

GOVERNMENTAL AFFAIRS REPORT

Highlights At-A-Glance

FEDERAL – Legislative

H.R. 1 – Lower Energy Costs Act. (*Update to 3/20/23 Report*) The House passed the Republican's energy package bill, [H.R. 1](#), on March 30, and it now heads to the Senate where Senate Majority Leader Chuck Schumer (D-NY) says the bill is "dead-on-arrival." [Read more.](#) Known as the Lower Energy Costs Act, the nearly 900-page bill is a comprehensive package of separate energy bills House Speaker House McCarthy (R-CA) has been touting since the Republicans took majority control of the House in January. [Read more.](#) The legislation "focuses on two main priorities: increasing the production and export of American energy and reducing the regulatory burdens that make it harder to build American infrastructure and grow our economy." [Read more.](#) According to Speaker McCarthy, "Policies that will be included in the energy package can be broken down into several broad categories: Increasing American Energy Production; Increasing the Production and Processing of Critical Minerals; Streamlining Energy Infrastructure and Exports; Broad Permitting Reform; and Government Accountability." Key provisions include: reducing the royalty rate companies that drill offshore need to pay to the government from at least 16.67 percent down to 12.5 percent; limit the president's authority to block cross-border energy projects like the Keystone XL pipeline; make it easier to sell U.S. liquified natural gas abroad by getting rid of the need for Energy Department approval for export applications for countries where the U.S. doesn't have a free trade agreement; Regarding permitting, set two-year time limits for conducting a more-stringent type of environmental review known as an environmental impact statement for major projects. These reviews would also be limited to 150 pages, except for extraordinarily complex projects, where the reviews would have a 300-page maximum. Regarding

repealing Inflation Reduction Act programs, the package would eliminate a program that aims to reduce planet-warming methane emissions from the oil and gas sector by both providing grants and loans to help companies cut emissions and also issuing fines on excess emissions; and eliminate funds given to the Environmental Protection Agency that would seek to spur funding for climate-friendly projects. [Read a summary of key provisions here.](#) The White House has also voiced their opposition to the bill and communicated that President Biden would veto the measure if it passed Congress. [Read more.](#)

H.R. 1362 – Saving America's Energy Future Act. On March 22, official bill text was made available for H.R. 1362, known as the Saving America's Energy Future Act. Sponsored by Rep. August Pfluger (R-TX), the bill would "prohibit the Secretary of the Interior and the Secretary of Agriculture from issuing a moratorium on issuing new oil and gas leases and drill permits on certain Federal lands." [Read more.](#)

S. 782 – Furthering Resource Exploration and Empowering American Energy Act. On March 30, official bill text was made available for [S. 782](#), known as the Furthering Resource Exploration and Empowering American Energy Act or the FREE American Energy Act. Sponsored by Sen. Rick Scott (R-FL), the bill would "require applicable Federal agencies to take action on applications for Federal energy authorizations." Specifically, the bill would remove barriers for approvals and authorizations for energy infrastructure projects, pipelines, oil and gas lease sales, and alternative energy production. [Read more.](#)

S. 678 – No Oil Producing and Exporting Cartels Act of 2023. On March 22, official bill text was made available for [S. 678](#), known as the No Oil Producing

and Exporting Cartels Act of 2023 or NOPEC. This bipartisan bill, led by Sen. Chuck Grassley (R-IA), “would explicitly authorize the Justice Department to bring lawsuits against oil cartel members for antitrust violations. It would clarify that neither sovereign immunity nor the ‘Act of State’ doctrine prevents a court from ruling on antitrust charges brought against foreign governments for engaging in illegal pricing, production and distribution of petroleum products.” According to Sen. Grassley, “We’ve seen time and again how OPEC has colluded to set global oil prices, bringing uncertainty and high prices to consumers around the globe. The oil cartel and its member countries need to know that we are committed to stopping their anti-competitive behavior. We must continue working to develop domestic clean, renewable and alternative energy resources in the United States. We also must remain committed to meeting American energy demands while reducing our reliance on foreign oil, especially when it’s artificially and illegally priced. Our bill shows the OPEC members we will not tolerate their flagrant antitrust violations.” [Read more.](#)

S. 617 – Clean Ocean and Safe Tourism Anti-Drilling Act. On March 22, official bill text was made available for [S. 617](#), known as the Clean Ocean and Safe Tourism Anti-Drilling Act or COAST Anti-Drilling Act. Sponsored by Sen. Bob Menendez (D-NJ), the bill would “amend the Outer Continental Shelf Lands Act to permanently prohibit the conduct of offshore drilling on the outer Continental Shelf in the Mid-Atlantic, South Atlantic, North Atlantic, and Straits of Florida planning areas.” According to Sen. Menendez, “The COAST Anti-Drilling Act draws a line in the sand — a line that we must never let Big Oil cross — by permanently banning drilling throughout the Atlantic.” [Read more.](#)

H.J. Res. 30 - Climate Change and Other Environmental, Social, and Governance Factors in Retirement Plans. (*Update to 3/6/23 Report*) On March 23, Congress failed to override President Biden’s veto of Republican-backed H.J. Res. 30. [Read more.](#) This joint resolution of disapproval under the Congressional Review Act would have nullified

“a Department of Labor rule concerning the fiduciary duties with respect to employee benefit plans. Under the rule issued on December 1, 2022, plan fiduciaries may consider climate change and other environmental, social, and governance factors when they make investment decisions and when they exercise shareholder rights, including voting on shareholder resolutions and board nominations.” Both the House and Senate approved the measure but President Biden vetoed it earlier this month. [Read more.](#)

FEDERAL – Regulatory

BLM Solar Energy Development – Colorado. On March 24, the Bureau of Land Management (BLM) announced it “will accept competitive bids to lease public lands for solar energy projects on approximately 1,064 acres in Saguache County, Colorado” for a competitive live auction on April 27, 2023. According to the BLM, the project area “consists of approximately 1,064 contiguous acres of public land, identified in the 2012 Final Programmatic Environmental Impact Statement for Solar Energy Development in Six Southwestern States (Solar Programmatic EIS) and subsequent Approved Resource Management Plan (Solar RMP) Amendments/Record of Decision (ROD) as suitable for utility-scale solar energy development.” [Read more.](#)

BLM Solar and Wind Energy Development Information Collection. On March 31, the BLM published a notice of information collection, *Agency Information Collection Activities; Submission to the Office of Management and Budget for Review and Approval; Terms, and Conditions for Leasing Public Lands for Solar and Wind Energy Development* ([88 Fed. Reg. 19324](#)), which proposes to renew an information collection that “enables the BLM to collect the necessary information to authorize the use of public lands for solar and wind energy, pipelines, and electric transmission lines with a capacity of 100 Kilovolts (kV) or more.” The public comment period is open through May 1, 2023. [Read more.](#)

BLM Resource Advisory Councils Nominations.

On March 29, the BLM announced that the Missouri Basin and Western Montana Resource Advisory Councils (RACs) are seeking to fill existing vacancies, as well as for member terms that are scheduled to expire. "The RACs provide advice and recommendations to the BLM on land use planning and management of the National System of Public Lands within their geographic areas." Categories for members include those "who represent energy and mineral development." All nominations must be received no later than April 28, 2023. [Read more.](#)

BOEM Offshore Oil and Gas Lease Sale – Gulf of Mexico. (*Update to 3/6/23 Report*) On March 29, the Bureau of Ocean Energy Management (BOEM) held its scheduled offshore oil and gas lease sale with bids on more than 2,600 square miles for the Gulf of Mexico Regionwide Outer Continental Shelf Oil and Gas Lease Sale 259, although a total of 114,000 square miles were up for bid. [Read more.](#) The sale "generated \$263,801,783 in high bids for 313 tracts covering 1.6 million acres in federal waters of the Gulf of Mexico." The BOEM lease sale was required under the Inflation Reduction Act of 2022. [Read more.](#)

Castner Range National Monument – Texas.

On March 21, President Biden signed a proclamation designating Castner Range in El Paso, Texas as a national monument. [Read more.](#) According to the White House, "This action will protect the cultural, scientific and historic objects found within the monument's boundaries, honor our veterans, servicemembers, and Tribal Nations, and expand access to outdoor recreation on our public lands." [Read more.](#)

U.S. Fish and Wildlife Service Endangered and Threatened Wildlife and Plants 5-Year Review.

On March 23, the U.S. Fish and Wildlife Service (FWS) published a notice of initiation of reviews, *Endangered and Threatened Wildlife and Plants; Initiation of 5-Year Status Reviews for 133 Species in Oregon, Washington, Idaho, Montana, California, Nevada, Hawaii, Guam, and the Commonwealth of the Northern Mariana Islands* ([88 Fed. Reg. 17611](#)).

The notice initiates "5-year status reviews for 133 species in Oregon, Washington, Idaho, Montana, California, Nevada, Hawaii, Guam, and the Commonwealth of the Northern Mariana Islands under the Endangered Species Act of 1973. Two of these species also occur outside of United States jurisdiction in Canada and Palau. A 5-year status review is based on the best scientific and commercial data available at the time of the review; therefore, we are requesting submission of any new information on these species that has become available since the last reviews." The notice announces the "active review of 133 species, including 4 mammals, 13 birds, 3 fishes, 2 snails, 4 insects, 2 crustaceans, and 105 plants," as listed in the provided table and indicated by state. The FWS will accept information submissions through May 22, 2023. [Read more.](#)

FEDERAL – Judicial

Climate Change Lawsuit – Minnesota. On March 23, the U.S. Court of Appeals for the Eighth Circuit, on appeal from the U.S. District Court for the District of Minnesota, ruled that a climate change lawsuit brought against oil and gas companies could remain in state court. In [Minnesota v. American Petroleum Institute](#) (Case No. 21-1752), the three-judge panel rejected the defendants' argument that the case should be in a federal forum, writing, "Minnesota is not the first state or local government to file this type of climate change litigation. Nor is this the first time that the Energy Companies [...] have made these jurisdictional arguments. But our sister circuits rejected them in each case [...] Today, we join them." In a concurring opinion, one of the judges wrote that although he agreed the case did not belong in federal court, he also implied that a different outcome might be available but for the limitation on the court, writing, "But only Congress or the Supreme Court gets to make that call. And we have our marching orders: even the strongest arguments for removal don't work here." [Read more.](#)

BLM Lease Sales – North Dakota. On March 27, North Dakota won an initial victory regarding federal oil and gas leasing when a federal judge ruled that the

“Biden administration likely acted unlawfully when it canceled lease sales in North Dakota [...] in granting a preliminary injunction to prevent federal agencies from stopping the leasing process. The judge stopped short of granting North Dakota’s request to compel the lease sales to occur. The court also rejected the state’s request to compel federal agencies to hold the previously canceled quarterly lease sales for available lands.” In [*State of North Dakota v. U.S. Department of the Interior*](#) (Case No. 1:21-cv-00148-DMT-CRH), the U.S. District Court for the District of North Dakota rendered an 82-page preliminary injunction that orders the Interior Department and Bureau of Land Management (BLM) to: “1. Analyze individual parcels nominated for lease sales in North Dakota according to their statutory requirements; 2. Make lawful determinations regarding the nominated parcels’ availability and eligibility; 3. Complete those determinations in time for quarterly lease sales, as set forth in statute and regulations; and 4. When there are ‘available’ and ‘eligible’ lands, hold a lease sale in that quarter.” According to North Dakota Attorney General Drew H. Wrigley, “The Court’s order directs BLM to comply with federal law and do what Congress commanded BLM to do.” Wrigley said it was “unfortunate that North Dakota had to take BLM to court twice to finally get it to do its duty.” Wrigley also praised the court’s decision as a “victory for the rule of law,” and noting that “BLM’s illegal cancellations were costing North Dakota’s citizens over \$100 million in revenue a year and depriving the Nation of much needed access to oil and gas during these difficult times of high inflation and threats to our energy security.” [Read more.](#)

Mountain Valley Pipeline – Virginia. (*Update to 3/20/23 Report*) In a victory for the Mountain Valley pipeline project, on March 29, the U.S. Court of Appeals for the Fourth Circuit (Virginia) “unanimously denied environmentalists’ challenge to a Virginia water permit for the planned natural gas project.” In [*Sierra Club v. State Water Control Board*](#) (Case No. 21-2425), the court held that “Because it is clear from the record that DEQ considered a variety of factors in determining that the construction and operation of the Pipeline would comply with Virginia’s narrative water

quality standard, we conclude that the Agencies did not act arbitrarily and capriciously by determining that the Pipeline will comply with Virginia’s narrative water quality standard.” [Read more.](#) The decision brings the Equitrans Midstream Corporation’s 303-mile Mountain Valley natural gas pipeline – to run through Virginia and West Virginia – closer to construction resumption. [Read more.](#)

STATE – Legislative

Estate Proceedings – Arkansas. On March 21, HB 1448 was signed into law by Gov. Sarah Huckabee Sanders (R). The bill amends existing law regarding bonds and sureties relating to decedent estate administration. The bill also amends the procedure for disposing of real property under the Wills, Estates, and Fiduciary Relationships code. As no effective date was provided, under Arkansas law the legislation takes effect 90 days after adjournment on March 15, 2023. [Read more.](#)

Corporate Franchise Tax – Arkansas. As of March 16, SB 207 passed both chambers of the legislature. Sponsored by Sen. Blake Johnson (R), the bill amends the existing corporate franchise tax to create the Secretary of State business and commercial services electronic filing system special fund; provides for certain processing fees; updates the definition of corporation to include a limited liability company; updates information available in a franchise tax report; and amends additional definitions. [Read more.](#)

Carbon Capture – Arkansas. On March 28, SB 407 passed the Senate and has been transmitted to the House. Sponsored by Sen. Matt McKee (R), regarding bioenergy and carbon capture technology, the bill would require energy produced from certain sources be considered carbon neutral and require energy produced from certain sources in conjunction with carbon capture technologies be considered carbon negative. [Read more.](#)

Maximum Gasoline Refining Margin; Oil Producer Reporting; Price Gouging – California. On March 27, [SBX1-2](#) passed both chambers of the legislature

and was transmitted to Gov. Gavin Newsom (D) who quickly signed the measure into law on March 28. [Read more](#). Introduced in the special session by Sen. Nancy Skinner (D) and hurriedly moved through committee referral to enrollment in just one week, “This bill proposes several policies to address gasoline supply and pricing, including authorizing the California Energy Commission (CEC) to establish a maximum gross gasoline refining margin (maximum margin) and penalty on gasoline sold by refiners in the state. This bill also establishes a new independent division at the CEC, the Division of Petroleum Market Oversight (Division), to provide independent oversight and analysis of the transportation fuels markets. Additionally, this bill establishes the Independent Consumer Fuels Advisory Committee (Committee) for the Division; expands and recasts the existing reporting requirements on refiners; and requires the CEC, by January 1, 2024, and every three years thereafter, to submit an assessment to the Legislature and Governor that identifies methods to ensure a reliable supply of affordable and safe transportation fuels in California.” As reported, the bill passage “was an unusually fast process for a controversial issue, especially one opposed by the powerful oil industry that has spent millions of dollars to stop it.” [Read more](#). In short, “The bill would authorize the State Energy Resources Conservation and Development Commission to set a maximum gross gasoline refining margin — and then establish a penalty for any California-based refineries that exceed that margin. The Commission would be required, however, to consider a refiner’s request for an exemption from that maximum margin. In addition to setting these restrictions, the legislation would require that all penalties collected be deposited into a ‘Price Gouging Penalty Fund’ in the State Treasury. The bill would also establish the Division of Petroleum Market Oversight within the Commission — operating independently of the Commission authority and providing guidance to the governor on issues related to transportation fuel pricing and decarbonization. The bill also sets certain reporting requirements, providing that “Each major oil producer, refiner, marketer, oil transporter, oil storer, pipeline operator, or port through which refined gasoline is imported

or exported, shall annually submit information to the commission in such form and extent as the commission prescribes pursuant to this section.” Although Newsom initially called for legislation imposing a “penalty tax” on oil and gas companies, “Legislative leaders rejected his initial call for a new tax because they feared it could discourage supply and lead to higher prices. Instead, Newsom and lawmakers agreed to let the California Energy Commission decide whether to penalize oil companies for price gouging. But the crux of the bill isn’t a potential penalty. Instead, it’s the reams of new information oil companies would be required to disclose to state regulators about their pricing. The companies would report this information, most of it to be kept confidential, to a new state agency empowered to monitor and investigate the petroleum market and subpoena oil company executives. The commission will rely on the work of this agency, plus a panel of experts, to decide whether to impose a penalty on oil company profits and how much that penalty should be.” The Act has multiple effective dates. [Read more](#).

Oil Sources – California. On March 29, [SB 15](#) passed committee following its introduction by Sen. Shannon Grove (R). The bill “would express the intent of the Legislature that the California Energy Commission (CEC, formerly the State Energy Resources Conservation and Development Commission) monitor countries that export oil to California and identify human rights abuses and lower environmental standards for oil production than California. It would require the California Air Resources Board (CARB) to report greenhouse gas (GHG) emissions data associated with oil transported in California and the Geologic Energy Management Division (CalGEM) to make available air quality emissions data associated with the transportation of imported oil.” According to the bill sponsor, the bill would prioritize California oil production. “Why would we import millions of barrels of oil from countries hostile to our values when we can produce the most climate compliant oil right here, by Californians for Californians?” said Sen. Grove. [Read more](#).

Repeal Of Infrequently Used Tax Expenditures – Colorado. (*Update to 2/20/23 Report*) On March 23, Gov. Jared Polis (D) signed HB23-1121 into law. Sponsored by Rep. Shannon Bird (D), the bill repeals “infrequently used tax expenditures” which includes: The in-state investment pre-1959 insurance premium tax deduction; The corporate condemnation capital gains income tax deduction; The oil shale excess percentage depletion income tax deduction; The mining and milling impact assistance corporate income tax credit; The oil shale equipment and machinery severance tax deduction; The oil shale processing severance tax deduction; The oil shale severance tax rate reductions; The oil shale noncommercial production severance tax exemption; and The mineral and mineral fuels impact assistance severance tax credit. The Act has multiple effective dates. [Read more.](#)

Forced Pooling – Colorado. On March 20, SB23-201 was introduced by Sen. Sonya Jaquez Lewis (D). Concerning protections for property owners in the pooling of oil and gas minerals on multiple separately owned tracts, the bill would change “the commission’s process for entering a forced pooling order” and details that process. “Additionally, the bill requires that the commission issue a pooling order before any minerals that are subject to the pooling order are extracted or any well is drilled to access the minerals. The bill also authorizes a nonconsenting owner to audit or cause to be audited certain records of the oil and gas operator no more frequently than every 3 years but before any costs are recovered from the drilling unit.” [Read more.](#)

County Recorders – Illinois. On March 28, SB 2227 passed the Senate and has been transmitted to the House. Sponsored by Sen. Sally Turner (R), the bill amends multiple provisions of the Recorder Division of the Counties Code, including allowing storage of certain information or documents in databases rather than only in books; Removes provisions repealing a Section concerning a mechanics lien demand and referral pilot program that would have otherwise repealed on January 1, 2024; Provides that the recorder may accept facsimile or other photographic

or photostatic copies of the signatures of parties executing documents without labeling those signatures as copies if they are digital signatures offered in compliance with federal or State law; In provisions relating to documents received stating that a mortgage or lien is to be filed but not recorded, provides that the document will be marked filed only upon payment of a fee equal to what would be charged if the document were to be recorded; Provides that a recorder may waive the fee for additional copies of certificates of discharge or release from active duty if the recorder deems collecting the fee to be a burden to the county and the fee is waived for all requesting copies of these documents; Removes and repeals provisions relating to the time for opening and closing the recorder’s office; and Increases the fee for violations relating to recording a map, plat, or subdivision of land to \$1,000 (rather than \$200). [Read more.](#)

Natural Resources and Environmental Protection Act Amendments – Michigan. On March 21, SB 220 was introduced by Sen. Jeff Irwin (D). The bill would amend the Natural Resources and Environmental Protection Act increasing the fee imposed on oil and gas produced in the state for monitoring, surveillance, enforcement, and administration. [Read more.](#)

Excess Oil & Gas Funds to Severance Tax Fund – New Mexico. (*Update to 1/23/23 Report*) On March 17, [SB 26](#) was signed into law by Gov. Michelle Lujan Grisham (D). Sponsored by Sen. Roberto “Bobby” J. Gonzales (D), the bill provides for the distribution of certain excess oil and gas tax revenues and federal mineral leasing act payments to the severance tax permanent fund. As reported, SB 26 will “automatically take some of the state’s excess oil and gas revenue — income above a certain baseline — and transfer it into the severance tax permanent fund, starting in July 2024.” [Read more.](#)

Nuclear Waste Storage – New Mexico. (*Update to 2/20/23 Report*) On March 17, [SB 53](#) was signed into law by Gov. Michelle Lujan Grisham (D). Sponsored by Sen. Jeff Steinborn (D), regarding nuclear waste storage within the state, the bill “would expand the scope of an existing task force to negotiate with the

federal government over disposal facilities. It would also prohibit the disposal of nuclear waste in New Mexico without the state's consent." The Act takes immediate effect. [Read more.](#)

Enhanced Oil Recovery; Surface Owners – North Dakota. *(Update to 1/23/23 Report)* On March 28, Gov. Doug Burgum (R) signed HB 1272 into law. Sponsored by Rep. Mike Lefor (R), the bill amends existing law relating to the jurisdiction of the industrial commission and reviewing the enhanced oil recovery potential status of a well and rights of surface owners. The Act takes effect on August 1, 2023. [Read more.](#)

Triggered Oil Extraction Tax Rate – North Dakota. *(Update to 3/6/23 Report)* On March 29, Gov. Doug Burgum (R) signed HB 1286 into law. Sponsored by Rep. Craig Headland (R), the bill removes the triggered oil extraction tax rate changes for wells located outside the exterior boundaries of a reservation. This Act is effective for taxable events occurring after June 30, 2023. [Read more.](#)

Oil Refining Capacity – North Dakota. *(Update to 1/23/23 Report)* On March 22, HCR 3006 was adopted. Sponsored by Rep. Vicky Steiner (R), the concurrent resolution urges "Congress to support policies to increase oil refining capacity in the United States." [Read more.](#)

Oil and Gas Production Tax County Allocations – North Dakota. *(Update to 1/23/23 Report)* On March 20, SB 2162 was signed into law by Gov. Doug Burgum (R). Sponsored by Sen. Dale Patten (R), the bill provides for oil and gas gross production tax allocations to counties. As the bill provides no effective date, under North Dakota law it becomes effective on August 1, 2023. [Read more.](#)

Lake Erie Oil and Gas – Ohio. HB 43, sponsored by Rep. Michael Skindell (D), was subject to a committee hearing on March 24. The bill would "ban the taking or removal of oil or natural gas from and under the bed of Lake Erie." [Read more.](#)

Plain Language in Oil and Gas Property Contracts – Pennsylvania. On March 24, HB 698 was introduced by Rep. Joe Webster (D). The bill would require the use of plain language in "oil and gas property contracts." According to Rep. Webster, "Since oil and gas lease contracts are often lengthy and filled with many industry-specific and legal terms, constituents are frequently confused or misled when entering into lease agreements. As elected officials, I believe it is our responsibility to ensure that our constituents are provided with a simplified process that could assist them in making the best decisions possible for their families. Therefore, I will be introducing legislation that would provide for plain language in oil and gas property contracts. Under this legislation, oil and gas contracts would have to pass a readability test to ensure that contracts are easy to read and understand. The legislation would also require that industry-specific terms be defined so that landowners may better understand what each term means and how it may affect their contracts. In addition, this legislation would require that contracts be signed in the presence of a notary public." A similar bill failed to advance in last year's legislative session. [Read more.](#)

Remote Notarial Acts – North Dakota. *(Update to 2/6/23 Report)* On March 17, HB 1083 was signed into law by Gov. Doug Burgum (R). Sponsored by the House Judiciary Committee (R), relating to the Revised Uniform Law on Notarial Acts, the bill updates existing notarial law by providing for remote notarial acts. As the bill provides no effective date, under North Dakota law it becomes effective on August 1, 2023. [Read more.](#)

Carbon Capture – Oklahoma. On March 20, SB 19 passed the Senate. Sponsored by Sen. George Burns (R), relating to carbon capture technologies, the bill requires "energy produced from certain sources be considered carbon neutral; [and] requiring energy produced from certain sources in conjunction with carbon capture technologies be considered carbon negative." [Read more.](#)

Gross Receipts Tax and Use Tax – South Dakota.

