

GOVERNMENTAL AFFAIRS REPORT

Highlights At-A-Glance

FEDERAL – Legislative

U.S. Congress Out of Session in Summer Recess.

The U.S. Congress is out of session in the summer recess. The U.S. Senate is back in regular session on September 5, 2023, and the U.S. House of Representatives is back in regular session on September 12, 2023. [Read more.](#)

Congressional Letter to Tennessee Valley Authority Calling for Fossil Fuel Phaseout.

On August 16, a group of Democrat congressional members sent a letter to Tennessee Valley Authority leadership calling upon the country's largest electric power provider "to phase out fossil fuels and transition to a 100-percent clean energy grid by 2035." The lawmakers wrote, "TVA continues to rely on fossil fuels that are not only supercharging the climate crisis, but are subjecting TVA customers to electric grid blackouts and energy insecurity. It is long past time for TVA to begin the transition to a renewable and reliable electric grid." [Read the letter here.](#) In response, the TVA told *The Hill*, "Since 2005, TVA has reduced mass carbon emissions by 57%, one of the largest decreases in the industry. We will continue to lead, with our current plan taking us to an 80% reduction in carbon emissions by 2035 – without impacting reliability or affordability." [Read more.](#)

FEDERAL – Regulatory

BLM Oil and Gas Lease Sales – New Mexico; Oklahoma. On August 14, the Bureau of Land Management (BLM) "opened a 30-day public protest period to receive public input on eleven oil and gas parcels totaling 595.59 acres that may be included in an upcoming lease sale in New Mexico and Oklahoma." [Read more.](#) The parcels would include "four in Eddy and two in Lea County – totaling about 434 acres in

New Mexico, and another five parcels on 162 acres in Oklahoma." The BLM protest period is open through September 13, 2023, for the lease sale planned for November 2023. [Read more.](#)

BLM Oil and Gas Lease Sales – Kansas; New Mexico. On August 21, the BLM New Mexico State Office [announced the opening](#) of "a 30-day public scoping period to receive public input on 27 oil and gas parcels totaling 6,282.06 acres that may be included in an upcoming lease sale in New Mexico and Kansas." The lease sale will reportedly be held in the second quarter of 2024. The comment period is open through September 20, 2023. [Read more.](#)

BLM Oil and Gas Lease Sales – North Dakota. On August 22, the BLM Montana-Dakotas State Office announced the opening of "a 30-day public scoping period to receive public input on six oil and gas parcels totaling 2,335 acres that may be included in an upcoming lease sale in North Dakota." The public comment period is open through September 20, 2023. [Read more.](#)

BLM Oil and Gas Lease Sales – North Dakota. On August 18, the BLM Montana-Dakotas State Office "opened a 30-day public comment period to receive public input on 13 oil and gas parcels totaling 3670.57 acres that may be included in an upcoming lease sale in North Dakota. The BLM completed scoping on these parcels in July 2023 and is now seeking public comment on the parcels, potential deferrals, and the related environmental analysis. BLM will use input from the public to help complete its review of each parcel and determine if leasing of these parcels conforms with all applicable laws, policies, and land use plans." The public comment period is open through September 17, 2023. [Read more.](#)

BLM Supplemental Environmental Impact Statement for Proposed Resource Management Plan/Final EIS – Colorado. To follow up our prior reporting, on August 23, the BLM Colorado River Valley Field Office/Grand Junction Field Office announced it “is preparing this supplemental environmental impact statement (EIS) for the 2014 Colorado River Valley Field Office (CRVFO) Proposed Resource Management Plan (PRMP)/Final EIS and 2015 Grand Junction Field Office (GJFO) PRMP/Final EIS. The BLM approved the RMPs and Records of Decision (RODs) for the CRVFO and GJFO in 2015.” [Read more.](#) The public comment period is open through November 1, 2023. The BLM will also hold public information meetings on September 12 and 13, 2023. [Read more.](#)

BLM Four Rivers Resource Management Plan – Idaho. On August 18, the BLM issued “a [Record of Decision for the Four Rivers Field Office Resource Management Plan](#) that provides guidelines and objectives for renewable energy development, fish and wildlife habitat, outdoor recreation, livestock management, and other uses across approximately 783,000 acres of public lands and more than 1.17 million acres of Federal mineral estate in southwest Idaho. The decision also designates the new 120,000-acre Bennett Hills Backcountry Conservation Area (BCA), the first BCA in Idaho, to promote high quality, wildlife-dependent recreation activities while supporting the BLM’s multiple-use and sustained yield mission.” According to the BLM, they “updated the plan to separate management of oil and gas from geothermal resources and prioritize BLM resources in areas with high potential for oil and gas. Under this plan, areas with low and no potential are now closed for oil and gas leasing to reduce speculative nominations and protect sensitive resources in these areas. High and moderate oil and gas potential areas remain open to leasing. Geothermal leasing opportunities will be unaffected from the previous plan.” [Read more.](#)

