

GOVERNMENTAL AFFAIRS REPORT

Highlights At-A-Glance

FEDERAL – Legislative

S. 1776 – Protecting Unique and Beautiful Landscapes by Investing in California Lands Act.

On July 12, official bill text was made available for [S. 1776](#), known as the Protecting Unique and Beautiful Landscapes by Investing in California Lands Act or the PUBLIC Lands Act. Sponsored by Sen. Alex Padilla (D-CA), this land conservation bill “would restore and expand protections for over 1 million acres of California’s public lands.” Specifically, the bill “would increase protections for public lands throughout northwest California, the Central Coast, and Los Angeles. It would designate nearly 600,000 acres of new wilderness, more than 583 miles of new wild and scenic rivers, and over 100,000 acres of an expanded national monument.” The bill does not mention any impacts to existing or future oil and gas production. [Read more.](#)

FEDERAL – Regulatory

Department of Energy Employment Report.

On June 28, the U.S. Department of Energy (DOE) released their [2023 U.S. Energy and Employment Report](#), “a comprehensive study designed to track and understand employment trends across the energy sector.” The report shows that “the energy workforce added almost 300,000 jobs (+3.8% growth) in 2022. Clean energy jobs increased in every state reflecting increased investments due to President Biden’s Investing in America agenda. Clean energy jobs grew 3.9% adding 114,000 jobs nationally, increasing to over 40% of total energy jobs. Clean energy technologies, such as solar and wind, accounted for more than 84% of net new electric power generation jobs, adding over 21,000 jobs (+3.6% growth), and jobs related to zero emissions vehicles saw nearly 21% growth, adding over 38,000 jobs.” Additionally, the “geothermal

workforce added 1,000 jobs, growing by 5.0% in 2022.” [Read a full executive summary here.](#) And the top-three states for clean energy jobs growth were California, West Virginia, and Texas. And the report also shows that fossil fuel sector jobs saw even greater growth than “clean energy jobs.” For example, “natural gas fuel jobs grew 24 percent, and petroleum jobs grew 13 from 2021 to 2022.” [Read more.](#)

BLM Solar Development – Nevada. To follow up our prior reporting providing notice of the Nevada BLM solar auction, on June 28, the BLM reported the results of that utility-scale solar energy development auction, which resulted in \$105.15 million in high bids. According to the BLM, “The auction of four parcels across 23,675 acres in the Amargosa Desert could support nearly 3 gigawatts of renewable energy to the electrical grid. This is the highest-yielding onshore renewable energy auction in the agency’s history.” [Read more.](#)

Department of Interior Rejects Environmentalist Petition to Phase Down Oil and Gas Production.

On June 27, in a blow to environmental activists, the Biden administration rejected a bid to phase down oil and gas production on federal lands and waters. In a letter responding to a [2022 environmentalist petition](#), Laura Daniel-Davis, Interior Department Principal Deputy Assistant Secretary, Land and Mineral Management, wrote, “This responds to the petition your organization submitted on January 19, 2022, on behalf of the Center for Biological Diversity and numerous other environmental organizations. Your petition requested that the Secretary promulgate regulations establishing a maximum production rate and a phasedown of existing onshore and offshore oil and gas production from public lands and waters [...] I have considered your petition and have decided not to initiate the rulemaking you requested for the reasons discussed in this letter because the Department has a robust rulemaking

agenda already underway to address the climate crisis and implement reforms to our conventional energy programs, and has insufficient resources to undertake the proposed rulemaking at this time.” [Read the letter here.](#)

Bureau of Ocean Energy Management Proposed Rulemaking. On June 29, The Interior Department’s Bureau of Ocean Energy Management (BOEM) published a proposed rule, *Risk Management and Financial Assurance for OCS Lease and Grant Obligations* ([88 Fed. Reg. 42136](#)), that “proposes to modify its criteria for determining whether oil, gas, and sulfur lessees, right-of-use and easement (RUE) grant holders, and pipeline right-of-way (ROW) grant holders may be required to provide bonds or other financial assurance above the current regulatorily prescribed base bonds to ensure compliance with their Outer Continental Shelf Lands Act (OCSLA) obligations. This proposed rule would also remove existing restrictive provisions for third-party guarantees and decommissioning accounts and would add new criteria under which a bond or third-party guarantee that was provided as supplemental financial assurance may be canceled. Additionally, this proposed rule would clarify bonding requirements for RUEs serving Federal leases. Based on the proposed framework, BOEM estimates that the aggregate amount of supplemental financial assurance required of lessees and grant holders under this proposed rulemaking available to the U.S. government for decommissioning activities would increase by an estimated \$9.2 billion over current levels. This value represents less than one-quarter of all offshore decommissioning liabilities, which is currently estimated at \$42.8 billion. This proposed rulemaking would not apply to renewable energy activities.” The public comment period is open through August 28, 2023. The proposed rule also includes an information collection component for which public comments are due by July 31, 2023. [Read more.](#)

EPA Proposal for Greenhouse Gas Emissions Reporting Requirements for the Oil and Gas Sector. On July 6, the U.S. Environmental Protection Agency (EPA) announced “a proposal to amend reporting requirements for petroleum and natural gas systems

under EPA’s Greenhouse Gas Reporting Program.” [Read more.](#) According to the EPA, “The proposed revisions would improve the accuracy of reported emissions of greenhouse gases (GHG), including methane, one of the primary drivers of the climate crisis, from applicable petroleum and natural gas facilities, consistent with the Methane Emissions Reduction Program under the Inflation Reduction Act.” According to *Bloomberg Government*, “the proposed revisions respond to gaps in total methane emissions reported by adding new covered sources, including ‘other large release events.’ This would allow for abnormal methane emission events to be captured that are otherwise not completely accounted for under existing methods. The amendments would also create new or revise existing calculation methodologies, and collect data at a more granular level. Also included in the proposal are determinations to establish whether data submitted to the EPA under the proposed revisions would receive confidential treatment.” [Access a detailed EPA Fact Sheet here.](#) Once the proposal is formally published in the Federal Register the EPA will provide a 60-day comment period. We will keep AAPL members updated once the proposed revisions are published. The EPA is proposing “that most revisions would become effective on January 1, 2025, and that reporters would implement most of the changes beginning with reports prepared for the 2025 reporting year and submitted by March 31, 2026.” [Read more.](#)

Office of Natural Resources Revenue Information Collection. On June 29, in the Interior Department’s Office of Natural Resources Revenue (ONRR) published a notice of information collection, *Agency Information Collection Activities; Suspensions Pending Appeal and Bonding* ([88 Fed. Reg. 42102](#)). Through this information collection, “ONRR seeks renewed authority to collect information related to the paperwork requirements necessary to post a bond or other surety, or to demonstrate financial solvency to suspend compliance with an order or to stay the assessment or accrual of civil penalties.” The public comment period is open through July 31, 2023. [Read more.](#)

U.S. Fish and Wildlife Service Final Rule. On July 3, the U.S. Fish and Wildlife Service (FWS) published a

final rule, *Endangered and Threatened Wildlife and Plants; Designation of Experimental Populations* ([88 Fed. Reg. 42642](#)), that is intended to provide greater flexibility for the FWS “to protect endangered species because of climate change.” The rule “allows for ‘experimental populations’ of endangered species to be introduced into habitats outside of where they have historically lived, removing a requirement that such populations only be introduced to the plant or animal’s ‘historical range.’” Of the rule, Interior Department Secretary Deb Haaland said, “The impacts of climate change on species habitat are forcing some wildlife to new areas to survive, while squeezing other species closer to extinction. The Interior Department is committed to using all of the tools available to help halt declines and stabilize populations of the species most at-risk.” The final rule takes effect on August 2, 2023. [Read more.](#)

FEDERAL – Judicial

BLM Well Permitting Approvals – California. On June 22, environmentalists sued the Biden administration, “seeking to halt the unlawful drilling of multiple oil and gas wells in California’s San Joaquin Valley.” According to the lawsuit, [Center for Biological Diversity v. U.S. Bureau of Land Management](#) (Case No. 1:23-at-00526) filed in California federal court, “The agency rushed the approval of the well permits in the Mount Poso oil field near Bakersfield without allowing input from the public and nearby communities, as required by federal law.” The litigants claim the approval of drilling permits for new oil wells on public land in the San Joaquin Valley, California, were made “without accounting for the air quality, groundwater, public health, and climate impacts of BLM’s continued expansion of oil and gas drilling, and without providing for meaningful input from the communities most impacted by its permitting decisions.” Among other relief, the suit asks the court to vacate and halt the approvals. [Read more.](#)

STATE – Legislative

Severance Tax Exemption – Louisiana. On June 27, HB 634 was signed into law by Gov. John Bel Edwards (D). Sponsored by Rep. Jack McFarland (R),

the bill “provides for eligibility for a severance tax exemption for production of natural gas, gas condensate, and oil from any well drilled to a depth of more than 15,000 feet.” The Act takes immediate effect. [Read more.](#)

Corporation Franchise Tax – Louisiana. On June 28, Gov. John Bel Edwards (D) signed SB 3 into law. Sponsored by Sen. Sen. R.L. Bret Allain (R), the bill changes the month for the annual determination of the personal income tax and corporate franchise tax automatic rate reductions. The Act takes immediate effect. [Read more.](#)

Corporation Franchise Tax – Louisiana. Gov. John Bel Edwards (D) vetoed SB 1. The Republican-backed bill would have phased out the “corporation franchise tax over a four-year period beginning on or after Jan. 1, 2025, with the franchise tax fully phased-out on or after Jan. 1, 2028.” [Read more.](#)

Environmental Protection – Nevada. Democrat-sponsored AJR 3 died in the legislative session adjourned on June 6, 2023. The Joint Resolution proposed to amend the Nevada Constitution to establish certain rights relating to the environment such as a guarantee providing to each person the right to a clean and healthy environment; mandating a trust obligation of the State to conserve, protect and maintain certain environmental resources; requiring the State to fulfill its trust obligation equitably for all beneficiaries regardless of race, ethnicity, gender, geography or wealth; and prohibiting the State, whether through action, inaction or the action of others, from causing the unreasonable degradation, diminution or depletion of the environment. [Read more.](#)

STATE – Regulatory

Sunset Advisory Commission Results – Texas. On June 27, the Texas Sunset Advisory Commission announced their last report for the 2022-23 review cycle, *Final Results of Sunset Reviews 2022-23*, which is now available on their website. [You may access the report here.](#) According to the Commission, “This

comprehensive report summarizes the final results of each Sunset review, including both legislative actions and nonstatutory management directives. The 88th Legislature adopted 95 percent of the Sunset Commission's funding and statutory recommendations, passing all 15 Sunset bills. Together, the commission's five funding recommendations, 138 statutory changes, and 85 management directives will position the agencies and entities to better serve and protect Texans." During the 2022-23 biennium, the Commission "evaluated 21 entities, most of which related to natural resources and criminal justice, including the Public Utility Commission of Texas (PUC), Texas Commission on Environmental Quality (TCEQ), Texas Water Development Board, Texas Juvenile Justice Department (TJJD), and a limited scope re-review of the Texas Commission on Law Enforcement (TCOLE)." For background, the Commission "works by setting a date on which an agency is abolished unless the Legislature passes a bill to continue it. Sunset staff evaluates the agency and issues recommendations for positive change. The Commission considers the recommendations, hears public testimony, and decides on a package of changes to bring to the full Legislature." [Read more.](#)

