle Standards. On June 14, President Biden vetoed [S.J.Res. 11](#). The joint resolution would have nullified “the Environmental Protection Agency rule relating to *Control of Air Pollution From New Motor Vehicles: Heavy-Duty Engine and Vehicle Standards* ([88 Fed. Reg. 4296](#)) and published on January 24, 2023. The rule modifies emission standards to reduce air

pollution, including ozone and particulate matter, from heavy-duty engines and vehicles.” That rule went into effect on March 27, 2023 “governing pollution from heavy-duty vehicles including trucks and buses.” Sen. Deb Fischer (R-NE), who sponsored the resolution, said, “This veto is more than just a slap in the face to truckers [...] Pushing this excessive regulation forward will also raise prices for families already grappling with inflation.” [Read more.](#)

H.R. 1615 – Gas Stove Protection and Freedom Act. On June 13, the House passed [H.R. 1615](#), known as the Gas Stove Protection and Freedom Act. The Republican-sponsored measure “prohibits the Consumer Product Safety Commission from using federal funds to (1) regulate gas stoves as a banned hazardous product, or (2) issue or enforce a product safety standard that prohibits the use or sale of gas stoves or substantially increases their price.” In short, the bill would have the effect of keeping “the Consumer Product Safety Commission from banning gas stoves and also limiting the safety agency’s ability to regulate the products.” The bill comes in the wake of recent mixed messaging from the White House and the Department of Energy which seem to support bans on gas stoves and heating. [Read more.](#)

H.R. 288 – Separation of Powers Restoration Act of 2023. On June 15, [H.R. 288](#), known as the Separation of Powers Restoration Act of 2023 or SOPRA Act, passed the House. Sponsored by Rep. Scott Fitzgerald (R-WI), the bill would codify a repeal of the *Chevron* doctrine – a judicial precedent resulting from a 1984 U.S. Supreme Court case involving Environmental Protection Agency actions. [Read more.](#) That doctrine, or deference, provides “that courts must defer to agency interpretations of ambiguous statutes, rather than how Congress wrote them.” According to Rep. Fitzgerald, “This has led to executive branch agencies circumventing Congress to issue rules with the force of law.” H.R. 288 “restores congressional intent, and stops executive branch overreach.” A review of the *Chevron* doctrine is currently pending before the U.S. Supreme Court in [Loper Bright Enterprises v. Raimondo](#) (Case No. 22-451). As reported by *The Hill*, the case “could significantly

scale back federal agencies’ authority, with major implications for the future of environmental and other regulations.” [Read more.](#)

House Energy & Commerce Committee Hearing on EPA Efforts to Restrict Vehicle Fuels. On June 22, the House Energy & Commerce Committee Subcommittee on Environment, Manufacturing, and Critical Materials held a hearing, “Driving Affordability: Preserving People’s Freedom to Buy Affordable Vehicles and Fuel,” that included EPA staff and transportation and fuel industry stakeholder witnesses. Of the hearing, Committee leadership said, “Americans need affordable, reliable transportation to get to work, take their children to school, go to the doctor, and live their lives. Today, however, people are struggling to afford some of the highest energy and auto prices in decades as a result of Biden’s energy and inflation crisis. His rush-to-green policies are hurting middle- and low-income families the most. The Environmental Protection Agency’s (EPA) recent regulatory efforts to advance this radical agenda, particularly on the kind of cars Americans can drive and the fuels they can use, risk further disrupting fuel markets and increasing transportation costs.” To access a full recording of the hearing and witness testimony, [Read more.](#)