BLM Rock Springs Resource Management Plan Revision – Wyoming. On August 18, the BLM published a *Notice of Availability of the Draft Resource Management Plan and Environmental Impact Statement*

for the Rock Springs RMP Revision, Wyoming ([88 Fed. Reg. 56654](#)) announcing the BLM “has prepared a [Draft Resource Management Plan \(RMP\) and Draft Environmental Impact Statement \(EIS\)](#) for the Rock Springs Field Office and by this notice is providing information announcing the opening of the comment period on the Draft RMP/EIS and on BLM’s proposed Areas of Critical Environmental Concern.” The notice opens a 90-day comment period coinciding with the Environmental Protection Agency’s publication of its Notice of Availability of the Draft RMP/EIS. According to the BLM, “The purpose of the Rock Springs RMP is to provide an updated, comprehensive, and environmentally adequate framework for managing and allocating uses of public lands and resources administered by the BLM Rock Springs Field Office. The Rock Springs RMP will address changing needs of the planning area by updating information and revising management goals, objectives, and decisions while ensuring that public lands are managed according to the principles of multiple use identified in [the applicable law] and while maintaining the valid existing rights and other obligations already established.” Wyoming Gov. Mark Gordon (R), however, has criticized this RMP/EIS. “Upon first glance, I am extremely disappointed, yet not surprised, by the redirection this Administration is taking with this draft,” said Gov. Gordon in a press release. “Over a decade’s worth of work from Wyoming’s cooperating agencies, local stakeholders, and impacted industries seems to have fallen on the deaf ears of the federal BLM and its imperious agenda. I know I am not alone in my desire to review this draft with a fine-tooth comb. I will protect the interests of the State of Wyoming and make sure they pay attention to the good work being done at the state and local level as we move ahead.” [Read more.](#)

BLM Onshore Oil and Gas Leasing Rulemaking Update. As an update to our prior reporting on the proposed BLM onshore oil and gas leasing rulemaking, the BLM has announced they will hold a virtual public meeting on the proposal on September 19, 2023. [To register for the meeting read more here.](#) For background, the proposed BLM rule, *Fluid Mineral Leases and Leasing Process* ([88 Fed. Reg. 47562](#)), “would update the agency’s leasing process as part of its

effort to better balance development with conservation.” The rule would also impact minimum bids, fees for expressing interest in a parcel, bonding requirements, as well as royalty and rental rates as mandated under last year’s [Inflation Reduction Act](#). The BLM is also still accepting public comments on the proposed rule through September 22, 2023. [Read more.](#)

EPA Greenhouse Gas Reporting Rule. (*Update to 8/14/23 Report*) On August 21, the U.S. Environmental Protection Agency (EPA) announced it will hold a virtual “technical outreach webinar” on September 7, 2023, to present on their recently proposed *Greenhouse Gas Reporting Rule: Revisions and Confidentiality Determinations for Petroleum and Natural Gas Systems* ([88 Fed. Reg. 50282](#)) that we’ve been covering for members. According to the EPA, the “proposed action would make important improvements to the Greenhouse Gas Reporting Program (GHGRP) subpart W to allow for the expanded incorporation of empirical data and to improve the accuracy of data reporting, consistent with the Congressional requirements of the Inflation Reduction Act and EPA’s authority under Clean Air Act.” That rulemaking “is proposing to amend requirements that apply to the petroleum and natural gas systems” in order “to ensure that reporting is based on empirical data, accurately reflects total methane emissions and waste emissions from applicable facilities, and allows owners and operators of applicable facilities to submit empirical emissions data that appropriately demonstrate the extent to which a charge is owed. The EPA is also proposing changes to requirements that apply to the general provisions, general stationary fuel combustion, and petroleum and natural gas systems source categories of the Greenhouse Gas Reporting Rule to improve calculation, monitoring, and reporting of greenhouse gas data for petroleum and natural gas systems facilities. This action also proposes to establish and amend confidentiality determinations for the reporting of certain data elements to be added or substantially revised in these proposed amendments.” According to the EPA, there are four parts to their proposed amendments to this greenhouse gas reporting rule established in 2009, “which: (1) Address gaps in the total methane emissions reported by facilities by adding several new covered sources such as ‘other large