Railroad Commission Class VI Underground Injection Control Program Proposed Rule Amendments – Texas. *(Update to 6/26/23 Report)*

On July 5, the Texas Railroad Commission (RRC) announced it will hold a public hearing "on the proposed amendments to Chapter 5, relating to Carbon Dioxide (CO₂), which are part of the RRC's ongoing application to the United States Environmental Protection Agency (EPA) for enforcement primacy of the Class VI Underground Injection Control (UIC) Program. The hearing will be held virtually from 1 p.m. – 4 p.m. on Wednesday, July 19, 2023." [Read the hearing notice here.](#) The hearing will be accessible for viewing live via webcast on the [Texas ADMINMonitor website here.](#) "The first part of the hearing will consist of a brief overview by RRC staff regarding the proposed rule amendments. The second part of the hearing will consist of public comment on the proposed rule

amendments. To view the proposed rules, visit the RRC website at <https://www.rrc.texas.gov/general-counsel/rules/proposed-rules/> under "Chapter 5. Carbon Dioxide – Various Rules." For background, on June 13, the RRC released "proposed amendments to various rules in Chapter 5 relating to Carbon Dioxide. The proposed amendments concern enforcement primacy for the federal Class VI Underground Injection Control program." The proposed amendments to [16 Texas Administrative Code Chapter 5](#) relating to carbon dioxide are to "ensure that the rules are as stringent as the requirements of the U.S. Environmental Protection Agency (the 'EPA') to support the Commission's application to EPA for enforcement primacy for the federal Class VI Underground Injection Control (UIC) program." [Read more.](#) The proposal was formally published in the Texas Register on June 30, 2023, and the public comment period remains open through July 31, 2023. [Access the RRC public comment website here.](#)

Regulatory Reduction Task Force – Wyoming.

On June 19, "Pete Obermueller, president of the Petroleum Association of Wyoming, told the Wyoming Regulatory Reduction Task Force that what's hurting Wyoming's oil and gas industry the most isn't the regulatory environment. It's the heavy tax burden." The Task Force was created by the state legislature "to examine rules, regulations, statutes, and processes affecting" multiple industries. The Task Force is also tasked with holding public meetings to seek input from citizens and stakeholders, including state agency officials, representatives of local governments and industry groups. [Read more.](#) "The taxes are especially difficult for Wyoming's producers," Obermueller said, "because a large portion of the operators in the state are small businesses." Other issues discussed were reviving legacy wells and enhanced oil recovery. Sen. Mike Gierau (D), Chairman of the Task Force, "told Cowboy State Daily the input and ideas the task force received will now go through working groups. They will then send over recommendations to various committees in the Legislature. For any energy-related recommendations, for example, these will likely go over to the Minerals Committee. Tax issues might go

to the Revenue Committee. From there, bills might end up in the legislative session next year.”

[Read more.](#)

Western Governors’ Association Annual Meeting.

The Western Governors’ Association (WGA) held its annual meeting on June 26-28, 2023. Much of the policy discussions among the 22 WGA governors of the westernmost U.S. states and territories revolved around climate change issues, carbon capture, geothermal energy resources, energy transmission infrastructure, and bipartisan solutions and coordination between states. [Read more.](#) “We have a lot more that unites us than what divides us, and that’s sometimes challenging in this day and age, with people peddling division on both sides of the aisle,” Colorado Gov. Jared Polis (D) told reporters. Wyoming Gov. Mark Gordon (R), who will be the next WGA Chair, said, “What you find in the West and among western governors is a common commitment to really focus on solutions, rather than politics. We all care deeply about this region.” [Read more.](#) In related news, on June 28, “the governors of Wyoming and Colorado signed a memorandum of understanding [...] for interstate collaboration on the development of carbon capture technologies.” This bipartisan agreement “will explore the potential of these emerging tools to complement existing and future industries while boosting economic growth and reducing greenhouse gas emissions in both states.” [Read more.](#)

STATE – Judicial

Climate Change Lawsuit – Oregon. On June 22, Multnomah County in Oregon filed suit in state court against a group of oil and gas companies, including Exxon Mobil, Shell, Chevron, BP, ConocoPhillips, as well as the American Petroleum Institute, “seeking to hold them accountable for the damages arising from the 2021 Pacific Northwest Heat Dome, one of the most deadly and destructive human-made weather disasters in American history.” The lawsuit, [County of Multnomah v. ExxonMobil Corp.](#) (Case No. 23CV25164), seeks \$51.5 million in damages in which the county – which includes

Portland – “alleges that the combined historical carbon pollution from the use of Defendants’ fossil fuel products was a substantial factor in causing and exacerbating the heat dome, which smothered the County’s residents for several days.” [Read more.](#) The lawsuit claims “that the Defendants committed negligence and fraud, and created a public nuisance, all of which are well-established causes of action under Oregon state tort law.” In response to the lawsuit, a spokesperson for ExxonMobil told CNBC, “Suits like these continue to waste time, resources and do nothing to address climate change. This action has no impact on our intention to invest billions of dollars to leading the way in a thoughtful energy transition that takes the world to net zero carbon emissions.” [Read more.](#)

Winter Storm Uri Grid Operator Liability –

Texas. On June 23, the Texas Supreme Court ruled in consolidated cases, [CPS Energy v. Electric Reliability Council of Texas \(Case No. 22-0056\)](#) and [Electric Reliability Council of Texas, Inc. v. Panda Power Generation Infrastructure Fund, LLC \(Case No. 22-0196\)](#), related to 2021 Winter Storm Uri that resulted in system-wide power outages throughout Texas. The court wrote that “These two cases present three questions concerning the Electric Reliability Council of Texas, Inc.: (1) Is ERCOT a governmental unit as defined in the Texas Tort Claims Act and thereby entitled to pursue an interlocutory appeal from the denial of a plea to the jurisdiction? (2) Does the Public Utility Commission of Texas have exclusive jurisdiction over the parties’ claims against ERCOT? And (3) is ERCOT entitled to sovereign immunity? The answer to all three questions is yes.” Thus, in Case No. 22-0056, the court affirmed the court of appeals’ judgment dismissing the claims against ERCOT, and in Case No. 22-0196, the court reversed the court of appeals’ judgment and rendered judgment dismissing the claims against ERCOT. Chief Justice Nathan Hecht – writing for the majority – wrote that ERCOT “operates under the direct control and oversight of the PUC, performs the governmental function of utilities regulation and it possesses the power to adopt and enforce rules pursuant to that rule.” He added that immunity “prevents the disruption of key governmental

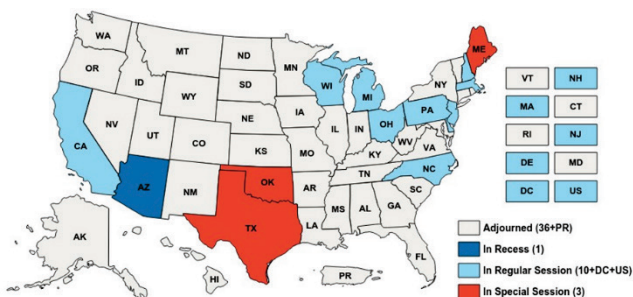
services, protects public funds and respects separation of powers principles.” [Read more](#). In short, the Supreme Court held “that sovereign immunity, which largely shields government agencies from civil lawsuits, also protects the operator of the Texas electric grid.” As reported by Houston Public Media, “The 5-4 opinion will likely free the nonprofit corporation from lawsuits filed by thousands of Texans for deaths, injuries and damages following the deadly 2021 winter storm, unless lawyers find another way forward.” [Read more](#).

INDUSTRY NEWS FLASH

► **Strategic Petroleum Reserve Refill.** On July 7, the U.S. Department of Energy (DOE) “awarded contracts for 3.2 million barrels of locally produced crude for over \$230.34 million in another purchase to refill the Strategic Petroleum Reserve (SPR) after war-induced releases.” The DOE said, this “announcement advances the President’s replenishment strategy following his historic release from the SPR to address the significant global supply disruption caused by Putin’s war on Ukraine.” [Read more](#).

LEGISLATIVE SESSION OVERVIEW

States in Session



Session Notes: California, Massachusetts, Michigan, New Hampshire, New Jersey, North

Carolina, Ohio, Pennsylvania, and Wisconsin are in regular session. The U.S. Congress is also in session.

Oklahoma legislators reconvened a special session on June 12 to override any potential vetoes from Republican Gov. Kevin Stitt, reports [Fox25News](#). Although the special session was originally given a deadline of June 30, after the Senate failed to override Governor Stitt’s veto on [SB 26](#), regarding tribal-state tobacco compacts, lawmakers passed [HCR 1002](#) on June 26 extending the special session through July 31.

Texas Republican Gov. Greg Abbott called the legislature into a second special session on June 27 immediately after the first special session adjourned without coming to an agreement on property taxes, reports [The Houston Chronicle](#). Governor Abbott said he would force lawmakers to focus only on distributing \$12 billion in proposed property tax cuts until they have a deal, dropping the border security priority from the first special session. The move comes as no surprise as Governor Abbott promised to call multiple special sessions to address unfinished legislative business left over from the regular session.

Signing Deadlines (by date): **Missouri** Republican Gov. Mike Parson and **Nevada** Republican Gov. Joe Lombardo had until June 16 to act on legislation or it became law without signature. **Texas** Republican Gov. Greg Abbott had until June 18 to act on legislation or it became law without signature. ■

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FEDERAL – Legislative

S. 2389 – Offshore Energy Security Act of 2023. On July 19, Sen. Bill Cassidy (R-LA) introduced [S. 2389](#), known as the Offshore Energy Security Act of 2023. The bill would mandate two offshore oil and gas lease sales in 2024 and two sales in 2025; provides certainty to offshore energy producers to continue investing in the United States; and preserves the value of the 5-year offshore leasing program. Regarding the latter, Sen. Cassidy says, “Despite a legal obligation to maintain an offshore leasing program, the Biden administration has delayed the finalization of the 5-Year Plan for offshore oil and gas. In doing so, they have publicly acknowledged the Bureau of Ocean Energy Management (BOEM) will not start any sale-specific environmental review—which can take up to two years—until the new 5-Year Plan is finalized in December 2023. That means the earliest an offshore oil and gas lease sale is likely to occur is some time in 2026.” Sen Cassidy added, “The Biden administration has been slow-walking offshore leases since day one. This helps OPEC+ and puts a smile on Vladimir Putin and Nicholas Maduro’s faces. What the administration is doing is against the law and increases oil prices to the delight of foreign dictators. We’re working to stop them.” [Read more.](#)

S. 2028 – Expediting Natural Gas Exports to Allies Act of 2023. On July 21, official bill text was made available for [S. 2028](#), known as the Expediting Natural Gas Exports to Allies Act of 2023. Sponsored by Sen. Marc Rubio (R-FL), the bill would “amend the Natural Gas Act to authorize expedited approval of applications to export natural gas to certain allies of the United States.” Sen. Rubio said, “Too many of our allies allowed themselves to become dangerously dependent on Russian natural gas, when American natural gas is the obviously safe and reliable

alternative. Expediting the approval of U.S. natural gas exports to allies and strategic partners is a common sense step to reduce our allies’ economic reliance on foreign adversaries while creating more jobs for Americans at home.” [Read more.](#)