(Update to 2/6/23 Report) On March 27, HB 1137 was signed into law by Gov. Doug Burgum (R). Sponsored by Rep. Chris Karr (D), the bill's purpose is to "reduce certain gross receipts tax rates and a use tax rate, and to repeal a conditional reduction of certain gross receipts tax rates." The Act is effective through June 30, 2027. [Read more.](#)

Eminent Domain Landowner Bill of Rights – Texas.

On March 28, HB 376 was voted favorably out of committee without amendment. Sponsored by Rep. Glenn Rogers (R), the bill amends the landowner bill of rights related to eminent domain by providing for a required decreased value report. [Read more.](#)

Landman Definitions – Texas. On March 23 and 27, AAPL President Carl D. Campbell, CPL, testified before Texas Senate and House committee hearings in support of AAPL-sponsored bill, SB 604, and identical House companion bill, HB 1915. The bills would amend existing statutes to harmonize the AAPL definitions and descriptions of landman, landwork, and land professional within the state code to better reflect the full breadth, scope and types of work performed by landmen in Texas. These amendments would ensure AAPL members are provided with the same employment treatment, tax benefits, and unauthorized practice of law protections for work performed in renewables and other energy sources in addition to the existing oil and gas development and production protections. We will continue to keep AAPL members informed as the bills advance. [Read more.](#)

Political Subdivision Regulation of Energy

Sources and Engines – Texas. On March 27, HB 2374 passed committee. Sponsored by Rep. Brooks Landgraf (R), the bill would restrict a political subdivision from the regulation of energy sources and engines based on their fuel source. [Read more.](#)

Severance Tax Revenue Amendments – Utah.

On March 23, Gov. Spencer Cox (R) signed SB 256 into law. Sponsored by Sen. David Hinkins (R). This bill modifies provisions related to the deposit of severance tax revenue into state agency accounts,

and specifically clarifies the timing for the deposit of severance tax revenue. The Act is effective 60 days following session adjournment on March 3, 2023.

[Read more.](#)

County Recorders – Utah. (Update to 2/20/23

Report) On March 20, Gov. Spencer Cox (R) signed HB 351 into law. Sponsored by Rep. Jordan Teuscher (R), the bill "modifies provisions related to county recorders." Specifically, the bill "defines terms; establishes the County Recorder Standards Board (board) for the purpose of making rules that establish statewide standards for county recorders; requires counties to establish an appeal authority to hear and decide appeals from a county recorder's application of rules made by the board; requires county recorders to comply with the board's rules and the county's appeal authority; describes the membership and appointment of board members; requires the Department of Commerce to provide staff support to the board; requires the board to report annually to the Legislature; and makes technical changes." The Act is effective 60 days following session adjournment on March 3, 2023. [Read more.](#)

Disposition of Severance Taxes – Utah. (Update to 1/23/23 Report) On March 20, Gov. Spencer Cox (R) signed SB 107 into law. Sponsored by Sen. Ronald Winterton (R), the bill "directs the Division of Finance to transfer portions of the oil and gas severance tax to the Transportation Investment Fund." The Act is effective 60 days following session adjournment on March 3, 2023. [Read more.](#)

State Lands Improvements – Wyoming.

HB 114 died in the House upon session adjournment. Sponsored by Rep. Steve Harshman (R), relating to state lands, the bill would have revised "provisions related to improvements made by a lessee of state lands; extending the maximum length of certain leases of state lands; authorizing leases for residential purposes; [and] specifying that leases are required to comply with minimum state standards." [Read more.](#)

Foreign Ownership of Property – Wyoming.

HB 116 died in the House upon session adjournment.

Sponsored by Rep. Bill Allemand (R), the bill would have amended existing law to provide for provisions prohibiting foreign property ownership in Wyoming. [Read more.](#)

State Lands Task Force – Wyoming. HB 131 died in committee upon session adjournment. Sponsored by Rep. Bill Henderson (R), relating to state lands, the bill would have “establish[ed] a legislative task force on state lands and investments; specifying membership, powers and duties of the task force; specifying termination of the task force; requiring reports; [and] providing appropriations.” [Read more.](#)

Severance Tax Refunds – Wyoming. HB 163 died in the House upon session adjournment. Sponsored by the Select Federal Natural Resource Management Committee (R), the bill would have established severance tax refunds for specified oil, natural gas and coal severance taxes based on increased federal mineral royalty rates. [Read more.](#)

State Lands – Wyoming. SF 107 died in the House upon session adjournment, although it passed the Senate. Sponsored by Sen. Larry Hicks (R), relating to state lands, the bill would have provided “for the acquisition, exchange or sale of state trust lands as specified; [and] designating criteria for the sale and exchange of state trust lands.” The bill also provided a definition of “isolated parcel” and provided for the disposal of such parcels that are 80 acres or less. [Read more.](#)

STATE – Regulatory

Oil and Gas Regulation – Colorado. On March 16, Gov. Jared Polis (D) delivered a letter to the Colorado Oil and Gas Conservation Commission (COGCC) and Department of Public Health and Environment (CDPHE), calling on the agencies to take certain regulatory actions to “produce demonstrable and meaningful reductions of ozone and other air pollution from the oil and gas sector.” [Read the letter here.](#) Gov. Polis said, “his initiative is the first comprehensive ozone emission reduction program for the oil and gas industry in the United States.” In the letter, Gov. Polis

provided three regulatory directives: “develop rules by 2025 requiring upstream oil and gas operators in the ozone nonattainment area to achieve at least a 30% reduction of nitrogen oxides and by at least 50% in 2030; develop rules to solidify environmental best management practices addressing ozone and consider regular updates; [and] incentivize and reward oil and gas operators who demonstrate industry-leading environmental performance and goal achievement in greenhouse gas and local air pollution mitigation.” [Read more.](#)

Nevada’s New Governor Embracing Energy Development – Nevada. Last Monday, Gov. Joe Lombardo (R) issued an executive order “outlining the state’s energy future, drawing a sharp contrast with the energy goals of his Democratic predecessor. Lombardo’s seventh executive order since taking office in January calls for a diverse energy portfolio that includes natural gas, which former Gov. Steve Sisolak had tried to move away from during his administration.” [Read more.](#) The first item in Lombardo’s Executive Order 2023-07 provides that “The state’s energy policy will be focused on developing and maintaining a robust, diverse energy supply portfolio and a balanced approach to electric and natural gas energy supply and transportation fuels that emphasizes affordability and reliability for consumers. This energy portfolio shall also advance sustainability and reliability by including solar, wind, geothermal, hydropower, natural gas (for both electric generation and direct use in homes and businesses), hydrogen, energy storage, and other resources needed to meet the vast energy demands in the state.” The order also “emphasizes affordable rates and reliability for consumers and increasing the state’s energy independence to ensure there’s enough power during peak summer months.” Additionally, “Lombardo also has directed the state to implement policies that streamline the permitting process for proposed energy projects and reduce regulations, while ensuring there are appropriate environmental and cultural reviews.” [Read the executive order here.](#)

Pension Fund Divestment from Firms Boycotting Oil and Gas Industry – Texas. (*Update to 2/20/23 Report*) On March 20, Texas Comptroller Glenn Hegar (R) “announced an updated list of companies that are boycotting the oil and gas industry and are subject to the divestment provisions outlined in Texas Government Code Chapter 809, which defines a financial company as a publicly traded financial services, banking or investment company.” [Read more](#). As previously reported, on February 7, the Texas Tribune reported that the “Teacher Retirement System of Texas had divested part of its massive pension fund from 10 financial firms that the state comptroller singled out for ‘boycotting’ the oil and gas industry.” The state teacher’s pension fund has almost 2 million Texas educators and retirees who participate in the fund, “which is worth about \$173 billion” and reportedly “the sixth-largest such pension fund in the U.S.” For background, “in 2021, Texas lawmakers [prohibited state funds](#) from contracting with or investing in companies that divest from oil, natural gas and coal companies. In August 2022, Hegar released [a list of 10 investment firms](#) and several funds that would be blocked from doing business with the state due to their climate-change-conscious investment strategies.” [Read more](#).

STATE – Judicial

Contract Interpretation – Colorado. On March 27, the Colorado Supreme Court rendered its opinion in the long-running case, [Antero Resources Corporation v. Airport Land Partners, Ltd.](#) (Case No. 2023 CO 13), addressing the question, what is a “bona fide dispute over the interpretation of a contract” as it related to the jurisdiction of the Colorado Oil and Gas Conservation Commission over resolving such a dispute. The court held that it is “undisputed that the Colorado Oil and Gas Conservation Commission (‘COGCC’ or ‘the Commission’) lacks jurisdiction under section 34-60-118.5(5), C.R.S. (2022), to engage in contract interpretation to resolve a bona fide dispute between parties under an oil and gas lease. But this court has never been asked to consider this question.” The Court held that “Today we follow the longstanding statutory mandate that COGCC lacks jurisdiction to

resolve bona fide disputes of contract interpretation and hold that such a dispute exists where the parties disagree in good faith about the meaning or application of a relevant contract term. Examining the disputes here, we further conclude that each presents a bona fide dispute because the parties have a good faith disagreement over the meaning of contract terms.” As reported, the holding means that “the Colorado Oil and Gas Conservation Commission does not have the authority to resolve a contract dispute between a well operator in Garfield County and those who are owed royalties from the extraction operations, putting a stop to a half-decade of ping-ponging between venues.” The 4-3 decision was met with a strong dissent from the opposing justices, who “believed an unambiguous contract needs no interpretation, and the majority had simply offloaded unnecessary work onto the trial courts.” The justices wrote, “Rather than put its proverbial foot down to prevent the Commission from wrongly passing the buck to our overburdened and overworked district courts, the majority empowers the Commission to evade responsibility specifically delegated to it by the legislature.” [Read more](#).

Lesser Prairie-Chicken – Texas. On March 21, the State of Texas, the Texas General Land Office, the Texas Department of Agriculture, and the Railroad Commission of Texas filed a lawsuit against the Interior Department regarding the listing of the Lesser Prairie-Chicken as threatened and endangered. In [Texas v. U.S. Dept. of the Interior](#) (Case No. 7:23-cv-00047), the litigants claim that the Interior Department decision is “another example of the Biden administration’s ‘arbitrary policy changes’ that undermine state autonomy and energy development.” Of the lawsuit, Texas Attorney General Ken Paxton said, “The Lesser Prairie-Chicken’s change in classification puts many of Texas’s conservation efforts at risk, all while bringing immeasurable harm to Texans’ property rights.” The following day, industry groups, including the Permian Basin Petroleum Association, filed their own lawsuit against the Interior Department in [Permian Basin Petroleum Association v. Dept. of the Interior](#) (Case No. 7:23-cv-00049-DC-RCG). According to the

plaintiffs, the “final rule violated Interior’s own policies for application of the Endangered Species Act, and violated the Administrative Procedure Act with arbitrary and unsubstantiated conclusions arbitrary population segments.” [Read more.](#)

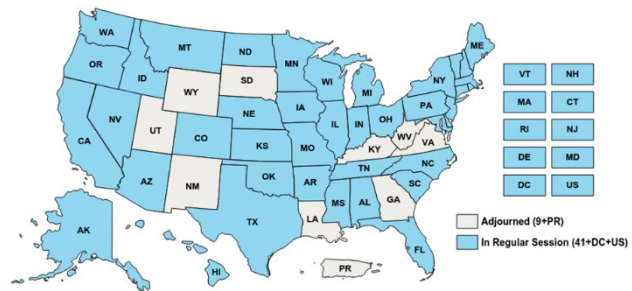
INDUSTRY NEWS FLASH

► **U.S. to Remain a Net Exporter of Petroleum Products Through 2050.** As reported by the *Oil & Gas Journal* on March 23, according to the U.S. Energy Information Administration (EIA) 2023 Annual Energy Outlook, the U.S. “will remain a net exporter of petroleum products through 2050.” The EIA data finds that “Although domestic consumption of petroleum and other liquids does not increase through 2040 across most cases, U.S. petroleum and other liquids production remains high because of increased exports of finished products in response to growing international demand, according to EIA’s analysis.” [Read more.](#)

► **Louisiana gets \$156 million in Gulf of Mexico oil revenue.** Louisiana has received “more than \$156 million in revenue from offshore oil and gas production in the 2022 fiscal year in the Gulf of Mexico, the Interior Department announced Thursday, with most of that money slated for hurricane risk reduction projects. It is part of more than \$353 million being distributed to four Gulf Coast states under a federal law that governs the process.” [Read more.](#)

LEGISLATIVE SESSION OVERVIEW

States in Session



Session Notes: Alabama, Alaska, Arizona, Arkansas, California, Colorado, Connecticut, Delaware, Florida, Hawaii, Idaho, Illinois, Indiana, Iowa, Kansas, Maine, Maryland, Massachusetts, Michigan, Minnesota, Mississippi, Missouri, Montana, Nebraska, Nevada, New Hampshire, New Jersey, New York, North Carolina, North Dakota, Ohio, Oklahoma, Oregon, Pennsylvania, Rhode Island, South Carolina, Tennessee, Texas, Vermont, Washington and Wisconsin are in regular session.

The **U.S. Congress** is in its [two-week Spring Recess](#) from April 3 – April 17, 2023.

The following states adjourned their 2023 legislative sessions on the dates provided: **South Dakota** (March 27), **Georgia** (March 29), **Kentucky** (March 30) and **Idaho** (March 31).

The following states are scheduled to adjourn their 2023 legislative sessions on the dates provided: **Mississippi** (April 4), **Kansas** (April 6) and **Maryland** (April 10).

Louisiana is scheduled to convene their 2023 legislative sessions on April 10.

Signing Deadlines (by date): **Virginia** Republican Gov. Glenn Youngkin had until March 27 to act on legislation or it became law without signature. **West Virginia** Republican Gov. Jim Justice had until March 29 to act on legislation or it became law without signature. **New Mexico** Democratic Gov. Michelle Lujan

Grisham has until April 7 to act on legislation or it will be pocket vetoed. **South Dakota** Republican Gov. Kristi Noem has until April 11 to act on legislation or it becomes law without signature. **Kentucky** Democratic Gov. Andy Beshear has 10 days from presentment to act on legislation, Sundays excepted, or it becomes law without signature.

[Louisiana](#) is currently holding interim committee hearings. ■

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GOVERNMENTAL AFFAIRS REPORT

Highlights At-A-Glance

FEDERAL – Legislative

S. 947 – Lower Energy Costs Act. On April 12, official bill text was made available for [S. 947](#), known as the Lower Energy Costs Act. Sponsored by Sen. John Kennedy (R-LA), the bill would “lower energy costs by increasing American energy production, exports, infrastructure, and critical minerals processing, by promoting transparency, accountability, permitting, and production of American resources, and by improving water quality certification and energy projects.” According to Sen. Kennedy, “Energy production is the key to America’s national security and economic success. Louisiana has always served our country by helping bring affordable, sustainable energy to market, and this bill would remove the burdensome, bureaucratic handcuffs that have been hurting the industry and millions of Americans.” [Access a complete 30-point bill summary here.](#)

S. 879 – Energy Freedom Act. On April 7, official bill text was made available for [S. 879](#), known as the Energy Freedom Act. Sponsored by Sen. Ted Cruz (R-TX), the bill would accelerate “federal permitting for energy projects and pipelines, mandating new onshore and offshore oil and gas lease sales, approving pending liquified natural gas (LNG) export licenses, and generally speeding up solar, wind, and geothermal development.” According to Sen. Cruz, “One study found \$157 billion in energy investment is tied up in the federal permitting process. I’m reintroducing the Energy Freedom Act to reverse Biden’s actions so we don’t have to resort to tapping the Strategic Petroleum Reserve. The Energy Freedom Act would put a stop to the Biden administration’s sabotage of the American energy industry, and Congress should take it up without delay.” [Read more.](#)

S. 373 – Reinvesting in Shoreline Economies and Ecosystems Act of 2023. On April 6, official bill text was made available for [S. 373](#), known as the Reinvesting in Shoreline Economies and Ecosystems Act of 2023 or the RISEE Act of 2023. This bipartisan measure would lift the cap on federal offshore energy revenue returns to 38 coastal states, including those lining the Great Lakes, which is currently subject to a combined cap of about \$375 million per year. The bill would also establish an offshore wind revenue sharing model; dedicate funding to the National Oceans and Coastal Security Fund; and eliminate an administrative fee under the Mineral Leasing Act to revert “the royalty structure under the Mineral Leasing Act back to an equal split between the federal government and inland energy producing states by eliminating a 2 percent fee that the Department of the Interior collects to administer the onshore revenue sharing program.” [Read a complete bill summary here.](#) A bipartisan House version, [H.R. 913](#), has also been introduced. [Read more.](#)

H.J. Res. 46 – Endangered Species Act Resolution of Disapproval. On March 30, a group of Republican lawmakers, led by Rep. Cliff Bentz (R-OR), introduced [H.J. Res. 46](#), a resolution of disapproval “to retain the regulatory definition of habitat within the Endangered Species Act (ESA).” A Senate companion version has also been introduced by Sen. James Lankford (R-OK) and Sen. Cynthia Lummis (R-WY). [Read more.](#) “The Biden Administration, when it rescinded the Trump Critical Habitat Rule, gave Washington bureaucrats the green light to designate critical habitat where the species in question had not been seen in decades,” said Rep. Bentz. “This action by the Biden Administration was not about conserving or protecting at risk species. It was about preventing human activities that the Biden Administration disagrees with, like forest management, livestock grazing, and other multiple uses of our public

lands and waters in and upon millions of acres of public land. The Trump Administration's definition of habitat is scientifically based and meets the needs of both our environment and the people living within it. This measure will help to restore sanity to the implementation of the ESA and will provide at least some certainty to millions of Americans who are impacted by at risk species." The resolution of disapproval seeks to rescind the Biden administration rulemaking through use of the Congressional Review Act process. According to Sen. Lankford, "The Critical Habitat rule gives the Biden Administration free rein to interpret any geographic area across the country—not just the one a listed species currently occupies—as a 'critical habitat' in need of federal protection under the ESA. This radical environmentalist proposal potentially impacts landowners, a variety of industries crucial to Oklahoma, jobs, and existing wildlife recovery efforts nationwide [...] I want to protect our plants and wildlife, but I stand firmly against this rule." [Read more.](#)

Congressional Request for Transparency from the DOE and EPA for Infrastructure, Investment, and Jobs Act Spending. On April 13, "House Energy and Commerce Committee Chair Cathy McMorris Rodgers (R-WA), Energy, Climate, and Grid Security Subcommittee Chair Jeff Duncan (R-SC), and Environment, Manufacturing, and Critical Materials Subcommittee Chair Bill Johnson (R-OH) [...] sent letters to the Department of Energy (DOE) and the Environmental Protection Agency (EPA) calling on the administration to be completely transparent on its record-spending in the Infrastructure, Investment, and Jobs Act (IIJA), which is contributing to President Joe Biden's energy and inflation crisis and making America more reliant on China." The letter writers call on the DOE and EPA to provide receipts of expenditures tied to IIJA funds and programs. [Read more.](#)

Congressional Letter Regarding the Strategic Petroleum Reserve Drawdown. On April 6, Rep. Vicente Gonzalez (D-TX) sent a letter to President Biden expressing "grave concern regarding the Administration's inaction to replenish the Strategic Petroleum Reserve (SPR) after the sell down of crude oil conducted to relieve oil prices that increased after

Russia invaded Ukraine." In the letter, Rep. Gonzalez calls upon the administration to answer a set of questions regarding replenishment of the SPR, writing, "I encourage you to promptly follow through on your promise to repurchase crude oil to replenish the Strategic Petroleum Reserve." [Read the letter here.](#) In related news, on April 12, U.S. Energy Secretary Jennifer Granholm said, "The Biden administration plans to refill the U.S. Strategic Petroleum Reserve soon, and hopes to refill it at lower oil prices if it's advantageous to taxpayers during the rest of the year." [Read more.](#)

FEDERAL – Regulatory

Interior Department Proposed Plan to Guide the Balanced Management of Public Lands. On April 3, the Interior Department published a 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.” Public comments are due by June 20, 2023, or 15 days after the last public meeting, for which dates have not yet been released. [Read more.](#)

BLM Solar Leasing – Nevada. On April 11, the BLM published a *Notice of Competitive Offer and Notice of Segregation for Solar Energy Development on Public Land, Nye County, Nevada* ([88 Fed. Reg. 21708](#)), announcing that the “Pahrump Field Office will accept competitive bids on four parcels of public lands in Nye County, Nevada, for photovoltaic solar energy development: two parcels located within the Amargosa Valley Solar Energy Zone offered for lease, and two parcels to determine preferred right-of-way applicants. The BLM also announces the segregation of the two parcels of public lands outside the Amargosa Valley Solar Energy Zone from appropriation under the public land laws, including the Mining Law, but not the Mineral Leasing or Material Sales Acts, for a period of 2 years from the date of publication of this notice, subject to valid existing rights. This segregation will facilitate the orderly administration of the public lands while the BLM considers potential solar development on the two described parcels.” The BLM will hold the competitive live auction for all parcels on June 27, 2023. [Read more.](#)

BLM Oil and Gas Lease Sale – Nevada. On April 4, the BLM “Nevada State Office released an environmental assessment analyzing four parcels (4,720 acres) for the proposed July 2023, Competitive Oil and Gas Lease Sale. This includes four parcels located within Nye County, Nevada (4,270 acres). The release of this environmental assessment starts a 30-day public comment period, which will end on May 4, 2023.” [Read more.](#)

BLM Approves Western Transmission Line. On April 11, the BLM announced it “has issued a notice to proceed for construction of the 732-mile TransWest Express Project, a high-voltage transmission line

that will extend from south-central Wyoming through northwestern Colorado and central Utah, ending in southern Nevada. Over 1,000 jobs will be created during construction and once complete, the line will provide 3,000 megawatts of new transmission capacity.” The transmission line will support greater expansion of solar and wind energy development and production throughout the West. [Read more.](#)

BLM Awards Orphaned Wells Contracts. On April 5, the BLM announced it “has awarded multiple contracts, supported through funding from President Biden’s Bipartisan Infrastructure Law to plug and remediate orphaned oil and gas wells on America’s public lands. The Indefinite Delivery Indefinite Quantity contracts will go to six small businesses from across the country to provide environmental support services including project planning, evaluation, and regulatory compliance in support of orphaned oil and gas well plugging operations.” [Read more.](#)

BLM Information Collection; Oil and Gas Facility Site Security. On April 7, the BLM published a notice of information collection, *Agency Information Collection Activities; Submission to the Office of Management and Budget for Review and Approval; Oil and Gas Facility Site Security* ([88 Fed. Reg. 20904](#)). According to the BLM, this information collection “enables the BLM to collect information about Federal and Indian (except Osage Tribe) onshore oil and gas leases. The information facilitates accurate measurement of oil and gas, production accountability, payment of royalties that are due, and prevention of theft and loss.” The public comment period is open through May 8, 2023. [Read more.](#)

BLM Information Collection; Measurement of Gas. On April 7, the BLM published a notice of information collection, *Agency Information Collection Activities; Submission to the Office of Management and Budget for Review and Approval; Measurement of Gas* ([88 Fed. Reg. 20903](#)). According to the BLM, this notice is “requesting renewal of a control number that pertains to the accurate measurement and proper reporting of all-natural gas removed or sold from Federal and Indian leases, units, unit participating areas, and areas

subject to communitization agreements.” The public comment period is open through May 8, 2023.