release events,’ that would capture abnormal methane emission events that are not fully accounted for using existing methods; (2) Add new or revise existing calculation methodologies to improve the accuracy of reported emissions data for methane and other greenhouse gases and incorporate additional empirical data; (3) Collect data at a more granular level to improve verification and transparency of the data collected; and (4) Make other technical amendments, clarifications, and corrections to improve understanding of the rule.” [Read a detailed rule analysis here.](#) The public comment period is open through October 2, 2023. [Read more.](#) To attend the virtual technical outreach webinar on September 7, [read more here to register and attend.](#) For further information on the proposed rulemaking, including a fact sheet, you may visit the EPA’s dedicated [GHGRP website here.](#)

National Petroleum Council Small Producer GHG Emissions Workshops. The National Petroleum Council (NPC) has announced two upcoming workshops for small producers/operators in support of the NPC’s “Study on GHG Reductions in the Natural Gas Supply Chain” at the request of the Secretary of Energy “to provide the Council’s perspective on greenhouse gas emissions reduction plans and potential across the U.S. natural gas value chain. These workshops are being held to ensure that the voice of the ‘less capitalized operator’ community is included in the NPC study.” The next workshops will be held in Denver (September 12) and Pittsburgh (September 27). To read more about the program agendas and information on attending, [Read more.](#) To learn more about the NPC Study and its advisory role to the Department of Energy, [Read more.](#)

ONRR Electronic Provision of Records. (*Update to 8/14/23 Report*) On August 16, the Interior Department’s Office of Natural Resources Revenue (ONRR) published a correction to their August 9, 2023 final rule, *Electronic Provision of Records During an Audit* ([88 Fed. Reg. 53790](#)), that amended existing regulations to allow ONRR and other authorized Interior Department “representatives the option to require that an auditee use electronic means to provide records requested during an audit of an auditee’s royalty reporting and payment.” The correction notes an error by ONRR that “used a

subpart that was designated reserved. This document corrects the final regulations by adding the subpart.” (See [88 Fed. Reg. 55571](#)) The ONRR correction does not change the effective date of September 8, 2023. [Read more.](#)

White House Council on Environmental Quality Proposed Rulemaking. (*Update to 8/14/23 Report*) On August 21, the U.S. Chamber of Commerce delivered a comment letter to Amy Coyle, Deputy General Counsel for the White House Council on Environment Quality (CEQ), urging a comment period extension of at least 45 days for their proposed rulemaking. The letter was also joined by IPAA, AXPC, and other producer and industry stakeholders. [Read the letter here.](#) For background, on July 31, the CEQ released a proposed rule, *National Environmental Policy Act Implementing Regulations Revisions Phase 2* ([88 Fed. Reg. 49924](#)), that seeks “to revise its regulations for implementing the procedural provisions of the National Environmental Policy Act (NEPA), including to implement the Fiscal Responsibility Act’s amendments to NEPA. CEQ proposes the revisions to provide for an effective environmental review process that promotes better decision making; ensure full and fair public involvement; provide for an efficient process and regulatory certainty; and provide for sound decision making grounded in science, including consideration of relevant environmental, climate change, and environmental justice effects. CEQ proposes these changes to better align the provisions with CEQ’s extensive experience implementing NEPA; CEQ’s perspective on how NEPA can best inform agency decision making; longstanding Federal agency experience and practice; NEPA’s statutory text and purpose, including making decisions informed by science; and case law interpreting NEPA’s requirements. CEQ invites comments on the proposed revisions.” [Read more.](#) In short, the rule would streamline the NEPA process “as part of the deal reached to raise the debt ceiling earlier this year. The rule streamlines the environmental review process under NEPA by allowing multiple agencies to develop joint categorical exclusions, the term for actions that do not affect the environment enough to require an environmental impact statement.” [Read more.](#) However, as reported by *Bloomberg Government*, Alex Herrgott,

who led the Federal Permitting Improvement Steering Council during the Trump administration, “said the proposal would yield only a modest impact on permitting times because they don’t address the real problem: the hundreds of laws and regulations governing permitting at the federal, state, and local levels. Those standards often conflict with one another and leave developers confused.” The public comment period is open through September 29, 2023. [Read more.](#) For a deeper dive into the rulemaking, read a detailed summary from law firm Covington & Burling LLP [here.](#) As of this report, the CEQ is continuing to hold a number of virtual public meetings. To register and attend a session, [Read more here.](#)

