

GOVERNMENTAL AFFAIRS REPORT

FEDERAL – Legislative

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

ANWR Lease Cancellations; NPR-A Reduced Leasing Acreage – Alaska. On September 6, the Biden administration announced that it will cancel seven oil and gas leases in the Arctic National Wildlife Refuge (ANWR) that were authorized under a 2017 law signed by President Trump, and which may open up a legal battle with the administration seeking to unilaterally nullify an act of Congress. [Read more.](#) Interior Secretary Deb Haaland said on a call with reporters, "On day one of this administration, President Biden directed us to look at the oil and gas leases sold in the refuge by the previous administration. What we have found in our analysis is that the lease sale itself was seriously flawed and based on a number of fundamental legal deficiencies." [Read more.](#) On the same day, President

Biden also announced plans "to protect about 13 million acres in another part of Alaska, known as the National Petroleum Reserve — Alaska (NPR-A)." (See [Management and Protection of the National Petroleum Reserve in Alaska: 88 Fed. Reg. 62025](#)). This proposal "would prohibit any new leasing in 10.6 million acres, which is more than 40 percent of the reserve," said Sec. Haaland. [Read more.](#) In response, Sen. John Barrasso (R-WY), ranking member of the Senate Committee on Energy and Natural Resources, said, "President Biden's war on American energy continues. With the stroke of a pen, his administration is placing more than 40 percent of the National Petroleum Reserve off limits for petroleum production. He is ignoring the law and making us more dependent on foreign oil. Not only is this bad energy policy, it's bad foreign policy. Today's decision rewards our adversaries and hurts American families." The public comment period for the proposed NPR-A rule is open through November 7, 2023 and comments can be submitted through the proposed rule link above. [Read more.](#)

BLM Oil and Gas Leasing – Nevada. On August 29, the Bureau of Land Management (BLM) Nevada State Office "opened a 30-day public scoping period to receive public input on 13 oil and gas parcels totaling 17,495 acres that may be included in an upcoming March 2024 lease sale in Nevada." The BLM public comment period is open through September 27, 2023. [Read more.](#)

BLM Oil and Gas Leasing – Utah. On August 30, the BLM "opened a 30-day public comment period on an environmental assessment to reevaluate impacts associated with 29 oil and gas leases that were previously leased, totaling 46,919.91 acres in southern Utah." The comment period is open through September 29, 2023. Per the BLM, "The original leasing decisions were challenged following BLM's March and December 2018 competitive oil and gas lease sales. In accordance

with a settlement agreement, BLM prepared this analysis and is seeking public comments as it considers whether to affirm the 2018 leasing decisions, amend and affirm the leasing decisions, or cancel all or a portion of the leases.” [Read more.](#)

BLM Oil and Gas Lease Sale – Wyoming.

On September 7, the BLM Wyoming State Office announced the results of the September 6, 2023 competitive oil and gas lease sale offering 81 parcels covering 67,183.78 acres in Wyoming. The BLM reports that “in total, 53 parcels covering 35,701.21 acres sold for \$13,207,883.” [Read more.](#)

BLM Oil and Gas Lease Sale – Wyoming. On September 1, the BLM “released an environmental assessment analyzing 36 oil and gas parcels totaling approximately 19,140.94 acres for a proposed lease sale that would be held in March 2024. The release of this environmental assessment starts a 30-day public comment period” that will end on October 2, 2023. “The BLM completed scoping on these parcels in July and is now seeking public comment on the parcels, potential deferrals, and 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.” [Read more.](#)

BLM Rock Springs Draft Environmental Impact Statement and Resource Management Plan – Wyoming. (*Update to 8/28/23 Report*) On August 30, the BLM announced a number of public meetings “discussing the Rock Springs Draft Environmental Impact Statement and Resource Management Plan (DEIS/RMP). The three meetings will offer opportunities to learn more about the plan and EIS process, ask specialists questions, and submit comments.” The 90-day public comment period began on August 18. “The DEIS/RMP analyzes resource management issues for BLM-administered lands in Sweetwater, Fremont, Lincoln, Uinta, and Carbon counties. This plan will update management decisions about Areas of Critical Environmental Concern, oil and gas development, lands and realty, and renewable energy. The BLM strives to balance opportunities to use and develop BLM-

administered resources with environmental conservation.” [Read more.](#)

