Lloyd Gosselink
ATTORNEYS AT LAW

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THE LONE STAR CURRENT

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REGULATIONS ON IMAGES CAPTURED BY DRONES

by Sydney P. Sadler

In 2013, the Texas Legislature enacted Chapter 423 of the Texas Government Code, which governs the operation of unmanned aerial vehicles—drones—in Texas's airspace (the "Drone Laws"). Tex. Gov't Code § 423.001, *et. seq.* After enactment, the Drone Laws were challenged in federal court, and the district court found that they violated the First Amendment, placing the validity and enforcement of the law in question for several years. However, the Fifth Circuit resolved the question this past October, finding that the law does not violate the First Amendment and is enforceable. *Nat'l Press Photographers Ass'n v. McCraw*, 84 F.4th 632 (5th Cir. 2023). LG clients should be aware and cautious of the various rules, exceptions, and ramifications that apply to the capture of private property images via drone under the Drone Laws.

Under Section 423.003(a), a person commits an offense if the person uses a drone to capture an image of an individual or privately owned real property with the intent to conduct surveillance on the individual or property captured in the image. Tex. Gov't Code § 423.003(a). A person also commits an offense if they not only capture an image via drone, but also if they possess, disclose, display, distribute, or use that image. Tex. Gov't Code § 423.004.

In practice, the Drone Laws cover an incredibly broad range of actions related to drone images. For instance, even incidental capture of private property via a drone image violates the Drone Laws. Tex. Gov't Code § 423.005(a). Furthermore, the Drone Laws prohibit capturing an image via drone "with the intent to conduct surveillance." *Id.* at § 423.003(a).

Neither the Drone Laws nor case law define the parameters of what actions constitute "surveillance." In a district court opinion that has since been reversed on other grounds, the court acknowledged that the term "surveillance" was unconstitutionally vague. *Nat'l Press Photographers Ass'n v. McCraw*, 594 F. Supp. 3d 789, 810 (W.D. Tex. 2022), rev'd and remanded, 84 F.4th 632 (5th Cir. 2023) ("But without knowing what constitutes surveillance it is impossible to know whether one's intention constitutes that prohibited activity."). The Fifth Circuit declined to offer any clarification, instead finding that the vagueness concern was "a mere hypothetical dispute." *McCraw*, 84 F.4th at 644. Without a specific definition of "surveillance," clients should be wary of capturing or using drone images that do not fall within one of the statutory exceptions.

In light of the broad range of actions that may constitute a violation of the Drone Laws, the ramifications for a violation are specific and could jeopardize clients' business and proceedings in three ways. First, a violation of the Drone Laws is treated as a Class B or Class C misdemeanor, although prosecution of such violations appears to be rare. Tex. Gov't Code § 423.004(b); see *McCraw*, 84 F.4th at 642 (stating that the Hays County district attorney's office had initiated just one prosecution for a Drone Laws violation in which a private individual surreptitiously photographed his neighbor). Second, in a civil action, a private real property owner may obtain the following from a party who violates the Drone Laws: (1) an injunction; (2) $5,000 for all images captured in a single episode or $10,000 if those images are disclosed, displayed, distributed or used; (3) actual damages; and (4) court costs and reasonable attorney's fees. Tex. Gov't Code 423.006. Third, illegally obtained images from a drone may not be used as evidence in any criminal or juvenile proceeding, civil action, or administrative proceeding. Tex. Gov't Code § 423.005. Such images

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Lloyd Gosselink Rochelle & Townsend, P.C., provides legal services and specialized assistance in the areas of municipal, environmental, regulatory, administrative and utility law, litigation and transactions, and labor and employment law, as well as legislative and other state government relations services.

Based in Austin, the Firm's attorneys represent clients before major utility and environmental agencies, in arbitration proceedings, in all levels of state and federal courts, and before the Legislature. The Firm's clients include private businesses, individuals, associations, municipalities, and other political subdivisions.

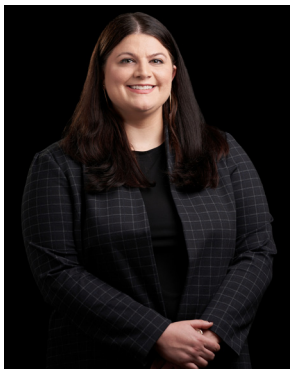
The Lone Star Current reviews items of interest in the areas of environmental, utility, municipal, construction, and employment law. It should not be construed as legal advice or opinion and is not a substitute for the advice of counsel.