FEDERAL – Judicial

Federal Gulf of Mexico Offshore Leasing. (*Update to 10/31/22 Report*) On August 24, the American Petroleum Institute (API), state of Louisiana, and Chevron U.S.A. Inc. filed a challenge to the Interior Department Bureau of Ocean Management’s (BOEM) Final Notice of Sale for Lease Sale 261. [Read the API press release here.](#) The federal complaint filed in the U.S. District Court for the Western District of Louisiana follows the [BOEM’s August 23 announcement](#) “to hold the final offshore lease sale mandated by the Inflation Reduction Act, but with significantly reduced acreage and severe restrictions on oil and natural gas vessel traffic.” [Read more.](#) The scaled-down lease sale – which will now include 6 million fewer acres than previously scheduled for the September 2023 sale – was the result of a legal settlement the Biden administration made with environmental litigants. [Read more.](#) In the current complaint, *Louisiana v. Haaland* (Case No. 2:23-cv-01157), the plaintiffs are challenging the BOEM’s “alteration to Gulf of Mexico lease sales aimed at protecting the endangered Rice’s whale.” API Senior Vice President and General Counsel Ryan Meyers said, “Today we’re taking steps to challenge the Department of the Interior’s unjustified actions to further restrict American energy access in the Gulf of Mexico. Despite Congress’ clear intention in the Inflation Reduction Act, the Biden administration has announced a ‘lease sale in name only’ that removes approximately 6 million acres of the Gulf of Mexico from the sale and adds new and

unjustified restrictions on oil and natural gas vessels operating in this area, ignoring all other vessel traffic. Together with the State of Louisiana and Chevron U.S.A. Inc., we intend to use every legal tool at our disposal to challenge these actions.” [Read more.](#)

Interior Department; Office of Natural Resources Revenue Royalties – Texas. (*Update to 7/31/23 Report*) As an update to our prior reporting on the following case, law firm Oliva Gibbs recently published a useful legal analysis of the case and the broader issues implicated by the court’s decision. [Read more.](#) For background, on July 24, the U.S. District Court for the Northern District of Texas ruled in favor of an energy company that owns and operates oil and gas platforms under federal leases off the Southern California coast. The company sought judicial review of an Office of Natural Resources Revenue (ONRR) order to pay over \$19 million in additional royalties on oil and gas produced between 2007 and 2013. In *DCOR, LLC v. U.S. Dept. of the Interior* (Case No. 3:21-CV-00120-N), the court found that the ONRR’s decision was “arbitrary and capricious in increasing royalties under the First Order and failing to address whether the audit complied with” Generally Accepted Governmental Auditing Standards (GAGAS). “While the ONRR Director may correct errors in an underlying order,” the court said, “he or she may not implement new reasoning outside of the statutory deadline.” Accordingly, the court vacated the \$2,370,400.62 in additional royalties due under the ONRR’s amended order and remanded this case back to the ONRR “for further proceedings to consider GAGAS compliance and the as-yet addressed arguments from DCOR’s First Statement of Reasons.” [Read more.](#)

National Monuments – Utah. On August 11, the U.S. District Court for the District of Utah ruled against the state in [Garfield County v. Biden](#) (Case No. 4:22-cv-00059-DN-PK) when it dismissed a lawsuit filed last year by Utah Attorney General and two Utah counties claiming President Joe Biden exceeded his executive authority “when he re-designated Bears Ears and Grand Staircase-Escalante national monuments after President Donald Trump shrank their boundaries.” The court wrote that it “has no ability to review the

president’s power to declare monuments without a waiver of sovereign immunity from Congress.” As reported by *Bloomberg Government*, “Utah claimed that the Administrative Procedure Act waives sovereign immunity” but the court disagreed “saying there are no other federal officials involved in the president’s monument proclamations, and Congress has not granted sovereign immunity.” The ruling further solidifies the Biden administration’s attempt to shield the Bears Ears and Grand Staircase-Escalante monument areas from oil and gas drilling and mining. The Utah Attorney General’s Office [issued the following statement](#) in response to the ruling: “The Attorney General’s Office respectfully but strongly disagrees with the court’s order on the Monuments case today. We will appeal the dismissal in order to stand up against President Biden’s egregious abuse of the Antiquities Act.” [Read more.](#)

STATE – Legislative

Local Taxation – California. On August 23, the current amended version of [ACA-1](#) was considered in committee. The bill proposes “amendments to the California Constitution to allow a city, county, or special district, with 55% voter approval, to incur bonded indebtedness or impose specified special taxes to fund projects for affordable housing, permanent supportive housing, or public infrastructure.” [Read a full bill summary here.](#) The California Independent Petroleum Association (CIPA) as well as other industry groups have come out strongly against the measure. According to CIPA, the bill “would allow local governments to increase taxes (e.g., parcel taxes, transactions and use taxes, sales and use taxes, Mello-Roos taxes)” with the lower vote percentage “instead of the two-thirds vote currently required under the California Constitution.” CIPA and fellow groups recently sent a letter to members of the Assembly Appropriations Committee voicing their opposition. [Read the letter here.](#) The letter writers said, “It is important to improve infrastructure and increase housing availability, but higher taxes on working Californians run counter to the goal of making the state more affordable for all.” The groups are working towards killing the bill before a mid-September deadline.

STATE – Regulatory

Cost Estimate Regulations for Oil and Gas Operations – California. On August 18, the California Department of Conservation's Geologic Energy Management Division (CalGEM) released draft rules, *Cost Estimate Regulations for Oil and Gas Operations*. This begins the 45-day public comment process that ends on October 4, 2023. [Access the draft rule here](#). According to CalGEM, the rulemaking purpose is "to develop criteria and a reporting schedule for oil and gas operators to submit cost estimates for well plugging and abandonment, production facilities decommissioning, and any required site remediation. The information submitted will assist CalGEM and the state in understanding the liability associated with clean up and remediation of all of the state's oil and gas wells, associated facilities, and sites. It will also provide information on the total liabilities that could potentially fall to the state if operators are unable to meet their financial obligations for asset retirement." [Access a rulemaking fact sheet here](#). According to CIPA, this "will impact bonding requirements placed on operators by CalGEM. Cost estimating matrices presented in the draft rule are based on cost incurred by CalGEM when the Agency plugs orphaned wells and restores locations. These costs are inordinately high when compared with industry practices. The State has very prescriptive bidding procedures that they must follow, resulting in excessive costs and in turn could result in higher than anticipated bonding requirements." CalGEM will also hold a virtual public hearing on October 3, 2023. Advanced registration is required and [can be done so here](#). For more information on how to submit a public comment, [Read more](#).

Los Angeles Environmental Justice and Equity Land Use Planning – California. On August 22, the Los Angeles City Planning (LACP) announced the initiation of an [Environmental Justice Policy Program](#), "which is a comprehensive effort to centralize and strengthen environmental justice policies in the City's [General Plan](#). The General Plan describes policy goals and objectives that inform land use decisions, and ultimately shape and guide the physical

development of the City. As part of the Program, City Planning anticipates updating the Health Element, also called 'The Plan for a Healthy Los Angeles,' and the Air Quality Element of the General Plan. Other changes include making targeted updates to the Open Space Element, and the creation of a new environmental justice element or chapter in the Health Element. A recently completed [Health Element Progress Report](#) provides the status of the existing Health Element programs. This report will inform additional environmental justice policies and programming as part of the Environmental Justice Policy Program. In addition to the Environmental Justice Policy Program, the Department is set to launch a Climate Vulnerability Assessment (CVA) in partnership with the Emergency Management Department and the Climate Emergency Mobilization Office. The CVA will help identify the City's communities that are most vulnerable to climate change and will ensure that climate equity is a priority in future climate planning efforts." LACP has also made available a survey that "will help inform the first phase of the planning process by collecting initial feedback. Future opportunities to participate will become available throughout this multi-year effort." [Access the survey here](#). For a summary and background, plan updates, and other LACP Environmental Justice Policy Program resources, [Read more](#).

Natural Gas Power Plants to Stay Open through 2026 – California. In a blow to environmental activists, on August 16, the State Water Resources Control Board, which oversees the phaseout of natural gas facilities, voted unanimously to keep the state's three natural gas fired power plants operational through 2026 to meet the state's ever-growing energy needs. Environmentalists had been pushing for an immediate shutdown of the power plants. The plants were originally slated to be shut down in 2020, but their life was extended by three additional years under an order from Gov. Gavin Newsom (D). [Read more](#).