[Read more.](#)

BLM Information Collection; Measurement of Oil.

On April 5, the BLM published a notice of information collection, *Agency Information Collection Activities; Submission to the Office of Management and Budget for Review and Approval; Measurement of Oil* ([88 Fed. Reg. 20180](#)). According to the BLM, “This collection of information enables the BLM to ensure compliance with standards for the measurement of oil produced from Federal and Indian (except Osage Tribe) leases and compliance with pertinent statutes.” The public comment period is open through May 5, 2023.

[Read more.](#)

BLM Resource Advisory Council Meeting – Montana.

On April 5, the BLM published a *Notice of Western Montana Resource Advisory Council Meeting* ([88 Fed. Reg. 20181](#)). The RAC “will hold an in-person meeting on Wednesday, April 26, 2023, in Butte, Montana. The meeting will start at 9 a.m. and conclude at 4 p.m. A virtual participation option will also be available.” RAC meetings are open to the public. Per the BLM, “The Council provides recommendations to the Secretary of the Interior concerning the planning and management of the public land resources located within the BLM’s Western Montana District and offers advice on the implementation of the comprehensive, long-range plan for management, use, development, and protection of the public lands within the District. Agenda topics for the upcoming meetings include a discussion of RAC objectives and responsibilities; reports from the managers of the Butte, Dillon, and Missoula BLM Field Offices about activities in their areas; and other resource management issues the Council may raise. Written comments may also be sent in advance of the meeting.” [Read more.](#)

BLM Resource Advisory Council Meeting – Utah.

On April 11, the BLM published a *Notice of Public Meetings, Utah Resource Advisory Council, Utah* ([88 Fed. Reg. 21707](#)). The announcement provides for multiple Resource Advisory Council (RAC) meetings which are all open to the public. According to the BLM,

“The Utah RAC provides recommendations to the Secretary of the Interior, through the BLM, on a variety of public lands issues. Agenda topics for the August meeting include updates and overview of BLM district and state planning efforts, and other issues as appropriate.” [Read more.](#)

EPA Methane Emissions Proposed Rulemaking.

(Update to 3/6/23 Report) On April 11, Republican members of the U.S. Senate Committee on Environment and Public Works delivered a letter to EPA Administrator Michael Regan expressing their opposition to proposed EPA methane emissions rules targeting the oil and gas industry. [Read the letter here.](#) As previously reported, the supplemental proposal, *Standards of Performance for New, Reconstructed, and Modified Sources and Emissions Guidelines for Existing Sources: Oil and Natural Gas Sector Climate Review* ([87 Fed. Reg. 74702](#)), aims to “update, strengthen, and expand the standards proposed on November 15, 2021 (November 2021 proposal), which are intended to significantly reduce emissions of greenhouse gases (GHGs) and other harmful air pollutants from the Crude Oil and Natural Gas source category.” The lawmakers expressed concern that the rulemaking, if finalized, “would reduce annual domestic crude oil production by about 21 million barrels and natural gas production by 358 million Mcf in 2026.” Further, the rulemaking analysis “estimates total compliance costs at \$15 to \$19 billion over ten years without even accounting for other expenses nor the negative economic consequences from lost tax and royalty revenues, lost jobs, increased energy prices, and energy security implications [and] [b]urdening American producers with excessive and duplicative regulations under the pretense of fighting global climate change only serves to shrink production, raise costs for consumers, and transfer the Administration’s climate guilt to foreign polluters whose environmental regulations are a pale shadow of American standards.” The letter calls for the EPA “to reverse course on this onerous rule, fully engage with producers, and listen to the states that must bear the brunt of these regulations.” [Read more.](#)

EPA Methane Emissions Proposed Rulemaking

Listening Sessions. Related to the above, on April 12,

the EPA announced it “is holding a series of national listening sessions for the public to share their comments on the design of the Methane Emissions Reduction Program.” The sessions will be held virtually online and the public is invited to attend. The first session will be held on May 2, 2023. For more information on session dates and instructions on how to attend sessions and make oral comments, [Read more here](#).

Executive Order on Modernizing Regulatory Review.

On April 6, President Biden issued an executive order, “to modernize the regulatory process to advance policies that promote the public interest and address national priorities.” [Read the executive order here](#). The order would increase the threshold for the White House Office of Office of Information and Regulatory Affairs (OIRA) to conduct regulatory analysis up to \$200 million, from the current \$100 million. The order also provides for OIRA to possibly limit stakeholder meetings in the development of rulemaking as well as to “recognize distributive impacts and equity.” The order also updates 2003 guidance (OMB Circular A-4) on how the White House Office of Management and Budget could calculate rulemaking costs and benefits. [Read the draft revisions to OMB Circular A-4 here](#). The White House has also released *Draft Guidance Implementing Section 2(e) of the Executive Order of April 6, 2023 (Modernizing Regulatory Review)* which provides a Q&A on the modernizing process and how OIRA will implement this process in the future. Early analysis of the releases indicate that the Biden administration could justify a more burdensome regulatory scheme by pushing costs and benefits out over a longer period of time, while also reducing public input in certain instances which, if implemented, would be a departure from long standing procedures under both Republican and Democrat administrations. [Read a copy of the draft guidance here](#).

GAO Report on Utility-Scale Energy Storage. On March 30, the U.S. Government Accountability Office (GAO) released a report, [Utility-Scale Energy Storage Technologies and Challenges for an Evolving Grid \(GAO-23-105583\)](#), highlighting the challenges in deploying utility-scale energy storage for power grid integration. Some of the energy storage technologies challenges highlighted are planning, regulation,

standardization, and valuation. In the report, “GAO developed six high-level policy options in response to these challenges. These policy options are provided to inform policymakers of potential actions to address the policy challenges identified in this technology assessment. They identify possible actions by policymakers, which include Congress, federal agencies, state and local governments, academic and research institutions, and industry. The status quo option illustrates a scenario in which policymakers do not intervene with ongoing efforts.” According to the GAO, the study could, in part, “enable the growth of solar and wind energy generation.” [Read more](#).

FEDERAL – Judicial

Social Cost of Greenhouse Gases – Fifth Circuit (Louisiana). On April 5, the U.S. Court of Appeals for the Fifth Circuit, on appeal from the U.S. District Court for the Western District of Louisiana, ruled against a group of Republican-led states regarding a challenge to the Biden administration’s use of climate metrics to estimate the costs of greenhouse gas emissions because the group did not have standing to pursue those claims. Louisiana, Texas, and eight other states argued they would be harmed as a result of the application of the social cost of carbon in agency determinations calculating costs of impacts resulting from greenhouse gas emissions. In [Louisiana v. Biden](#) (Case No. 22-30087), the court wrote, “Plaintiffs’ allegations of ‘injury in fact’ rely on a chain of hypotheticals: federal agencies may (or may not) premise their actions on the Interim Estimates in a manner that may (or may not) burden the States. Such injuries do not flow from the Interim Estimates but instead from potential future regulations, i.e., final rules that are subject to their own legislated avenues of scrutiny, dialogue, and judicial review on an appropriately developed record.” In sum, the court held, “Plaintiffs contemplate harms that are several steps removed from—and are not guaranteed by—the challenged Executive Order or the Interim Estimates. The states cannot do away with their alleged parade of horrors in a single swipe at the duly elected executive. Although the ‘case-by-case approach that this requires is understandably frustrating [to

plaintiffs],’ this remains ‘the traditional, and remains the normal, mode of operation of the courts.’” For background, the dispute involved an executive order signed by President Joe Biden on his first day in office “that revived an agency, formed during the Obama administration but disbanded during the Trump administration, known as the Interagency Working Group on the Social Cost of Greenhouse Gases. The executive order gave the working group the power to issue estimates on the ‘social costs’ of greenhouse gases and required federal agencies to include these estimates in each cost-benefit analysis for new regulations.” [Read more.](#)

Mountain Valley Pipeline – Virginia. (*Update to 4/3/23 Report*) On April 3, the Mountain Valley pipeline faced a major setback when the U.S. Court of Appeals for the Fourth Circuit (Virginia) rejected the West Virginia Department of Environmental Protection’s water permit for the project citing “139 state stormwater permit violations” and at least 46 “narrative water quality standards violations.” Of the latest decision, Sen. Joe Manchin (D-WV) said, “It is infuriating to see the same 4th Circuit Court panel deal yet another setback for the Mountain Valley Pipeline project and once again side with activists who seem hell-bent on killing any fossil energy that will make our country energy independent and secure.” [Read more.](#) The ruling comes just days after the same court “unanimously denied environmentalists’ challenge to a Virginia water permit for the planned natural gas project.” For background, on March 29, in [Sierra Club v. State Water Control Board](#) (Case No. 21-2425), the court held that “Because it is clear from the record that DEQ considered a variety of factors in determining that the construction and operation of the Pipeline would comply with Virginia’s narrative water quality standard, we conclude that the Agencies did not act arbitrarily and capriciously by determining that the Pipeline will comply with Virginia’s narrative water quality standard.” [Read more.](#) The March 29 decision would have brought the Equitrans Midstream Corporation’s 303-mile Mountain Valley natural gas pipeline – to run through Virginia and West Virginia – closer to construction resumption. [Read more.](#)

STATE – Legislative

Methane Seepage in the Raton Basin – Colorado.

On April 10, SB23-186 passed the Senate and has been referred to the House. Sponsored by Sen. Rod Pelton (R), concerning methane seepage in the Raton basin of Colorado, the bill would require the Colorado Oil and Gas Conservation Commission to complete a study. “The bill also requires the commission to implement a regulatory category for methane recovery in the Raton basin, which category includes consideration of enforcement, financial assurance, flow lines, forms, operator guidance, orphan well programs, rules, and policies and allows for beneficial uses deemed prudent by local governments.” [Read more.](#)

Corrections to Real Estate Recordings; Landman Definition – New Mexico. (*Update to 2/6/23 Report*)

On April 5, Gov. Michelle Lujan Grisham (D) signed HB 250 into law. Sponsored by Rep. Greg Nibert (R), the bill amends existing law regarding corrections to real property recordings and adds to the code that a “land professional who is certified or registered by a nationally recognized land professional organization and who filled in the form or provided the description for the original instrument” may execute a scrivener’s error affidavit. The Act takes effect 90 days after session adjournment on March 18, 2023. [Read more.](#)

Notarial Acts – New Mexico. On April 4, Gov. Michelle Lujan Grisham (D) signed SB 246 into law. Sponsored by Sen. Daniel Ivey-Soto (D), the bill amends the Revised Uniform Law on Notarial Acts, specifically defining “automatic notarial officers” and “judicial officers”; redefining roles of notarial officers and notaries public; amending personal appearance requirements; prohibiting acts of discrimination as grounds to refuse to perform notarial acts; providing for notarial acts to be performed by notarial officers and others authorized by state law; recognizing notarial acts performed by an Indian nation, tribe or pueblo; requiring an official stamp in specified circumstances; clarifying official stamp requirements; providing requirements for a certificate of notarial acts; amending continuing legal education credit

requirements; making technical and conforming changes; [and] providing grounds to deny, refuse to renew, revoke, suspend or condition the commission of a notarial officer. The Act takes effect 90 days after session adjournment on March 18, 2023. [Read more.](#)

Post-Production Royalty Oversight Program – North Dakota. (*Update to 1/23/23 Report*) On April 12, Gov. Doug Burgum (R) signed SB 2194 into law. Sponsored by Sen. Brad Bekkedahl (R), the bill “creates a post-production royalty oversight program with a procurement exemption. It also amends section 38 of NDCC relating to the oil and gas well plugging and site reclamation fund and provides a report.” The Act is effective on August 1, 2023. [Read more.](#)

Oil Extraction Tax Exemption on Production from a Restimulation Well – North Dakota. (*Update to 1/23/23 Report*) On April 12, Gov. Doug Burgum (R) signed HB 1427 into law. Sponsored by Rep. Jason Dockter (R), the bill creates an oil extraction tax exemption on production from a restimulation well as provided. This Act is effective for taxable production beginning after June 30, 2023. [Read more.](#)

Community Solar Projects – Pennsylvania. On March 13, HB 330 was referred to committee following introduction by Rep. Perry Stambaugh (R). The bill would authorize local solar energy development in Pennsylvania by expanding “access to solar power through a local and voluntary offering that has been competitively bid and ensures adequate ratepayer protection by not permitting any cross-subsidization.” In short, the bill aims to create a community solar program. [Read more.](#)

Closed-Loop Geothermal Injection Wells Regulatory Jurisdiction – Texas. On April 13, SB 786 passed the Senate and has been transmitted to the House. Sponsored by Sen. Brian Birdwell (R), the bill resolves “a current conflict in Texas law regarding the wells associated with geothermal energy. The Texas Railroad Commission (RRC) and the Texas Commission on Environmental Quality (TCEQ) are both required to regulate these wells. The wells associated with geothermal energy include geothermal

closed loop injection wells which are a Class V injection well under the jurisdiction of TCEQ per Section 27.011, Water Code. However, RRC is also given the responsibility to regulate the exploration, development, and production of geothermal energy and associated resources under Section 141.011, Natural Resources Code. If a geothermal generator is using a closed loop injection well for power generation, the well is also regulated by RRC in current statute. This bill would remove closed-loop geothermal injection wells from the regulative authority of TCEQ and place them solely under the regulatory authority of RRC. This clarification would provide certainty to potential operators seeking to produce geothermal energy.” [Read more.](#)

Royalty Interest Taxation – Texas. (*Update to 3/20/23 Report*) On April 5, HB 456 passed the House and has been transmitted to the Senate. Sponsored by Rep. Tom Craddick (R), the bill would exempt the value of royalty interests owned by charitable organizations from ad valorem taxation of real property. [Read more.](#)

Office of Oil and Gas in the Department of Environmental Protection – West Virginia. (*Update to 3/20/23 Report*) On March 29, Gov. Jim Justice (R) signed HB 3110 into law. Sponsored by Del. Bill Anderson (R), “relating to funding the Office of Oil and Gas in the Department of Environmental Protection; provid[es] for the apportionment of three fourths of one percent of oil and gas severance taxes not to exceed \$1,200,000 to Office of Oil and Gas; establishing two tiers of annual oversight fees for wells producing more than 60,000 cubic feet of gas per day; increasing the expedited permit modification fee by \$2500 over the current level; eliminating the one million dollar cap on deposits to the Oil and Gas Operating Permit and Processing Fund from collections of fees for expedited permits and expedited permit modifications; providing that those fees, if not used for other purposes, may be moved to the Oil and Gas Reclamation Fund; and making technical corrections.” The Act takes effect on June 9, 2023. [Read more.](#)

STATE – Regulatory

Ballot Initiative – Colorado. Last week, a coalition of Colorado environmentalists and residents filed a ballot initiative seeking to phase out oil and gas production in Colorado by 2030. The potential 2024 ballot measure would require “the Colorado Oil and Gas Conservation Commission to phase out oil and gas expansion by 2030 through a gradual decrease in the issuance of new oil and gas permits, prioritizing reduction of new oil and gas permits in disproportionately impacted communities, protecting public health, safety, welfare, the environment and wildlife from existing oil and gas operations, transitioning the Commission’s duties after 2030 to monitoring, plugging and remediating previously permitted oil and gas operations, and providing assistance to workers and communities most impacted by the reduction in new oil and gas operations.” [Read the ballot measure here](#). As reported, “Supporters of the plan say it’s not only designed to rein in drilling and hydraulic fracturing across the state. It’s also meant as a referendum on Gov. Jared Polis’ approach to climate change, which has focused on regulating pollution from oil and gas operations instead of phasing them out over time.” The ballot initiative must go through a number of stages before it is certified to make it onto the 2024 general election ballot. [Read more](#). We will keep AAPL members informed as this ballot initiative process moves forward into next year. [Read more](#).

New Mexico Environment Department Air Quality Bureau Stakeholder Meeting – New Mexico. On April 6, the New Mexico Environment Department (NMED) Air Quality Bureau announced they will hold a stakeholder engagement webinar on April 27, 2023. According to the NMED, “The upcoming webinar will focus on NM’s review and progress on Step 3 and 4 (of EPA guidance) and also touch on other stakeholder engagement opportunities.” For more information, [Read more](#).

STATE – Judicial

State Lands Development – Ohio. UPDATE: On April 13, an Ohio judge denied an environmentalist

group’s petition to halt expanded state land drilling under a new Ohio law. [Read more](#). For background, on April 6, environmental groups filed suit against the state of Ohio in an attempt to halt implementation of [H.B. 507](#), a bill “which Republicans passed in the final days of the last legislative session, [and] changed Ohio’s code to require rather than authorize state agencies to lease the lands they own for oil and gas development. And it directed the Oil and Gas Land Management Commission to develop a set of rules for applications.” The bill also defined “natural gas” as “green energy” which angered environmentalists seeking to stop natural gas drilling in the state. In [Ohio Environmental Council v. Ohio](#), the litigants sought a preliminary injunction “to stop the leasing of Ohio state parks and other public lands to the oil and gas industry.” [Read more](#). According to the Ohio Environmental Council plaintiff, “House Bill 507’s ‘mandatory leasing provision’ would require the State to lease state parks to the oil and gas industry. Companies are already circling Ohio’s state parks, ready to take advantage of the upcoming open drilling season.” [Read more](#).

INDUSTRY NEWS FLASH

► **OPEC+ announces surprise oil production cut.** On April 2, OPEC+ nations “stunned the oil market, announcing additional surprise production cuts until the end of this year.” As reported, “The surprise cut made one thing clear—OPEC is firmly in control of the oil market and has the arsenal of rhetoric, surprise announcements, and actual production cuts to lift oil prices whenever they feel they are not getting enough money for their crude.” [Read more](#).

► **New York City’s two largest pension funds to divest from some upstream natural gas, oil, and coal companies.** On April 13, New York City pension trustees approved a plan to divest two of the largest state pension funds from some upstream natural gas, oil, and coal companies by 2025. This is part of a plan to achieve net-zero emissions by 2040 in the New York City Employees’ Retirement System and the Teachers’ Retirement System investment

GOVERNMENTAL AFFAIRS REPORT

Highlights At-A-Glance

FEDERAL – Legislative

H.R. 2811 – Limit, Save, Grow Act of 2023. On April 26, the Republican's debt limit increase bill, [H.R. 2811](#), known as the Limit, Save, Grow Act of 2023, passed the House. The bill would raise the debt limit through March 31, 2024, or until the debt increases by \$1.5 trillion. [Read more](#). The bill also contains many provisions from the GOP comprehensive energy package, [H.R. 1](#), that passed the House in March but was deemed "dead on arrival" in the Senate by Democrat leaders. [Read more](#). Specifically, H.R. 2811 repeals or modifies tax credits for renewable and clean energy, energy efficient property, alternative fuels, and electric vehicles; requires major federal rules (e.g., rules likely to result in an annual economic effect of at least \$100 million) to be approved by Congress before they take effect; and also includes various provisions related to the development of energy resources such as oil, natural gas, and minerals. For example, the bill requires additional federal oil and gas leasing; reduces or eliminates certain royalties and fees; and expedites the permitting process for various energy projects. The bill is unlikely to be considered in its current form in the Democrat-led Senate. [Read more](#).

Senate Environment and Public Works Committee Energy Hearing. On April 26, the Senate Environment and Public Works Committee held an oversight hearing, *Committee Business Meeting & Opportunities to Improve Project Reviews for a Cleaner and Stronger Economy*, "to examine stakeholder perspectives on improving coordination, predictability and efficiency in the environmental review and permitting process to support a clean energy transition." [Access the full hearing and witness testimony here](#). In his opening statement, Chairman Tom Carper (D-DE) stated, "We are here today to

discuss an important and timely topic: opportunities to reform our nation's environmental review and permitting processes in a way that supports our transition to a clean energy economy and the good-paying jobs that come with it." Ranking Member Sen. Shelley Moore Capito (R-WV) said, "In my home state of West Virginia alone, there are multiple real-world examples of how our broken environmental review and permitting process is holding up critical projects across multiple sectors important to West Virginians but also to our national economy." [Read more](#).

House Natural Resources Committee Hearing on Endangered and Threatened Species.

(Update to 4/17/23 Report) On April 27, the House Committee on Natural Resources held a full committee markup – a process where committee members review the measures in detail and may consider amendments – for a number of House resolutions AAPL has been tracking and reporting on for members, specifically [H.J. Res. 29](#) and [H.R. Res 46](#), related to endangered and threatened species, including the Lesser Prairie-Chicken, among others. For background, on April 18, the Committee held a legislative hearing on a number of these measures. To access a full recording of the hearing, [Read more](#).

FEDERAL – Regulatory

BLM Resource Advisory Council Meeting – Alaska.

On April 24, the Bureau of Land Management (BLM) announced it will hold an Alaska Resource Advisory Council (RAC) meeting on May 24, 2023, in Anchorage. "Both in-person and virtual participation options are available and the public is welcome to attend. The 15-member Alaska RAC serves in an advisory capacity concerning issues relating to land use planning and the management of public land resources located within the State of Alaska.

Members represent a variety of interests reflective of the Bureau's multiple-use mission and Alaska's diverse population." RAC meetings are open to the public. [Read more.](#)

BLM Resource Advisory Council Meeting – Utah.

On April 14, the BLM announced it "will hold a field tour and public meeting of the Utah Resource Advisory Council (RAC) on May 17-18, 2023, to receive advice and recommendations on public land planning efforts." According to BLM Utah Director Gregory Sheehan, "These opportunities allow stakeholders to gain a more-comprehensive understanding of resource management, provide input and ensure collaboration with others to find solutions." RAC meetings are open to the public. [Read more.](#)

Greater Sage-Grouse – California; Nevada.

On April 27, the BLM published a proposed rule, *Endangered and Threatened Wildlife and Plants; Threatened Status for the Bi-State Distinct Population Segment of Greater Sage-Grouse With Section 4(d) Rule and Designation of Critical Habitat* (88 Fed. Reg. 25613), to announce a reopening of previous comment periods for proposed rulemaking to list the Bi-State distinct population segment (DPS) of greater sage-grouse as threatened under the Endangered Species Act (Act) with a section 4(d) rule and to designate critical habitat for the Bi-State DPS. For background, the District Court for the Northern District of California vacated a March 31, 2020, withdrawal of an October 28, 2013, proposed listing rule. The proposed rule "will initiate a new status review to determine whether the Bi-State DPS meets the definition of an endangered or threatened species under the Act." The public comment period is open through June 26, 2023. [Read more.](#)

Mountain Valley Pipeline; Energy Department.

On April 21 – in a surprise move that angered environmental activists – U.S. Energy Secretary Jennifer Granholm delivered a letter to the Federal Energy Regulatory Commission calling upon the commissioners to proceed "expeditiously" with permitting the Mountain Valley Pipeline project. Granholm wrote, "I am writing about the impact the

Mountain Valley Pipeline (MVP) project can have in support of the Nation's energy security and energy supply [...] Energy infrastructure, like the MVP project, can help ensure the reliable delivery of energy that heats homes and businesses, and powers electric generators that support the reliability of the electric system." [Read the letter here.](#) Granholm's efforts have been lauded by Sen. Joe Manchin (D-WV) who has long been pressing for approval of the vital pipeline project to traverse West Virginia and Virginia. [Read more.](#)

Environmental Justice Presidential Executive Order.