To receive an electronic version of The Lone Star Current *via e-mail, please contact Jeanne Rials at 512.322.5833 or jrials@lglawfirm.com. You can also access* The Lone Star Current *on the Firm's website at www.lglawfirm.com.*

FIRM NEWS

We are pleased to announce that **C. Cole Ruiz** has been elected as a Principal of the Firm effective January 1, 2024. His practice focuses on counseling landowners and governmental and nonprofit client boards and management on natural resource-related legal and policy issues and governance, including statutory and regulatory compliance, water rights, water markets and security, water and land transactions, permitting, infrastructure finance, land use, water resource management and development, utility regulation, open government, contested cases, litigation and administrative proceedings, and governmental relations. Cole received his doctor of jurisprudence from St. Mary's University School of Law, his master's from St. Mary's University, and his bachelor's from the University of Texas at Austin.

Laura Ingram has joined the Firm's Employment Law Practice Group as a Principal. Laura draws upon over a decade of experience advising on employment law matters as well as several years focused on defense litigation. Laura started her legal career advising county government on employment law and other civil matters in Wichita County. After a few years, she made her way back down to Austin to work in private practice, advising and defending client interests in civil litigation matters. Laura then refocused her career on employment law and found her niche, serving in state government as Employment Counsel for the Texas Health and Human Services Commission and then as Deputy General Counsel (Employment Law) and Ethics Officer for the Texas Department of Agriculture. Laura enjoys helping her clients navigate the complexities of employment law, providing them with timely and comprehensive guidance on a full spectrum of personnel issues. Laura's client-centered approach, personal integrity, and thoughtful communication style helps promote the trust that is indispensable for client relationships when dealing with tough workplace issues. Laura received her doctor of jurisprudence from the University of San Diego School of Law and her bachelor's from the University of Texas at Austin.



Lauren Binger has joined the Firm's Districts, Water, and Energy and Utility Practice Groups as an Associate. Lauren assists clients with matters relating to certificates of convenience and necessity, water supply, water quality, and water rights, in addition to providing general counsel services to political subdivisions in Texas. Lauren was working in private practice in Central Indiana prior to joining the Firm. Lauren received her doctor of jurisprudence from the University of Notre Dame Law School and her bacherlor's from Texas Tech University.

MUNICIPAL CORNER

A political subdivision has (1) jurisdiction over a portion of the state, (2) a governing body comprised of members locally elected or appointed, and (3) the power to assess and collect taxes. Tex. Att'y Gen. Op. No. JS-0007 (2023).

The Kerr County Attorney requested a Texas Attorney General opinion regarding whether a volunteer fire department is a political subdivision for purposes of a land exchange with a county under Texas Local Government Code subsection 263.006(e). The Attorney General determined that a court would likely conclude a volunteer fire department organized as a nonprofit entity is not a political subdivision within the scope of subsection 263.006(e).

Chapter 263 does not define the term "political subdivision," so the Attorney General referred to the definition of a "political subdivision" provided in *Guar. Petroleum Corp. v. Armstrong*, 609 S.W.2d 529, 531 (Tex. 1980). In this case, the Texas Supreme Court stated that a "political subdivision" has three attributes: (1) jurisdiction over a portion of the state, as opposed to jurisdiction throughout the state; (2) a governing body comprised of members who are locally elected or appointed by locally elected officials; and (3) the power to assess and collect taxes.

The Attorney General considered that state law does not provide for a volunteer fire department's creation, government, or general powers (*i.e.*, its jurisdiction over the state); that governing members are not required to be elected or appointed by locally elected officials; and that a nonprofit corporation is not authorized to assess and collect taxes. Accordingly, the Attorney General determined that a volunteer firefighter does not fit the definition of "political subdivision" provided by the Texas Supreme Court.

A municipal ordinance is preempted to the extent that it is inconsistent with state law. Tex. Att'y Gen. Op. No. KP-0446 (2023).

State Senator Brandon Creighton requested a Texas Attorney General opinion regarding the power of the Galveston Park Board of Trustees (the "Park Board") under Texas Local Government Code Chapter 306 and its ability to use the City of Galveston's (the "City's") hotel occupancy tax. Senator Creighton asked whether the City may (1) limit the Park Board's powers granted by the state, (2) exercise control over hotel occupancy tax funds appropriated to the Park Board, and (3) remove previous parks and facilities designations.

First, the Attorney General reinforced that a municipal ordinance is preempted to the extent it is inconsistent with state law. Absent an express statement of preemption by the state legislature, the Texas Constitution prohibits city ordinances that conflict with state law. Accordingly, the Attorney General determined that the City may not limit the powers granted to the Park Board by the Texas Local Government Code because such a limitation would conflict with Local Government Code Chapter 306. Further, the Attorney General determined that, because the Legislature has not addressed whether parks and facilities may be removed from a park board's management and control, a court would likely find that state law does not preempt the City from doing so.

Second, the Attorney General addressed use of the hotel occupancy tax and determined that the extent to which a municipality may exercise control over use of hotel occupancy funds after the funds are appropriated to a park board is determined by a contract governing the disbursement of funds. