

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.](#)

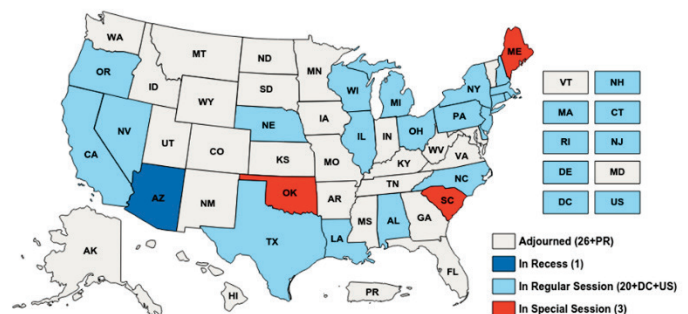
INDUSTRY NEWS FLASH

► **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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