Natural Gas Marketing Claims Settlement – California. On August 14, the California Attorney General Rob Bonta announced a settlement had been

reached with Southern California Gas Company (SoCalGas) “in connection with numerous unqualified environmental marketing claims the company made in 2019 that natural gas is ‘renewable.’” [Read more.](#) Attorney General Bonta said, “Such claims are misleading. The vast majority of natural gas — including a vast majority of the gas distributed by SoCalGas — is not renewable, but rather is derived from fossil fuels.” Under the terms of the settlement agreement, “SoCalGas would be prohibited from making similar statements characterizing natural gas as ‘renewable’ [and] the company would need to pay \$175,000 in penalties, of which 50 percent — \$87,500 — will be funneled to the California Environmental Protection Agency’s Environmental Justice Small Grants Program to fund a project focused on environmental justice.” [Read more.](#)

Pollution Protection Measures – Colorado. (*Update to 5/1/23 Report*) On August 16, the Colorado Carbon & Energy Management Commission announced “it is opening an Informational Docket on Cumulative Impacts.” For background, [HB 23-1294](#), enacted this year, requires the Energy and Carbon Management Commission “to adopt rules that evaluate and address the cumulative impacts of oil and gas operations and to adopt a definition of ‘cumulative impacts,’ no later than April 28, 2024.” As noted by the Commission, “The signing of HB 23-1294 came after the Commission conducted an extensive and robust stakeholder engagement process on the question of what should the Commission consider when evaluating how to further address cumulative impacts from oil and gas operations. This stakeholder engagement process lasted two months, and took comment from 124 people and organizations. The work and outcomes of these stakeholder meetings are critical to the work that the Commission is undertaking today on this important issue.” Further, “Recognizing that the Commission has the authority to consider only those cumulative impacts that are addressable, it is asking stakeholders and interested persons to provide their input as to how the Commission should proceed in scoping and developing draft rules that evaluate and address cumulative impacts. The Commission is opening an informational docket, in which the public

will be able to provide input.” The public comment period is open through September 15, 2023. [Access the Commission’s public comment webpage here.](#) The Commission will also take public comment from interested persons at a hearing on October 12 and 13, 2023. To learn more about submitting comments, attending hearings, and information on the Commission’s oversight in this area, [Read more.](#)

EPA Proposed Emissions Rule – Texas. On August 15, the Railroad Commission of Texas (RRC) announced that the RRC and “the Texas Commission on Environmental Quality (TCEQ) submitted joint comments opposing the EPA’s proposed rule that would add regulations to fossil fuel-fired electric generating units in attempts to decrease carbon dioxide (CO₂) emissions.” According to the RRC, “The likely outcome of this rule could result in the elimination of coal-fired units and a reduced ability to operate natural-gas fired power plants, which are critical for electricity supply in a state experiencing a booming population like Texas. The comments also detail the unrealistic assumptions and artificially high metrics EPA used to estimate the climate benefits of the rule. Additionally, the supplemental costs involved, along with the additional infrastructure that would be necessary to implement the proposed requirements, would impose unreasonable costs in comparison to the anticipated benefits, all while placing reliable fuel supply for the electric grid at risk.” [Read the joint RRC/TCEQ EPA proposed rule comment here.](#) Of the rulemaking, RRC Commissioner Wayne Christian said, “President Biden’s obsession with ‘net-zero’ is propping up unreliable energy sources that only make our electric grids unstable and leave consumers with higher energy costs. In May, the Public Utilities Commission of Texas and the Federal Energy Regulatory Commission warned that the retirement of thermal-based energies is leaving our grids extremely vulnerable to power blackouts, and this decision will only lead to less investment in those sources and less reliable energy on our grids.” The final EPA rule is expected within the first quarter of 2024. [Read more.](#)

Railroad Commission Class VI Underground Injection Control Program and Primacy Rule Amendments – Texas. (*Update to 7/10/23 Report*)

To follow up our continuing coverage of the following Texas rulemaking, on August 22, the Texas Railroad Commission (RRC) adopted “amendments to [16 Texas Administrative Code Chapter 5](#), relating to Carbon Dioxide (CO2). The amendments 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.” [Access the RRC memo and adopted rule here.](#)

To view the RRC rulemaking and regulatory history resource page, visit <https://www.rrc.texas.gov/general-counsel/rules/proposed-rules/> under “Chapter 5. Carbon Dioxide – Various Rules.” [Read more.](#)