House Natural Resources Committee Hearing on Withdrawal of BLM Conservation and Landscape Health Rule. (Update to 6/12/23 Report) On June 15, the House Committee on Natural Resources held a hearing to consider [H.R. 3397](#), a Republican bill that would “require the Director of the Bureau of Land Management to withdraw a rule of the Bureau of Land Management relating to conservation and landscape health.” For background, the BLM proposed rule, *Conservation and Landscape Health* ([88 Fed. Reg. 19583](#)), if finalized, would undermine the “multiple-use requirement for BLM lands and would hinder access to public lands for energy and critical mineral development, grazing, forest management, and recreation.” [Read more.](#) The rule, “would apply land-health standards to all of the 245 million acres that BLM manages, instead of limiting them to federal livestock grazing allotments. The rule would also

designate conservation as a formal use of public lands, on par with energy development, grazing and recreation. Energy developers, mining companies and other land users could purchase conservation leases and use them as compensatory mitigation to offset project impacts as a condition of permit approval. The proposed rule would also allow for nongovernment groups to buy these leases and pay to conduct restoration work on the land.” [Read more](#). The hearing included witness testimony from the governors of South Dakota and Wyoming as well as Kathleen Sgamma, President of the Western Energy Alliance. To access a full recording of the hearing and witness testimony, [Read more](#).

Senate Letter to the EPA Regarding the Methane Emissions Reduction Program. On June 15, a group of Democrat senators sent a letter to EPA administrator Michael Regan asking “the agency to quickly pass rules to cut down on emissions. They’re asking for the EPA to limit routine flaring of gas (releasing natural gas directly into the air) and to set up financial support to comply with environmental provisions of the Inflation Reduction Act.” [Read the letter here](#). The senators say they strongly support the EPA’s “critical work to reduce methane emissions from oil and gas production, and we encourage you to seize on existing opportunities to drive sharp reductions in emissions of this potent greenhouse gas.” [Read more](#).

Congressional Letter to EPA Regarding Recent Supreme Court Decision. On June 21, Republican members of Congress sent a letter to the EPA and the Army Corps of Engineers regarding the recent U.S. Supreme Court decision in [Sackett v. EPA](#) which we covered in our May 30, 2023 Governmental Affairs Report. As noted by the letter writers, “The Court’s ruling reinforces property owners’ rights, protects the separation of powers by limiting your Agencies’ authority to what Congress has delegated in statute, and ensures adherence to the congressional intent in writing the Clean Water Act (CWA). Additionally, the Court upholds the cooperative federalism framework of the CWA, as well as the states’ authority and responsibility to regulate non-Federal waters within

their borders.” The letter states that “While we are pleased to see *Sackett II* clearly define the scope of the Agencies’ regulatory authority, we are concerned that the Administration is now delaying implementation of the ruling” and asks for responses to questions regarding the ruling. [Read the letter here](#).

House Letter to the EPA Regarding the Methane Emissions Reduction Program. On June 9, Rep. Cathy McMorris Rodgers (R-WA), Chair of the House Committee on Energy and Commerce and Rep. Bill Johnson (R-OH), Chair of the House Subcommittee on Environment, Manufacturing, and Critical Materials, sent a letter to EPA administrator Michael Regan challenging “implementation of the Methane Emissions Reduction Program under Section 60113 of the Inflation Reduction Act of 2022 (IRA).” [Read the letter here](#). The lawmakers write, “The EPA’s regulatory proposal for methane creates substantial legal and regulatory uncertainty, which discourages energy production and increases energy prices. The EPA is also planning to add to the regulatory burden with a new tax on methane emissions. As the Congressional Budget Office determined, a tax on methane emissions will increase operational costs, reduce energy production, and increase the price of natural gas.” The letter also requested a response to questions and certain documentation by June 23, 2023. [Read more](#).

FEDERAL – Regulatory

BLM National Petroleum Reserve-Alaska Oil and Gas Leasing Information Collection. On June 15, the Bureau of Land Management (BLM) published a notice of information collection and request for comment, *Agency Information Collection Activities; Submission to the Office of Management and Budget for Review and Approval; Oil and Gas Leasing: National Petroleum Reserve-Alaska* ([88 Fed. Reg. 39272](#)), proposing to renew an information collection regarding oil and gas leasing in the National Petroleum Reserve-Alaska (NPRA). The information collection “covers paperwork requirements for operators and operating rights owners” in the NPRA. The public comment period is open through July 17, 2023. [Read more](#).