H.R. 4824 – Energy Opportunities for All Act. (*Update to 6/26/23 Report*) On July 24, [H.R. 4824](#), known as the Carbon Sequestration Collaboration Act, was introduced by Rep. Jim Baird (R-IN). The bill would amend existing law to “require the Secretary of Energy to carry out terrestrial carbon sequestration research and development activities.” Specifically, the legislation would “enhance oversight of Department of Energy clean energy programs” and “authorize a program to better account for abandoned oil and gas wells.” [Read more.](#)

H.R. 4785 – Fracturing Responsibility and Awareness of Chemicals Act of 2023. On July 20, [H.R. 4785](#), known as the Fracturing Responsibility and Awareness of Chemicals Act of 2023, or FRAC Act, was introduced by Rep. Diana DeGette (D-CO). The bill would “authorize the Environment Protection Agency to regulate hydraulic fracturing to protect water resources.” According to Rep. DeGette, the bill “would close a loophole in the Safe Drinking Water Act that prevents EPA from regulating the notorious drilling process that involves injecting huge volumes of toxic chemicals deep into the ground to recover oil and natural gas, potentially contaminating the nation’s water supply and putting the public’s health at risk.” The bill is unlikely to advance out of committee in the Republican-controlled House of Representatives. [Read more.](#)

H.R. 4374 – Energy Opportunities for All Act. (*Update to 6/26/23 Report*) On July 19, [H.R. 4374](#), known as the Energy Opportunities for All Act advanced in the House Natural Resources Committee

following its introduction by Rep. Elijah Crane (R-AZ). The bill would nullify a recent Bureau of Land Management (BLM) order that blocked mineral development surrounding the Chaco Canyon National Historic Park for 20 years. For background, on June 2, the BLM announced the withdrawal of public lands surrounding Chaco Culture National Historical Park from future oil and leasing and mining. [Public Land Order No. 7923](#) “withdraws public lands within a 10-mile radius of the park for 20 years, subject to valid existing rights, and responds to decades of efforts from Tribes, elected officials, and the public to better protect the sacred and historic sites and Tribal communities currently living in northwest New Mexico.” (See *Public Land Order No. 7923 for Public Lands Withdrawal Surrounding Chaco Culture National Historical Park Boundary; San Juan, Sandoval, and McKinley Counties, New Mexico*; [88 Fed. Reg. 37266](#)) According to the BLM, the withdrawal applies only to public lands and federal mineral estate and does not apply to minerals owned by private, state or Tribal entities. It does not affect valid existing leases; during the 20-year withdrawal period, production from existing wells could continue, additional wells could be drilled on existing leases, and Navajo Nation allottees can continue to lease their minerals.” The order went into effect on June 7, 2023. [Read more.](#)

Senate Energy & Natural Resources Committee Hearing on Pipelines and Energy Production on Federal Lands. On July 26, the U.S. Senate Committee on Energy & Natural Resources held a hearing, *Full Committee Hearing to Examine Opportunities for Congress to Reform the Process for Permitting Electric Transmission Lines, Pipelines, and Energy Production on Federal Lands*, “to examine opportunities for Congress to reform the process for permitting electric transmission lines, pipelines, and energy production on federal lands.” Led by Chairman Joe Manchin (D-WV) and Ranking Member John Barrasso (R-WY), witnesses included representatives from power companies, the Petroleum Association of Wyoming, and other stakeholders. To access a full video recording of the hearing and witness testimony, [Read more.](#)

House Natural Resources Committee Hearing; Offshore Leasing Program. On July 27, the House Committee on Natural Resources, Subcommittee on Energy and Mineral Resources, held an oversight hearing titled, *Safeguarding American Jobs and Economic Growth: Examining the Future of the Offshore Leasing Program*. The hearing’s key message was that the Department of the Interior is “more than a year overdue in issuing a new five-year program for offshore oil and natural gas leasing. This delay not only jeopardizes energy investment and numerous American industries, but also allows our adversaries to take the lead in global energy production.” Witnesses included various industry stakeholders. To access a full video recording of the hearing and witness testimony, [Read more.](#)

Sen. Manchin Questions SEC Chairman over Proposed Climate Disclosure Rule. On July 19, before the U.S. Senate Appropriations Subcommittee on Financial Services and General Government, Sen. Joe Manchin (D-WV) questioned the U.S. Securities and Exchange Commission (SEC) Chairman Gary Gensler on the SEC’s proposed climate disclosure rule “that jeopardizes America’s economic and energy security” and the “insufficient time it provides for public comment.” Sen. Manchin has previously expressed “concerns with the SEC’s proposed climate disclosure rule, which would require companies of all sizes to disclose considerably more information about their carbon emissions. Senator Manchin said that the proposed rule could hinder the ‘all-the-above’ energy policy the country desperately needs, and expressed particular concern that reporting requirements could extend to small businesses down the supply chain indirectly contributing to emissions, also known as ‘Scope 3 emissions.’” SEC final climate disclosure rulemaking has been delayed multiple times by the agency in the wake of broad opposition and thousands of public comment submissions. News outlets report the final rule could be released by the end of 2023, but the SEC has yet to provide a date. [Read more.](#)

Senate Letter to U.S. Forest Service Regarding Climate Change Policies. On July 25, the Chairman of the Senate Committee on Energy & Natural

Resources, Sen. Joe Manchin (D-WV), and Ranking Member John Barrasso (R-WY), delivered a letter to the U.S. Department of Agriculture in response to advanced notice of proposed rulemaking from the U.S. Forest Service “adapting its current policies, or developing new policies, in an effort to address ‘climate resilience.’” The senators said they “have significant apprehension about this rulemaking initiative.” The senators added that “we worry that the advance notice of proposed rulemaking will only serve to create more barriers to success. Specifically, we are concerned that ‘develop[ing] new policies and actions to better anticipate, identify, and respond to rapidly changing conditions associated with climate-amplified impacts’ will add difficult-to-implement and litigation-prone complexity to internal processes that the Forest Service must undertake when preparing vital forest management projects. Likewise, it could serve to lengthen project preparation times, lead to policies that will tie the hands of land managers, and generally create more barriers to critical active management projects.” In short, the lawmakers questioned the need for more climate-related policies and requested that the Forest Service “not adapt current policies or develop any new policies that would hinder or curtail important forest management practices.” [Read more.](#)

Congressional Letter to U.S. Trade Representative Regarding Mexico Energy Policies. On July 20, congressional representatives sent a letter to U.S. Trade Representative Katherine Tai to express concern with the “Government of Mexico’s pursuit of discriminatory policies that favor state-run energy companies and directly undermine United States-Mexico-Canada Agreement (USMCA) commitments.” The lawmakers write, “These discriminatory policies exist throughout Mexico’s energy sector, including natural gas and oil exploration and production, electricity generation including solar and wind power, and retail sales. Mexico’s unfair actions threaten over \$10 billion in U.S. investment that have already been made and clearly run afoul of Mexico’s USMCA obligations. Ensuring there is a reliable market for U.S. energy production and infrastructure will help strengthen energy supply chains in North America and lower energy costs for consumers as Americans

continue to feel the impacts of volatile energy markets.” [Read more.](#)

FEDERAL – Regulatory

BLM Resource Advisory Council Meetings – California. On July 19, the Bureau of Land Management (BLM) published a notice of call for nominations “to request public nominations for the Bureau of Land Management’s (BLM) California Desert District Advisory Council (DAC), the Central California Resource Advisory Council (RAC), and the Northern California RAC to fill existing vacancies and member terms that are scheduled to expire. The Councils provide advice and recommendations to the BLM on public land use planning and management within their geographic areas.” One of the nomination categories includes those who “represent energy and mineral development.” Parties may self-nominate and the nomination period is open through August 18, 2023. [Read more.](#)

BLM Resource Advisory Council Meetings – Missouri; Montana. On July 20, the BLM published a notice of call for nominations to request public nominations for the BLM’s “Missouri Basin and Western Montana Resource Advisory Councils (RACs) to fill existing vacancies, as well as for member terms that are scheduled to expire. The RACs provide advice and recommendations to the BLM on land use planning and management of the National System of Public Lands within their geographic areas.” One of the nomination categories includes those who “represent energy and mineral development.” Parties may self-nominate and the nomination period is open through August 21, 2023. [Read more.](#)

BLM Notice of Information Collection; Geothermal Resource Leases and Unit Agreements. On July 19, the BLM published a notice of information collection, *Agency Information Collection Activities; Submission to the Office of Management and Budget for Review and Approval; Geothermal Resource Leases and Unit Agreements (88 Fed. Reg. 46177)*, that seeks public input on certain information collected by the BLM that it uses “to issue geothermal leases in BLM-managed lands, and in national forests and other lands managed

by the U.S. Forest Service.” The public comment period is open through August 18, 2023. [Read more.](#)

BLM Oil and Gas Leasing Regulations. On July 24, the Bureau of Land Management (BLM) released a 300+ page proposed rulemaking, *Fluid Mineral Leases and Leasing Process* ([88 Fed. Reg. 47562](#)), that according to the BLM, would “revise the BLM’s oil and gas leasing regulations. Among other things, the proposed rule would reflect provisions of the Inflation Reduction Act pertaining to royalty rates, rentals, and minimum bids, and would update the bonding requirements for leasing, development, and production. The proposed rule would also improve the BLM’s leasing process to ensure proper stewardship of public lands and resources and would revise some operating requirements.” [Read the proposed rule here.](#) If finalized, the new rule “will increase bonding requirements, royalty rates and minimum bids for oil and gas drilling on public lands. Statements by the bureau on the proposed rules say they will lead to more responsible leasing and development processes. Critics say it’s just a step toward the elimination of oil and gas development on public lands.” William Perry Pendley, a Wyoming native who led the BLM during the Trump administration, “told *Cowboy State Daily* that despite the bureau’s claims that the rules are designed for responsible leasing, the ultimate goal is to stop oil and gas production.” Pendley says, “It’s going to increase the cost to the industry, and that gets passed onto the American people.” [Read more.](#) According to reporting in *The Hill*, the Biden administration’s proposal would “raise fees associated with drilling for oil on public lands — making it more costly to drill on lands owned by the federal government, but giving the government more cash when that drilling takes place.” However, according to BLM Director Tracy Stone-Manning, “This proposal to update BLM’s oil and gas program aims to ensure fairness to the taxpayer and balanced, responsible development as we continue to transition to a clean energy economy.” [Read more.](#) As reported by *Bloomberg Government*, “Federal onshore oil and gas royalty rates are historically consistently lower than on state-issued leases and federal offshore leases,” the Interior Department said in a statement. “The onshore royalty rate, which had been unchanged for over a century prior to Biden taking office,

will be raised to 16.67%.” The current rate is 12.5%. Regarding new bonding requirements, the new rule would raise bonds for a new oil or gas lease from the current level of \$10,000 to a minimum of \$150,000, the first increase in more than 60 years. The rule also seeks to increase the state-level blanket bond — a single bond that covers all of a company’s wells in a single state — from \$25,000 to \$500,000 and also proposes eliminating a national blanket-bond option. These changes come in part as a result of a 2019 U.S. Government Accountability Office report finding that 99% of federal oil and gas leases have bonds that fall short of the ability to pay for the full cost of orphaned and abandoned site cleanup and remediation. [Read more.](#) In addition to raising rates and fees, the rulemaking includes higher minimum bid requirements, as well as limits designed to steer development away from wildlife and cultural sites. [Read more details of the rulemaking provisions here.](#) The public comment period is open through September 22, 2023, and we urge AAPL members to make their voices heard. [Read more.](#)