STATE – Judicial

Emissions and Pollutants – Colorado. On August 21, environmental groups filed a lawsuit against the Colorado Air Quality Control Commission, “challenging an inadequate rule adopted by the Colorado Air Quality Control Commission (AQCC) to address polluter permitting in disproportionately impacted communities (DICs).” The suit states that “The rule, which was required by the Colorado Environmental Justice Act, improperly divides DICs into two classes – with one class receiving less protection than the other; allows most polluters to avoid monitoring their emissions at the source by paying a vague ‘community monitoring fee’; fails to monitor harmful toxic air pollutants; and limits its most stringent requirements to a handful of sources. The groups request the court to find these aspects of the rule unlawful and to return it to the commission for revisions.” Of the suit, [GreenLatinos v. Colorado Air Quality Control Commission](#), Dan Haley, President and CEO of the Colorado Oil and Gas Association, said, “Our members’ commitment to working with state agencies and disproportionately impacted communities to meet these tough new standards won’t be deterred by activist lawsuits. We think the changes are a step toward improving air quality for those most

disadvantaged in our communities. Our focus is on improving air quality beyond the gains we’ve already realized.” [Read more.](#)

Cryptocurrency Mining – Colorado. On August 14, law firm Reed Smith LLP published an instructive legal article on cryptocurrency mining and some of the potential pitfalls for oil and gas producers engaged in this new area. The attorneys note that “As oil and gas producers evaluate emergent opportunities with cryptocurrency mining, it is imperative to conduct a comprehensive risk analysis and ensure any programs are compliant with existing leases and contracts. A new lawsuit filed by a lessor in the District Court for Denver, Colorado claiming the lessee breached its lease obligations, in part through its cryptocurrency mining operations, shows the potential legal exposure producers may face as they take part in this developing segment of the industry.” That case, *Hobe Minerals Limited Liability Company v. Bonanza Creek Energy Operating Company, LLC* (Case No. 2023-CV-32226), filed last month in the Denver District Court, “puts at issue the effect of cryptocurrency mining operations powered by gas wells and the lease provisions for those wells. Its resolution may shed light on the sufficiency of operations to hold oil and gas leases, as well as the interaction between cryptocurrency mining operations and other lease provisions.” As noted, “Hobe seeks a declaration that the leases terminated due to a lack of sufficient operations and that the cryptocurrency mining operations did not continue the leases beyond the primary terms.” We will keep AAPL members updated as the case progresses. [Read more.](#)

Climate Change Case – Montana. On August 14, a Montana state court ruled in favor of a group of young people who alleged that state policy regarding the health effects of climate change violated their rights to protection. In [Held v. Montana](#) (Case No. CDV-2020-307), the litigants challenged the constitutionality of the state’s “fossil-fuel based energy system, which they allege causes and contributes to climate change in violation of their constitutional rights.” In the 103-page order, the court found that the young plaintiffs have standing to bring

their claim, that Montana's greenhouse gas emissions can be traced to state policy, and that Montana's greenhouse gas emissions and climate change "have been proven to be a substantial factor in causing climate impacts to Montana's environment and harm and injury to the Youth Plaintiffs." The case was reportedly effective because it was "brought under the environmental rights provision of the state's constitution." Julia Olson, chief legal counsel of Our Children's Trust, who represented the plaintiffs, said the decision was a "turning point" and "for the first time in U.S. history, a court ruled on the merits of a case that the government violated the constitutional rights of children through laws and actions that promote fossil fuels, ignore climate change, and disproportionately imperil young people." On the other hand, the Montana Attorney General's office "called the ruling 'absurd' and said it would appeal the decision." [Read more.](#)

Produced Water – Texas. On July 28, the Texas Court of Appeals of Texas, Eighth District (El Paso), decided "who owns produced water arising from a hydraulic fracturing operation: COG Operating, LLC (the existing mineral lessee) or Cactus Water Services, LLC (who later entered [into] a produced water lease agreement with the surface owners)." The trial court "decided the ownership question in COG's favor." Here, the appellate court in [Cactus Water Services, LLC v. COG Operating, LLC](#) (Case No. 08-22-00037-CV) affirmed the trial court in favor of COG. In short, the holding finds "that the mineral lessee under an oil and gas lease owns the water extracted simultaneously with oil and gas during production operations." As noted by Houston law firm Mayer Brown, "Because the Court's decision is not binding on other jurisdictions in Texas, unless or until the Texas Supreme Court settles the question, industry clients may see continued litigation over produced water ownership in other courts statewide, particularly as produced water is increasingly treated as a monetizable asset by producers and surface owners. This litigation is most likely to affect lessees with mineral leases executed or amended prior to September 1, 2019, the effective date of the Section 122.002 amendments to the Texas Natural Resources Code [which clarified that produced water is typically

conveyed as part of the mineral estate], assuming the validity of these amendments is not challenged." Notably, "the mineral leases at issue in this case were executed before the legislative amendment, [so] the Court recognized Section 122.002 did not affect ownership rights in the present case." Thus, the court was tasked with analyzing the parties' intent in reaching its decision. [Read more.](#)

INDUSTRY NEWS FLASH

► Natural gas coalition launched in the Carolinas.