BLM Chaco Culture National Historical Park Public Land Order – New Mexico. (Update to 6/12/23 Report)

On June 11, Interior Secretary Deb Haaland received an unexpected surprise when she planned on addressing the local community to celebrate her agency's prohibition of oil and gas drilling in the Chaco Culture National Historical Park for 20 years, only to be confronted with Native American protestors unhappy with her decision. Land allottees from the Navajo Nation who receive oil and gas royalties from exploration blocked Sec. Haaland from entering and holding a ceremony at the national monument. Many of the protestors "said this moratorium undermines their sovereignty, something supported by Navajo Nation President Buu Nygren and some federal Republican officials." [Read more.](#) For background, on June 2, the Bureau of Land Management (BLM) announced the withdrawal of public lands surrounding Chaco Culture National Historical Park from future oil and leasing and mining. [Public Land Order No. 7923](#) "withdraws public lands within a 10-mile radius of the park for 20 years, subject to valid existing rights, and responds to decades of efforts from Tribes, elected officials, and the public to better protect the sacred and historic sites and Tribal communities currently living in northwest New Mexico." (See *Public Land Order No. 7923 for Public Lands Withdrawal Surrounding Chaco Culture National Historical Park Boundary; San Juan, Sandoval, and McKinley Counties, New Mexico*; [88 Fed. Reg. 37266](#)) According to the BLM, the withdrawal applies only to public lands and federal mineral estate and does not apply to minerals owned by private, state or Tribal entities. It does not affect valid existing leases; during the 20-year withdrawal period, production from existing wells could continue, additional wells could be drilled on existing leases, and Navajo Nation allottees can continue to lease their minerals." The order went into effect on June 7, 2023. [Read more.](#)

BLM Oil and Gas Lease Sale – Wyoming. On June 16, the BLM Wyoming State Office "issued the sale notice for a competitive oil and gas lease sale offering 115 parcels covering 95,351.20 acres in Wyoming scheduled for September 6, 2023." [Read more.](#) Related to the above notice, on June 12, the BLM Wyoming

State Office "opened a 30-day public scoping period to receive public input on 36 oil and gas parcels totaling 19,130.92 acres that may be included in an upcoming lease sale in Wyoming." The public comment period for those parcels is open through July 12, 2023.

[Read more.](#)

BLM Rights-of-Way, Leasing, and Operations for Renewable Energy. On June 16, the BLM published a proposed rule, *Rights-of-Way, Leasing, and Operations for Renewable Energy* ([88 Fed. Reg. 39726](#)), that "is proposing to amend its existing right-of-way (ROW) regulations, issued under authority of the Federal Land Policy and Management Act (FLPMA). The principal purpose of these amendments would be to facilitate responsible solar and wind energy development on public lands managed by the BLM. The rule would adjust acreage rents and capacity fees for solar and wind energy, provide the BLM with more flexibility in how it processes applications for solar and wind energy development inside designated leasing areas, and update agency criteria on prioritizing solar and wind applications. The rule would also make technical changes, corrections, and clarifications to the existing ROW regulations. This rule would implement the authority granted to the Secretary of the Interior (Secretary) in the Energy Act of 2020 to 'reduce acreage rental rates and capacity fees' to 'promote the greatest use of wind and solar energy resources' and achieve other enumerated policy goals." In short, the rule "would aim to speed the development of renewable energy on public lands" and "would cut fees for solar and wind development on public lands by 80 percent." [Read more.](#) Further, as part of the BLM's updated environmental review for solar development plans in 11 Western states, the BLM is "planning to identify new areas for potential solar development, as well as lands excluded from development and those that may be suitable for development through a variance process." The public comment period is open through August 15, 2023. [Read more.](#)

BLM Onshore Oil and Gas Operations; Federal and Indian Oil and Gas Leases Final Rule. On June 16, the BLM published a final rule, *Onshore Oil and Gas Operations; Federal and Indian Oil and Gas Leases*;