Clean Water Act; EPA Authority; Updated WOTUS Rule. (*Update to 5/30/23 Report*) In the wake of the May 2023, U.S. Supreme Court decision in [Sackett v. EPA](#) (Case No. 21–454), “narrowing the federal government’s authority regulating bodies of water and effectively [upending a Biden administration policy](#) that recently went into effect,” on September 8, the U.S. Environmental Protection Agency (EPA), Department of Defense, and the Army Corps of Engineers jointly issued revisions to those regulations defining Waters of the United States (WOTUS) under the Clean Water Act. (See [Revised Definition of “Waters of the United States”; Conforming; 88 Fed. Reg. 61964](#)). Per the revision, “This conforming rule amends the provisions of the agencies’ definition of ‘waters of the United States’ that are invalid under the Supreme Court’s interpretation of the Clean Water Act in the 2023 decision.” [Read more analysis here.](#) For background, the Supreme Court found that the WOTUS policy “ultimately open[ed] the door for the federal government to regulate wetlands, lakes, ponds, streams and ‘relatively permanent’ waterways, largely mimicking a pre-2015 environmental rule set during the Obama administration which implemented the changes in an effort to curb water pollution. The regulation is a broad interpretation of which water sources require protection under the Clean Water Act.” [Read more.](#) Thus, the Supreme Court “established a more stringent test to determine whether the Clean Water Act applies to a wetland. The ruling was a setback for the EPA and a victory for an Idaho couple, Michael and Chantell Sackett, who had been battling with the federal government for over 15 years to build a house on an empty lot near a large lake. The EPA had “classified the wetlands on the Sacketts’ lot as ‘waters of the United States’ because they were near a ditch that fed into a creek, which fed into Priest Lake, a navigable, intrastate lake. The Sacketts sued, alleging that their property was not ‘waters of the United States.’” The district court ruled in favor of the EPA, and the Ninth Circuit appellate court affirmed, holding that the Clean Water Act “covers wetlands with an ecologically significant nexus

to traditional navigable waters and that the Sacketts' wetlands satisfy that standard." In short, in overruling the appellate and district courts, the Supreme Court "ultimately held that the federal government's WOTUS definition must be restricted to a water source with a 'continuous surface connection' to major bodies of water." This interpretation may severely limit the EPA's authority over not just wetlands, but other bodies of water over which the agency has exercised authority under its formerly broad definition. [Read more](#). For a deeper dive into the Supreme Court's opinion [read more here](#) from law firm Jackson Walker LLP.

FEDERAL – Judicial

Federal Onshore Royalties – Wyoming. On August 25, the U.S. Court of Appeals for the 10th Circuit, on appeal from the U.S. District Court for the District of Wyoming, affirmed a lower court ruling involving "a set of regulations that govern the calculation of royalties for oil and natural gas produced on federal lands. After the agency charged with collecting these royalties amended the regulations in 2016, the American Petroleum Institute (API) challenged several of the changes under the Administrative Procedure Act." The Wyoming district court rejected those challenges and the API appealed. Here, in [American Petroleum Institute v. U.S. Dept. of Interior](#) (Case No. 21-8076), the appellate court held that "Because API does not show that the agency acted arbitrarily and capriciously in enacting the challenged provisions of the 2016 regulations, we affirm." As reported by the *Oil & Gas Journal*, "The decision by the U.S. Court of Appeals for the Tenth Circuit means increased royalty payments in a couple of different ways. Higher royalties will be paid because of fewer cost deductions from the 'gross proceeds' of oil and gas transactions. Or, if a company uses a market price index specifically for gas sales, higher payments will occur because the highest reported price in a given month will be treated as the market price for royalty calculations. The regulations, from the Interior Department's Office of Natural Resources Revenue (ONRR), were written by the Obama administration, went into effect at the start of 2017, and were stalled by attempted changes during the Trump administration. After courts overruled the

Trump ONRR, the 2016 final rule went into effect in 2019, followed by industry litigation" led by the API and resulting in this case decision. [Read more](#).

STATE – Legislative

Taxation – Wisconsin. On August 30, Rep. Treig Pronschinske (R) introduced AJR 66, a constitutional amendment that would prohibit either chamber of the legislature from passing a bill that increases the rate of the state sales tax or that increases any of the rates of the income tax or franchise tax unless the bill is approved by two-thirds of all of the members elected. In Wisconsin, a proposed constitutional amendment requires adoption by two successive legislatures and ratification by the people in the next general election before it can become effective. [Read more](#).

STATE – Regulatory

New State Oil and Gas Supervisor – California. On September 1, Gov. Gavin Newsom (D) announced the appointment of Douglas Ito as the new Oil and Gas Supervisor for the California Department of Conservation, Geologic Energy Management Division. [Read more](#). According to the announcement, "Ito has served as Director of the Consumer Protection and Enforcement Division at the California Public Utilities Commission since 2019 and was interim Deputy Executive Director of Safety and Consumer Protection at the Commission in 2022. Ito was Assistant Division Chief of the Transportation and Toxics Division at the California Air Resources Board from 2014 to 2019 and served as Chief of the Freight Branch there from 2013 to 2014 and as Chief of the Air Quality and Transportation Planning Branch from 2010 to 2013." [Read more](#).