This month, a new natural gas group, the Carolinas Natural Gas Coalition, was launched. The coalition "is an alliance of industry groups, pipeline companies, contractors, natural gas producers and suppliers, community leaders, commercial companies, individuals and other allies dedicated to promoting and advocating for the future of natural gas." The group "promotes the value of natural gas and protects the interests of the natural gas industry, its members, and consumers." [Read more.](#)

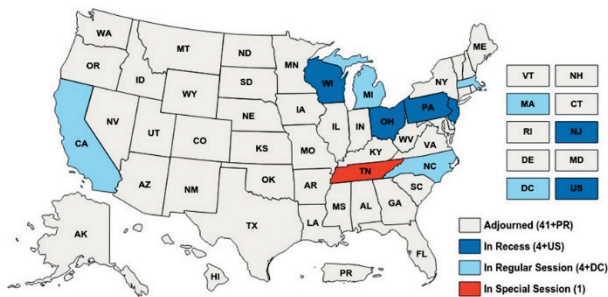
► Record-breaking New Mexico oil production likely to provide state government with a multibillion-dollar surplus. On August 23, New Mexico state economists reported "record-breaking oil production in New Mexico is likely to provide state government with a new multibillion-dollar surplus during the upcoming budget year. Annual state general fund income would increase to \$13 billion for the fiscal year that runs from July 2024 to June 2025 — a surplus of \$3.5 billion, or 36%, over current annual general fund spending obligations, according to the forecast from lead economists at four state agencies including the Legislature's budget and accountability office." [Read more.](#)

► North Dakota oil industry has best month in two years. As reported by the North Dakota Department of Mineral Resources, the "petroleum industry had its best month in 2½ years in June as oil production climbed 3%. The state's natural gas output also rose 3%," according to the data released.

As the nation's third-largest petroleum producer after Texas and New Mexico, North Dakota "pumped 1.17 million barrels of oil a day in June, its highest monthly output since December 2020." [Read more.](#)

LEGISLATIVE SESSION OVERVIEW

States in Session



Session Notes: California, Michigan and North Carolina are in regular session. The U.S. Congress is out of session in the summer recess. The U.S. Senate is back in regular session on September 5, 2023, and the U.S. House of Representatives is back in regular session on September 12, 2023. [Read more.](#)

The following states are in recess until the dates provided: **Pennsylvania** Senate (August 30), **Wisconsin** (September 12), **Ohio** (September 13), **Pennsylvania** House (September 26) and **New Jersey** (November 14).

North Carolina is scheduled to adjourn their 2023 legislative session on August 31.

Signing Deadlines (by date): **California** Democrat Gov. Gavin Newsom has until October 14 to sign or veto legislation or it becomes law without signature. **Michigan** Democratic Gov. Gretchen Whitmer has 14 days to act on legislation or it becomes law without signature. **Pennsylvania** Democratic Gov. Josh Shapiro has 10 days from presentment to act on legislation or it becomes law without signature.

The following states are currently holding 2023 interim committee hearings or studies: [Alabama](#), [Alaska](#), [Arizona](#), [Arkansas](#), [Colorado](#), [Connecticut](#), [Georgia](#), [Hawaii](#), [Idaho](#), [Illinois](#) [House](#), [Indiana](#), [Iowa](#), [Kansas](#), [Kentucky](#), [Louisiana](#), [Maine](#), [Maryland](#), [Minnesota](#), [Mississippi](#) [House](#) and [Senate](#), [Missouri](#) [House](#) and [Senate](#), [Montana](#), [Nevada](#), [New Hampshire](#) [House](#) and [Senate](#), [New Mexico](#), [New York](#) [Assembly](#), [North Dakota](#), [Oklahoma](#) [House](#) and [Senate](#), [Rhode Island](#), [South Carolina](#) [House](#) and [Senate](#), [South Dakota](#), [Tennessee](#), [Utah](#), [Vermont](#), [Virginia](#) [House](#), [Washington](#), [West Virginia](#) and [Wyoming](#).

The following states are currently posting 2023 bill drafts, pre-files and interim studies: [Florida](#), [Georgia](#), [Iowa](#), [Nevada](#), [North Carolina](#), [Oklahoma](#) [House](#) and [Senate](#), [Utah](#) and [Wyoming](#). ■

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