Codification of Onshore Orders 1, 2, 6, and 7 ([88 Fed. Reg. 39514](#)). According to the BLM, “This final rule codifies Onshore Order 1—Approval of Operations; Onshore Order 2—Drilling Operations on Federal and Indian Oil and Gas Leases; Onshore Order 6—Hydrogen Sulfide Operations; and Onshore Order 7—Disposal of Produced Water. This rule places the existing regulations, which were promulgated over the years through various notice and comment rulemakings but not codified in the Code of Federal Regulations (CFR), into the CFR in their entirety without making any substantive changes.” The final rule takes immediate effect. [Read more.](#)

BLM Proposed Plan to Guide the Balanced Management of Public Lands. (*Update to 5/15/23 Report*) On June 20, the BLM extended the comment period for its controversial public lands rulemaking after receiving considerable pushback from industry stakeholders and members of Congress. The original deadline date was June 20, 2023, and this announcement extends the period through July 5, 2023. [Read more.](#) For background, on April 3, the BLM published their proposed rule, *Conservation and Landscape Health* ([88 Fed. Reg. 19583](#)), “to guide the balanced management of America’s public lands for the benefit of current and future generations. The proposed Public Lands Rule provides tools for the Bureau of Land Management (BLM) to improve the resilience of public lands in the face of a changing climate; conserve important wildlife habitat and intact landscapes; plan for development; and better recognize unique cultural and natural resources on public lands.” According to the Interior Department announcement, “The proposal is consistent with strategies used by other state and federal land management agencies to ensure the federal government has tools and direction to identify areas in need of restoration or conservation, as well as the ability to encourage investments in public lands to help balance the impacts of development. It will increase access to outdoor recreation by putting conservation on equal footing with other uses, consistent with the BLM’s multiple use and sustained yield mission.” [Read more.](#) As reported, “The proposed rule would apply land-health standards to

all of the 245 million acres that BLM manages, instead of limiting them to federal livestock grazing allotments. The rule would also designate conservation as a formal use of public lands, on par with energy development, grazing and recreation. Energy developers, mining companies and other land users could purchase conservation leases and use them as compensatory mitigation to offset project impacts as a condition of permit approval. The proposed rule would also allow for nongovernment groups to buy these leases and pay to conduct restoration work on the land.” [Read more.](#)

Department of Energy Qualifying Advanced Energy Projects. To follow up our prior reporting, the U.S. Treasury Department and Department of Energy have announced an allocation of \$4 Billion in “Qualifying Advanced Energy Project Credits” for projects that “prioritize certain manufacturing areas, including components associated with clean hydrogen, nuclear technologies, EV components, solar production, wind energy, and sustainable aviation fuels.” The projects may qualify for certain tax credits and are “meant to incentivize investment in clean-energy manufacturing and recycling projects, greenhouse gas (GHG) emission reduction projects and critical materials projects.” As part of the ongoing process, the Department of Energy (DOE) will hold an informational webinar on June 27, 2023. [To attend read more here.](#) Per the DOE, “This webinar, hosted by DOE and Treasury, will provide information about how small-, medium-, and large-sized manufacturers can prepare and submit concept papers for the Qualifying Advanced Energy Project Credit program.” This program is facilitated through the DOE Office of Energy Efficiency and Renewable Energy (EERE) which “invests in research and development to lower the cost of clean energy technologies, protect the private sector from financial risk, and ensure an equitable transition to a decarbonized economy.” [Read more about the EERE programs and funding here.](#) For a detailed summary and analysis of the program, types of renewable and GHG-reducing project categories, approval timetables, and the overall project selection process, [Read more.](#)

Endangered Species Act Proposed Rulemaking.

On June 22, the Biden administration released two proposed rulemakings that would reverse Trump administration policies under the Endangered Species Act (ESA). "The proposals include the restoration of the so-called blanket 4(d) rule, which extends the same protections given to endangered species to those listed as threatened." The second rulemaking would remove "language allowing agencies to weigh economic factors when determining whether to list a species." And a third proposal also released the same day "would streamline the federal interagency consultation process" related to the ESA. The first rulemaking, *Endangered and Threatened Wildlife and Plants; Listing Endangered and Threatened Species and Designating Critical Habitat* ([88 Fed. Reg. 40764](#)), issued jointly by the U.S. Fish and Wildlife Service, Interior Department, National Marine Fisheries Service, National Oceanic and Atmospheric Administration, and Department of Commerce, would revise portions of regulations that implement [section 4 of the ESA](#). According to the rulemaking release, "The proposed revisions to the regulations clarify, interpret, and implement portions of the Act concerning the procedures and criteria used for listing, reclassifying, and delisting species on the Lists of Endangered and Threatened Wildlife and Plants and designating critical habitat." The second rulemaking, *Endangered and Threatened Wildlife and Plants; Regulations Pertaining to Endangered and Threatened Wildlife and Plants* ([88 Fed. Reg. 40742](#)), issued by the Interior Department and the U.S. Fish and Wildlife Service, proposes to revise regulations concerning protections under the ESA, specifically, "proposing to reinstate the general application of the 'blanket rule' option for protecting newly listed threatened species pursuant to [section 4\(d\) of the Act](#), with the continued option to promulgate species-specific rules." The third rulemaking, *Endangered and Threatened Wildlife and Plants; Revision of Regulations for Interagency Cooperation* ([88 Fed. Reg. 40753](#)), issued jointly by the U.S. Fish and Wildlife Service, Interior Department, National Marine Fisheries Service, National Oceanic and Atmospheric Administration, and Department of Commerce, would amend portions of regulations that implement [section 7 of the ESA](#). Specifically, the rulemaking is "proposing these changes to further clarify

and improve the interagency consultation processes, while continuing to provide for the conservation of listed species." The public comment period for all rulemakings closes on August 21, 2023. [Read more.](#)

President Biden Appoints Federal Permitting Improvement Steering Council Executive Director.

On June 21, President Biden appointed Eric Beightel as the incoming Executive Director of the Federal Permitting Improvement Steering Council (FPISC). The FPISC was created in 2015 and "is a unique federal agency charged with improving the transparency and predictability of the federal environmental review and authorization process for certain critical infrastructure projects." As reported by the American Exploration & Production Council, the "FPISC is responsible for coordinating federal environmental reviews and authorizations for infrastructure projects that qualify for FAST-41 coverage." [Read a FAST-41 Fact Sheet here.](#) FAST-41 was developed to create "a new governance structure, set of procedures, and funding authorities to improve the Federal environmental review and authorization process for covered infrastructure projects." FAST-41 projects "range from clean or conventional energy production, electricity transmission, energy storage, pipelines, manufacturing, mining, carbon capture and many other sectors." [Read more.](#)

National Labor Relations Board Independent

Contractor Standard. On June 13, the "National Labor Relations Board (NLRB) reconsidered its standard when determining whether workers are covered employees under the National Labor Relations Act or, instead, are independent contractors excluded from such coverage." In [The Atlanta Opera, Inc. and Make-Up Artists and Hair Stylists Union Local 798](#) (NLRB Administrative Case No. 10-RC-276292), "the NLRB reinstated its 2014 independent-contractor standard, holding that 'entrepreneurial opportunity' is not the animating factor of the independent-contractor test." [Read more.](#) Under the facts of the case, the NLRB determined that the workers – theatrical make-up artists and hair stylists – were, in fact, employees rather than independent contractors as argued by the employer. For perspective, the NLRA primarily applies to unionized workers and oftentimes private sector non-union employees engaged

in “concerted activity” regarding workplace conditions and policies. The NLRA does not apply to independent contractors. According to Steptoe & Johnson, the standard applied by the NLRB in this case “involves an independent-contractor inquiry that is guided by a non-exhaustive list of common-law factors, including factors such as the extent of the employer’s control over the worker, the worker’s skill, and whether the work is part of the regular business of the employer. When weighing these common-law factors, the NLRB explained, entrepreneurial opportunity should be analyzed by considering whether ‘evidence tends to show that the putative independent contractor is, in fact, rendering services as part of an independent business.’ The NLRA further noted that it would ‘give weight only to actual (not merely theoretical) entrepreneurial opportunity, and that it should necessarily evaluate the constraints imposed by a company on the individual’s ability to pursue this opportunity.’” In short, “In applying this adopted standard, the NLRB concluded that the workers at issue were employees under the National Labor Relations Act. This ruling is important because it broadens the scope of workers classified as covered employees and therefore protected by the National Labor Relations Act.” [Read more](#). You may also read further legal analysis of the decision [here](#) and [here](#).