BLM Oil and Gas Lease Sale – Nevada. On July 25, the BLM reported that the competitive oil and gas lease sale offering 4 parcels covering 4,720 acres in Nevada held that day received no bids. The next BLM oil and gas lease sale in Nevada is scheduled for Dec. 5, 2023. [Read more.](#)

BLM Geothermal Lease Sale – Nevada. On July 21, the BLM “opened a 30-day public comment period on four environmental assessments for 53 parcels totaling 161,503 acres across Nevada that have been nominated for a proposed statewide geothermal lease sale. The public comment period closes August 21, 2023.” All parcels included in the geothermal lease sale will be held on the EnergyNet platform on Nov. 14, 2023. [Read more.](#)

BLM Proposed Eastern Colorado Resource Management Plan. The BLM Royal Gorge Field Office has released a Notice of Availability for its Proposed Eastern Colorado Resource Management Plan and Final Environmental Impact Statement. [Read more.](#) The proposed management plan for 658,000 acres of public lands located in central Colorado, mostly along the

Arkansas River, between Salida and Cañon City, “will guide the use and management of these lands for decades to come, benefiting local communities, wildlife and the state. This BLM plan will manage wildlife, water, cultural resources, recreation areas, conservation areas, oil and gas development, road building and livestock management.” The release opens up a 30-day public protest period which ends on August 7, 2023.

[Read more.](#)

Interior Department Announces Offshore Wind Energy Lease Sale in the Gulf of Mexico. On July 20, the Interior Department announced “it will hold the first-ever offshore wind energy lease sale in the Gulf of Mexico, advancing the Biden-Harris administration’s work to deploy 30 gigawatts (GW) of offshore wind energy by 2030 and reach a carbon-free electricity sector by 2035. The areas to be auctioned on August 29, 2023, by the Bureau of Ocean Energy Management have the potential to generate approximately 3.7 GW and power almost 1.3 million homes with clean, renewable energy.” Interior Secretary Deb Haaland said, “Today’s announcement marks another historic step in the Biden-Harris administration’s efforts to create a clean energy future. By catalyzing the offshore wind energy potential of the Gulf of Mexico, we can tackle the climate crisis, lower energy costs for families and create good-paying jobs.” [Read more.](#)

U.S. Fish and Wildlife Service Rights-of-Way. On July 24, the U.S. Fish and Wildlife Service (FWS) published a proposed rule, *Streamlining U.S. Fish and Wildlife Service Permitting of Rights-of-Way Across National Wildlife Refuges and Other U.S. Fish and Wildlife Service-Administered Lands* ([88 Fed. Reg. 47442](#)), that reopens and revises a 2021 proposed rule “that would streamline our process for permitting of rights-of-way across National Wildlife Refuge System lands and other Service-administered lands. By aligning Service processes more closely with those of other Department of the Interior (DOI) bureaus, to the extent practicable and consistent with applicable law, we will reduce the amount of time the Service requires to process applications for rights-of-way across Service-managed lands. We originally proposed revisions that included requiring a preapplication meeting and use of a standard

application, allowing electronic submission of applications, and providing the Service with additional flexibility, as appropriate, to determine the fair market value or fair market rental value of rights-of-way across Service-managed lands.” The FWS proposed rule reopening the 2021 public comment period will be open through August 23, 2023. [Read more.](#)

U.S. Fish and Wildlife Service Seizure and Forfeiture Procedures. On July 25, the U.S. Fish and Wildlife Service (FWS) published a final rule, *Seizure and Forfeiture Procedures* ([88 Fed. Reg. 47808](#)), that revises FWS seizure and forfeiture regulations. According to the FWS, “These regulations establish procedures relating to property seized or subject to administrative forfeiture under various laws enforced by the Service. This revision sets forth the procedures the Service uses for the seizure, bonded release, appraisal, administrative proceeding, petition for remission, and disposal of items subject to forfeiture under laws administered by the Service and reflects the procedures required by the Civil Asset Forfeiture Reform Act of 2000 (CAFRA) and [...] makes these regulations easier to understand using simpler language. This revision more clearly explains the procedures used in administrative forfeiture proceedings, makes the process more efficient, and makes the Service’s seizure and forfeiture procedures more uniform with those of other agencies subject to CAFRA.” This final rule is effective August 24, 2023. [Read more.](#)

U.S. Fish and Wildlife Service Lincoln National Forest Mineral Withdrawal – New Mexico. On July 21, the U.S. Fish and Wildlife Service (FWS) published a “preliminary environmental assessment (Draft EA) for a proposed mineral withdrawal in the Guadalupe Mountains. The Lincoln National Forest has submitted an application requesting the Secretary of the Interior to withdraw approximately 28,513 acres of National Forest System lands from location and entry under the United States mining laws and from leasing under the mineral leasing laws, subject to valid existing rights, for a period of 20 years.” [Read more.](#) The Draft EA details “26 threatened and endangered species in the area proposed for withdrawal that could be impacted by oil and gas drilling and mining.” The

Draft EA publishing opens a 30-day public comment period. To submit a public comment, [read more here](#). The “Department of Interior will make a final decision following that process. Should the proposal be denied by the DOI, its Bureau of Land Management would be allowed to consider proposals for exploration and extraction projects in the area.” [Read more](#).

White House Methane Summit. On July 26, the Biden administration held a White House Methane Summit that establishes a new Cabinet-level White House Methane Task Force that “will strengthen interagency and multi-stakeholder action to dramatically reduce methane emissions.” The task force “is gathering federal, state, tribal and local leaders involved in programs targeting methane emissions, as well as companies that have developed methane detection technology like optical gas imaging cameras and satellites.” [According to a White House Fact Sheet and press release](#), “The President’s Investing in America agenda is accelerating adoption of technologies and tools to address methane emissions and helping the U.S. unlock a win-win opportunity for communities and the economy.” In addition to the creation of the task force, the Summit also focused on: Detecting Emissions Using Innovative Technology; Taking Common-Sense Actions to Mitigate Methane Emissions; Responding to Emissions Events; and Leading International Efforts on Methane Management. Notably absent from the Summit were stakeholders from the oil and gas industry. “The U.S. oil and natural gas industry is responsible for, and committed to, achieving methane emissions reductions, yet is absent from the invitee list for the White House’s methane summit,” said Independent Petroleum Association of America President and CEO Jeffrey Eshelman. “Our members are committed to improving environmental performance. American producers are taking the right steps to produce energy cleanly and responsibly. We’re the envy of the world in reducing emissions and we have the cleanest air in more than two decades because of natural gas.” [Read more](#).

FEDERAL – Judicial

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

STATE – Legislative

Franchise Tax – Texas. On July 22, Gov. Greg Abbott (R) signed Special Session bill SB 3 into law. As provided by the legislature, “Current law requires taxable entities that do not owe any franchise tax due to the total revenue exemption to file a no tax due information report with the comptroller, placing an unnecessary administrative burden on the state’s small business owners.” Sponsored by Sen. Paul Bettencourt (R), SB 3 will reduce the franchise tax burden “by increasing to \$2.47 million the amount of the total revenue exemption for the franchise tax, thereby increasing the number of small businesses exempt from paying franchise taxes; and eliminating the requirement for a taxable entity that does not owe any franchise tax because of the total revenue exemption to file an information report with the comptroller, thereby reducing the administrative

burden on the state's small business owners." The Act takes effect on January 1, 2024. [Read more.](#)

STATE – Regulatory

Greenhouse Gas Emissions – Colorado. As a follow up to 2021 reporting, on July 20, the Colorado Air Quality Control Commission unanimously approved a new greenhouse gas intensity verification rule. According to the Commission, "The new rule defines how certain oil and gas facilities must calculate their greenhouse gas intensity, monitor operations to ensure compliance with intensity standards, and keep records to accurately account for emissions from their operations. The term 'intensity' refers to the ratio of a facility's amount of greenhouse gas emissions over the amount of oil and gas it produces. The rule is important because greenhouse gas emissions, like methane and carbon dioxide, cause climate change. Both environmental and industry workgroups played a major role in developing the final rule." Further, "The greenhouse gas intensity program applies to upstream oil and gas operations, which are also known as 'well sites' or 'production' facilities. The program includes two main parts: the new verification rule and greenhouse gas intensity standards. The new verification rule will ensure facilities adhere to the [greenhouse gas intensity standards adopted in 2021](#). The standards become more protective over time in accordance with the [2021 Colorado Greenhouse Gas Pollution Reduction Roadmap](#), which calls for the oil and gas industry to achieve a 36% reduction in greenhouse gases by 2025 and a 60% reduction by 2030." [Read more.](#) As reported, the intensity program – which was supported by the oil and gas industry – "will give oil and gas companies a free hand in how they reduce emissions, and will set the targeted cuts based on the amount of oil and gas produced." The rule, which considered various stakeholder interests, was "delicately balanced," according to Commissioner Curtis Rueter. "The agreement reached today is rooted in technical expertise across academia, technology providers, and industry, and will provide Colorado with a sound regulatory framework to verify greenhouse gas emissions," according to a joint statement by the

Colorado Oil and Gas Association and the American Petroleum Institute. [Read more.](#)

San Miguel County Oil and Gas Phase Out – Colorado. Following their July 5 meeting, San Miguel County Commissioners have decided "not to endorse a statewide ballot initiative that would phase out new oil, gas and fracking permits by the end of 2030." As reported, "Ultimately, the board of county commissioners decided that individual commissioners could endorse the ballot initiative but that collectively, they would not offer an endorsement given the different interests of people and livelihoods in the area." District Two Commissioner Lance Waring said, "This initiative coincides with a lot of our goals and values. On the flip side, there is a portion of the county that is oil-rich and there are some folks who would be affected." In short, the commissioners found "there were too many diverse interests represented in the county to endorse this particular ballot initiative." [Read more.](#)

Venting and Flaring – Louisiana. On July 20, the Louisiana Department of Natural Resources Office of Conservation published proposed rulemaking "to prohibit venting and flaring of natural gas except as authorized in Subpart 15. Benefits of these amendments include reducing natural gas waste and recovering reserves." [Read the proposed rulemaking here.](#) The public comment period is open through August 21, 2023. [Read more.](#) To see a comparative redline version of the proposed regulatory changes against the existing regulations, [Read more.](#)

Inactive Well Assessments – Louisiana. On July 20, the Louisiana Department of Natural Resources Office of Conservation published proposed rulemaking "to expand the applicability and amount of inactive well assessments. Benefits of these amendments include incentivizing operators to either return wells to active service or permanently abandon them which reduces the number of wells which could eventually become orphaned; increasing revenue for restoring existing orphaned sites and regulating oil and gas development to ensure protection of the environment and public safety." [Read the proposed rulemaking](#)

[here](#). The public comment period is open through August 21, 2023. [Read more](#). To see a comparative redline version of the proposed regulatory changes against the existing regulations, [Read more](#).

Emissions Monitoring – New Mexico. On July 18, the New Mexico Environment Department Air Quality Bureau announced that “a memo regarding conditional approval to use drones for OGI monitoring required under 20.2.50 NMAC (‘Part 50’) has been posted to the Air Quality Bureau’s Compliance & Enforcement webpage. [Access the memo here](#). According to the AQB, “The memo describes the conditions under which OGI monitoring may be performed using drones as a method to achieve compliance with the OGI monitoring requirements in Part 50. As long as the conditions in the memo are met, no alternative compliance plan needs to be submitted to NMED; this method is considered an approved method.” [Read more](#).

Environmental Quality Board Petition – Pennsylvania. At its July meeting, the Department of Environmental Protection Environmental Quality Board (EQB) “voted 18-0 — with one abstention — to dismiss a request from the Sierra Club and others to raise the bond amount for conventional wells. State regulators are rejecting a petition from environmentalists to increase a key cost for natural gas drillers. It’s not because they think current costs are appropriate. Trying to raise them now is against the law.” In its [recommendation to EQB on the petition](#), DEP said, “While the Department agrees the current bonding requirements for conventional oil and gas wells are insufficient, the EQB no longer has the statutory authority to take the action requested by the Petitioners. As a result, the Petition for Rulemaking must be denied.” [Read more](#).

Energy Utility Rate Increases – Wyoming. On July 17, the Wyoming Public Service Commission held a hearing to consider a proposal by Rocky Mountain Power to increase rates by more than 20 percent. As reported, “Rocky Mountain Power says rate increases are necessary to ensure reliable service even when the costs of fuels needed to heat and cool homes

spike.” Joelle R. Steward, Senior Vice President, Regulation and Customer/Community Solutions, said “the Company is facing increasing NPC [net power costs] driven by increases in regional market prices and fuel costs as well as new state and federal environmental compliance environmental requirements.” [Access the compete testimony here](#). We will keep members updated as the Commission’s process continues. [Read more](#).

STATE – Judicial

Allocation and Production Sharing Agreements; Pooling – Texas. On June 30, the Texas Court of Appeals, Third District (Austin), addressed the issue of Allocation and Production Sharing Agreements (PSAs) in [Railroad Commission of Texas v. Opiela](#) (Case No. 03-21-00258-CV) and “whether the specific facts of this case allowed for a PSA Well to be permitted under the existing standards” This appeal arose from the complaint by the Opielas “about a permit issued by the Railroad Commission of Texas to Magnolia Oil & Gas Operating LLC (collectively, Appellants) to drill a horizontal oil well from one parcel of land, through another, and into land with minerals leased in part from the Opielas. The dispute centers on the laws, regulations, and judicial and Commission decisions concerning pooling of tracts of land for purposes of oil production along with production-sharing agreements (PSAs) and allocation wells-methods of designating how to share production.” Here, the Opielas’ lease prohibited pooling “‘in any manner whatever’ for oil production, and the Opielas did not sign a consent to pool or a PSA. Nevertheless, after a previous operator obtained an allocation-well permit, Magnolia obtained an amended permit to drill a PSA well upon the Commission’s finding that Magnolia had made a good-faith showing that it had the right to drill and operate a horizontal well in the minerals owned by the Opielas because at least 65% of their fellow interest holders had assented to share the production in some way.” The procedural history of the case shows that the “Commission denied the Opielas’ complaint that Magnolia lacked a good-faith claim to operate the Audioslave A 102H Well (the Well). The trial court reversed the Commission’s order and remanded

this cause to the Commission, concluding that the Commission erred in finding that Magnolia showed a good-faith claim of right to drill the Well. The trial court also concluded that the Commission erred in adopting and applying rules for PSA well permits, deciding that the Commission lacked the authority to review whether an applicant seeking a well permit has right under a lease or other relevant title documents to drill the Well, and failing to consider the pooling clause in the Opielas' lease." Here, the appellants argued on appeal "that existing rules adopted through formal notice-and-comment rulemaking provide an adequate framework for the Commission to issue well permits for unpooled multi-tract horizontal wells. The Commission contends that substantial evidence supported its conclusion that Magnolia was entitled to a drilling permit. Magnolia contends that the trial court erred by holding that the Commission is required to evaluate whether an operator has both a valid lease and pooling authority when drilling a horizontal well across multiple tracts. Magnolia also contends that the trial court required the Commission to exceed its jurisdiction by adjudicating disputes between private parties over the authority to drill horizontal wells." In sum, the appellate court affirmed the trial court in part, reversed in part, and sent the case back to the Commission for further proceedings. As noted by law firm Oliva Gibbs, "In short, the Court of Appeals holds that the RRC does not have the authority to 'adjudicate title' between parties. Further, the Commission was not required to account for the anti-pooling language in the Opielas' lease in making its 'good-faith' determination in favor of Magnolia. However, the Court takes a fairly narrow view of what passes for a PSA." [Read more.](#)

INDUSTRY NEWS FLASH

► **Solar and wind to supply over a third of all global power by 2030.** As reported on July 17 by *Rigzone*, "Solar and wind generation will continue increasing and supply over a third of all power by 2030, up from 12 percent currently, according to a report from RMI, a non-profit organization focused on the energy transition. Based on the organization's forecast, solar and wind could generate 12,000 to

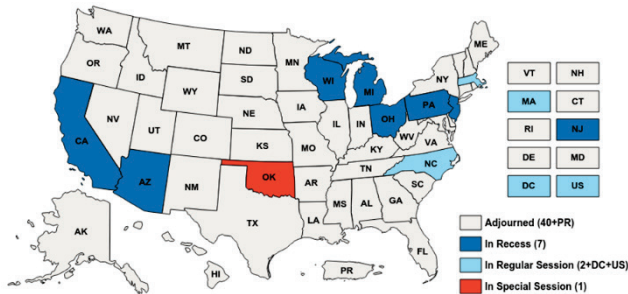
14,000 terawatt-hours by 2030, which is three to four times higher compared to 2022 levels. The projected levels would also exceed recent calls ahead of the COP28 climate summit to triple total renewable energy by 2030." [Read more.](#)

► **Environmentalist litigation stalls oil and gas drilling permits on BLM leased acres.** As reported in *Cowboy State Daily* on July 27, the "Bureau of Land Management is withholding oil and gas drilling permits on leased acres on public land, if the leased acres are in litigation. Pete Obermueller, president of the Petroleum Association of Wyoming, said the agency is doing this by its own choice. Nearly every lease and permit issued in Wyoming since 2021 has faced litigation from various anti-fossil fuel groups, he said. As a result, 2 million acres are languishing in this holding pattern awaiting court decisions that may take years." Further, the BLM "has been deferring leases in 'extraordinary numbers,' said Obermueller. As reported, "A total of 462 parcels covering more than 500,000 acres have been deferred without any explanation or guidance as to how to remove them from this limbo status." [Read more.](#)

► **Trump vows to end Green New Deal if reelected in 2024.** In a July 20 campaign video, former President Trump said that "if he returns to the White House, he would end President Biden's 'Green New Deal atrocities' on his first day." The Green New Deal, "a congressional resolution that laid out a framework for tackling climate change, has never been passed by lawmakers" but "Trump, however, uses the term more broadly to describe several Biden administration energy policies, including the Environmental Protection Agency's proposed limits on vehicle greenhouse gas emissions and the Department of Transportation's increase in fuel economy standards." [Read more.](#)

LEGISLATIVE SESSION OVERVIEW

States in Session



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

The following states are in recess until the dates provided: **Arizona** (July 31), **California** (August 14), **Michigan** (August 22), **Wisconsin** (September 12), **Ohio** (September 13), The **Pennsylvania** Senate (September 18) and House (September 26).

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

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GOVERNMENTAL AFFAIRS REPORT

Highlights At-A-Glance

FEDERAL – Legislative

H.R. 5073 – Promoting Domestic Energy

Production Act. On July 28, [H.R. 5073](#), a bipartisan bill known as the Promoting Domestic Energy Production Act, was introduced by Rep. Mike Carey (R-OH) and Rep. Vicente Gonzalez (D-TX). The legislation would allow “energy companies to deduct costs, including labor and safety, associated with oil and gas exploration.” [Read more.](#) Specifically, the measure would allow for the deduction of intangible drilling costs, effectively reversing a provision in last year’s Inflation Reduction Act (IRA) that targeted domestic oil and gas production. The IRA imposed a 15% corporate minimum tax on book income on American companies. This is notable because “while companies in most industries can still reduce taxable income by the amount of depreciation deductions received under corporate tax, oil and gas companies are not able to do so.” As noted by Rep. Carey, “Unfortunately, the Inflation Reduction Act limited the ability of energy companies to deduct intangible costs and depreciating assets. The Promoting Domestic Energy Production Act allows companies to consider intangible drilling costs when calculating their income for tax purposes. These are the same deductions that every other industry is allowed to utilize.” [Read more.](#)

Senate Letter to U.S. Attorney General Urging Action Against the Fossil Fuel Industry. On July 31, four senators, led by Sen. Bernie Sanders (I-VT), sent a letter to U.S. Attorney General Merrick Garland “to strongly urge the Department of Justice to bring suits against the fossil fuel industry for its longstanding and carefully coordinated campaign to mislead consumers and discredit climate science in pursuit of massive profits.” [Read the letter here.](#) In response to the letter, “Industry leaders point out that the computer, internet,

and electricity used to write the letter, their cell phones, eyeglasses, other technology, the methods of transportation they use to travel to and from Washington, D.C., are also made possible by the fossil fuel industry.” Ed Longanecker, President of the Texas Independent Producers & Royalty Owners Association, told *The Center Square*, that the request “is not surprising, but it’s incredibly unfortunate as it does nothing to help the American people. In fact, these kinds of distractions do the opposite by putting further strain on companies that supply the energy that fuels our modern society and makes the protections, conveniences, and products we all value and utilize on a daily basis possible.” [Read more.](#)

FEDERAL – Regulatory

BLM Draft Resource Management Plan – Colorado.

On August 2, the Bureau of Land Management (BLM) released a notice of availability for a Draft Resource Management Plan and Supplemental Environmental Impact Statement for the Colorado River Valley Field Office and Grand Junction Field Office which arose from prior litigation. ([88 Fed. Reg. 51855](#)) The areas cover “approximately 494,160 acres of BLM-administered surface lands and approximately 695,210 acres of BLM-administered federal fluid mineral estate are in Eagle, Garfield, Mesa, Pitkin, and Routt Counties in Colorado” and “approximately 1,060,900 acres of BLM-administered surface lands and approximately 1,226,450 acres of BLM-administered federal fluid mineral estate are in Garfield, Mesa, Montrose, and Rio Blanco Counties in Colorado.” [Read more.](#) The BLM “encourages the public to provide information and comments pertaining to the analysis presented in this draft supplemental EIS.” The comment period will be open for 90 days. According to *Bloomberg Government*, areas with “low or medium oil and gas production potential will be closed to leasing and drilling

under a proposed plan.” In short, the plan would “block oil and gas leasing across more than 1.5 million acres of federal public land in western Colorado’s Colorado River Valley and around the city of Grand Junction” but “leaves 382,000 acres of land with ‘high’ oil and gas potential open to leasing. But according to Kathleen Sgamma, president of the Western Energy Alliance, and reported by *Energy in Depth*, “the proposed plan is aimed at removing oil and gas development from BLM lands, and will stop responsible energy development and other productive uses of the land.” [Read more.](#)

BLM Resource Advisory Councils – Colorado.

On August 9, the BLM published a *Statewide Call for Nominations for Colorado Resource Advisory Councils* ([88 Fed. Reg. 53907](#)) requesting public nominations for the BLM Colorado Northwest, Southwest, and Rocky Mountain Resource Advisory Councils (RAC) “to fill existing vacancies, as well as member terms that are scheduled to expire. The RACs provide advice and recommendations to the BLM on land use planning and management of the National System of Public Lands within their geographic areas.” Interested parties may self-nominate. The nomination period will be open through September 8, 2023. [Read more.](#)

BLM Oil and Gas Lease Sale – Nevada. On August 8, the BLM “opened a 30-day public comment period to receive public input on five oil and gas parcels totaling 4,538 acres that may be included in an upcoming lease sale in Nevada. The comment period ends September 7, 2023. The BLM completed scoping on these parcels in June 2023 and is now seeking public comment on the parcels, potential deferrals, and the related environmental analysis. BLM will use input from the public to help complete its review of each parcel and determine if leasing of these parcels conforms with all applicable laws, policies, and land use plans.” [Read more.](#)

BLM Grand Staircase-Escalante National Monument – Utah. On August 10, the BLM published a Notice of Availability and opened a 90-day public comment period for the Draft Resource Management Plan and Environmental Impact Statement for the Grand Staircase-Escalante National Monument, “which would

replace the existing 2020 Record of Decision and Approved Resource Management Plans for the Grand Staircase-Escalante National Monument and 2020 Record of Decision and Approved Resource Management Plan for the Kanab-Escalante Planning Area that together guide the management of approximately 1.87 million acres of public lands.” (See [88 Fed. Reg. 54663](#)). The public comment period closes Nov. 9, 2023. [Read more.](#) The BLM will also hold “five open-house forum public meetings with opportunities to speak with resource specialists: two virtual meetings and three in-person meetings, one each in Escalante, Kanab, and Panguitch.” The first announced meeting will take place on September 12. To register and learn more about the meeting, [Read more.](#)

BLM Oil and Gas Leasing – Utah. On August 9, the BLM “opened a 30-day public comment period for a supplemental environmental assessment to consider leasing 59 oil and gas parcels totaling 121,548.98 acres in southern Utah. The comment period will close at 4:30 p.m. MT on Sept. 8, 2023. The decisions to lease these parcels were challenged in court after BLM auctioned the parcels in competitive oil and gas lease sales in September and December 2018. In accordance with a settlement agreement, BLM is seeking public comments to consider whether to affirm the 2018 decision to approve the leases, amend and affirm the leases with revised terms, or cancel all or a portion of the leases.” [Read more.](#)

Energy Department Carbon Capture Funding – Louisiana; Texas. On August 11, the U.S. Department of Energy “announced up to \$1.2 billion to advance the development of two commercial-scale direct air capture facilities in Texas and Louisiana. These projects — the first of this scale in the United States — represent the initial selections from the President’s Bipartisan Infrastructure Law-funded Regional Direct Air Capture (DAC) Hubs program, which aims to kickstart a nationwide network of large-scale carbon removal sites to address legacy carbon dioxide pollution and complement rapid emissions reductions.” [Read more.](#) According to the Energy Department, this funding “will be the world’s largest investment in engineered carbon removal in history and each Hub will eventually remove

more than 250 times more carbon dioxide than the largest DAC facility currently operating.” [Read more.](#)

EPA Greenhouse Gas Reporting Rule. (*Update to 5/30/23 Report*) To update our prior reporting, on August 1, the U.S. Environmental Protection Agency (EPA) published a proposed rule, *Greenhouse Gas Reporting Rule: Revisions and Confidentiality Determinations for Petroleum and Natural Gas Systems* ([88 Fed. Reg. 50282](#)), that “is proposing to amend requirements that apply to the petroleum and natural gas systems source category of the Greenhouse Gas Reporting Rule to ensure that reporting is based on empirical data, accurately reflects total methane emissions and waste emissions from applicable facilities, and allows owners and operators of applicable facilities to submit empirical emissions data that appropriately demonstrate the extent to which a charge is owed. The EPA is also proposing changes to requirements that apply to the general provisions, general stationary fuel combustion, and petroleum and natural gas systems source categories of the Greenhouse Gas Reporting Rule to improve calculation, monitoring, and reporting of greenhouse gas data for petroleum and natural gas systems facilities. This action also proposes to establish and amend confidentiality determinations for the reporting of certain data elements to be added or substantially revised in these proposed amendments.” According to the EPA, there are four parts to their proposed amendments to this greenhouse gas reporting rule established in 2009, “which: (1) Address gaps in the total methane emissions reported by facilities by adding several new covered sources such as ‘other large release events,’ that would capture abnormal methane emission events that are not fully accounted for using existing methods; (2) Add new or revise existing calculation methodologies to improve the accuracy of reported emissions data for methane and other greenhouse gases and incorporate additional empirical data; (3) Collect data at a more granular level to improve verification and transparency of the data collected; and (4) Make other technical amendments, clarifications, and corrections to improve understanding of the rule.” [Read a detailed rule analysis here.](#) The public comment period is open through October 2, 2023. The EPA also noted that “Under the Paperwork

Reduction Act (PRA), comments on the information collection provisions are best assured of consideration if the Office of Management and Budget (OMB) receives a copy of your comments on or before August 31, 2023.” [Read more.](#) The EPA will also be holding a virtual public hearing on August 21, 2023 for the proposed rulemaking. [To register and attend read more here.](#) If you wanted to be a speaker, the last day to pre-register to speak will be August 16, 2023. On August 18, 2023, the EPA will post a general agenda that will list pre-registered speakers in approximate order at: www.epa.gov/ghgreporting. Each commenter will have four minutes to provide oral testimony. The EPA will make every effort to follow the schedule as closely as possible on the day of the hearing. The EPA encourages commenters to provide the EPA with a copy of their oral testimony electronically (via email) by emailing it to GHGReporting@epa.gov.

NLRB Employer Rules. On August 2, the National Labor Relations Board issued an administrative decision and order in [Stericycle, Inc. and Teamsters Local 628](#) (Cases 04–CA–137660, 04–CA–145466, 04–CA–158277, and 04–CA–160621) in which it adopted “a new legal standard to decide whether an employer’s work rule that does not expressly restrict employees’ protected concerted activity under Section 7 of the National Labor Relations Act (Act) is facially unlawful under Section 8(a)(1) of the Act.” [Read a detailed case analysis here.](#) According to law firm Steptoe & Johnson PLLC, “This case is the latest in what has been a continued effort to roll back precedents set under the Trump administration. In *Stericycle, Inc.*, the Board reversed a 2017 decision that addressed how to analyze whether employer rules infringe on employees’ rights under the National Labor Relations Act (NLRA) to engage in concerted activities. The Board explained that it will examine rules from the perspective of an employee who is economically dependent on the employer to determine if an employee could reasonably interpret the rule to restrict or prohibit his or her rights protected under the NLRA. If it does so, the rule will be found unlawful, unless the employer can prove that it has a legitimate and substantial business interest that cannot be accomplished with a more narrowly tailored rule.” In short, “the Board will scrutinize workplace rules

and employee handbook policies more closely than it has in recent years. To repeat — this impacts all employers, not just those with unionized workforces. Importantly for employers, workplace rules that were previously held to be permissible — such as restricting photography in the workplace or requiring civil conduct — may now be unlawful if a reasonable employee could interpret the rules as chilling protected rights. This outcome is particularly likely if the rules could be more narrowly tailored to protect the employer's interests." [Read more.](#)

Offshore Leasing Plan. On August 1, a coalition of state and private oil and gas producing associations, including the American Petroleum Institute and the Independent Petroleum Association of America, sent a letter to President Biden, calling on the administration to finalize an offshore leasing plan. The organizations urge the administration "to finalize a new National Outer Continental Shelf Oil and Gas Leasing Program (five-year leasing program) that includes the 11 lease sales proposed in the Proposed Program released on July 1, 2022, and to begin pre-leasing work now so that the Interior Department can start holding sales in 2024 without any additional delays." They further state, "Time is running out to avoid significant consequences that could result from a prolonged gap in federal offshore leasing and production in the years ahead." [Read the letter here.](#)

ONRR Electronic Provision of Records. On August 9, the Interior Department's Office of Natural Resources Revenue (ONRR) published a final rule, *Electronic Provision of Records During an Audit* ([88 Fed. Reg. 53790](#)), that amends existing regulations to allow ONRR and other authorized Interior Department "representatives the option to require that an auditee use electronic means to provide records requested during an audit of an auditee's royalty reporting and payment." This rule is effective 30 days following the publishing date. [Read more.](#)

Treasury Department Tax Credits for Solar and Wind Facilities. On August 10, the U.S. Department of the Treasury announced final rules and procedural guidance for an Inflation Reduction Act program that "provides up

to a 20-percentage point boost to the Investment Tax Credit for qualified solar or wind facilities in low-income communities." [Read more.](#) According to the Treasury Department, "The goals of the program are to increase clean energy facilities in low-income communities, encourage new market participants, and benefit individuals and communities that have experienced adverse health or environmental effects or lacked economic opportunities." [Access a White House Clean Energy Update on the program here.](#) As reported in *The Hill*, "eligible categories include 700 megawatts to facilities in low-income neighborhoods; 200 to facilities on tribal land; 200 to facilities located in federally-subsidized housing; and 700 to facilities that generate electricity where at least half of the financial benefit goes to households under 200 percent of the poverty line." [Read more.](#)

White House Council on Environmental Quality Proposed Rulemaking. On July 31, the White House Council on Environmental Quality (CEQ) released a proposed rule, *National Environmental Policy Act Implementing Regulations Revisions Phase 2* ([88 Fed. Reg. 49924](#)). According to the CEQ, this "Bipartisan Permitting Reform Implementation Rule" seeks "to revise its regulations for implementing the procedural provisions of the National Environmental Policy Act (NEPA), including to implement the Fiscal Responsibility Act's amendments to NEPA. CEQ proposes the revisions to provide for an effective environmental review process that promotes better decision making; ensure full and fair public involvement; provide for an efficient process and regulatory certainty; and provide for sound decision making grounded in science, including consideration of relevant environmental, climate change, and environmental justice effects. CEQ proposes these changes to better align the provisions with CEQ's extensive experience implementing NEPA; CEQ's perspective on how NEPA can best inform agency decision making; longstanding Federal agency experience and practice; NEPA's statutory text and purpose, including making decisions informed by science; and case law interpreting NEPA's requirements. CEQ invites comments on the proposed revisions." [Read more.](#) In short, the rule would streamline the NEPA process "as part of the deal

reached to raise the debt ceiling earlier this year. The rule streamlines the environmental review process under NEPA by allowing multiple agencies to develop joint categorical exclusions, the term for actions that do not affect the environment enough to require an environmental impact statement.” [Read more](#). However, as reported by *Bloomberg Government*, Alex Herrgott, who led the Federal Permitting Improvement Steering Council during the Trump administration, “said the proposal would yield only a modest impact on permitting times because they don’t address the real problem: the hundreds of laws and regulations governing permitting at the federal, state, and local levels. Those standards often conflict with one another and leave developers confused.” The public comment period is open through September 29, 2023. [Read more](#). For a deeper dive into the rulemaking, read a detailed summary from law firm Covington & Burling LLP [here](#). In addition, the CEQ will hold a number of virtual public meetings starting on August 26, 2023. To register and attend, [Read more here](#).

White House Office of Management and Budget Environmental Guidance. On August 2, the White House Office of Management and Budget released “proposed guidance for assessing changes in environmental and ecosystem services in benefit-cost analysis.” (See *Request for Comments on Proposed Guidance for Assessing Changes in Environmental and Ecosystem Services in Benefit-Cost Analysis*; [88 Fed. Reg. 50912](#)) In short, the guidance, once finalized, would instruct federal agencies to consider environmental and ecosystem impacts as part of the cost-benefit analysis process when issuing new rulemaking. As reported by *The Hill*, “the draft guidance would encourage agencies to make sure their analyses are broad enough to include benefits provided by ecosystems and give them a monetary value or otherwise quantify them or describe them qualitatively in their analysis of an action’s potential impacts.” It is yet unclear how this new framework under the cost-benefit analysis will impact future rulemaking. The public comment period is open through September 18, 2023. [Read more](#).

FEDERAL – Judicial

ANWR Leasing – Alaska. On August 7, the U.S. District Court for the District of Alaska let stand a Bureau of Land Management order to place a temporary moratorium on the federal government’s implementation of an oil and gas leasing program on the Coastal Plain of the Arctic National Wildlife Refuge (ANWR). In *Alaska Industrial Development and Export Authority v. Biden* (Case No. 3:21-cv-00245-SLG), the court affirmed the Interior Department’s authority “to pause leasing as the agency completes a new National Environmental Policy Act analysis of how fossil fuel development would affect the 1.6-million-acre refuge.” In its analysis, the court held that “given the temporary nature of the Moratorium and their desire to address legal issues that could stymie the Program while balancing” conservation goals the “rule of reason” leaned in the government’s favor. “Second, Congress has not provided any timetable for implementation of the Program beyond the requirements to conduct two lease sales within set periods of time, neither deadline of which Agency Defendants have violated. Third, the delays have resulted only in possible economic harm, as human health and welfare are not directly impacted by the Moratorium.” And fourth, the government is delaying the Program to ensure the “NEPA review comports with the law.” [Read more](#).

Greater Sage-Grouse – Wyoming. On August 7, the U.S. Court of Appeals for the Tenth Circuit, on appeal from the U.S. District Court for the District of Wyoming, ruled in favor of the Bureau of Land Management (BLM) approval of a natural gas development project over the objections of environmentalists. In *Western Watersheds Project v. U.S. Bureau of Land Management* (Case No. 22-8022), the court addressed a challenge to the BLM’s “approval of Jonah Energy’s development project on state and federal land in southwestern Wyoming. The project is designed to drill exploratory wells on lands for which Jonah possesses development rights.” The environmentalists argued that the “BLM inadequately considered the impacts of the project on sage-grouse populations and pronghorn antelope migration and

grazing patterns. They also object[ed] to BLM's approval of the order of development of the affected lands, arguing that BLM should have required a different sequence of development." The court disagreed, concluding "that BLM adequately collected and considered information on the sage-grouse and pronghorn, and selected a development plan that meets the statutory requirements." The approved project allows Jonah Energy LLC to drill 3,500 natural gas wells across 141,000 acres in the Upper Green River Basin. [Read more.](#)

STATE – Legislative

County Recorders – Illinois. On July 28, Gov. J.B. Pritzker (D) signed [SB 2227](#) into law. Sponsored by Sen. Sally Turner (R), the bill amends the Recorder Division of the Counties Code with multiple changes including amending certain fees, allowing for fee waivers, and procedures related to recording instruments, among other provisions. For a full summary of the provisions, [Read more here.](#) The Act takes effect on January 1, 2024.

Independent Contractors – Illinois. (*Update to 3/6/23 Report*) On August 4, Gov. J.B. Pritzker (D) signed [HB 1122](#) into law. Sponsored by Rep. Will Guzzardi (D), the bill creates the Freelance Worker Protection Act (FWPA) which "defines a 'freelance worker' as anyone hired or retained as an independent contractor to provide products or services in Illinois or for any Illinois-based entity in exchange for compensation of at least \$500 (either in a single contract or in the aggregate of all contracts during the last 120 days). However, the FWPA specifically excludes: (1) workers performing construction services; (2) workers performing services as an employee for a contractor who engages in construction; (3) workers engaged in the traditional employer-employee relationship as defined by the Illinois Wage Payment and Collections Act; and (4) all foreign, federal, state, and local government entities including school districts. In addition, the law defines 'freelance worker' as a 'natural person,' which is defined as an 'individual human being.'" The FWPA provides three requirements for hiring a freelance

worker: (1) the hiring of a freelance worker "to provide services or products valued at \$500 or more requires that the agreement be memorialized in a written contract;" (2) the contracting company/entity "must pay the freelance worker within 30 days after the freelance worker has completed the services or delivered the product;" and (3) "contracting entities are prohibited from engaging in any discriminatory, retaliatory, or harassing behavior toward contracted freelance workers." According to Gov. Pritzker, the bill aims to "protect freelance workers from intimidation, harassment, and discrimination from hiring parties, requires timely compensation and requires employers to provide freelance workers with written contracts." The Act takes effect July 1, 2024. [Read more.](#)

Electronic Nontestamentary Estate Planning Documents – Illinois. On July 28, Gov. J.B. Pritzker (D) signed HB 2269 into law. Sponsored by Rep. Margaret Croke (D), the bill amends the Electronic Wills and Remote Witnesses Act and changes the short title of the Act to the Electronic Wills, Electronic Estate Planning Documents, and Remote Witnesses Act. The bill defines various estate, trust, and testamentary terms and provides for electronic estate-related documents and signatures. The Act takes effect on January 1, 2024. [Read more.](#)

Regulatory Reduction Task Force – Wyoming. On August 11, the Wyoming Legislature's Regulatory Reduction Task Force announced "a survey where the public can provide input on statutes or other areas where the Task Force can reduce the regulatory burden on Wyoming's businesses and citizens to foster growth in the state's economy. The Task Force was created by the Management Council at its March 23 meeting to examine rules, regulations, statutes, and processes affecting the mining, agriculture, and construction industries." Public comments submitted prior to Sept. 11, 2023, can be considered by the Task Force at its next meeting. To access public comment resources and to learn more about the Task Force, [Read more.](#)

STATE – Regulatory

Governor Newsom Appoints First Oil Watchdog

Czar – California. On August 1, Gov. Gavin Newsom (D) announced that “Tai Milder, a seasoned antitrust prosecutor, will lead the Division of Petroleum Market Oversight – the new office established by Governor Newsom’s gas price gouging law – to investigate price gouging and hold Big Oil accountable.” Newsom calls Milder’s appointment as “the first Director of the Division of Petroleum Market Oversight within the California Energy Commission (CEC), a major milestone in the state’s efforts to hold Big Oil accountable following last year’s record gasoline price spikes.” As noted by the California Independent Petroleum Association, the “announcement comes as the CEC is unveiling a [new interactive dashboard](#) with a stated goal of ‘increasing transparency’ within the oil and gas industry. The dashboard, which has data from January 1999 to present, has a detailed price breakdown of costs, taxes, and fees for a gallon of gasoline. It also has estimated gross margins for refiners and distributors, which is one of many indicators that can be used to look at how the petroleum market in California is operating.”

[Read more.](#)

Bonding and Financial Security Requirements –

California. On July 31, the California Geologic Energy Management Division (CalGEM) issued a notice to operators to inform them that CalGEM is implementing the requirements that were added to the state code in 2019 by [Assembly Bill 1057](#), “which intended to address concerns that as oil production continues to decline, oil and gas infrastructure could be orphaned, potentially leaving taxpayers to address the risks and cover the costs of plugging and abandoning wells, decommissioning attendant facilities, and remediating sites.” According to CalGEM, “This statute authorizes CalGEM to require operators to provide additional financial security beyond the statutory minimums established in [PRC §3204](#) based on CalGEM’s evaluation of the risk that an operator may desert its wells and the potential threats the operator’s wells pose to life, health, property, and natural resources. The required amount of additional security will be

based on CalGEM’s estimation of the reasonable costs to the State for properly plugging and abandoning all the operator’s wells and decommissioning any attendant production facilities in accordance with [PRC § 3208](#), or \$30 million, whichever is less.” Regarding the notice, the California Independent Petroleum Association (CIPA) “was encouraged that CalGEM adopted several of the suggestions CIPA offered for consideration. First, CalGEM lists a sinking fund as an acceptable means of financial assurance. This would allow operators to contribute over time to cover their well remediation costs in the future. Instead of sending premiums to Wall Street surety companies, the money set aside by operators would instead go into an interest-bearing account and would be available to the operator for the purpose it is intended—the plugging and abandonment of their wells over time. This would dovetail quite well with the state’s robust Idle Well Management Plan Program. Second, the NTO states that CalGEM will accept ‘a binding work plan to reduce asset retirement obligations’ allowing operators to meet their obligations over time.” One drawback noted by CIPA is that the notice “still suggests CalGEM will be using estimates of how much it would cost the state, not operators, to remediate wells” but a separate notice will follow on this topic, according to CIPA, and CIPA “has informed CalGEM that objections will be made to avoid falsely inflated numbers to set risk calculations. CIPA will protest any proposed regulations that only use state costs of well remediation, which are strikingly higher than the same work done by CIPA producers.” [Read more.](#)

Governor Approves State Exit from Regional

Greenhouse Gas Initiative – Virginia. (*Update to 6/12/23 Report*) On July 31, Gov. Glenn Youngkin (R) approved the state’s withdrawal from the Regional Greenhouse Gas Initiative (RGGI). In response, environmental groups have already threatened lawsuits. [Read more.](#) For background, on June 7, Virginia’s State Air Pollution Control Board voted 4-3 “to exit a regional carbon emissions reduction program, a move backed by Gov. Glenn Youngkin (R) but rebuked by the state General Assembly.” That vote moved Virginia one step closer towards withdrawing

from the RGGI, “a program that issues tradable carbon-dioxide allowances and limits power plant emissions in participating states. Other participating states include Connecticut, Delaware, Maine, Maryland, Massachusetts, New Hampshire, New Jersey, New York, Pennsylvania, Rhode Island and Vermont.” The Democrat-controlled General Assembly voted to join the RGGI in 2020 under Gov. Youngkin’s predecessor, Gov. Ralph Northam (D). In June, Gov. Youngkin hailed the Board’s vote saying, “The Office of the Attorney General has confirmed the State Air Pollution Control Board has the legal authority to take action on the regulatory proposal using the full regulatory process – and today, the Board voted to do just that – furthering Virginians access to a reliable, affordable, clean and growing supply of power.”