On April 21, President Biden issued an "Executive Order on Revitalizing Our Nation's Commitment to Environmental Justice for All" ([Executive Order 14096](#)), that seeks to "advance environmental justice for all by implementing and enforcing the Nation's environmental and civil rights laws, preventing pollution, addressing climate change and its effects, and working to clean up legacy pollution that is harming human health and the environment." [Read the Executive Order here.](#) The order directs "all federal agencies to make equity a core issue in their missions" and "also directs the Environmental Protection Agency and other agencies to focus on disproportionate impacts to low-income and other disadvantaged communities. Those agency actions must address cumulative impacts of pollution and climate change." The executive order also creates a new Office of Environmental Justice within the White House Council on Environmental Quality. The executive order updates a President Clinton-era order that "first focused agencies on inequitable exposure to pollution in marginalized communities. Biden promised to strengthen it shortly after taking office in January 2021." [Read more.](#)

FEDERAL – Judicial

EPA Consent Decree; Oil and Gas Emissions –

Washington, DC. On April 17, a U.S. District Court judge approved a consent decree between the U.S. Environmental Protection Agency (EPA) and environmental groups in which the EPA agrees "to strengthen pollution regulations for certain oil and gas

facilities and equipment after environmental groups complained the standards hadn't been updated in more than a decade." In the consent decree, [California Communities Against Toxics v. Regan](#) (Case No. 1:22-cv-01012-CRC), the EPA agrees "to review and update its emissions rules to more fully regulate hazardous air pollutants from oil and gas storage, production and transmission facilities. Under the settlement, the government agreed to propose and finalize new rules in 2024 and 2025, but did not commit to make specific changes." In the underlying lawsuit, the litigants "said the regulations finalized in 2012 didn't cover all of the oil and gas equipment and processes that might emit pollutants, like storage tanks or oil wells that can leak gasses. It sought to force the government to consider requiring new technologies to monitor for leaking, and to close what they called loopholes that allow operators to avoid liability for emissions violations during equipment malfunctions." We will keep AAPL members informed once the EPA releases this consent decree proposed rulemaking. [Read more.](#)

Federal Oil and Gas Production – Washington, DC. On April 25, environmental groups filed a lawsuit in federal court challenging "the failure of Defendants U.S. Secretary of the Interior Deb Haaland and U.S. Department of Interior (collectively referred to as 'Interior') to respond to the Conservation Groups' January 19, 2022, Petition for rulemaking to reduce the rate of oil and gas production on federal public lands." In [Center for Biological Diversity v. Haaland](#) (Case No. 1:23-cv-01144), the litigants claim "that the Administrative Procedure Act requires federal agencies like the Department of the Interior to 'give interested parties the right to petition for the issuance, amendment, or repeal of a rule' and that the law requires the agency to 'conclude a matter presented to it within a reasonable time.'" [Read more.](#) The legal action "targets the administration's failure to respond to portions of the petition on public lands oil and gas production in the lower 48 states" [...] and says it is "urgent that Biden officials align the federal oil and gas program with our country's climate goals and the president's own campaign promises." [Read more.](#)

Natural Gas Hookup Bans – Ninth Circuit (California). On April 17, the U.S. Court of Appeals for the Ninth Circuit, on appeal from the U.S. District Court for the Northern District of California, dealt a blow to Berkeley city leaders when it overturned an ordinance that banned natural gas hookups in some new buildings in the city in [California Restaurant Assoc. v. City of Berkeley](#) (Case No. 21-16278). The appeals court reversed the lower court's dismissal of the case where the California Restaurant Association (CRA) argued that "the ordinance was preempted by the federal Energy Policy and Conservation Act (EPCA). The CRA and groups supporting the case argued that the ordinance in fact amounted to a ban on natural gas appliances." The court explained that the EPCA "expressly preempts State and local regulations concerning the energy use of many natural gas appliances, including those used in household and restaurant kitchens. Instead of directly banning those appliances in new buildings, the City of Berkeley took a more circuitous route to the same result. It enacted a building code that prohibits natural gas piping into those buildings, rendering the gas appliances useless." In sum, the appeals court agreed with the plaintiff group, writing, "Berkeley can't bypass preemption by banning natural gas piping within buildings rather than banning natural gas products themselves." [Read more.](#)

STATE – Legislative

Bond Requirements; Well Plugging – California. On April 19, AB 1167 advanced in committee following its introduction by Asm. Wendy Carrillo (D). The bill requires a person who acquires the right to operate a well or production facility to file with the State Oil and Gas Supervisor a bond for the well or production facility in an amount determined by the supervisor to be sufficient to cover, in full, all costs of plugging and abandonment and site restoration; and provides for related procedures. [Read more.](#)

Carbon Sequestration – California. On April 19, SB 308 passed committee following its introduction by Sen. Josh Becker (D). "This bill requires the California Air Resources Board (CARB) to establish rules and

processes for certifying carbon dioxide removal processes that can be used for negative emissions credits. This bill requires CARB to adopt a regulation requiring certain emitting agencies to purchase negative emissions credits equal to a specified percentage of their greenhouse gas (GHG) emissions, with that percentage increasing over time.” [Read more.](#)

Oil and Gas Supervisor – California. On April 19, SB 275 passed committee following its introduction by Sen. Shannon Grove (R). Regarding the state Oil and Gas Supervisor, who is required to supervise the drilling, operation, maintenance, and abandonment of oil and gas wells, the bill would require a supervisor appointment to receive Senate confirmation. [Read more.](#)

Carbon Capture, Removal, Utilization, and Storage – California. On April 19, SB 438 passed committee following its introduction by Sen. Anna Caballero (D). The bill is identified as “a technical cleanup measure” to a 2022 bill “to clarify the accidental production of oil does not violate the ban on enhanced oil recovery on CCRUS projects.” [Read more.](#)

Renewables Portfolio Standard Program – California. On April 18, SB 663 passed committee following its introduction by Sen. Bob Archuleta (D). “This bill defines renewable hydrogen and adds renewable hydrogen as a renewable energy resource under the Renewable Portfolio Standard (RPS). This bill also establishes criteria for renewable hydrogen acquired from a pipeline to meet RPS standards.” [Read more.](#)

Oil and Gas Drilling Health Effects – California. On April 25, [SB 556](#) was scheduled for a hearing following its introduction by Sen. Lena Gonzalez (D). The bill provides “people who have developed cancer, respiratory illnesses and birth defects the right to hold oil drillers liable for their illnesses if they live, work, or go to school within 3,200 feet of oil drilling and if the company did not use the best technologies to mitigate risk.” Further, “the oil drillers and their boards of directors would have the presumption of liability for

damages with minimum penalties of \$250,000 and maximum penalties of \$1 million. The presumption could be rebutted if the companies proved the illnesses were caused another way.” [Read more.](#)

State Oil, Gas, and Geothermal Regulation – Colorado. On April 17, [SB23-285](#) was introduced by Sen. Kevin Priola (D). The bill “changes the name of the Colorado Oil and Gas Conservation Commission in the Department of Natural Resources (DNR) to the Energy and Carbon Management Commission, effective July 1, 2023, and expands the commission’s regulatory authority to include the regulation of energy and carbon management areas beyond oil and gas to include emerging energy generation and storage technologies—specifically deep geothermal and underground gas storage. The bill also changes the name of the commission’s cash fund accordingly and allows the commission to use the fund for the purposes of administering the expanded regulatory areas.” [Read a detailed bill summary here.](#)

Clean Energy Plans – Colorado. On April 21, SB23-198 was subject to a committee hearing following its introduction by Sen. Faith Winter (D). The bill provides that for entities submitting clean energy plans to state regulators they must achieve certain greenhouse gas reduction targets as indicated and sets entity and state reporting requirements. [Read more.](#)

Geothermal Energy – Colorado. On April 19, HB23-1252 passed committee following its introduction by Rep. Sheila Lieder (D). The bill would provide for the implementation of measures to advance thermal energy services. [Read more.](#)

Pollution Protection Measures – Colorado. On April 14, HB23-1294 was introduced by Rep. Jennifer Bacon (D). The bill would impose broad emissions controls over various industries, including oil and gas production. [Read a full bill summary here.](#) The bill, if passed, will “functionally prohibit new permitting for most industrial processes in the state,” said the Colorado Oil and Gas Association and the American Petroleum Institute. The bill “adds new permitting restrictions and penalties on oil and gas development

and other commercial and industrial air pollution sources.” As reported, “The bill focuses primarily on permitting in the oil and natural gas industry, but state officials must also consider indirect air pollution sources, and that will affect a wide range of industries across the state, said industry officials.” The bill also “removes rules that allow temporary relief from emission control regulations during start-up, shutdown, or malfunction of commercial or industrial air pollution sources.” [Read more.](#)

Severance Taxes – Louisiana. On April 20, HB 172 advanced to a floor vote following its introduction by Rep. Phillip DeVillier (R). The bill “reduces the severance tax rate on oil over an eight-year period from 12.5% to 8.5% of its value at the time and place of severance and fixes the severance tax rate for oil produced from certain incapable and stripper wells at the current rate.” [Read more.](#)

Carbon Capture and Sequestration – Louisiana. On April 3, [HB 571](#) was introduced by Speaker Clay Schexnayder (R). The bill provides multiple provisions for the regulation of carbon capture and sequestration. [Read a complete bill summary here.](#)

Independent Contractors – Montana. *(Update to 2/20/23 Report)* On April 25, SB 22 was signed into law by Gov. Greg Gianforte (R). Sponsored by Sen. Shane Morigeau (D), regarding existing law governing independent contractor exemption certificates, the bill adds new language to provide that a person without an independent contractor exemption certificate is rebuttably presumed to be an independent contractor when: (i) the person represents to a hiring entity or individual in writing that the person has an independent contractor exemption certificate; (ii) the person provides the hiring entity or individual a forged or otherwise fraudulent independent contractor exemption certificate; or (iii) the person's independent contractor exemption certificate expires while the person is working under the contract and prior to full performance of the contract, for a period not to exceed 120 days following the expiration of the certificate. Prior versions of this bill would have imposed an independent contractor analysis and employee

definitions but were removed from the final legislation. The Act is effective October 1, 2023. [Read more.](#)

Liens – North Dakota. *(Update to 1/23/23 Report)* On April 18, SB 2311 was signed into law by Gov. Doug Burgum (R). Sponsored by Sen. Brad Bekkedahl (R), the bill amends existing law regarding construction liens and well or pipeline construction liens. The Act takes effect on August 1, 2023. [Read more.](#)

Transfer-on-Death Deeds – Oklahoma. *(Update to 2/20/23 Report)* On April 26, Gov. Kevin Stitt (R) signed SB 298 into law. Sponsored by Sen. Brent Howard (R), the bill prohibits a designated grantee beneficiary from accepting real estate on behalf of another designated beneficiary through a transfer-on-death deed. The Act is effective November 1, 2023. [Read more.](#)

Energy Source Choices – Texas. *(Update to 3/6/23 Report)* Last week, [SB 1017](#) passed the legislature. Sponsored by Sen. Brian Birdwell (R), the bill ensures that gasoline and diesel-powered engines can never be outlawed by local governments in Texas. The companion House version, [HB 2374](#), was sponsored by Rep. Brooks Landgraf (R). “SB 1017 is about individual liberty, and when people are free to choose and the market is allowed to be competitive, Texas oil and natural gas always win,” said Rep. Landgraf. “It’s an honor to fight for the hard-working men and women of the Permian Basin, to fight for freedom and for energy independence.” As reported by the Texas Oil & Gas Association, “This legislation would protect energy choice by preventing political subdivisions from adopting or enforcing ordinances, orders, regulations, or similar measures which would limit access to specific fuel sources or prohibit the sale of engines based on their fuel source.” The bill will now head to the governor for signature. [Read more.](#)

Hydrogen Energy Development – Texas. On April 10, HB 2847 passed committee following its introduction by Rep. Drew Darby (R). The bill would grant “the Railroad Commission of Texas (RRC) jurisdiction over all pipeline transportation and underground storage of hydrogen and establishing the

Texas Hydrogen Production Policy Council to study and make recommendations relating to the RRC's policy framework for hydrogen energy development." [Read more.](#)

Class 1 Injection Well Inspections – Texas. On April 19, HB 4120 passed committee following its introduction by Rep. Ryan Guillen (R). Relating to the inspection of the location of a proposed Class I injection well, the bill amends existing law to provide that an inspection report prepared by an engineer or geoscientist licensed in the state can be accepted to meet the requirements as provided. [Read more.](#)

Texas STRONG Defense Fund – Texas. On April 20, HJR 111 passed committee following its introduction by Rep. Ryan Guillen (R). The resolution is "Proposing a constitutional amendment providing for the creation of the Texas severance tax revenue and oil and natural gas (Texas STRONG) defense fund, dedicating the money in that fund to benefit areas of the state significantly affected by oil and gas production, and providing for the transfer of certain general revenues to that fund, the economic stabilization fund, the state highway fund, the oil and gas regulation and cleanup account, the Texas emissions reduction plan fund, and the property tax relief fund." [Read more.](#)

Natural Gas Energy Conservation Programs – Texas. On April 20, SB 1050 passed committee following its introduction by Sen. Bryan Hughes (R). Regarding local distribution companies delivering natural gas to homes and businesses and related energy conservation programs, would provide for "a statewide framework for natural gas energy conservation programs in order to allow more Texans to participate in such programs, which could allow for the purchase of higher efficiency appliances, the retrofitting of homes, and the saving of more capacity for electric generation." [Read more.](#)

Orphaned Wells; Geothermal Operators – Texas. On April 20, SB 1210 passed the Senate and has been transmitted to the House. Sponsored by Sen. Cesar Blanco (D), relating to the authority of the

Railroad Commission of Texas to designate certain persons as the operator of an orphaned oil or gas well, the bill "would allow a geothermal operator to adopt an orphaned oil and gas well to convert it into a geothermal electricity production well." The purpose is to "reduce the number of orphaned oil and gas wells in Texas, thereby reducing the amount of money the Railroad Commission's Oilfield Regulation and Cleanup Fund must spend on plugging orphaned wells." [Read more.](#)

STATE – Regulatory

State Attorney General Launches Investigation of ESG Climate Fund – Louisiana. On April 25, Louisiana Attorney General Jeff Landry (R) "ordered an investigation into a major investor-led coalition that aims to fight climate change through the financial sector." Landry's office has announced a "multi-pronged" effort focusing on the Climate Action 100+ Steering Committee, specifically scrutinizing Franklin Templeton and the California Public Employees' Retirement System. The investigation will look into whether the groups breached their obligations to investors by prioritizing climate initiatives. The move is yet another foray by the GOP against the environmental, social, and governance movement, or ESG." [Read more.](#)

RRC Draft Oil and Gas Division Monitoring and Enforcement Plan – Texas. On April 25, the Texas Railroad Commission announced that pursuant to 2017 legislation, the RRC was directed "to develop an annual plan to assess the most effective use of its limited resources to protect public safety and minimize damage to the environment. The RRC will always strive to strengthen its capabilities to track, measure, and analyze the effectiveness of its oil and gas monitoring and enforcement program." [Read more.](#) The purpose of this plan is to define and communicate the Oil and Gas Division's strategic priorities for its monitoring and enforcement efforts. The plan confirms many of the division's current priorities as well as establishing direction for data collection, stakeholder input, and new priorities for fiscal year 2024. The RRC seeks input from stakeholders in the development of

this plan.” [Read the draft plan here](#). The deadline for public comments is May 23, 2023. You may [submit comments here](#).

Interactive Oil and Gas Map – Wyoming. Last week, the Wyoming State Geological Survey released a 2023 update to its [Interactive Oil and Gas Map of Wyoming](#). As reported, “This is the sixth update since the web map was initially published in 2016. Continual updates are necessary to keep track of new oil and gas wells, changes to fields and modifications to hydrocarbon processing facilities such as refineries and gas plants. Since the last 2021 map version, more than 175 new wells came online in named oil or gas fields, and more than 150 new wildcat wells were drilled. This has had a notable visual impact on field boundaries and oil and gas infrastructure throughout the state.” [Read more](#).

INDUSTRY NEWS FLASH

► Texas upstream employment on the rise.

As reported last week by the Texas Independent Producers and Royalty Owners Association (TIPRO), “upstream oil and natural gas employment in Texas totaled 198,700 jobs in March, up by 1,500 positions from the prior month and up by 20,000 year/year.” According to TIPRO president Ed Longanecker, “The oil and gas industry continues to ramp up employment and production in line with growing demand for our product here and abroad.” [Read more](#).

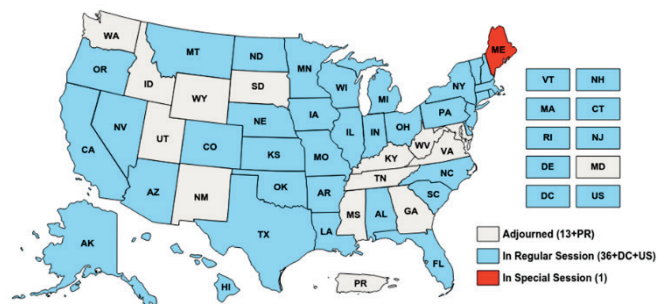
► Shale production in the biggest basins expected to hit record in May. According to data released on April 18 from the U.S. Energy Information Administration (EIA), “shale crude oil production in the seven biggest shale basins is expected to rise in May to the highest on record. Oil output is set to rise 49,000 barrels per day to 9.33 million bpd, the EIA said, [and] production in the Permian is due to rise to 5.69 million bpd, the highest on record.” [Read more](#).

► American Chemistry Council releases white paper on importance of natural gas. On April 19,

the American Chemistry Council “released a white paper highlighting the importance of natural gas and the need for policies that reflect its value to the American economy, the energy transition, and climate progress. Entitled ‘*Natural Gas: Its Key Role in a Strong Economy and a Lower Emissions Future*,’ the paper explains how natural gas is linked to several national priorities. [Read more](#).

LEGISLATIVE SESSION OVERVIEW

States in Session



Session Notes: Alabama, Alaska, Arizona House, Arkansas, California, Colorado, Connecticut, Delaware, Florida, Hawaii, Illinois, Indiana, Iowa, Kansas, Louisiana, Massachusetts, Michigan, Minnesota, Missouri, Montana, Nebraska, Nevada, New Hampshire, New Jersey, New York, North Carolina, North Dakota, Ohio, Oklahoma, Oregon, Pennsylvania, Rhode Island, South Carolina, Texas, Vermont, and Wisconsin are in regular session. The U.S. Congress is also in session.

Kansas lawmakers returned from recess on April 24 to finish up the omnibus budget as well as consider any potential vetoes from Democratic Gov. Laura Kelly, reports [The Kansas City Star](#). The legislature is scheduled to adjourn after the veto session.

The **Arizona** Senate is on hiatus until May 3, reports the [AZ Mirror](#). The chamber moved to adjourn on April 25, the 107th day of the 2023 legislative session. In Arizona, regular sessions of the legislature can only last 100 days, unless extended seven additional days by the

House Speaker and the Senate President. After that, lawmakers can meet indefinitely if procedural motions are approved regularly by a majority of members. Senate Republican spokeswoman Kim Quintero said the break is aimed at continuing work on the state budget.

The following states adjourned their 2023 legislative sessions on the dates provided: **Indiana** (April 29), **Iowa** and **North Dakota** (April 28), **Tennessee** (April 21), and **Washington** (April 23).

Signing Deadlines (by date): **Georgia** Republican Gov. Brian Kemp has until May 8 to act on legislation or it becomes law without signature. **Washington** Democratic Gov. Jay Inslee has until May 16 to act on legislation or it becomes law without signature. **Kentucky** Democratic Gov. Andy Beshear has 10 days from presentment to act on legislation, Sundays excepted, or it becomes law without signature. **Maryland** Democratic Gov. Wes Moore has 30 days from presentment to act on legislation or it becomes law without signature. **Mississippi** Republican Gov. Tate Reeves has 15 days from presentment to act on legislation, Sundays excepted, or it becomes law without signature. **Tennessee** Republican Gov. Bill Lee has 10 days from presentment to act on legislation, Sundays excepted, or it becomes law without signature. ■

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GOVERNMENTAL AFFAIRS REPORT

Highlights At-A-Glance

FEDERAL – Legislative

H. Res. 339 - All the Above Energy Policy. On April 28, Rep. Dan Newhouse (R-WA) introduced [H. Res. 339](#), “Expressing the sense of the House of Representatives that an ‘all-of-the-above’ energy strategy is the most viable approach to energy policy. Of the bill, Rep. Newhouse said, “The Biden Administration and far-left Democrats are forcing Americans to choose between traditional resources like oil and natural gas, and renewable resources like solar and wind. The truth is, we need both, including nuclear. An all-of-the-above energy strategy is the best approach for our energy security and independence. I will never stop fighting for the U.S. energy sector, defending our producers from wrongful attacks, and working to restore American energy independence.” [Read more.](#)

S. 1435 - Bureau of Land Management Conservation and Landscape Health Rulemaking. On May 3, Sen. John Barrasso (R-WY) introduced [S. 1435](#), legislation that would withdraw the Bureau of Land Management’s proposed rule that seeks to update federal land management, *Conservation and Landscape Health* ([88 Fed. Reg. 19583](#)). As previously reported, the rulemaking “calls for the ‘balanced management’ of public lands with a focus on improving conservation and stewardship. Many Republican senators view the proposal as anathema to the long-held doctrine of multiple use on public lands and an attempt by the Biden administration to prioritize conservation over other activities.” Since the rule would also designate conservation as a formal use of public lands, it would put it on par with energy development, grazing, and recreation and possibly be applied to prevent oil and gas development on federal lands. [Read more.](#)

S. 1404 - Chaco Cultural Heritage Area Protection Act. On May 3, a group of congressional Democrats reintroduced [S. 1404](#), known as the Chaco Cultural Heritage Area Protection Act, “to protect Chaco Canyon and the greater sacred landscape surrounding the Chaco Culture National Historical Park.” The bill “would prevent future leasing and development of oil, gas and minerals on more than 316,000 acres of non-Indian federal lands that are within a 10-mile buffer zone around the Chaco Culture National Historical Park.” [Read more.](#) Of the legislation, Sen. Martin Heinrich (D-NM) said, “Chaco Canyon is one of the most important living cultural landscapes on the planet. It holds deep meaning for Pueblo people and many New Mexicans. Since I have been in Congress, I have worked in close partnership with Tribal leaders and a broad array of New Mexicans to prevent new oil and gas development in the vicinity of Chaco Culture National Historical Park. That includes the Biden administration’s administrative withdrawal to protect the area within a 10-mile radius of Chaco Culture National Historical Park from new federal oil and gas leasing and development for the next 20 years. We need to make that permanent. That’s why I am proud to once again join Senator Luján, our delegation, and all of the Pueblos, Tribal Nations, and New Mexicans who have called for permanent protection of the irreplaceable and sacred landscape that is Chaco Canyon.” [Read more.](#)

S. 1399 - Building American Energy Security Act of 2023. On May 2, Sen. Joe Manchin (D-WV) announced the reintroduction of his energy permitting reform bill, the [Building American Energy Security Act of 2023](#) (S. 1399), that failed to advance last year after it was blocked by his fellow Senate Democrats. As reported by *Bloomberg Government*, Manchin’s bill “would set a maximum of two years for reviews under

the National Environmental Policy Act for major energy projects and one year for 'lower-impact projects' and "would impose a 150-day limit on court challenges to energy projects as well as authorize the Mountain Valley Pipeline." [Read a complete bill summary here.](#) The bill reintroduction may be used as part of bipartisan negotiations in ongoing debt limit increase discussions with the Biden administration, who has voiced support for the Manchin legislation. [Read more.](#) In related news, Senate Republicans and Democrats have been releasing draft plans of their own in recent days "to speed up the approval process for energy and other infrastructure projects." [Read more.](#) Democrat plans also focus on permitting for renewables. [Read more.](#)

Senate Committee on Energy and Natural Resources Hearing on Permitting Reform. On May 11, the Senate Committee on Energy and Natural Resources held a: *Full Committee Hearing to Examine Opportunities for Congress to Reform the Permitting Process for Energy and Mineral Projects*, the purpose of which was "to examine opportunities for Congress to reform the permitting process for energy and mineral projects." Witnesses included various industry stakeholders. Committee Chairman Joe Manchin (D-WV) said in his opening remarks, that "we're going to continue our conversations about the opportunities for and the need to reform the permitting process for all types of energy projects." To access a full recording of the hearing, [Read more.](#)

House Natural Resources Committee Hearing on the Biden Administration's Executive Overreach and its Impact on American Energy Independence. On May 11, the House Committee on Natural Resources Subcommittee on Oversight and Investigations held a hearing titled, *The Biden Administration's Executive Overreach and its Impact on American Energy Independence*, stating that "the Biden Administration has abused executive authority to limit America's energy independence in support of meeting radical environmental justice goals." The hearing covered three key messages: The Biden Administration has abused executive authority to limit America's energy independence in support of meeting

radical environmental justice goals; Limiting America's energy independence harms America's economy, our national security, and the daily lives of Americans; and President Biden's weaponization of the National Environmental Policy Act and the Council on Environmental Quality as vehicles to force social change in furtherance of the administration's radical agenda is an unprecedented assault on America's energy independence and separation of powers, a bedrock of the American democratic system. Witnesses included various energy analysts and educators. To access a full recording of the hearing, [Read more.](#)

House Committee on Oversight and Accountability ESG Hearing. On May 10, the House Committee on Oversight and Accountability held a hearing titled, *ESG Part I: An Examination of Environmental, Social, and Governance Practices with Attorneys General*, which included testimony from the Utah and Alabama Attorneys General regarding the detrimental impacts of the Environmental Social and Governance (ESG) movement. The hearing focused on how ESG harms financial markets, consumers, and domestic energy production and supply. To access a full recording of the hearing, [Read more.](#)

Senate Energy and Natural Resources Committee Hearing. On May 2, Senate Energy Committee Ranking Member John Barrasso (R-WY) "castigated Interior Secretary Deb Haaland's record on oil and gas leasing" by "accusing her of violating the law by not holding quarterly lease sales." [Read more.](#) Sen Barrasso told Sec. Haaland, who was appearing before the committee regarding budget requests, that "Instead of holding quarterly oil and gas lease sales, the secretary has held only one lease sale in two years," and in his direct questioning of Sec. Haaland "cited the Mineral Leasing Act, the federal law that requires the quarterly sales." Sec. Haaland responded, "We follow the law in everything we do. We have had lease sales, we'll continue to have lease sales." But Barrasso said she had not been following the law, during the contentious exchange. [Access the complete committee hearing here.](#)

Senate Letter to Treasury Secretary Opposing Climate Related Actions. On May 2, a group of Republican senators delivered a letter to Treasury Secretary Janet Yellen protesting “recent climate related actions taken by the Department of Treasury’s Federal Insurance Office.” The lawmakers “called on FIO to cease pressuring state insurance regulators into implementing the Biden Administration’s ‘unrealistic environmental, social, and governance agenda.’” [Read the letter here.](#) The letter points out “that FIO’s actions, including its proposal on climate related data collection, make state insurance regulators feel ‘coerced’ to adopt high cost, one-size-fits-all climate-risk mitigation policies. The Senators urged the FIO to recognize the real-world impacts of ESG strategies, including (i) an increase in compliance costs on insurers and (ii) higher premiums for Americans. The Senators stated that many insurers are already taking into account climate-related risks, as it is within their best interests to account for risks from various sources, and that FIO should recognize that fact.” [Read more.](#)

Strategic Petroleum Reserve. On May 8, House Energy and Commerce Chair Cathy McMorris Rogers (R-WA) and Senate Energy Natural Resources Ranking Member John Barrasso (R-WY) sent a letter to the US Government Accountability Office (GAO) to request that the GAO “evaluate the Department of Energy’s (DOE) management of the U.S. Strategic Petroleum Reserve (SPR) and conduct an audit of the SPR modernization program authorized by Section 404 of the Bipartisan Budget Act of 2015” and said, “DOE’s mismanagement of the SPR has undermined America’s energy security, leaving the nation more vulnerable to energy supply disruptions, and increasing the ability for OPEC and Russia to use energy as a geopolitical weapon.” The lawmakers also asked the GAO for a response to a series of specific questions. [Read the letter here.](#)

Federal Greenhouse Gas Emissions Policy. (*Update to 2/20/23 Report*) On May 8, Rep. Sam Graves (R-MO), Chairman of the House Committee on Transportation and Infrastructure, delivered a letter to Brenda Mallory, Chair of President Biden’s Council

on Environmental Quality (CEQ), sharing his “strong concerns” on CEQ interim guidance regarding new requirements for federal agency consideration of greenhouse gas emissions under the National Environmental Policy Act (NEPA). Rep. Graves wrote, “In light of the serious issues the United States currently faces with energy independence and advancing infrastructure priorities, I believe this guidance will further jeopardize our nation’s sensitive energy, infrastructure, and national security interests. Accordingly, I ask CEQ to withdraw the guidance and refocus efforts on streamlining, modernizing, and reforming the NEPA process.” [Read the letter here.](#)

FEDERAL – Regulatory

BLM Resource Management Plan – Idaho. On May 8, the Bureau of Land Management (BLM) published, *Opportunity To Comment on Changes to the Proposed Four Rivers Field Office Resource Management Plan, Idaho* ([88 Fed. Reg. 29689](#)), that solicits comments on clarifications and significant changes to the Proposed Four Rivers Field Office Resource Management Plan (RMP) and Final Environmental Impact Statement (EIS) released in February 2020. According to the BLM, regarding the EMP /EIS, “The clarifications and changes will include separating the fluid mineral allocation management action into two allocation management actions—one for oil and gas and one for geothermal. The allocation will identify additional ‘closed’ areas for oil and gas leasing and development. In addition, one fluid mineral management action regarding prioritization of mineral leasing within high potential areas will be added. There are also other minor clarifications and editorial corrections.” [Read more.](#)

EPA Proposed Coal and Gas-Fired Power Plant Emissions Standards. On May 11, the EPA “proposed new carbon pollution standards for coal and natural gas-fired power plants that will protect public health, reduce harmful pollutants and deliver up to \$85 billion in climate and public health benefits over the next two decades.” [Read more.](#) “The proposal for coal and new natural gas power plants would avoid up to 617 million metric tons of total carbon dioxide (CO₂) through 2042, which is

equivalent to reducing the annual emissions of 137 million passenger vehicles, roughly half the cars in the United States. Through 2042, EPA estimates the net climate and health benefits of the standards on new gas and existing coal-fired power plants are up to \$85 billion.” [Read more](#). The EPA will be hosting virtual training sessions to provide the public with information about the proposal and about participating in the public comment process. Those trainings will be held on June 6 and 7, 2023, and registration information is [available here](#). In response to the proposal, Sen. Joe Manchin (D-WV), Chairman of the Senate Energy and Natural Resources Committee, said he will oppose every pending and future Biden administration nominee to serve in the EPA due to the EPA’s “expected overreach targeting power plant emissions.” [Read more](#).

EPA Primacy of Class VI Wells Under the Underground Injection Control (UIC) Program; Carbon Capture – Louisiana. On April 28, the U.S. Environmental Protection Agency (EPA) announced plans to grant Louisiana authority to issue Class VI permits under the Underground Injection Control (UIC) program for long-term carbon capture and sequestration (CCS). The EPA’s proposed approval, formally published on May 4, 2023, *State of Louisiana Underground Injection Control Program; Class VI Program Revision Application (88 Fed. Reg. 28450)*, is subject to a 60-day comment period following its publication in the Federal Register, with the public comment period open through July 3, 2023. If approved, Louisiana would be just the third state to receive authority from the EPA to issue CCS permits following North Dakota and Wyoming. [Read more](#). Administered through the Louisiana Department of Natural Resources, per the EPA, “the proposal would grant the State of Louisiana’s request for primary responsibility – or primacy – of Class VI wells under the Underground Injection Control (UIC) Program, which regulates the injection of carbon dioxide (CO2) into deep rock formation. Class VI injection wells—when used as a part of carbon capture and storage and carbon dioxide removal projects—are a critical tool for cutting carbon emissions and combatting the climate crisis.” [Read more](#).

EPA Responds to Industry Group Letter on Carbon Capture and Sequestration. The EPA has responded to a March 14, 2023, letter helmed by the West Virginia Manufacturers Association and other industry groups representing interests in Pennsylvania, West Virginia, Illinois, Texas, and New Mexico “calling for the expeditious approval of state primacy applications for Class VI injection wells.” [Read the letter here](#). In their letter to EPA Administrator Michael Regan, the groups say they join a “bipartisan chorus of stakeholders and policymakers who are calling attention to this lack of movement that is obstructing needed investments in CCS.” In their response, the “EPA explained why it takes so long and said it aims to do it faster. But the answer contained no specifics on how it plans to improve its performance; the answer left at least two of the seven signatories unsatisfied.” The response also stated that “the EPA supports primacy efforts and reviews each application carefully, to ensure that the State’s Class VI application is complete and that its Class VI permitting regulations are as stringent as the federal regulations.” For example, the EPA noted that it “expects to complete its review of Louisiana’s application and publish a proposed rule in the coming weeks. It’s also working with three other states to help them complete their applications.” [Read more](#).

BLM Proposed Plan to Guide the Balanced Management of Public Lands. (*Update to 4/17/23 Report*) On May 10, the Bureau of Land Management (BLM) released public meeting information for their proposed Conservation and Landscape Health rule. The meetings span multiple dates through May and June and provide both virtual and in-person options. [Read more](#). For background, on April 3, the BLM published their proposed rule, “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." Public comments are due by June 20, 2023, or 15 days after the last public meeting, as noted in the announcement. [Read more](#).

BLM Environmental Assessment for June 2023 Oil and Gas Lease sale – North Dakota. On May 10, the BLM released an Environmental Assessment (EA) for the proposed June 2023 oil and gas lease sale for North Dakota. The BLM Montana/Dakotas State Office released the EA for the proposed offering of 32 parcels (10,842.44 acres) in western North Dakota. A public protest period will be open through June 8, 2023. [Read more](#).

BLM Resource Management Plan Meetings – Nebraska; Wyoming. On May 10, the BLM announced it "is hosting a series of public meetings to share information and receive public input as it prepares to revise its Newcastle and Nebraska resource management plans. We welcome anyone interested in the future management of BLM-managed lands and minerals in northeastern Wyoming, as well as the state of Nebraska." The proposed plan revision "would replace the existing 23-year-old Newcastle resource management plan that guides the

management of approximately 287,900 acres of BLM-administered surface and 1.7 million acres of federal mineral estate in Crook, Weston, and Niobrara counties in Wyoming. Through this process, BLM will also revise its Nebraska plan, dated 1992, that includes 5,100 acres of BLM-managed surface and 223,900 acres of federal mineral estate across the state of Nebraska." The meetings will be held in person in Wyoming over multiple dates throughout May as well as virtually online. [Read more](#).

BLM Resource Management Plan – Idaho. On May 8, the BLM announced it "is seeking public input on potential updates to the proposed Four Rivers Field Office Resource Management Plan, which was initially released February 14, 2020. Updates to the proposal would allow BLM to separate management of oil and gas from geothermal resources and prioritize BLM resources in areas with high potential for oil and gas. The Four Rivers Field Office manages more than 1.17 million acres of Federal mineral estate in southwest Idaho." The public comment period is open through June 7, 2023. [Read more](#).

BLM Solar Energy Development – Idaho. On May 2, the BLM announced it will hold a virtual forum on May 18, 2023, "to share information and receive public input on three applications for solar energy development on public lands designated as solar variance areas in Mohave County. The three projects are White Hills Solar, Mineral Park Solar, and Leo Solar. White Hills is initially proposed as 450-megawatt on 4,300 acres of public lands, Mineral Park Solar is initially proposed as 275-megawatt on 3,958 acres of public lands, and Leo Solar is initially proposed as 300-megawatt on 3,736 acres of public lands." The BLM will also open the forum up for public comment. [Read more](#).

States Seek to Intervene in Federal Regulatory Administrative Case to Stop Asset Manager ESG Practices for Utility Companies. On May 10, a group of 17 Republican-led states filed a motion to intervene in a federal administrative case before the Federal Energy Regulatory Commission (FERC) regarding "BlackRock, the largest asset manager in the world,

from imposing sustainable investing practices on utility companies.” The states have appealed to FERC “to keep BlackRock from laying down environmental, social and governmental (ESG) investing priorities on utility companies.” (See [Blackrock, Inc.; FERC Docket No. EC16-77-002](#)). The states challenge “targets that would force utilities to reduce their fossil fuel usage from 61% in 2020 to 25% by 2030 and to 2% by 2050. Another scenario calls for U.S. power-sector emissions to reach net zero by 2035.” The states say FERC “must ensure that BlackRock Inc. abstains from imposing environmental, social and governmental (ESG) priorities on energy companies in its portfolios.” [Read more.](#)

White House Senior Advisor Supports Permitting Reform. On May 10, President Biden’s Senior Advisor John Podesta addressed the Bipartisan Policy Center regarding “the Biden-Harris Administration’s Priorities for Energy Infrastructure Permitting Reform.” In his remarks, Podesta said, “The President has been clear over the past six months that we believe permitting reform should pass on a bipartisan basis—and that we believe permitting needs to be optimized for building out a clean energy economy.” Podesta also said he supports Sen. Joe Manchin’s (D-WV) reintroduced permitting reform legislation, which could also speed up approvals related to oil and gas production and pipeline infrastructure. These discussions come amidst ongoing dialogue between the Biden administration and congressional Republicans on resolving the looming debt limit ceiling issue. [Read more.](#)

FEDERAL – Judicial

Chevron Doctrine; Federal Regulations – U.S. Supreme Court. On May 1, the U.S. Supreme Court granted review of the case, [Loper Bright Enterprises v. Raimondo](#) (Case No. 22-451), on appeal from the U.S. Court of Appeals for the District of Columbia Circuit. The case presents the question as to whether the 1984 U.S. Supreme Court opinion in [Chevron U.S.A. Inc. v. Natural Resources Defense Council, Inc.](#), 467 U.S. 837 (1984), should be overruled. The case created a precedent since known as the *Chevron* doctrine which “grants agencies deference when Congress left ambiguity in a statute.” As reported by

The Hill, the current case on review “could significantly scale back federal agencies’ authority, with major implications for the future of environmental and other regulations.” For example, over the years, the EPA has been given leeway to interpret ambiguous statutes like the Clean Air Act. [Read more.](#) The *Chevron* doctrine “involves a two-step test: First, judges decide if Congress has in the statute directly spoken to the precise question at issue. If it is ambiguous, courts defer to agencies as long as their actions are based on a ‘permissible construction.’” Many legal analysts note that the court’s majority conservative justices may take a limiting approach to the application of *Chevron*. The case at issue involved National Marine Fisheries Service regulations which Loper Bright says oversteps the regulatory authority of the service within the U.S. Department of Commerce’s National Oceanic and Atmospheric Administration. We will keep AAPL members updated as the case progresses, which the Supreme Court will hear next term. [Read more.](#)

Federal Administrative Proceedings – U.S. Supreme Court. On April 23, the U.S. Supreme Court rendered its opinion in [Axon Enterprise, Inc. v. Federal Trade Commission](#) (Case No. 21–86), a case questioning whether federal courts have jurisdiction to hear constitutional challenges to a federal agency’s structure, procedure, and existence, here the Federal Trade Commission’s, or must such challenges be raised first in an agency administrative proceeding. [Read more.](#) Here, the Supreme Court held that “Federal courts have federal-question jurisdiction to hear constitutional challenges to the structure or existence of [an agency] notwithstanding statutory review schemes set out in the congressional Acts.” In short, the congressional Acts at issue here, “did not preclude district courts’ ordinary subject-matter jurisdiction to hear challenges to those agencies’ structure, procedure, or existence.” The case is important because the holding could extend to other agency actions, for example, at present there are pending cases in Texas involving an energy company and pipeline company (See [TotalEnergies Gas & Power North America, Inc. v. Federal Energy Regulatory Commission](#); and [Rover Pipeline, LLC v. Federal Energy Regulatory Commission](#)) that have

been stayed pending the Supreme Court's ruling in *Axon Enterprise*, and which challenge the constitutionality of the Federal Energy Regulatory Commission's use of in-house administrative law judges that displace a district court's federal-question jurisdiction over claims. [Read more.](#)

EPA Emissions Regulations – California. On May 9, environmental groups filed a lawsuit against the EPA claiming the agency “failed to respond to Southern California’s plan to meet federal standards for clean air.” As reported by *Bloomberg Government*, “Southern California air regulators released a contingency measure plan to achieve ozone emissions reductions if anticipated development of new control technologies to reduce emissions—known as ‘black box’ measures—fail to materialize. But the EPA failed to approve or reject the contingency measure plan by the July 2021 deadline,” according to the groups. In the case, *East Yard Communities for Environmental Justice v. U.S. Environmental Protection Agency* (Case No. 2:23-cv-03545), the litigants are seeking a declaration that EPA is in violation of the federal Clean Air Act and seek an injunction directing EPA to take action on California’s contingency measures plan or the South Coast Air Basin, and that the court should retain jurisdiction over this matter until the EPA has complied with its non-discretionary duties under the Clean Air Act. [Read more.](#)

STATE – Legislative

Oil and Gas Pooling – Colorado. SB23-201 died upon session adjournment. Sponsored by Sen. Sonya Jaquez Lewis (D) and concerning protections for property owners in the pooling of oil and gas minerals on multiple separately owned tracts, the bill would have changed “the commission’s process for entering a forced pooling order.” Additionally, “the bill require[d] that the commission issue a pooling order before any minerals that are subject to the pooling order are extracted or any well is drilled to access the minerals. The bill also authorize[d] a nonconsenting owner to audit or cause to be audited certain records of the oil and gas operator no more frequently than every 3 years but before any costs are recovered from the

drilling unit.” [Read more.](#)

Anti-ESG Legislation – Florida. On May 2, Gov. Ron DeSantis (R) signed [HB 3](#) into law. The Republican bill “bars state and local governments from factoring in environmental, social or governance (ESG) factors in their decision of whether to invest or contract with specific businesses.” Additionally, “It also obligates state-registered banks to make loans to several industries — including fossil fuels, private prisons or the manufacture and sale of firearms — that the GOP alleges some large financial firms have been turning away from.” In short, the bill would bar financial institutions from discriminating against numerous industries that ESG activists have targeted such as traditional energy production. The Act takes effect 60 days after session adjournment on May 5, 2023. [Read more.](#)

Severance Tax Share to Parishes – Louisiana.

On May 2, two Republican constitutional amendment bills related to severance tax revenues to parishes advanced to their third reading in the House. [HB 277](#) and [HB 278](#) “would allow parish governments to keep a larger share of the revenues from severance taxes levied on natural resources.” For background, the “Louisiana Constitution says parishes get to keep 20% of the severance taxes collected within their borders but are limited to a maximum dollar amount that fluctuates with inflation every year. Currently, the cap is about \$1.1 million per parish.” HB 277 “would raise the cap to \$10 million to give parishes money to repair [transportation] infrastructure.” HB 278 “targets different provisions in the constitution and would effectively set the cap at roughly \$2.85 million.” [Read more.](#)

Electronic Notarizations – Montana. (*Update to 2/20/23 Report*) On May 4, Gov. Greg Gianforte (R) signed SB 330 into law. Sponsored by Sen. Greg Hertz (R), the bill requires county clerks to accept electronic notarizations. The Act is effective October 1, 2023. [Read more.](#)

Emergency Price Stabilization Act Exceptions – Oklahoma. On May 2, Gov. Kevin Stitt (R) signed

[HB 2561](#) into law. Sponsored by Rep. Mark McBride (R), the bill exempts the natural gas industry from the existing Emergency Price Stabilization Act that prohibits anyone from increasing prices more than 10% within 30 days after a declared emergency in Oklahoma. Rep McBride said, “Oklahoma natural gas utilities can’t control the market and shouldn’t have to foot the bill after emergencies. This is not the guy down the block increasing his gas, but an actual commodity market increase just like we’ve seen throughout the country.” [Read more.](#)

STATE – Regulatory

Greenhouse Gas Emission Standards for Crude Oil and Natural Gas Facilities – California. The California Air Resources Board (CARB) announced a public hearing to consider adoption of proposed amendments to the Greenhouse Gas Emission Standards for Crude Oil and Natural Gas Facilities regulations. CARB describes the objectives of the proposed amendments to the existing regulation as designed primarily to comply with the EPA’s requirements for California’s State Implementation Plan (SIP) submittal in 2018 to address emissions in ozone non-attainment areas. [Read a full summary of the CARB amendments and purpose.](#) The “EPA outlined each deficiency in the Oil and Gas Methane Regulation in their decision and provided further detail in an accompanying technical support document that was posted with their earlier proposed decision. Most of these changes are minor or administrative in nature.” CARB provides that some of “the more substantial provisions” are in response to an EPA decision requiring operators to identify components and equipment subject [to leak detection and repair] (LDAR) (accomplished through required development of LDAR plans), testing and other provisions to demonstrate that vapor collection and control systems are achieving sufficient control, efficiency, and reducing the amount of CARB Executive Officer discretion. These changes are necessary to achieve approval of the SIP and avoid sanctions that would otherwise occur.” The public hearing will be held on June 22, 2023, with a public comment closing date of June 12, 2023 or at the hearing as provided. The

hearing provides for in-person and virtual attendance. [Read more.](#)

Advanced Clean Fleets Rule – California. On April 28, the California Air Resources Board (CARB) approved new rules that will end sales of new heavy-duty gas and diesel trucks in the state by 2036, as part of their Advanced Clean Fleets rule. [Read the CARB Press Release here.](#) Per CARB, this “phased-in transition toward zero-emission medium-and-heavy duty vehicles” [...] helps put California on a path toward accomplishing Gov. Gavin Newsom’s goal of fully transitioning the trucks that travel across the state to zero-emissions technology by 2045.” [Access the complete regulatory docket history here](#) and the [adopted proposed rule here](#). As reported, “the mandate is the first in the world to ban new diesel trucks and require a switch to zero-emission big rigs, garbage trucks, delivery trucks and other medium and heavy-duty vehicles. The rules will dramatically change the commercial trucks that are driven on California’s roads, affecting about 1.8 million trucks, including ones operated by the U.S. Postal Service, FedEx, UPS and Amazon.” [Read more.](#)

Federal Nuclear Agency Issues License for Nuclear Storage in Opposition to State Leaders – New Mexico. On May 9, the U.S. Nuclear Regulatory Commission (NRC) “announced it issued an interim license for a facility in New Mexico to store spent nuclear fuel. In the announcement, the NRC authorized New Jersey-based Holtec International to construct the facility in Lea County, which is in the southeastern part of the state. The NRC license allows Holtec to transfer and store 8,680 metric tons, or 500 canisters, of nuclear waste over the next four decades.” State officials, New Mexico’s congressional delegation, and Gov. Michelle Lujan Grisham (D) have opposed the license “and have long been vocal opponents of siting the facility in the state.” In fact, in March, the governor signed [SB 53](#) into law to block the facility from being built in the state, but the state law may be preempted by federal authority if the matter winds up in court. [Read more.](#)

New Mexico Environment Department Pollution Website – New Mexico. On May 1, the New Mexico Environment Department (NMED) launched an update to their [Enforcement Watch website](#) to track pollution in the state. “The website lists active and resolved actions for alleged violations of laws, rules, permits and licenses. NMED labels a case resolved only after it passes through the courts, or in administrative procedures.” The website is accessible to the public for free. According to the NMED, they will “update the site as new violations are issued or past notices are resolved.” [Read more.](#)

Permitting Reform – Pennsylvania. On May 8, the “Pennsylvania Chamber of Business and Industry spearheaded a group of 68 leading business associations and local chambers of commerce in sending a letter to Governor Josh Shapiro and members of the Pennsylvania state legislature, urging them to take decisive action in reforming the state’s ‘dysfunctional and unpredictable permitting system.’” [Read the letter here.](#) The groups say, “Permitting reform will unlock a more efficient and modernized system of public infrastructure, facilitate re-shored investment into advanced manufacturing, and provide more opportunity for hardworking Pennsylvanians.” [Read more.](#)

El Paso Voters Reject Climate Action Ballot Measure – Texas. On May 6, in a special election, “voters in El Paso resoundingly rejected a ballot proposition that would have set the city on the path to 100 percent renewable energy and explored municipalization of the local electric utility. Sunrise El Paso, the local climate justice organization behind the proposition, bet on a grassroots, people-powered campaign to achieve ambitious climate action.” [Read more.](#) Opponents to [Proposition K](#) included Consumer Energy Alliance, a group representing energy consumers and supported by the traditional energy industry, as well as the El Paso Chamber of Commerce, El Paso Electric, and Marathon Petroleum. In the end, the climate measure was defeated by 81 percent of voters. [Read more.](#)

STATE – Judicial

Oil and Gas Well Approvals – California. On May 11, an environmental group filed a lawsuit against state regulators “for approving about two dozen new oil and gas wells in Los Angeles and San Luis Obispo counties close to homes, beaches and important habitat without conducting the required environmental review.” In [Center for Biological Diversity v. California Geologic Energy Management Division](#) (Case not yet docketed), the groups claim that in approving the wells, the California Geologic Energy Management Division (CalGEM), “relied on an expired 50-year-old study that doesn’t evaluate climate change or the risks to human health that have become well understood since that time.” The suit is asking for the court to “vacate and set aside CalGEM’s approval of six new steam injection wells in the Arroyo Grande oilfield in San Luis Obispo County and fifteen new oil and gas wells in the Wilmington oilfield in Los Angeles County.” [Read more.](#)

Pipelines; Landowner Consent – Iowa. Last week, in [Couser v. Shelby County](#) (Case No. 1:2022-cv-00020), an Iowa district court judge held that “a state law is constitutional that allows land surveys for carbon dioxide pipelines regardless of landowners’ consent.” The case arose from Summit Carbon Solutions – the pipeline operator – seeking an injunction against a landowner in that county. As reported by the *Iowa Capital Dispatch*, the case is “one of more than 10 lawsuits filed by Summit and Navigator CO2 Ventures against unwilling landowners in several Iowa counties for the injunctions, which created the potential for multiple, conflicting rulings.” [Read more.](#)

Oil and Gas Production – New Mexico. On May 10, environmental groups sued the state of New Mexico and various state entities in *Atencio v. New Mexico* (Case No. not yet docketed), “that are responsible for New Mexico’s oil and gas production system.” According to the lawsuit, “Plaintiffs are ‘frontline’ community members (i.e., people living near oil and gas production sites), Indigenous peoples, youth, and environmental organizations, all of whom are being injured by the State’s long-standing permitting of oil

and gas production and pollution without establishing a constitutionally compliant statutory, regulatory and enforcement framework that protects New Mexico's air, water, and other natural resources, as well as the lives and liberties of the frontline, Indigenous, and youth plaintiffs." The litigants call for various declaratory and injunction relief including a call to suspend oil and gas permitting, specified regulatory actions, financial assurance and remediation systems, treating the byproduct waste of oil and gas extraction, including produced water, as hazardous and radioactive waste, and use of the best science available science to detect and analyze the environmental and health impacts of pollution caused by oil and gas production. [Read more.](#)

Purchase and Sale Agreements; Leasing – Texas. On April 28, the Texas Supreme Court rendered its opinion in [Apache Corp. v. Apollo Exploration, LLC](#) (Case No. 21-0587), in which "at its core this case concerns whether petitioner, Apache Corporation, breached its purchase-and-sale agreements, or 'PSAs,' with respondents (whom we collectively call the 'Sellers'). In those PSAs, Sellers sold 75% of their working interests in 109 oil-and-gas leases to Apache. The parties ask us to resolve key questions of contract construction." Here, the Supreme held "that a Memorandum of Lease with a different expiration date than the lease itself creates a fact issue as to the interpretation of the lease." For background, the "court of appeals affirmed the trial court's summary judgment rulings on the interpretation of the term 'lease' and affected leases and the tort claims. But, holding that a collateral document—a Memorandum of Lease—designating the expiration date of the primary lease one day earlier than the lease itself created a fact issue of when the lease expired, the court of appeals reversed with regard, among other things, to the calculation of damages and the attorney's fee award. Apache sought review." At issue here was "the interpretation of the expiration date of the primary term of the leases. Reviewing the long history of the Court with computing time periods in legal texts of all varieties, the Court stated that the common law 'default' rule 'provides that the measuring date—the date 'from' or 'after' a period is to be

measured—is excluded in calculating time periods.'" Finally, the Court rejected the defendants' arguments regarding the construction "of the PSA's sell back and 'back in' provisions. The plain meaning of the text required Apache to offer back only the interest conveyed by each *individual* seller, not the interests of all sellers back to only one of them. If it had meant that, Justice Young notes, the lease 'would have explained how the process of distributing these interests would work.' Without such a mechanism in black and white, the Court was understandably unwilling to ink one themselves. Likewise, the Court construed the PSA to trigger the 'back in' provision when the specified revenues of production doubled the specified expenses, a 2-1 ratio. The Court remanded to the court of appeals for consideration of whether the sellers presented any evidence of damages for their breach of contract and tort claims." [Read more.](#)

Force Majeure; Leasing – Texas. On April 21, the Texas Supreme Court rendered its opinion in [Point Energy Partners Permian, LLC, et al. v. MRC Permian Company](#) (Case No. 21-0461), a case involving a lease dispute concerning the interpretation of a force majeure clause. Here, "the lessee mistakenly scheduled operations to drill a new well to commence after the deadline to suspend lease termination under a continuous-drilling program. After missing the deadline, the lessee discovered its scheduling error and only then invoked the lease's force majeure clause, referencing an allegedly qualifying event that had occurred nearly a month before the drilling deadline. Though the event did not cause the lessee to miss the deadline, the lessee argues the clause extended the drilling deadline and prevented the lease from terminating." The court disagreed, holding that, "construed in context, 'Lessee's operations are delayed by an event of force majeure' does not refer to the delay of a necessary drilling operation already scheduled to occur after the deadline for perpetuating the lease." The court also remanded the case back to the court of appeals "to consider two issues preserved but not reached: the size of the production units when the lease terminated and whether the evidence raised a fact issue supporting the lessee's tortious-interference claims regarding any leasehold interest in the retained production units." [Read more.](#)

Deeds; Title Insurance – Texas. The Texas Court of Appeals, Third District, recently ruled in a case involving title insurance and a forged deed. In *Houndstooth Capital Real Estate, LLC v. Maverick Title of Texas, LLC* (Case No. 03-21-00093-CV), Houndstooth appealed from summary judgments “on its claims against appellees—a title company, a title agent, and an escrow agent— arising from a real-estate transaction involving a forged deed.” Houndstooth contended “by failing to issue a title insurance policy or by improperly releasing \$205,000 in escrowed funds to a defrauding party, one or more of the appellees breached a fiduciary duty, were negligent, breached a contract, committed fraud, fraudulently induced a transaction, and breached an Insurance Code provision, resulting in recoverable lost profits.” Further, Houndstooth alleged that there were genuine issues of material fact existing on its claims that would require the case to proceed at trial. Here, the appellant court rejected Houndstooth’s arguments and affirmed the judgment of the lower court.

[Read more.](#)

INDUSTRY NEWS FLASH

► **Haynesville natural gas production reaches record high.** According to the latest industry data, “dry natural gas production from the Haynesville shale play in northeastern Texas and northwestern Louisiana reached new highs in March 2023, averaging 14.5 billion cubic feet per day (Bcf/d), 10% more than the 2022 annual average of 13.1 Bcf/d. Additionally, the rise in active natural gas-directed rigs in the Haynesville in 2022, as reported by Baker Hughes, followed rising natural gas prices. In the Haynesville, an average of 65 rigs were in operation in 2022, a 43% increase compared with 2021.”

[Read more.](#)

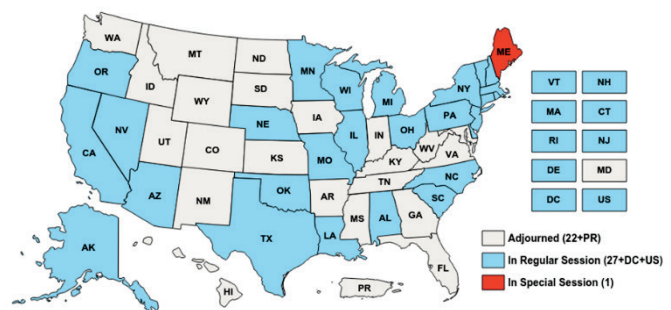
► **Ohio oil and gas industry pays second highest ever property taxes.** According to data released last week, “Ohio’s oil and gas industry paid \$57.6 million in real estate property taxes to eight eastern Ohio counties in 2021, the latest year for which data is

available. This is the second highest tax payment year in the past 12 years, according to the Ohio Oil and Gas Association. “The latest tax numbers again reinforce the positive impact our industry has in the communities where we operate,” said Rob Brundrett, president of the Ohio Oil and Gas Association.

[Read more.](#)

LEGISLATIVE SESSION OVERVIEW

States in Session



Session Notes: Alabama, Alaska, Arizona, California, Connecticut, Delaware, Illinois, Louisiana, Massachusetts, Michigan, Minnesota, Missouri, Nebraska, Nevada, New Hampshire, New Jersey, New York, North Carolina, Ohio, Oklahoma, Oregon, Pennsylvania, Rhode Island, South Carolina, Texas, Vermont, and Wisconsin are in regular session. The U.S. Congress is also in session.

The following states adjourned their 2023 legislative sessions on the dates provided: **Iowa** (May 4), **Florida** (May 5), **Colorado** (May 8), **Arizona** (May 12), and **Missouri** (May 13).

The following states are scheduled to adjourn their 2023 legislative sessions on the dates provided: **Alaska** (May 17) and **Illinois** (May 19).

Signing Deadlines (by date): **Georgia** Republican Gov. Brian Kemp had until May 8 to act on legislation or it became law without signature. **Indiana** Republican Gov. Eric Holcomb had until May 12 to act on legislation or it becomes law without signature. **Iowa** Republican Gov. Kim Reynolds has until June 3 to act on legislation

or it is pocket vetoed. **Colorado** Democratic Gov. Jared Polis has until June 7 to act on legislation or it becomes law without signature. **Arkansas** Republican Gov. Sarah Huckabee Sanders has 20 days from presentment to act on legislation, Sundays excepted, or it becomes law without signature. **Florida** Republican Gov. Ron DeSantis has 15 days from presentment to act on legislation or it becomes law without signature. **Kansas** Democratic Gov. Laura Kelly has 10 days from presentment to act on legislation or it will become law without signature. **Kentucky** Democratic Gov. Andy Beshear has 10 days from presentment to act on legislation, Sundays excepted, or it becomes law without signature. **Maryland** Democratic Gov. Wes Moore has 30 days from presentment to act on legislation or it becomes law without signature. **Mississippi** Republican Gov. Tate Reeves has 15 days from presentment to act on legislation, Sundays excepted, or it becomes law without signature. **Montana** Republican Gov. Greg Gianforte has 10 days from presentment to act on legislation, Sundays excepted, or it becomes law without signature. **North Dakota** Republican Gov. Doug Burgum has 15 days from presentment to act on legislation, weekends excepted, or it becomes law without signature. **Tennessee** Republican Gov. Bill Lee has 10 days from presentment to act on legislation, Sundays excepted, or it becomes law without signature. ■

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GOVERNMENTAL AFFAIRS REPORT

Highlights At-A-Glance

FEDERAL – Legislative

S. 1707 - Block All New (BAN) Fossil Fuel Exports Act. On May 18, Sen. Ed Markey (D-MA) introduced [S. 1707](#), known as the Block All New (BAN) Fossil Fuel Exports Act. The bill would reimpose a ban on the export of American crude oil and natural gas abroad. Of the bill, Sen. Markey said, “Our country is due for an oil change. A ban on oil and natural gas exports overseas is a win for environmental justice, for our economy, and for our planet.” In 2015, President Obama signed a bill lifting the four-decade restriction on domestic oil exports. And recently, due to the war in Ukraine, U.S. liquefied natural gas exports have surged as European nations ended their Russian imports. [Read more.](#)

S. 1634 - Colorado Outdoor Recreation & Economy Act. On May 17, Sen. Michael Bennet (D-CO) introduced [S. 1634](#), known as the Colorado Outdoor Recreation & Economy Act or CORE Act. The bill would “protect over 420,000 acres of public land in Colorado, establishing new wilderness areas and safeguarding existing outdoor recreation opportunities to boost the economy for future generations.” The bill also “prohibits new oil and gas development in areas important to ranchers and sportsmen.” The CORE Act brings together four previously introduced pieces of legislation into one bill. [Read a full bill summary here.](#) “Colorado’s public lands fuel more than our economy – they are a cornerstone of our way of life,” said Sen. Bennet. “The CORE Act is the result of years of conversation and compromise to boost our economy and protect our public lands for future generations.” [Read more.](#)

S. 1622 - End Speculative Oil and Gas Leasing Act. On May 16, Sen. Catherine Cortez Masto (D-NV) introduced [S. 1622](#), known as the End Speculative Oil

and Gas Leasing Act. The bill would “prohibit oil and gas leasing on public lands that have low or no potential for oil and gas development. The bill would update the Bureau of Land Management’s (BLM) administration of public lands, cut wasteful speculation, and allow lands with low or no potential to be reprioritized for more appropriate purposes, including wildlife habitat preservation, outdoor recreation, and grazing.” Rep. Susie Lee (D-NV) also introduced the House companion version, [H.R. 3377](#), on May 16, 2023. [Read more.](#)

S. 1456 - Spur Permitting of Underdeveloped Resources Act. On May 18, official bill text was made available for [S. 1456](#), known as the Spur Permitting of Underdeveloped Resources Act or the SPUR Act. Sponsored by Sen. John Barrasso (R-WY), the bill includes “provisions to increase domestic energy and mineral development, ensure federal lands remain open to productive uses, and streamline permitting of energy infrastructure.” According to Sen. Barrasso, “We need to lower prices for American families and unleash American energy. The way to do that is to impose strict deadlines and stop endless litigation. We must also block the administration from hijacking the permitting process to kill worthy projects. Our current system stifles development and undermines American energy security. Americans still know how to build things. Today’s broken process won’t allow it. That must change.” [Read more.](#)

S. 1449 - Revitalizing the Economy by Simplifying Timelines and Assuring Regulatory Transparency Act. Related to the above bill, on May 18, official bill text was made available for [S. 1449](#), known as the Revitalizing the Economy by Simplifying Timelines and Assuring Regulatory Transparency Act or the RESTART Act. Sponsored by Sen. Shelley Moore Capito (R-WV), the bill covers key reforms in the

Senate Environment and Public Works Committee jurisdiction, “including provisions to streamline the agency review process with enforceable timelines, implement time limits to prevent endless legal challenges, and modernize current laws while maintaining environmental protections.” According to Sen. Capito, “The current permitting and project review process slows the construction of roads and bridges, discourages domestic energy production, and minimizes investments made in our nation’s infrastructure, all of which has resulted in fewer jobs and higher prices for Americans. The two bills Senator Barrasso and I are introducing fix this broken system with substantive changes that cut red tape, modernize and streamline the permitting process, and prevent endless delays that have plagued job-creating projects across the country.” [Read more.](#)

S. 534 – Buffalo Tract Protection Act. On May 17, Sen. Martin Heinrich (D-NM) introduced [S. 534](#), known as the Buffalo Tract Protection Act. The “bill withdraws specified Bureau of Land Management lands in Placitas, New Mexico, from (1) location, entry, and patent under the mining laws; and (2) disposition under the mineral leasing, mineral materials, and geothermal leasing laws. Any conveyance of the surface estate of such federal land shall require a reservation of the mineral estate to the United States.” [Read more.](#)

House Domestic Energy Sector Supply Chain Committee Hearing. On May 23, the House Energy & Commerce Committee Subcommittee on Oversight and Investigations held a hearing, *Growing the Domestic Energy Sector Supply Chain and Manufacturing Base: Are Federal Efforts Working?*, to “discuss the impact of federal programs and policies on the domestic energy sector supply chain.” [Read more.](#) Witnesses included outside policy analysts and academia. To access a full recording of the hearing, [Read more.](#)

Senate Committee on Environment & Public Works Hearing. On May 17, the Senate Committee on Environment & Public Works held a hearing titled, *Federal Actions to Improve Project Reviews for a*

Cleaner and Stronger Economy, that focused on permitting and the environmental review process. Witnesses included Brenda Mallory, Chair of the White House Council on Environmental Quality and Christine Harada, Executive Director of the Federal Permitting Improvement Steering Council. To access a full recording of the hearing, [Read more.](#)

House Committee on Oversight and Accountability Hearing. On May 17, the House Committee on Oversight and Accountability Subcommittee on Economic Growth, Energy Policy, and Regulatory Affairs held a hearing titled, *Driving Bad Policy: Examining EPA’s Tailpipe Emissions Rules and the Realities of a Rapid Electric Vehicle Transition*, that focused on EPA’s proposed fuel emissions rulemaking and questioned the EPA’s authority over an area historically regulated by the U.S. Department of Transportation. Witnesses included various industry stakeholders. To access a full recording of the hearing, [Read more.](#)

Senate Finance Committee Hearing. On May 18, the Senate Finance Committee held a hearing titled, *Tax Incentives in the Inflation Reduction Act: Jobs and Investment in Energy Communities*, that covered “green energy” tax incentives and various energy policies under the Inflation Reduction Act enacted last year. Witnesses included various outside stakeholders and think tank analysts. To access a full recording of the hearing, [Read more.](#)

Senate Letter to the Bureau of Land Management. On May 11, a group of Republican senators sent a letter to Bureau of Land Management (BLM) Director Tracy Stone-Manning expressing concern with the BLM’s proposed Public Lands Rule that would put conservation policies on par with other public land use, such as energy development. The lawmakers wrote, “BLM’s proposed rule threatens the longstanding approach governing multiple use on our nation’s public lands, and we request that the proposed rule be withdrawn.” In short, they state that “BLM’s proposed [Public Lands Rule](#) is an effort to empower special interests that have long opposed BLM’s statutory mandate by prioritizing non-development over the

principles of multiple use and sustained yield. Taking large parcels of land out of BLM's well-established multiple use mandate would cause significant harm to many western states and negatively impact the livelihoods of ranchers, energy producers, and many others that depend on access to federal lands. As such, the proposal should be withdrawn immediately." [Read the letter here](#). In related news, on May 17, the Chairs of the Senate and Congressional Western Caucus "representing 128 members of both the House and Senate," also wrote to Stone-Manning "to express our deep concern" with the proposed rulemaking and requested "an extension of the comment period to a minimum of 120 days to allow careful consideration of the many views related to this consequential proposal." [Read the letter here](#).

FEDERAL – Regulatory

BLM Resource Advisory Council Meeting – Colorado. On May 17, the Bureau of Land Management (BLM) published a notice for a public meeting of the Colorado Rocky Mountain Resource Advisory Council (RAC). The two-day meeting and field tour on June 22 and June 23, 2023 will cover topics including solar energy development and the BLM's proposed [Public Lands Rule](#). For background, the "15-member Rocky Mountain RAC advises the Secretary of the Interior, through the BLM, on a variety of public land issues in the Rocky Mountain District of Colorado, including the Royal Gorge Field Office, San Luis Valley Field Office, and Browns Canyon National Monument." [Read more](#). On May 23, the BLM also published a notice for upcoming Colorado Southwest RAC meetings. [Read more](#).

BLM Resource Advisory Council Meeting – Idaho. On May 19, the BLM announced that the Idaho Resource Advisory Council (RAC) will hold a meeting and in-person field tour of public land projects on May 31 and June 1, 2023. A virtual participation option is also available. The RAC meeting and field tour are open to the public. [Read more](#).

BLM Eastern States Leasing – Louisiana; Michigan. On May 15, the BLM Eastern States Office released

the sale notice for competitive oil and gas lease sales in Michigan and Louisiana, scheduled for June 29, 2023. According to the notice, the "BLM will offer one parcel in Michigan totaling 40 acres and three parcels in Louisiana totaling 88.81 acres. The BLM evaluated the parcels under two environmental assessments with multiple opportunities for public engagement. Today's notice starts a 30-day protest period that closes on June 14, 2023." [Read more](#).

BLM Resource Advisory Council Meeting – New Mexico. On May 19, the BLM published a *Notice of Public Meeting, Southern New Mexico Resource Advisory Council, New Mexico* ([88 Fed. Reg. 32240](#)). Per the BLM, "The chartered 12-member Southern New Mexico RAC advises the Secretary of the Interior, through the BLM, on a variety of planning and management issues associated with public land management in its area of jurisdiction." The June 14, 2023 meeting is open to the public and offers in person and virtual options. [Read more](#).

BLM Leasing – New Mexico. On May 16, the BLM New Mexico State Office "released an environmental assessment analyzing 11 parcels (595.55 acres) for the proposed November 2023 Competitive Oil and Gas Lease Sale. These include six parcels located within Eddy and Lea counties, New Mexico (433.55 acres), and five parcels located within Pittsburg and Woods counties, Okla. (162.00 acres). The release of this environmental assessment starts a 30-day public comment period, which will end June 15, 2023." [Read more](#).

Bears Ears National Monument Advisory Committee and Utah Resource Advisory Council Call for Nominations – Utah. On May 22, the BLM published a *Call for Nominations for the Bears Ears National Monument Advisory Committee, the San Rafael Swell Recreation Area Advisory Council, and the Utah Resource Advisory Council* ([88 Fed. Reg. 32783](#)), requesting public nominations for the BLM Bears Ears National Monument Advisory Committee (MAC), the San Rafael Swell Recreation Area Advisory Council (SRS Council), and the Utah Resource Advisory Council (RAC) to fill existing vacancies and for member terms

that are scheduled to expire. All nominations must be received no later than June 21, 2023 and self-nominations may be submitted. [Read more.](#)

BLM Notice of Public Land Removal – Utah.

On May 15, the BLM published a *Notice of Proposed Withdrawal and Public Meeting, Utah* ([88 Fed. Reg. 31001](#)), that “proposes to withdraw approximately 170,429 acres of public lands and interests in lands from all forms of entry, appropriation, and disposal under the public land laws; location and entry under the U.S. mining laws; operation of the mineral and geothermal leasing laws; and disposal under the mineral materials laws, subject to valid existing rights. The withdrawal is proposed for a period of five years to maintain the status quo while the Department of the Interior, the State of Utah, and the State of Utah School and Institutional Trust Lands Administration (SITLA) consider a potential land exchange. Subject to valid existing rights, publication of this notice in the Federal Register segregates the lands for two years from the date of publication unless the segregative effect is terminated sooner. This notice also initiates a 90-day public comment period on the proposed withdrawal.” The public comment period is open through August 14, 2023. [Read more.](#)

BLM Leasing – Wyoming. On May 19, the BLM “released an environmental assessment analyzing 47 oil and gas parcels totaling approximately 46,250.57 acres for a proposed lease sale that would be held in December 2023. The release of this environmental assessment starts a 30-day public comment period, which will end June 20, 2023.” According to the BLM, they “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. All parcels that are leased as part of an oil and gas lease sale include appropriate protections and stipulations, such as seasonal timing limitations and controlled surface use to protect sage-grouse habitat and other important natural resources.” [Read more.](#)

BLM Annual Planning Documents – Wyoming. On May 18, the BLM announced that in lieu of an in-person meeting, the BLM Pinedale Field Office has made

Pinedale Anticline Project Area planning updates available online. The planning documents include information on the following: Annual wildlife updates, such as mule deer and greater sage-grouse population reports and mitigation actions; and annual air, water and operator updates concerning socioeconomics, air quality, water quality, reclamation, and operator development projection. The BLM is accepting public comments on the planning documents through June 2, 2023. [Read more.](#)

Energy Department Announces Carbon Capture Projects.

On May 17, the U.S. Department of Energy “announced \$251 million to support 12 selected projects across seven states that will bolster the nation’s carbon management capabilities. The projects, funded by President Biden’s Bipartisan Infrastructure Law, will expand carbon dioxide (CO₂) transportation and storage infrastructure to help significantly and responsibly reduce CO₂ emissions from power generation and industrial operations. In addition, DOE announced the second opening of a five-year \$2.25 billion funding opportunity to provide for the continuous development of commercial-scale carbon storage infrastructure. Expanding commercial CO₂ transport and storage will provide new economic opportunities and help achieve President Biden’s goal of a net-zero emissions economy by 2050.” [Read more.](#)

EPA Proposed Greenhouse Gas Reporting Program Amendments.

On May 22, the U.S. Environmental Protection Agency (EPA) released a supplemental notice of proposed rulemaking, *Revisions and Confidentiality Determinations for Data Elements Under the Greenhouse Gas Reporting Rule* ([88 Fed. Reg. 32852](#)) that “is proposing to amend specific provisions of the Greenhouse Gas Reporting Program (GHGRP). The proposed amendments consist of three parts: amendments related to global warming potentials (GWPs), amendments to expand the GHGRP to new source categories, and amendments for certain sectors that would improve the data collected and program implementation. In addition, EPA is proposing confidentiality determinations for data elements proposed to be added or revised as well as for existing

data elements where no confidentiality determination has previously been made. These proposed determinations establish whether data submitted to EPA will be entitled to confidential treatment.” As reported by the American Exploration and Production Council, “Of note, most of the upstream oil and gas related provisions expected from the agency, including the implementation of the Methane Emission Reduction Program (MERP) and the methane fee, are not included in this supplemental. The EPA stated it intends to take one or more separate actions in the coming months to implement those elements and the MERP, including a future rulemaking to propose revisions to certain requirements of subpart W of part 98 (Petroleum and Natural Gas Systems).” The public comment period is open through July 21, 2023. [Read more.](#)

IRS and Treasury Department Guidance on Energy Project Credits. On May 12, “the Department of Treasury and the Internal Revenue Service (IRS) released Guidance for taxpayers seeking to take advantage of domestic content bonus credits associated with energy projects under the Inflation Reduction Act (IRA).” See [IRS Notice 2023-38 here](#). In short, the IRA “created a 10% tax credit adder to encourage the use of ‘domestic content’ in renewable projects that qualify for the production tax credit (PTC) and investment tax credit (ITC). Projects built using the required amounts of U.S.-produced steel, iron and manufactured products can receive a significant 10% increase to the credits.” [Read more.](#) “Specifically, the Guidance sets out the requirements for using domestic steel, iron and manufactured products in order for a project to be eligible for the domestic content bonus credit amount. Projects that meet the domestic content requirement will be eligible to receive a 10 percent bonus under the production tax credit and up to a 10 percent bonus under the investment tax credit, provided that other requirements are also met. Under the Guidance, an ‘Applicable Project’ includes (i) a qualified facility, (ii) an energy project, or (iii) a qualified investment with respect to a qualified facility or energy storage technology under sections 45, 45Y, 48 and 48E of the Internal Revenue Code, respectively.” [Read more.](#) In related news, the law firm Pillsbury Winthrop Shaw Pittman LLP has provided additional information on program fund

eligibility related to the 2021 Infrastructure Investment and Jobs Act and last year’s Inflation Reduction Act. As noted, “With more application windows for projects across the infrastructure, energy and technology sectors opening in the first three quarters of 2023, businesses should begin preparing now. Applicants must meet certain compliance and eligibility obligations and all program requirements to obtain funds.” [Read more.](#)

Pipeline and Hazardous Materials Safety

Administration Gas Pipeline Leak Rulemaking.

On May 18, the Pipeline and Hazardous Materials Safety Administration (PHMSA) published a notice of proposed rulemaking, *Pipeline Safety: Gas Pipeline Leak Detection and Repair* ([88 Fed. Reg. 31890](#)), “to reduce methane emissions from new and existing gas transmission pipelines, distribution pipelines, regulated (Types A, B, C and offshore) gas gathering pipelines, underground natural gas storage facilities, and liquefied natural gas facilities. Among the proposed amendments for part 192-regulated gas pipelines are strengthened leakage survey and patrolling requirements; performance standards for advanced leak detection programs; leak grading and repair criteria with mandatory repair timelines; requirements for mitigation of emissions from blowdowns; pressure relief device design, configuration, and maintenance requirements; and clarified requirements for investigating failures. Finally, PHMSA proposes expanded reporting requirements for operators of all gas pipeline facilities within DOT’s jurisdiction, including underground natural gas storage facilities and liquefied natural gas facilities.” As *Reuters* reported, the PHMSA rulemaking is aimed at reducing methane leaks from the domestic pipeline system that is projected to eliminate one million tons of methane emissions by 2030. [Read more.](#) Further, the proposed rule “would put more responsibility on pipeline operators to find and fix leaks by requiring them to do more frequent inspections using updated technology. It also requires companies to fix all leaks. Right now, they only have to repair leaks determined to present an immediate public safety threat, regardless of resulting environmental harms.” [See a Steptoe & Johnson analysis here.](#) The public comment period is open through July 17, 2023. [Read more.](#)

U.S. Fish and Wildlife Service Notice of Information Collection. On May 16, the U.S. Fish and Wildlife Service (FWS) published a notice of information collection, *Agency Information Collection Activities; Submission to the Office of Management and Budget; Implementing Regulations for Petitions* ([88 Fed. Reg. 31270](#)), seeking public comment on information collection used in relation to the petition process for FWS and the National Marine Fisheries Service decisions “on listing, delisting, or changing the status of a listed species, or revising critical habitat. Any interested person may submit a written petition to the Services requesting to add a species to the Lists of Endangered and Threatened Wildlife and Plants (Lists), remove a species from the Lists, change the listed status of a species, or revise the boundary of an area designated as critical habitat.” The public comment period is open through June 15, 2023. [Read more.](#)

FEDERAL – Judicial

Clean Water Act; EPA Authority – U.S. Supreme Court. On May 25, the U.S. Supreme Court delivered its opinion 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.” That 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.](#) Here, 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 Environmental Protection Agency (EPA) and a victory for an Idaho couple, Michael and Chantell Sackett, who have been battling with the federal government for over 15 years in their efforts to build a house on an empty lot near a large lake.” The facts of the case center around the Sacketts, who “purchased property near Priest Lake, Idaho, and

began backfilling the lot with dirt to prepare for building a home. The Environmental Protection Agency informed the Sacketts that their property contained wetlands and that their backfilling violated the Clean Water Act, which prohibits discharging pollutants into “the waters of the United States.” The EPA then “ordered the Sacketts to restore the site, threatening penalties of over \$40,000 per day. The EPA 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 Waters of the United States (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.

Leasing; Drainage – Ohio. On May 1, the U.S. District Court for the Southern District of Ohio ruled against a lessor concerning a dispute arising from an oil and gas lease, specifically the Reasonable Development clause. In *Lehman v. Gulfport Energy Corp.* (Case No. 2:20-cv-3053), the plaintiffs sought a declaration that the lease required Gulfport to drill an offset well under the subject property and claimed breach of contract for Gulfport’s failure to drill an offset well and protect the land from drainage. Here, the court stated, that the case “consists of two claims, though each claim turns on the answer to the same central question: did Gulfport breach the Reasonable Development clause when it released the Property on April 18, 2018, without having drilled an offset well? Resolution of this question, which sits at the heart of

Plaintiffs' breach of contract claim, will necessarily resolve Plaintiffs' declaratory judgment claim, which requests a declaration that Gulfport was required to drill an offset well to prevent drainage of the Property." First, "Gulfport argues—and the Court agrees—that Plaintiffs misinterpret the plain language of the Lease. Under the Reasonable Development clause, the six-month window for Gulfport to begin drilling an offset well does not trigger until Gulfport acquires knowledge that an adjacent well is *producing*." Further, the court stated that "not only does Plaintiffs' position turn a blind eye to the express terms of the Lease, but it also produces a result that the parties likely could not have intended—a result that further weighs against Plaintiffs. Under Plaintiffs' interpretation, any time a well is drilled on adjacent acreage within 500 feet of Plaintiffs' property, Gulfport must predict, within six months of the adjacent well being drilled, whether that adjacent well will eventually produce oil or gas." On the second issue, the court held that "Neither the Lease nor Plaintiffs articulate any additional obligations falling on Gulfport to protect Plaintiffs' property from drainage—and the Court will follow suit." Thus, the court dismissed the case in its entirety in favor of Gulfport. [Read more.](#)

EPA Methane Emissions Plan – Pennsylvania. On May 16, an environmental group, Center for Biological Diversity, filed a federal lawsuit against the U.S. Environmental Protection Agency (EPA) claiming an "unreasonable delay under the Clean Air Act" in "deciding whether to approve or reject Pennsylvania's outdated plan to clean up smog from the methane gas industry." In [Center for Biological Diversity v. U.S. Environmental Protection Agency](#) (Case No. not yet docketed), the plaintiffs ask the court to compel the EPA to take final action on the state implementation plan. The group notes that in "recent decades vastly improved methods have been developed for capturing and limiting the emissions that lead to dangerous smog pollution. But the EPA has failed to consistently require that smog-reduction plans incorporate those technologies, so fossil fuel industries have failed to use them." The EPA has not yet responded to the lawsuit. [Read more.](#)

STATE – Legislative

Greenhouse Gas Emissions – Colorado. (*Update to 2/6/23 Report*) On May 11, Gov. Jared Polis (D) signed [SB23-016](#) into law. Sponsored by Sen. Chris Hansen (D), the bill establishes greenhouse gas (GHG) reduction goals over the coming years and also authorizes the Colorado Oil and Gas Conservation Commission (COGCC) to regulate Class VI injection wells "after publicly determining that the COGCC has the necessary resources to ensure the safe and effective regulation of these wells;" requires the Public Employees' Retirement Association and insurance companies to study climate risks to their investment portfolios; and commissions a study on electric transmission capacity. [Access a complete bill summary here.](#) The bill has multiple effective dates. [Read more.](#)

Greenhouse Gas and Decarbonization Tax Policy – Colorado. On May 11, Gov. Jared Polis (D) signed [HB23-1272](#) into law. Sponsored by Rep. Mike Weissman, the bill is described as legislation "concerning tax policy that advances decarbonization" which provides, "extending tax credits for the purchase or lease of electric vehicles; creating tax credits for industrial facilities to implement greenhouse gas emissions reduction improvements, for expenditures made in connection with geothermal energy projects, for production of geothermal electricity generation, for the deployment of heat pump technology, for retail sales of electric bicycles, and for construction of sustainable aviation fuel production facilities; creating a temporary specific ownership tax rate reduction on a portion of the sale of electric medium- and heavy-duty trucks; temporarily decreasing the severance tax credit for oil and gas production, requiring the revenue that is attributable to the decrease be deposited in the decarbonization tax credits administration cash fund, and creating the cash fund; and making an appropriation." [Read a complete bill summary here.](#) The Act has multiple effective dates. [Read more.](#)

Property Taxes – Colorado. On May 25, [SB23-303](#) was signed into law by Gov. Jared Polis (D). Sponsored by Sen. Steve Fenberg (D), the bill

concerns “a reduction in property taxes, and, in connection therewith, creating a limit on annual property tax increases for certain local governments; temporarily reducing the valuation for assessment of certain residential and nonresidential property; creating new subclasses of property; permitting the state to retain and spend revenue up to the proposition HH cap; requiring the retained revenue to be used to reimburse certain local governments for lost property tax revenue and to be deposited in the state education fund to backfill the reduction in school district property tax revenue; transferring general fund money to the state public school fund and to a cash fund to also be used for the reimbursements; eliminating the cap on the amount of excess state revenues that may be used for the reimbursements for the 2023 property tax year; referring a ballot issue; and making an appropriation.” Regarding the ballot issue, voters in the November 2023 general election will be asked “whether property taxes should be reduced and that seeks voter approval to retain and spend excess state revenues that will be used to backfill some of the reduced property tax revenue. Most of the bill only becomes effective if the voters approve the ballot issue.” The Act has multiple effective dates. [Read more.](#)

Landman Protections – Texas. (*Update to 4/3/23 Report*) On May 24, Gov. Greg Abbott (R) signed AAPL-sponsored landman bill, [SB 604](#), into law. The bill amends the existing state code to harmonize the AAPL definitions and descriptions of landman, landwork, and land professional within the state code to better reflect the full breadth, scope, and types of work performed by landmen in Texas. These amendments ensure AAPL members are provided with the same employment treatment, tax benefits, and unauthorized practice of law protections for work performed in renewables and other energy sources in addition to the existing protections for AAPL members working in oil and gas. Specifically, SB 604 provides key areas of benefits and protections for AAPL members performing landwork in Texas by expanding the definitions of “land services” to adopt the official AAPL definitions and broadens the energy sources in which our members either now work, or may in the future, to include the broadly defined “other energy

sources” that applies to renewables, geothermal, hydrogen, and even other yet unknown sources. The three areas are: (1) Unauthorized Practice of Law protection. In Texas, landmen are already protected from unauthorized practice of law penalties but our bill expands those protections to the full scope and breadth of work performed by landmen accordingly; (2) Independent Contractor Status. In Texas, landmen who meet specified criteria may be recognized as independent contractors, and with that the full protections the law affords. Our bill also expands those protections; and (3) Landman Carve Out for the Franchise/Margin Tax. In Texas, landmen are provided with a franchise/margin tax exemption. Our bill ensures the exemption applies to the full scope of work landmen perform. [Read the AAPL Press Release on our website here](#), with links to the bill and legislative summary. The Act takes immediate effect, except for the tax provision which will be effective January 1, 2024. [Read more.](#)

Orphaned Wells; Geothermal Operators – Texas. (*Update to 5/1/23 Report*) On May 19, Gov. Greg Abbott signed SB 1210 into law. Sponsored by Sen. Cesar Blanco (D), relating to the authority of the Railroad Commission of Texas to designate certain persons as the operator of an orphaned oil or gas well, the bill allows “a geothermal operator to adopt an orphaned oil and gas well to convert it into a geothermal electricity production well.” The purpose is to “reduce the number of orphaned oil and gas wells in Texas, thereby reducing the amount of money the Railroad Commission's Oilfield Regulation and Cleanup Fund must spend on plugging orphaned wells.” The Act is effective September 1, 2023. [Read more.](#)

Overriding Royalty Interest Bad Faith Washout – Texas. On May 13, HB 450 was enacted without the governor's signature after the requisite 10 days passed without action. Sponsored by Rep. Tom Craddick (R), the bill “adds the definition of a bad faith washout to the Property Code and provides a remedy for such action.” The legislature's bill analysis provides that, “The Texas courts have repeatedly looked at the concept of a ‘bad faith

washout' of royalty owners' rights. Essentially, a bad faith washout is when a lessee cancels an oil and gas lease to wipe out an overriding royalty owner's interest, then takes another lease on the same property under which they do not have to pay the overriding royalty interest owner anything. It is detrimental to the royalty owner and adverse to basic contract tenets and fairness. While the courts keep seeing these types of situations, they have repeatedly stated it is hard to identify and hard to prove without legislative guidance." Thus, the bill "amends the Property Code to authorize a person to bring a cause of action for a bad faith washout of the person's overriding royalty interest in an oil and gas lease in a district court of a county in which any part of the property subject to the lease is located. The bill also entitles the person to a remedy from that action in specific situations." The bill "requires the person to bring the action not later than the second anniversary of the date the person obtained actual knowledge that the washout occurred. Additionally, the bill authorizes an owner who prevails in action to recover actual damages, court costs, and attorney's fees, and the enforcement of a constructive trust on the oil and gas lease or mineral estate acquired to accomplish the washout of the overriding royalty interest. These remedies are cumulative of other remedies provided by common law or statute." The Act is effective September 1, 2023. [Read more.](#)

Energy Source Choices – Texas. (*Update to 5/123 Report*) On May 13, [SB 1017](#) was signed into law by Gov. Greg Abbott (R). Sponsored by Sen. Brian Birdwell (R), the bill ensures that gasoline and diesel-powered engines can never be outlawed by local governments in Texas. "SB 1017 is about individual liberty, and when people are free to choose and the market is allowed to be competitive, Texas oil and natural gas always win," said Rep. Brooks Landgraf, who sponsored the House version of the bill. According to the legislature's bill analysis, "legislation is needed to ensure local governments in Texas cannot create a patchwork of regulations across the state that limit individual liberty and hurt local businesses based on specific sources of fuel or engine types." This bill protects "energy choice by preventing

political subdivisions from adopting or enforcing ordinances, orders, regulations, or similar measures which would limit access to specific fuel sources or prohibit the sale of engines based on their fuel source." The Act is effective September 1, 2023.

[Read more.](#)

Electric Vehicle Taxes – Texas. On May 13, Gov. Greg Abbott (R) signed [SB 505](#) into law. Sponsored by Sen. Robert Nichols (R), the bill requires "new electric vehicle owners to pay \$400 to register their vehicles, in addition to other standard registration fees; current owners would pay \$200 a year when renewing registration." The law "does not apply to hybrid vehicles, who still pay gas taxes, nor does it affect owners of electric motorcycles, mopeds and autocycles, or a neighborhood electric vehicle with a maximum speed of 35 miles per hour." The rationale for the law, according to the legislature's analysis, is that "Electric vehicles use the same roads as petroleum-powered vehicles and thus drivers of these vehicles should also help provide funding for that infrastructure." The Act is effective September 1, 2023. [Read more.](#)

STATE – Regulatory

California Air Resources Board Emissions Regulations – California. The California Air Resources Board (CARB) has announced it is "soliciting public comments on a set of measures being proposed to make the state's standards align with those required by the U.S. Environmental Protection Agency. The specific regulations under review add to a list of air quality rules, all of them affecting Kern oil producers, that have come before state and regional officials in recent years. The set proposed by CARB are being treated separately from others proposed to accomplish goals such as clamping down on leaks from idle and orphan wells." [Read more detailed information about the CARB rulemaking here.](#) CARB will also hold a public hearing in person and virtually on June 22, 2023. [Read more about attending the hearing and submitting comments here.](#) As reported, this effort "is another drive by state regulators [to] revisit rules for detecting and containing methane." The public comment period

is open through June 12, 2023. [Read more.](#)

Air Pollution Regulations – Colorado. On May 18, the Colorado Air Quality Control Commission announced the adoption of “new protections for Colorado communities disproportionately impacted by air pollution.” The new rule includes “additional protections beyond legislative requirements” and “includes enhanced modeling and monitoring requirements for new or modified air pollution sources, as required by the Colorado Environmental Justice Act.” Of the rule, Dan Haley, President and CEO of the Colorado Oil and Gas Association, said, “We are appreciative of the way (the state health department) handled the process, but these additional monitoring and modeling requirements will be yet another hurdle to efficient permitting for all Colorado businesses.” The new rule will take effect July 15, 2023. [Read more.](#)

Oil and Gas Voter Ballot Measures – Colorado. Environmental group, Safe and Healthy Colorado, has recently filed a series of potential ballot measures with the Secretary of State for consideration in the 2024 general election if all signature requirements and certifications are approved. Initiative [No. 44](#) and [No. 45](#), which are in the process of a rehearing, would end “the expansion of oil and gas operations in an orderly and planned manner through a gradual phase out of new permits by 2030.” The group “submitted two versions of the ballot initiative [...] prioritizing disproportionately impacted communities that have a history of being the target of environmental racism. One version of the initiative would account for workers impacted by the energy transition.” Two other ballot initiatives, [No. 46](#) and [No. 47](#), were awaiting an initial hearing as of mid-May. Those measures would require “that the Colorado Oil and Gas Conservation Commission adopt rules by January 1, 2026, to discontinue the issuance of new oil and gas permits that involve hydraulic fracturing (commonly referred to as fracking) after December 31, 2030, and transition to a primary mission of monitoring, plugging, and remediating existing oil and gas facilities permitted before this date.” [Read more.](#)

Railroad Commission Skim Oil/Condensate Report Revisions – Texas. The Texas Railroad Commission (RRC) announced it “is accepting public comments on proposed revisions to the form and associated instructions for [Form P-18, Skim Oil/Condensate Report](#).” The proposed revisions include several changes to the form and comprehensive updates to the filing instructions.” According to the RRC, the “Form P-18 (Skim Oil/Condensate Report) is to be filed for the recording of the liquid hydrocarbons recovered from a saltwater gathering systems or other approved facilities. This form is associated with the reporting of the Form T-1 (Monthly Transportation and Storage Report), and Production Reports (Monthly Production Report).” [Read more.](#) The form “should be filed by operators of facilities from which skim liquid hydrocarbons are sold or disposed of by injection or other approved methods.” The public comment period is open through May 31, 2023. [Read more.](#)

[STATE – Judicial](#)

Marketable Title Act – Ohio. On April 18, in *Dougherty v. Abarta Oil & Gas Co., Inc.* (Case No. 2023-Ohio-1279), the Ohio Court of Appeals of Ohio, Fifth District, reversed a trial court decision regarding individuals who claimed an interest in the subject real property and for which the court held that the Marketable Title Act extinguished the interest. Here, the court disagreed and noted that “the Supreme Court of Ohio has made clear that there is no bright line test that can be applied to the facts of this case to determine whether the reference to the reservation of oil and gas rights protected that interested from extinguishment by the Ohio Marketable Title Act. Instead, the Court directs us to apply the three-step analysis.” Further, the court stated that “as part of our analysis we are mindful of whether the reservation serves as a notice of an outstanding interest in the real property at issue, and what burden the Marketable Title Act imposes on Appellee to investigate references within the deed at issue incorporating by reference the content of prior deeds.” Here, the court noted that “the issue before us in this case is whether the interest in question ‘was specifically identified in the muniments of title in a subsequent title transaction.’” The court concluded that

the analysis supports the “holding that their claimed interest was preserved by the Marketable Title Act.” [Read more.](#)

Joint Operating Agreements; Production Payments – Texas. (*Update to 2/14/22 Report*) On May 19, the Texas Supreme Court issued its opinion in [Freeport-McMoRan Oil & Gas LLC v. 1776 Energy Partners, LLC](#) (Case No. 22-0095). For background, the case arose from an oil and gas well operator withholding production payments “it was contractually obligated to make to one of the wells’ owners. It did so in reliance on a statutory provision—commonly referred to as a ‘safe harbor’ provision—that permits operators to withhold payments ‘without interest’ under certain circumstances. The owner sued the operator to recover the payments, with interest, and the operator ultimately made the payments, but without interest.” The trial court “held that, as a matter of law, the safe-harbor provision applies and relieves the operator from any obligation to pay interest on the amounts withheld.” However, the Texas Court of Appeals of Texas, Fourth District (San Antonio) reversed, “concluding that the trial court must resolve certain fact issues to determine whether the safe-harbor provision applies.” Here, the Supreme Court held that “Because we agree with the trial court that the safe-harbor provision applies as a matter of law, we reverse the court of appeals’ judgment and reinstate the trial court’s judgment.” [Read more.](#)

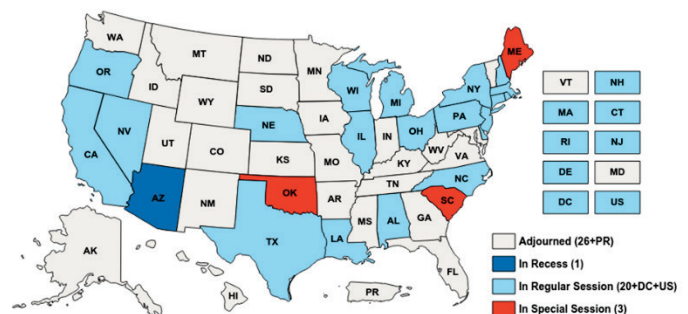
INDUSTRY NEWS FLASH

► **New API analysis shows oil and gas created 10.8 million jobs and added \$1.8 trillion to the U.S. economy.** On May 16, the American Petroleum Institute (API) released a study, commissioned by the API and prepared by PricewaterhouseCoopers, showing “the industry supported 10.8 million jobs and contributed nearly \$1.8 trillion to the U.S. economy in 2021.” The study also showed that Texas alone generated more than \$450 billion to the state’s economy. [Read more.](#)

► **Energy Department begins refilling depleted Strategic Petroleum Reserve.** On May 15, the U.S. Energy Department announced it “is soliciting bids for up to 3 million barrels of sour crude oil to refill its depleted Strategic Petroleum Reserve. Deliveries into the emergency government stockpile are planned for August, with awards to be announced in June. The move marks the agency’s second attempt to begin replenishing the Strategic Petroleum Reserve after it released more than 200 million barrels last year, in part to curb high energy prices.” [Read more.](#)

LEGISLATIVE SESSION OVERVIEW

States in Session



Session Notes: Alabama, California, Connecticut, Delaware, Illinois, Louisiana, Massachusetts, Michigan, Nebraska, Nevada, New Hampshire, New Jersey, New York, North Carolina, Ohio, Oklahoma, Oregon, Pennsylvania, Rhode Island, Texas, and Wisconsin are in regular session. The U.S. Congress is on Memorial Day holiday recess until June 5, but may return for debt ceiling limit votes.

The following states adjourned their 2023 legislative sessions on the dates provided: **Minnesota** (May 22); **Oklahoma** (May 26), and **Texas** (May 29). **Illinois** was scheduled to adjourn on May 19, however with budget negotiations still ongoing the regular session has been extended. Both chambers were back on May 24 and 25 and the House also scheduled a May 26 session, reports [The Telegraph](#). The legislature has a hard deadline of May 31 to pass a state spending plan.

Signing Deadlines (by date): **Iowa** Republican Gov. Kim Reynolds has until June 3 to act on legislation or it is pocket vetoed. **Colorado** Democratic Gov. Jared Polis has until June 7 to act on legislation or it becomes law without signature. **Missouri** Republican Gov. Mike Parson has until June 16 to act on legislation or it becomes law without signature. **Alaska** Republican Gov. Mike Dunleavy has 20 days from presentment to act on legislation, Sundays excepted, or it will become law without signature. **Arkansas** Republican Gov. Sarah Huckabee Sanders has 20 days from presentment to act on legislation, Sundays excepted, or it becomes law without signature. **Florida** Republican Gov. Ron DeSantis has 15 days from presentment to act on legislation or it becomes law without signature. **Kansas** Democratic Gov. Laura Kelly has 10 days from presentment to act on legislation or it will become law without signature. **Kentucky** Democratic Gov. Andy Beshear has 10 days from presentment to act on legislation, Sundays excepted, or it becomes law without signature. **Maryland** Democratic Gov. Wes Moore has 30 days from presentment to act on legislation or it becomes law without signature. **Minnesota** Democratic Gov. Tim Walz has three days from presentment to act on legislation, Sundays excepted, or it becomes law without signature. **Mississippi** Republican Gov. Tate Reeves has 15 days from presentment to act on legislation, Sundays excepted, or it becomes law without signature. **Montana** Republican Gov. Greg Gianforte has 10 days from presentment to act on legislation or it becomes law without signature. **North Dakota** Republican Gov. Doug Burgum has 15 days from presentment to act on legislation, weekends excepted, 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. **Tennessee** Republican Gov. Bill Lee has 10 days from presentment to act on legislation, Sundays excepted, or it becomes law without signature.

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GOVERNMENTAL AFFAIRS REPORT

Highlights At-A-Glance

FEDERAL – Legislative

H.R. 3746 – Fiscal Responsibility Act of 2023.

On June 3, President Biden signed the debt ceiling limit bill, [H.R. 3746](#), known as the Fiscal Responsibility Act of 2023, into law averting a potential financial default by the United States. The bipartisan deal lifts the debt ceiling through January 1, 2025 and also included two key energy-related provisions: (1) National Environmental Protection Act (NEPA) permitting reforms and (2) Approval for the Mountain Valley Pipeline, a natural gas pipeline running between Virginia and West Virginia which has long been stalled and was championed by Sen. Joe Manchin (D-WV), whose vote was necessary in the debt deal. [Read more about the Mountain Valley Pipeline provision here.](#) Regarding NEPA permitting reform, the bill amends existing law to require time and page limits on NEPA environmental assessments and NEPA environmental impact statements. [Access a detailed summary of the permitting reform provisions here.](#) Specifically, the “bill amends NEPA to require environmental assessments be completed in 1 year and 75 pages. An environmental impact statement will need to be completed in 2 years and 150 pages, or 300 pages for projects of extraordinary complexity. The time periods allowed would only start after a project sponsor completes an adequate right-of-way application. No federal environmental analyses will be needed for permits if those permits are not considered major federal actions.” [Read more.](#) Additionally, the bill requires the North American Electric Reliability Corporation to conduct and deliver a federal transmission capability study to the Federal Energy Regulatory Commission on recommendations regarding grid and transmission reliability. [Read more.](#)

H.R. 3397 – BLM Conservation and Landscape Health Proposed Rule Withdrawal. On May 17, Rep.

John Curtis (R-UT) introduced [H.R. 3397](#). The bill would require the withdrawal of the Bureau of Land Management (BLM) proposed rule, *Conservation and Landscape Health* ([88 Fed. Reg. 19583](#)), that we previously reported on and which 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, if finalized, “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.](#) As a reminder, the BLM is still accepting public comments on the proposed rule through June 20, 2023. You may [access that information here.](#)

Senate Letter to the EPA Regarding Methane Emissions Reduction Program.

On June 6, Sen. Joe Manchin (D-WV) sent a letter to the U.S. Environmental Protection Agency “to convey my strong concerns about the Environmental Protection Agency’s (EPA) selective implementation of the Inflation Reduction Act, which has led to delays delivering Congressionally mandated funding for methane emissions reductions and a lack of timely guidance for the energy industry to implement the Methane Emissions Reduction Program (MERP).” Sen. Manchin notes that the “EPA has also failed to provide any guidance to operators on how the agency will use emissions data to calculate fees.

It is impossible to upend complex operations in response to last-minute EPA guidance or regulations without risking supply disruptions or putting communities and workers at risk.” Sen. Manchin also requests that “To honor Congressional intent and preserve our nation’s energy security, fees on methane emissions should be postponed until at least a year after funding and guidance have been issued.” The letter also provides a list of issues and questions that Sen. Manchin requests a response to by June 20, 2023. [Read the letter here.](#)

FEDERAL – Regulatory

BLM Chaco Culture National Historical Park Public Land Order – New Mexico. 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 Southwest Resource Advisory Council Meeting – Colorado. On June 1, the BLM announced that the Southwest Resource Advisory Council (RAC) will hold a meeting on June 15, 2023 at the Uncompahgre Field Office in Montrose. The meeting is open to the public and participants may also attend

virtually online. The Southwest RAC “advises the BLM Colorado Southwest District, which consists of the Gunnison, Tres Rios, and Uncompahgre field offices.” [Read more.](#)

BLM Oil and Gas Lease Sale – Nevada. On June 2, the BLM Nevada State Office issued an environmental assessment and sale notice for a competitive oil and gas lease sale in the third quarter. “The BLM-Nevada State Office intends to move forward with the Proposed Action, as analyzed in the environmental assessment (DOI-BLM-NV-L000-2023-0002-EA), by offering 4 parcels totaling 4,720.00 acres in the Ely District. The parcels will be offered at the online oil and gas lease sale scheduled for July 25, 2023.” [Read more.](#)

BLM Resource Advisory Committee Meeting – New Mexico. On June 5, the BLM announced it will host a Southern New Mexico Resource Advisory Council (RAC) meeting on June 14, 2023. After the meeting, there will be a field tour at the Fort Stanton-Snowy River Cave National Conservation Area. The public is invited to attend the RAC meeting and the field tour. Both in-person and virtual participation options will be available for the meeting. [Read more.](#)

BLM Oil and Gas Lease Sale – Utah. On June 2, the BLM Utah State Office released an environmental assessment “analyzing six parcels comprising 8,972.24 acres for the proposed December 2023 competitive oil and gas lease sale on lands managed within the Vernal Field Office in Uintah County. The release of this environmental assessment starts a 30-day public comment period.” Public comments may be submitted through July 3, 2023. [Read more.](#)

Interior Department Orphaned Wells Remediation. On June 8, the Interior Department “announced a \$63.8 million investment through President Biden’s Investing in America agenda to put people to work plugging and remediating orphaned oil and gas well sites located in national parks, national forests, national wildlife refuges, and on other public lands and waters.” According to the Interior Department, the “allocation is part of a total of \$250 million provided through the Bipartisan Infrastructure Law to clean up orphaned well sites on

federal public lands” and will apply to 300 orphaned oil and gas well sites nationwide. [Read more.](#)

Department of Energy Hydrogen Strategy and Roadmap. On June 5, the U.S. Department of Energy “unveiled a roadmap it says will, using hydrogen energy, enable the U.S. to reduce its emissions by 10 percent in 2050, compared to 2005 levels.” According to the 99-page planning document, [U.S. National Clean Hydrogen Strategy and Roadmap](#), “Given its potential to help address the climate crisis, enhance energy security and resilience, and create economic value, interest in producing and using clean hydrogen is intensifying both in the United States and abroad. Zero- and low-carbon hydrogen is a key part of a comprehensive portfolio of solutions to achieve a sustainable and equitable clean energy future. The United States is stepping up to accelerate progress through historic investments in clean hydrogen production, midstream infrastructure, and strategically targeted research, development, demonstration, and deployment (RDD&D) in this critical technology.” The strategy “calls for specifically targeting hydrogen use in key industries, including chemicals, steel, refining and heavy transportation, where the energy source can have the greatest emissions reduction impact. It also outlines a need to make hydrogen energy cheaper and to focus on regional hubs.” [Read more.](#)

Interior Department Public Lands Restoration. On May 31, the Interior Department “announced plans to infuse \$161 million into ecosystem restoration and resilience on the nation’s public lands as part of President Biden’s Investing in America agenda. This work, led by the Bureau of Land Management, will focus on 21 ‘Restoration Landscapes’ across 11 western states and will range from restoring wildlife habitat in the sagebrush steppe of the high desert to re-creating wetland meadows to repairing watersheds on former industrial timberlands.” [Read more.](#) The restoration “funding, secured through the Inflation Reduction Act, will come in addition to \$40 million already provided for public lands restoration through the Bipartisan Infrastructure Law.” [Read more.](#)

FEDERAL – Judicial

Offshore Oil and Gas – U.S. Supreme Court. On June 5, the U.S. Supreme Court [denied review](#) in a case involving a ban on hydraulic fracturing off the California coast. In the 2022 case, [Environmental Defense Center v. Bureau of Ocean Energy Management](#) (Case No. 19-55526), the U.S. Court of Appeals for the Ninth Circuit imposed “a court-ordered prohibition on offshore fracking in federal waters off the California coast. That holding provided that “the federal government violated the National Environmental Policy Act, Endangered Species Act and Coastal Zone Management Act when it allowed fracking and acidizing extraction practices at all offshore oil and gas wells in leased federal waters in the Pacific Ocean.” [Read more.](#) “Access to the vast energy resources offshore is essential for meeting the growing demand for affordable, reliable energy while achieving our climate goals,” said Holly Hopkins, vice president of upstream policy at the American Petroleum Institute (API), the intervenor-defendant in the case. “API will continue to work with policymakers to advance opportunities that allow for the safe and responsible development of the Outer Continental Shelf.” [Read more.](#)

STATE – Legislative

Carbon Capture Study – Louisiana. On June 6, Senate Resolution 179 was adopted and “establishes the Task Force on Local Impacts of Carbon Capture and Sequestration to study and propose recommendations regarding the impact of carbon capture and sequestration projects across the state.” The Task Force will hold its first meeting no later than August 15, 2023 and submit a final report on or before February 15, 2024 to the Senate Committee on Natural Resources after which time the Task Force will be disbanded. [Read more.](#)

Carbon Capture – Louisiana. On June 1, HR 229 was adopted. The resolution “Urges and requests the U.S. Environmental Protection Agency to take such actions necessary to timely review and grant the state of Louisiana’s application for primacy in the

administration of Class VI injection well permitting.” [Read more.](#)

Severance Taxes – Louisiana. (*Update to 5/1/23 Report*) [HB 172](#) died in the Senate after passing the House. Sponsored by Rep. Phillip DeVillier (R), the bill would have reduced “the severance tax rate on oil over an eight-year period from 12.5% to 8.5% of its value at the time and place of severance and fixes the severance tax rate for oil produced from certain incapable and stripper wells at the current rate.” [Read a full bill summary here.](#) As reported, “After it passed the House, the Senate Revenue and Fiscal Affairs Committee was scheduled to vote on the bill on May 22, but Rep. DeVillier voluntarily postponed the vote” after a Louisiana Legislative Fiscal Office report showed the measure “would have cost the state \$97 million over the next five years.” [Read more.](#)

Class VI Injection Wells – Oklahoma. On June 7, SB 200 was signed into law by Gov. Kevin Stitt (R). Sponsored by Sen. Dave Rader (R), the bill “requires the Corporation Commission and Department of Environmental Quality to evaluate their own respective statutory regulations, and determine where modifications are needed in order to provide for the development of underground injection control Class VI wells. All recommendations must be submitted in a report by August 1, 2023.” The Act takes immediate effect. [Read more.](#)

Orphaned Wells; Methane Emissions – Oklahoma. On June 7, SB 852 was signed into law by Gov. Kevin Stitt (R). Sponsored by Sen. Dave Rader (R), the bill “authorizes the Corporation Commission to test and record methane emissions from orphaned wells and receive carbon credits for such measurements. If the Commission sells the credits, the proceeds must be deposited into the Oil and Gas Division Revolving Fund, and may be used to offset the cost of testing for methane.” The Act is effective 90 days after session adjournment on May 26, 2023. [Read more.](#)

Severance Tax Study – Pennsylvania. On May 31, Rep. Mandy Steele (D) introduced HR 131. This resolution would direct the Legislative Budget and

Finance Committee to conduct an audit to determine the amount of revenue lost since the enactment of the state impact fee and compare the severance tax imposed in other states to determine “how much money our state is losing by not imposing a severance tax.” [Read more.](#)

Severance Tax Exemption – Texas. On June 2, Gov. Greg Abbott (R) signed HB 591 into law. Sponsored by Rep. Giovanni Capriglione (R), regarding a tax exemption for on-site use of natural gas that would normally be vented or flared, the bill provides that gas produced from a qualifying well that is consumed on the well site and would otherwise have been lawfully vented or flared would not be subject to the severance tax imposed under existing law. The bill provides that “In order to qualify for the exemption a well site must abide by certain application requirements and be certified by the Texas Railroad Commission and the Comptroller of Public Accounts. To the extent that on-site gas exempt under the proposed section would in fact be gas that would have otherwise been vented or flared, there would be no revenue implication if the gas were from an oil well qualified for the flaring exemption under Section 201.053(2). However, the bill also mandates “that the gas would have been lawfully vented or flared is that it be from an oil or gas well not connected to a pipeline or not to a pipeline with sufficient takeaway capacity, and that the well have received authorization from the Railroad Commission for the flaring of gas for at least 30 days in the year preceding the year when application for certification as a qualifying well is filed. Authorization to flare does not demonstrate that gas was actually flared or that gas is normally flared from a well. Currently, on-site uses of gas other than those exempted under Section 201.053 are taxable. It cannot be determined how much of currently taxable uses may become exempt as well operators secure authorization to flare for gas that in fact would not have otherwise been flared. The bill is likely to result in a decrease in gas production tax revenue but in an amount that cannot be estimated.” The Act takes effect September 1, 2023. [Read more.](#)

STATE – Regulatory

Oil and Gas Leasing Moratorium – New Mexico.

On June 1, “New Mexico Commissioner of Public Lands Stephanie Garcia Richard announced a new executive order that places a moratorium on oil and gas leasing on state trust lands within one mile of schools or other educational facilities. The moratorium does not apply to tribal, federal, or private lands. The order goes into effect immediately and remains in effect until further notice.” [Read the announcement here](#). “In addition to prohibiting new oil and gas leasing near schools, the executive order [[Executive Order No. 2023-001](#)] also mandates State Land Office staff to review all existing oil and gas mineral leases, business leases and rights-of-way located within one mile of a school or other educational institution, and assess their compliance with applicable requirements, including the obligation to plug inactive wells, remediate spills and adhere to relevant air quality standards.” [Read more](#).

State Lease Form Updates – Ohio. To follow up our May 25 AAPLConnect member posting, the Ohio Department of Natural Resources, Oil and Gas Land Management Commission (OGLMC), has released their updated state leasing Land Nomination Form, Notice of Nomination Form, State Lease Form, Commission Procedures documents, and implementing rulemaking, that were approved at the OGLMC meeting on May 15, 2023, and effective as of May 28, 2023. OGLMC's Online Parcel Nomination Portal (OPNOP) [is available here](#). Individuals can nominate parcels and pay the required \$150 nomination fee via the portal. For reference, the related state lease form updated rulemaking information [can be found here](#). In short, “Ohio Administrative Code 155-1-01 is a new rule that establishes a standard lease for state agencies when negotiating oil and gas mineral rights leasing on state-owned land.” As previously reported in the AAPL Governmental Affairs Reports, these changes were made pursuant to the recent passage of HB 507 ([available here](#)) which eased state leasing in Ohio and streamlined the process for nominations and leasing approvals. You can read a [full summary of HB 507 here](#).

State Air Board Votes to Exit Regional Greenhouse Gas Initiative – Virginia.

On June 7, Virginia's State Air Pollution Control Board voted by 4-3 “to exit a regional carbon emissions reduction program, a move backed by Gov. Glenn Youngkin (R) but rebuked by the state General Assembly.” The vote will move Virginia towards withdrawing from the Regional Greenhouse Gas Initiative (RGGI), “a program that issues tradable carbon-dioxide allowances and limits power plant emissions in participating states. Other participating states include Connecticut, Delaware, Maine, Maryland, Massachusetts, New Hampshire, New Jersey, New York, Pennsylvania, Rhode Island and Vermont.” The Democrat-controlled General Assembly voted to join the RGGI in 2020 under Gov. Youngkin's predecessor, Gov. Ralph Northam (D). Gov. Youngkin hailed the Board's vote saying, “The Office of the Attorney General has confirmed the State Air Pollution Control Board has the legal authority to take action on the regulatory proposal using the full regulatory process – and today, the Board voted to do just that – furthering Virginians access to a reliable, affordable, clean and growing supply of power.” [Read more](#).

STATE – Judicial

Dormant Mineral Act – Ohio. On May 24, in [Tatum v. Dawson](#) (Case No. 2023-Ohio-1746), the Ohio Seventh District Court of Appeals addressed the question of whether “a delay in recording a certificate of transfer prejudice[s] the surface owner in its search for mineral holders under the Ohio Dormant Mineral Act”. At trial, the “court concluded that Appellants, the current surface owners of four parcels located in Harrison County, Ohio, failed to exercise reasonable diligence in their efforts to locate the successors or assigns of the original owner of the one-half mineral interest prior to serving notice of abandonment by publication. Because Appellants limited their search to Harrison County, despite the existence of an oil and gas lease in the Harrison County public records that included an address for the original mineral interest owner in Tuscarawas County, the judgment entry of the trial court is affirmed.” As noted by law firm Frost Brown Todd, “while *Tatum* is not seminal, it is

Lien on Land Enforcement; Court Jurisdiction – Texas. On May 19, the Texas Supreme Court addressed a dispute involving the enforcement of a lien on land and the jurisdiction of Texas courts over such a dispute. In [*Ditech Servicing, LLC v. Jerry Perez d/b/a Lighthouse Investments*](#) (Case No. 21-1109), the court stated that, “Generally, *statutory* county courts at law have concurrent jurisdiction with *constitutional* county courts, which have no jurisdiction over suits for the enforcement of a lien on land or the recovery of land. But the Legislature has granted Hidalgo County courts at law ‘concurrent jurisdiction with the district court in . . . civil cases in which the matter in controversy does not exceed \$750,000’. We are asked in this case whether a Hidalgo County court at law has jurisdiction over a civil case within that limit involving the foreclosure of a lien on land.” The Supreme Court held that it does and reversed the Court of Appeals decision. In short, the opinion holds “that a specific statutory grant of jurisdiction to Hidalgo County courts trumps the general statute barring a constitutional county court from suits to enforce a lien on land or for the recovery of land.” [Read more.](#)

► **ExxonMobil and Chevron shareholders reject calls for stronger climate change measures at their annual meetings.** In late May, ExxonMobil and Chevron shareholders rejected “calls for stronger measures to mitigate climate change, dismissing more than a dozen climate-related proposals at their annual meetings.” As reported by *Reuters*, “Exxon holders rejected all 12 shareholder proposals, the majority of which dealt with climate-related issues. None received a majority of votes cast that would signal a win, according to early results. Chevron investors also rejected proposals regarding emissions reduction targets, the creation of a board committee on

► **OPEC+ agrees to maintain production cut targets for 2023, but sets a new, lower target for 2024.** Last week, members of OPEC+ decided “to maintain its production cut targets for 2023, but agreed to set a new, lower target for 2024. Meantime, Saudi Arabia said on June 4 that it would unilaterally cut oil production by 1 million b/d in July for a month with the possibility of an extension. Saudi crude production in July would drop to just below 9 million b/d, its lowest level since June 2021.” [Read more.](#)

Texas Republican Gov. Greg Abbott called the legislature into special session on May 29 to address

property taxes and border security. The House adjourned on May 31 after passing its own version of the property tax relief plan and border security legislation, [CBS News](#) reports. The Senate remains in session. According to [The Texas Tribune](#), Governor Abbott will be calling multiple special sessions to address unfinished legislative business left over from the regular session.

Signing Deadlines (by date): **Iowa** Republican Gov. Kim Reynolds had until June 3 to act on legislation or it was pocket vetoed. **Colorado** Democratic Gov. Jared Polis had until June 7 to act on legislation or it became law without signature. **Oklahoma** Republican Gov. Kevin Stitt had until June 10 to act on legislation or it is pocket vetoed. **Missouri** Republican Gov. Mike Parson has until June 16 to act on legislation or it becomes law without signature. **Nevada** Republican Gov. Joe Lombardo has until June 16 to act on legislation or it becomes law without signature. **Texas** Republican Gov. Greg Abbott has until June 18 to act on legislation or it becomes law without signature. **Alaska** Republican Gov. Mike Dunleavy has 20 days from presentment to act on legislation, Sundays excepted, or it will become law without signature. **Louisiana** Democratic Gov. John Bel Edwards has 20 days from presentment to act on legislation or it becomes law without signature. ■

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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

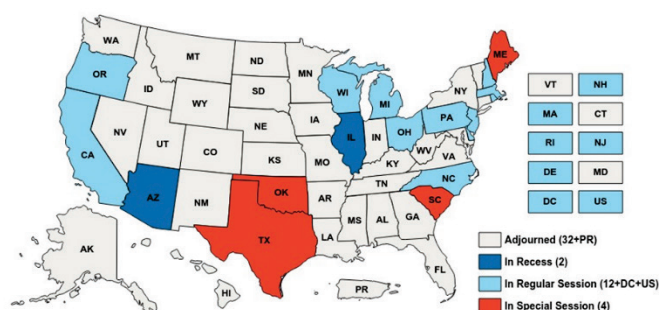
Climate Change Lawsuit – Montana. On June 12, a climate change case brought by 16 young residents of Montana alleging the state government has violated its constitutional provision to a “healthful environment” advanced to trial. In [Held v. Montana](#) (Case No. CDV-2020-307), the plaintiff’s say, “They 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



Illinois is in recess until October 24 when they will **reconvene** for a veto session.

The following states adjourned their 2023 legislative sessions on the dates provided: **Alabama** (June 6), **Connecticut** (June 7), **Louisiana** (June 8) and **New York** (June 10).

Oklahoma legislators reconvened a special session on June 12 to override any potential vetoes from Republican Gov. Kevin Stitt, reports [Fox25News](#). The special session has a deadline of June 30.

Texas Republican Gov. Greg Abbott called the legislature into special session on May 29 to address property taxes and border security. The House adjourned on May 31 after passing its own version of the property tax relief plan and border security legislation, [CBS News](#) reports. The Senate remains in session. According to [The Texas Tribune](#), Governor Abbott will be calling multiple special sessions to address unfinished legislative business left over from the regular 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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