STATE – Legislative

Carbon Capture and Sequestration – Louisiana.

(Update to 5/1/23 Report) On June 14, Gov. John Bel Edwards (D) signed [HB 571](#) into law. Sponsored by Speaker Clay Schexnayder (R), the bill updates current law by providing for the regulation of carbon capture and sequestration. [Read a complete bill summary here](#). Key provisions include: (1) Provides for the distribution of revenues collected by the Office of Mineral Resources pursuant to any contractual agreement for the storage of carbon dioxide beneath state-owned land or water bottoms; (2) Amends the procedures for the State Mineral and Energy Board to enter into operating agreements to share in the revenues from the storage of oil, natural gas, liquid or liquified hydrocarbons, or carbon dioxide; and (3) Provides additional notice be provided to local governments in advance of future CCS projects. It also

allows for certain revenue sharing between parishes and the State for CCS projects on state-owned land. The bill also provides for a new environmental analysis requirement; new reporting and record-keeping requirements; limited liability for project operators; certain fees and costs updates; and recordation of notice of geologic storage. The Act takes immediate effect. [Read more](#).

Renewable Energy; Power Generation – Michigan.

On June 14, HB 4759 was introduced by Rep. Betsy Coffia (D). The bill would “require certain providers of electric service to establish and recover costs for renewable energy and carbon-free energy programs; to require certain providers of electric or natural gas service to establish and recover costs for energy waste reduction programs; to authorize the use of certain energy systems to meet the requirements of those programs; to provide for the approval of energy waste reduction service companies; to reduce energy waste by state agencies and the public; to create a wind energy resource zone board and provide for its power and duties; to authorize the creation and implementation of wind energy resource zones; to provide for expedited transmission line siting certificates; to provide for customer generation and net metering programs and the responsibilities of certain providers of electric service and customers with respect to customer generation and net metering; to provide for fees; to prescribe the powers and duties of certain state agencies and officials; to require the promulgation of rules and the issuance of orders; to authorize the establishment of residential energy improvement programs by providers of electric or natural gas service; and to provide for civil sanctions, remedies, and penalties.” [Read more](#).

Federal Regulation of Oil and Gas Operations –

Texas. On June 14, Gov. Greg Abbott (R) signed HB 33 into law. Sponsored by Brooks Landgraf (R) and regarding the enforcement of certain federal laws regulating oil and gas operations within the State of Texas, the bill “prohibits a state agency or person employed by a state agency from contracting with or in any other manner assisting a federal agency or official regarding the enforcement of a federal statute, order,

rule, or regulation purporting to regulate oil and gas operations if the decree, order, rule, or regulation imposed a prohibition, restriction, or other regulation that did not exist under state law.” However, legal analysts note that while the bill provisions “would end state and local enforcement of a vast number of federal oil and gas regulations not reflected in state law [...] an amendment passed in the Senate Natural Resources & Economic Development Committee creates a big loophole, allowing state agencies to implement a ‘federal law by executing authority delegated to the state agency by a federal agency.’ It’s unclear how much leeway this will give state agencies to enforce federal regulations, but the most liberal reading of the language would allow them to enforce *all* federal oil and gas regulations because the EPA arguably delegates full enforcement authority to the state and every federal oil and gas regulation is the product of federal law. Even if we don’t accept this broad interpretation, state and local agencies can easily circumvent the enforcement prohibition by asking the EPA to explicitly delegate enforcement authority. Conversely, the EPA could unilaterally delegate such authority to ensure state cooperation.” [Read more](#). However, “even without the loophole, the law wouldn’t end all federal regulations on gas and oil production immediately. But it would still represent a massive shift in strategy going forward.” The Act takes immediate effect. [Read more](#).

STATE – Regulatory

Offshore Wind Development Roadmap – California.

The California Energy Commission (CEC) recently held “a workshop focusing on permitting approaches for offshore wind energy facilities and associated infrastructure off the coast of California.” [Access a recording of the workshop here](#). The workshop was part of the CEC adoption of a report titled, [Assembly Bill 525 Offshore Wind Energy Permitting Roadmap](#), “created in response to Assembly Bill 525, which established a goal for California to deploy up to 5,000 megawatts of offshore wind by 2030 and 25,000 megawatts by 2045. California aims to power 25 million homes with offshore wind by 2050. The report is the latest effort to bolster the development of

California’s Offshore Wind Strategic Plan, which will be submitted to the legislature in 2023.” As reported by law firm Pillsbury Winthrop Shaw Pittman LLP, “The report and associated workshop laid out California’s plan to coordinate efforts between multiple state and federal permitting agencies, which permitting officials believe will speed up the permitting process and simultaneously ensure that the interests of animals, fishery groups, tribal governments, stakeholders and local governments are protected.” [Read more](#).

Santa Cruz Suspends Natural Gas Prohibition –

California. In an about-face, on June 13 the Santa Cruz City Council voted unanimously in favor of suspending their 2020 natural gas prohibition ordinance. This comes in the wake of a recent federal appellate court ruling that struck down a similar ordinance in Berkeley since the “Santa Cruz ordinance, which prohibited natural gas infrastructure in new buildings, was modeled after Berkeley’s.” Santa Cruz Vice Mayor Renee Golder said, “I don’t think the state is ready to go all electric. I don’t think the grid can handle it. There’s radio advertisements telling us when to flex your power, do this, do that. And so I think it’s shortsighted to try to prohibit natural gas before the infrastructure, including the grid is ready for it.” [Read more](#).

Railroad Commission Approves Oil and Gas

Monitoring Plan – Texas. As a follow up to our prior reporting, the Texas Railroad Commission (RRC) announced on June 14 that “RRC commissioners have approved the agency’s Oil and Gas Monitoring Plan for Fiscal Year 2024 which continues to build on the agency’s strong record of stewardship of protecting the environment and residents.” [Read the full RRC press release here](#). According to the RRC, “The new plan includes goals to accurately demonstrate the Commission’s oil and gas monitoring and enforcement activities and to strategically use the oil and gas monitoring and enforcement resources. It focuses on developing a framework to describe the totality of oil and gas monitoring and enforcement efforts, beyond inspections and remediation work the agency does, which would include the extensive work that is done involving technical permit monitoring

and administrative compliance enforcement.” For background, in May 2023, AAPL Governmental Affairs provided members with an opportunity to submit public comments on the plan, in the draft stage, to have a voice in the process. [Read more.](#)

Railroad Commission Class VI Underground Injection Control Program Proposed Rule Amendments – Texas.

On June 13, the Texas Railroad Commission released “proposed amendments to various rules in Chapter 5 relating to Carbon Dioxide. The proposed amendments concern enforcement primacy for the federal Class VI Underground Injection Control program.” The proposed amendments to [16 Texas Administrative Code Chapter 5](#) relating to carbon dioxide are to “ensure that the rules are as stringent as the requirements of the U.S. Environmental Protection Agency (the ‘EPA’) to support the Commission’s application to EPA for enforcement primacy for the federal Class VI Underground Injection Control (UIC) program.” [Read more.](#) The proposal will be formally published in the Texas Register on June 30, 2023, and the public comment period will be open through July 31, 2023. [Access the RRC public comment website here.](#)

Louisiana Department of Natural Resources Name Change. As reported on June 14 by the *Louisiana Radio Network*, “Beginning next year, the Louisiana Department of Natural Resources will go under a name change. DNR spokesperson Patrick Courreges said the state agency will be known as The Louisiana Department of Energy and Natural Resources because it reflects how the agency’s role has expanded over the years.” Courreges said, “And we still do that, but we do more than that now. You look at our efforts in hydrogen, and our partners that our agency is leading, with Oklahoma and Arkansas” and the “department also oversees solar and wind energy projects.” [Read more.](#)

STATE – Judicial

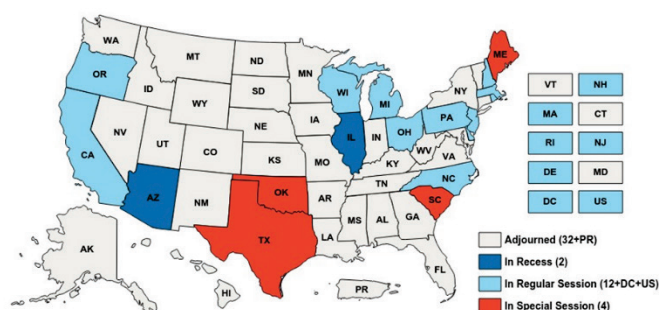
Climate Change Lawsuit – Montana. On June 12, a climate change case brought by 16 young residents of Montana alleging the state government has violated its constitutional provision to a “healthful environment” advanced to trial. In [Held v. Montana](#) (Case No. CDV-2020-307), the plaintiff’s say, “They are suing because their government keeps promoting and supporting fossil fuel extraction and burning, which is worsening the climate crisis and harming these youths’ lives.” The state previously sought to dismiss the lawsuit but the presiding judge denied their request in May, paving the way for the current trial. [Read more.](#) The plaintiffs are not seeking money damages but rather “They are asking the court to declare that Montana’s fossil fuel energy policies and actions violate young people’s state constitutional rights. The youth want the court to tell the government that it is unconstitutional to keep exploiting fossil fuels and they need to keep fossil in the ground and transition to clean energy no later than 2050.” [Read more.](#)

Adverse Possession; Leasing – Texas. On April 28, the Texas Court of Appeals, Seventh District (Amarillo), addressed “the issue of whether a non-operating working interest in an oil and gas lease may be adversely possessed.” In [PBEX II, LLC v. Dorchester Minerals, L.P.](#) (Case No. No. 07-21-00212-CV), the trial court held that “Dorchester adversely possessed a working interest in an oil and gas lease. For more than a quarter of a century, Dorchester paid the operating expenses attributable to the working interest, paid the royalties owed under the lease on the production, and retained the revenues from the sale of the minerals (less expenses, royalties, and taxes)-while Torch did none of these things.” Here, the appellate court held that “Because we find adverse possession of non-operating working interests is permitted under Texas law, we affirm the summary judgment.” As reported by law firm Oliva Gibbs LLP, “Of primary concern in this case is whether, regardless of the existence of a valid conveyance in 1990, Dorchester adversely possessed the non-op working interest of Torch in the Subject Land. In finding that Dorchester had in fact divested Torch’s interest, the court looked

INDUSTRY NEWS FLASH

► **Department of Energy buys more crude oil to replenish the Strategic Petroleum Reserve.** On June 9, the U.S. Department of Energy “awarded supply contracts to five companies to deliver 3.1 million barrels of crude oil to the Strategic Petroleum Reserve in August at an average price of \$73 per barrel.” Of the purchases, the Department of Energy said, “These 3 million barrels are being purchased for an average price of about \$73 per barrel, lower than the average of about \$95 per barrel that SPR crude was sold for in 2022, securing a good deal for taxpayers.” [Read more.](#)

States in Session



Signing Deadlines (by date): **Missouri** Republican Gov. Mike Parson had until June 16 to act on legislation or it becomes law without signature. **Nevada** Republican Gov. Joe Lombardo had until June 16 to act

on legislation or it becomes law without signature.

Texas Republican Gov. Greg Abbott had until June 18 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 York** Democratic Gov. Kathy Hochul has 10 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. ■

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