[Read more.](#)

STATE – Judicial

Monterey County Oil and Gas Drilling Ban – California. On August 3, the California Supreme Court issued its long-awaited opinion in *Chevron U.S.A. Inc. v. County of Monterey* (Case No. S271869), delivering a victory for the oil and gas industry by ruling that Monterey County cannot enforce a voter-approved ban on new oil and gas wells. For background, in 2016, Protect Monterey County sponsored, and Monterey County voters passed, “Measure Z,” which is “a local ordinance that bans oil and gas wastewater injection and impoundment and the drilling of new oil and gas wells throughout the County’s unincorporated areas.” Chevron, other oil producers, and mineral rights holders filed six actions against the county “challenging Measure Z on various grounds, including state and federal preemption.” The trial court entered judgment in favor of plaintiffs on the state and federal preemption claims. On appeal, the judgment was affirmed in favor of the oil and gas litigants. On review before the California Supreme Court, the court was charged with deciding whether state law preempts Measure Z. The court concluded that it does because Measure Z is contradictory to it. In short, the ruling provides that the state, not the county, has the authority to regulate certain methods of oil production that would have been banned by the county measure.

Accordingly, the court affirmed the judgment of the appellate court. [Read more.](#)

Hydraulic Fracturing Equipment Tax Exemption – Ohio. On August 2, the Ohio Supreme Court issued an opinion regarding whether certain hydraulic fracturing equipment is subject to Ohio’s sales and use tax in *Stingray Pressure Pumping, L.L.C. v. Harris* (Case No. 2023-Ohio-2598). The court stated that “Generally, Ohio exempts from taxation equipment used directly in the production of oil and gas. But not everything that is involved in oil and gas production qualifies for the exemption.” In this case, a taxpayer challenged a decision of the Ohio Board of Tax Appeals (BTA) “concluding that some of its equipment does not qualify for the exemption.” Here, the court rendered “a mixed verdict,” holding “that most of the equipment at issue is exempt from taxation and overrule the BTA as to these items. But we agree that one item is subject to taxation. So, we affirm in part and reverse in part.” As reported by *Bloomberg Government*, “The court rejected the Ohio Tax Commissioner’s argument that the items don’t qualify under the state’s exemption for equipment used ‘directly’ in the production of oil and gas because their primary function is to hold or store chemicals. The equipment is undoubtedly used in hydraulic fracturing but also has a storage or delivery function, the court said. Indeed, numerous everyday items have storage, holding, or delivery functions in addition to other functions, it said. Flashlights hold batteries and squirt guns store water, but those wouldn’t be considered their primary functions, it said.” The case arose from the state assessing “over \$3.6 million in tax, interest, and penalties on 60 pieces of equipment Stingray bought for its fracking operations. The commissioner later canceled half of the assessments, finding the pieces of equipment were covered by the exemption.” [Read more.](#)

INDUSTRY NEWS FLASH

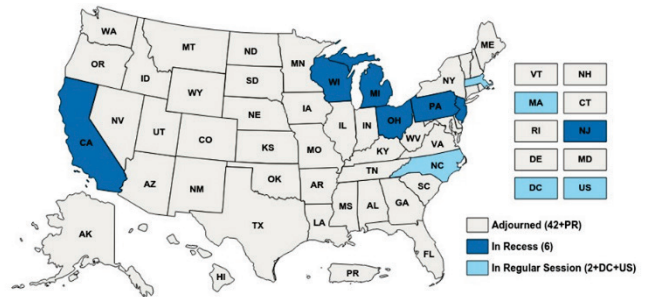
► **Biden administration delays plans to replenish the Strategic Petroleum Reserve.** In early August, the Biden administration announced it is delaying plans to restock the nation's Strategic Petroleum Reserve. "The Energy Department canceled a planned purchase of 6 million barrels for the strategic reserve [...] saying it wants to secure a good deal for taxpayers. The administration said it remains committed to refilling the reserve." [Read more.](#)

► **Boston bans fossil fuels in new construction and major renovations of city buildings.** On July 31, Boston Mayor Michelle Wu (D) signed an executive order "banning the use of fossil fuels in new construction and major renovations of city buildings. The executive order eliminates the use of common energy sources such as natural gas and heating oil in new municipal buildings. It also bars their use in renovations that affect 75% or more of a building's square footage. Any project that replaces a building's HVAC system, hot water system or cooking equipment also must eliminate fossil fuel sources and combustion." For now, the executive order only applies to public buildings, and not private projects. [Read more.](#)

► **Saudi Arabia to extend oil production cuts.** On August 3, Saudi Arabia announced it "will again extend an oil production cut of 1 million barrels per day, keeping the supply down for another month. The cut's extension into September was announced by the official Saudi Press Agency, which said it was done as part of an effort to support 'the stability and balance of oil markets.'" The cut was originally announced for July and was extended through August. [Read more.](#)

LEGISLATIVE SESSION OVERVIEW

States in Session



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

The following states are in recess until the dates provided: **California** (August 14), **Michigan** (August 22), **Wisconsin** (September 12), **Ohio** (September 13), the **Pennsylvania** Senate (September 18) and House (September 26), and **New Jersey** (November 14).

Signing Deadlines (by date): **Arizona** Democratic Gov. Katie Hobbs had until August 11 to act on legislation or it becomes law without signature. **California** Democratic Gov. Gavin Newsom has 12 days from presentment to act on legislation or it becomes law without signature. However, if the 12th day falls on a weekend or holiday the period is extended to the next day that is not a weekend or holiday. **Michigan** Democratic Gov. Gretchen Whitmer has 14 days to act on legislation or it becomes law without signature. **Pennsylvania** Democratic Gov. Josh Shapiro has 10 days from presentment to act on legislation or it becomes law without signature.

The following states are currently holding 2023 interim committee hearings or studies: [Alabama](#), [Alaska](#), [Arizona](#), [Arkansas](#), [Colorado](#), [Connecticut](#), [Georgia](#), [Hawaii](#), [Idaho](#), [Illinois](#) House, [Indiana](#), [Iowa](#), [Kansas](#), [Kentucky](#), [Louisiana](#), [Maine](#), [Maryland](#), [Minnesota](#),

Mississippi [House](#) and [Senate](#), Missouri [House](#) and [Senate](#), [Montana](#), [Nevada](#), [New Hampshire House](#) and [Senate](#), [New Mexico](#), [New York Assembly](#), [North Dakota](#), [Oklahoma House](#), [Rhode Island](#), [South Carolina House](#) and [Senate](#), [South Dakota](#), [Tennessee](#), [Utah](#), [Vermont](#), [Virginia House](#), [Washington](#), [West Virginia](#) and [Wyoming](#).

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

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GOVERNMENTAL AFFAIRS REPORT

Highlights At-A-Glance

FEDERAL – Legislative

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

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

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

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

FEDERAL – Regulatory

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

FEDERAL – Judicial

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

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

Interior Department; Office of Natural Resources Revenue Royalties – Texas. (*Update to 7/31/23 Report*)

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

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

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

STATE – Legislative

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

STATE – Regulatory

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

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

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

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

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

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

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

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

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

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

To follow up our continuing coverage of the following Texas rulemaking, on August 22, the Texas Railroad Commission (RRC) adopted “amendments to [16 Texas Administrative Code Chapter 5](#), relating to Carbon Dioxide (CO2). The amendments ensure that the rules are as stringent as the requirements of the U.S. Environmental Protection Agency (the ‘EPA’) to support the Commission’s application to EPA for enforcement primacy for the federal Class VI Underground Injection Control (UIC) program.” [Access the RRC memo and adopted rule here.](#)

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

STATE – Judicial

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

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

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

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

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

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

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

INDUSTRY NEWS FLASH

► Natural gas coalition launched in the Carolinas.

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

► Record-breaking New Mexico oil production likely to provide state government with a multibillion-dollar surplus.

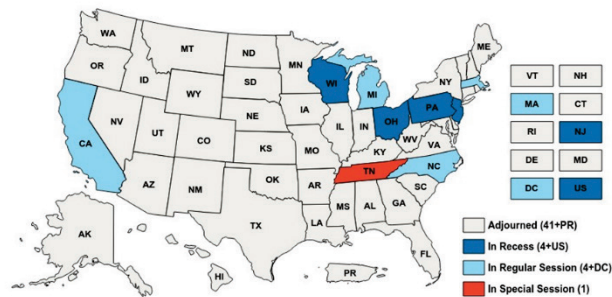
On August 23, New Mexico state economists reported “record-breaking oil production in New Mexico is likely to provide state government with a new multibillion-dollar surplus during the upcoming budget year. Annual state general fund income would increase to \$13 billion for the fiscal year that runs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

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

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

LEGISLATIVE SESSION OVERVIEW

States in Session



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

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

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

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

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

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

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GOVERNMENTAL AFFAIRS REPORT

FEDERAL – Legislative

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

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

FEDERAL – Regulatory

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

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

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

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

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

BLM Oil and Gas Lease Sale – Wyoming.

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

BLM Oil and Gas Lease Sale – Wyoming.

On September 1, the BLM “released an environmental assessment analyzing 36 oil and gas parcels totaling approximately 19,140.94 acres for a proposed lease sale that would be held in March 2024. The release of this environmental assessment starts a 30-day public comment period” that will end on October 2, 2023. “The BLM completed scoping on these parcels in July and is now seeking public comment on the parcels, potential deferrals, and related environmental analysis. BLM will use input from the public to help complete its review of each parcel and determine if leasing of these parcels conforms with all applicable laws, policies, and land use plans.” [Read more.](#)

BLM Rock Springs Draft Environmental Impact Statement and Resource Management Plan – Wyoming.

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

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

Clean Water Act; EPA Authority; Updated WOTUS Rule.

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

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

FEDERAL – Judicial

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

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

STATE – Legislative

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

STATE – Regulatory

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

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

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

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

STATE – Judicial

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

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

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

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

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

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

INDUSTRY NEWS FLASH

► Permian Basin contributes \$181.8 billion in GDP.

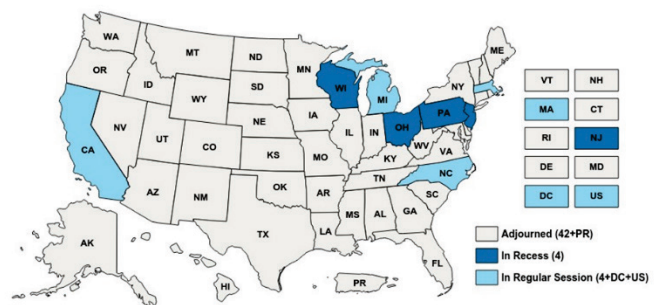
On August 29, the Permian Strategic Partnership – a coalition of 22 leading Permian Basin energy companies – announced that the Permian Basin has contributed \$181.8 billion in GDP and nearly 786,000 jobs to the American economy. The coalition’s economic report shows the Permian Basin “had a record year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

► Saudis retain oil production cuts into December.

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

LEGISLATIVE SESSION OVERVIEW

States in Session



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

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

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

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

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

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

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

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

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

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

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