Landman Registration – Ohio. On August 31, the Ohio Department of Commerce, Division of Real Estate & Professional Licensing, issued the following announcement for landmen who are registered in Ohio: "A few suggestions have been received from registered land professionals concerning the land professional disclosure statement. The Division has reviewed the suggestions and the form has been

updated to help make your job easier. Please be sure to download and save this newly updated form (below) for all future use. **Initial/Signature lines:** According to the suggestions, many properties have more than two owners. In an effort to help, the initial lines for landowners have been expanded and we have added signature lines for up to 4 landowners on one disclosure form. **Are you a licensed real estate agent:** The other item is where a registered land professional is also a licensed real estate agent and you had to handwrite a disclosure that you were licensed but not for the oil and gas transaction. Some landowners were questioning the validity of handwritten notice. Therefore, we have added check boxes to that disclosure to allow for registered land professionals that also hold a real estate license eliminating the need to have handwritten disclosures. It is your responsibility to check the box that applies to you before sending it to the landowner.” [Click here to access the new disclosure form](#). You may also contact Laura Monick at Laura.Monick@com.state.oh.us with any questions. For more information about Ohio land professional registration, in effect since 2019, [Read more here](#).

Public Utility Commission Hearing – Texas. As reported by our friends at HillCo Partners, on August 24, the Public Utility Commission met “to take up a number of items including the ERCOT governance, electric market development, electric reliability, and the reliability standard for the ERCOT market. An archive of the hearing can be found [here](#).”

STATE – Judicial

Oil and Gas Agreements; Arbitration – Pennsylvania. In the recent case, [PennEnergy Resources, LLC v. Winfield Resources, LLC](#) (Case No. 464 WDA 2022), PennEnergy Resources, LLC appealed from a trial court ruling denying its petition to vacate an arbitrator’s award of \$2.4 million in damages related to various oil and gas agreements, and specifically, competing arbitration clauses within those multiple agreements. Here, the court found that arbitration was the intent of the parties and remanded the case back for arbitration proceedings. As noted by law firm Oliva Gibbs, as “this

case demonstrates, there is a strong presumption in favor of enforcing arbitration agreements. Thus, it is critical for parties to be conscious of the implications of broad arbitration provisions in their agreements without explicitly excluding particular grievances.” [Read more](#).

Dormant Mineral Act – Ohio. In a recent case, [Toma v. Devaul](#) (Case No. 2023-Ohio-2163), the Ohio Court of Appeals, Fifth District, addressed the reasonable diligence standard under the Dormant Mineral Act (DMA) as regarding a reservation of certain mineral interests. As noted by law firm Oliva Gibbs, this case “illustrates the importance of conducting a reasonably diligent search for the holders of a severed mineral interest and provides additional context on what exactly that might entail.” Here, the court explained that a reasonably diligent search for the heirs, successors, and assigns relevant to the case would have included a review of the public records of a county presumably known to the appellants. As noted, “because Appellants neglected to continue their search in the Belmont County Record, their search did not meet the reasonable-diligence standard [...] Thus, based on the information available to them at the time, Appellants were not entitled to pursue notice by publication [...] and were therefore not entitled to abandonment.” [Read more](#).

Tax Sales; Mineral Interests – West Virginia. In a recent case, [Collingwood Appalachian III, LLC v. Erlewine](#) (Case Nos. Nos. 22-0139 and 22-0140), the West Virginia Supreme Court of Appeals addressed the “issue of whether an improper tax assessment of an unsevered mineral interest separate from the surface estate warrants the invalidation of tax sales of those mineral estate interests.” The court specifically addressed two tax deeds. Regarding the first tax sale, the court “held that the severance of title through two separate tax deeds represented a procedural ‘irregularity, error, or mistake.’” However, under the West Virginia code, “an irregularity, error, or mistake cannot invalidate a tax deed unless the legislature created a specific cause of action allowing it, which they have not.” Accordingly, the court held that the petitioners purchased a valid tax deed. As to

the second tax sale, it “hinged on a deed interpretation question.” The court explained that “If the deed is unambiguous, there is no need to go further than the plain text of the deed. By using the term ‘the same land,’ the Court held that the deed unambiguously reserved a twenty-five percent oil and gas estate interest [...] Thus, the Court determined there was no need to consider the conduct of the parties after the deed was executed. As a result, the second tax deed conveying a twenty-five percent oil and gas estate interest to Petitioners was valid.” [Read more.](#)

Purchase Agreements; Natural Gas Taxation – Wyoming. On August 29, in *Jonah Energy LLC v. Wyoming Dept. of Revenue* (Case No. 2023 WY 87), the Wyoming Supreme Court addressed an appeal by Jonah Energy from the Board of Equalization’s decision which upheld the Department of Revenue’s “final determinations increasing the taxable value of Jonah’s natural gas liquids (NGL) production for 2014 through 2016. Jonah challenges the Board’s refusal to account for deficiency fees it paid the purchaser of its NGL” in determining the NGL’s taxable value. Here, the Supreme Court affirmed the Board’s decision. The issues on appeal were: (1) Did the Board misinterpret the NGL Purchase Agreement (Purchase Agreement) between Jonah and Enterprise Products; and (2) Did the Board err by failing to take the facts and circumstances surrounding execution of the Purchase Agreement into account when interpreting it? As noted by *Bloomberg Law*, “The high court agreed with the board that the fee wasn’t a component of the sales price under the companies’ contract and therefore shouldn’t be considered when determining the fair market value of Jonah’s production. The purchase price didn’t include the fee because the fee wasn’t charged when Jonah delivered gas to Enterprise, but rather when Jonah failed to deliver the agreed upon amount for the month, the court said.” [Read more.](#)

INDUSTRY NEWS FLASH

► Permian Basin contributes \$181.8 billion in GDP.

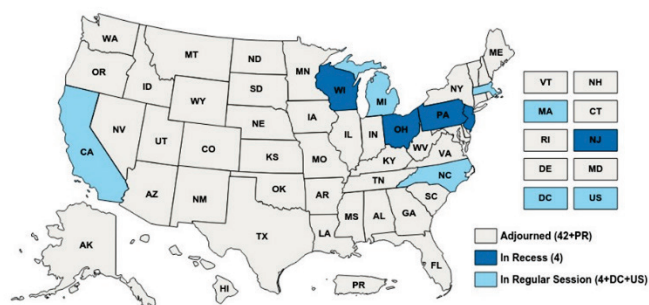
On August 29, the Permian Strategic Partnership – a coalition of 22 leading Permian Basin energy companies – announced that the Permian Basin has contributed \$181.8 billion in GDP and nearly 786,000 jobs to the American economy. The coalition’s economic report shows the Permian Basin “had a record year for tax revenue collected from the oil and gas industry. These funds support tax relief, road improvements, public schools and teachers, police and fire departments, community hospitals, universities, and other essential services.” Tracee Bentley, President and CEO of the Permian Strategic Partnership said, “This report confirms what many of us already knew: the Permian Basin is a major contributor not only to the Texas and New Mexico economies but to the national and global economy as well.” [Read more.](#)

► Saudis retain oil production cuts into December.

On September 5, Saudi Arabia announced they will extend current oil production cuts for the rest of the year, which is expected to keep prices at the pump higher going into the holiday season. The extension of these cuts that began in July will result in total production of around 9 million barrels per day through December. [Read more.](#)

LEGISLATIVE SESSION OVERVIEW

States in Session



Session Notes: California, Massachusetts, Michigan, and North Carolina are in regular session.

The **U.S. House of Representatives** is in session. The **U.S. Senate** is back in session on September 12, 2023.

The following states are in recess until the dates provided: **Wisconsin** (September 12), **Ohio** Senate (September 13), **Pennsylvania** Senate (September 18), **Pennsylvania** House (September 26), and **Ohio** House (September 27).

California is scheduled to adjourn on September 14, until the session reconvenes on January 3, 2024.

Virginia lawmakers concluded their one-day special session on September 6, after approving a compromised state budget, [HB 6001](#) and [SB 6001](#), that has been delayed for six months, reports [WTOP](#). The legislation includes \$1 billion in tax reductions, mainly through one-time rebates, and other tax-related changes like increasing the standard deduction, adjusting the age requirement for a military retiree tax benefit and reinstating a missed sales tax holiday. The budget also boosts K-12 education spending by \$650 million, prioritizes mental health initiatives, provides raises for state workers and allocates funds for economic development and college financial aid.

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](#) and [Senate](#), [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](#), [Oregon](#), [Rhode Island](#), [South Carolina](#)

[House](#) and [Senate](#), [South Dakota](#), [Tennessee](#), [Texas](#) [House](#), [Utah](#), [Vermont](#), [Virginia](#) [House](#), [Washington](#), [West Virginia](#), and [Wyoming](#).

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

Publication Note: *The next Governmental Affairs Report will skip a week, with the next issue to be published on October 2, 2023.*

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