

# 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 (CO<sub>2</sub>) 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 (CO<sub>2</sub>) 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.](#)

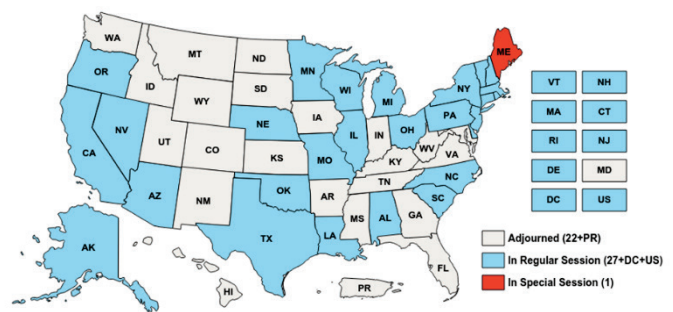
► **Ohio oil and gas industry pays second highest ever property taxes.** According to data released last week, “Ohio’s oil and gas industry paid \$57.6 million in real estate property taxes to eight eastern Ohio counties in 2021, the latest year for which data is

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. ■

---

This report is provided exclusively for AAPL members. If you have received this report as a non-member, please contact AAPL member services to learn more about joining AAPL. For more information, email [membership@landman.org](mailto:membership@landman.org) or call us at: 817-847-7700.

---

CONTENT DISCLAIMER: Information and/or website sources provided in this report may be among the many resources available to you. This report does not endorse nor advocate for any particular attorney or law firm, nor other private entity, unless expressly stated. Any legal, financial, and/or tax information contained herein is provided solely for informational purposes and does not represent legal, financial, or tax advice on behalf of AAPL and/or its affiliates. Links to outside sources are provided for reference only and any cited outside source is derived solely from material published by its author for public use. Any copyrighted material remains the property of its respective owner and no use or distribution authorization is granted herein.

© 2023 AAPL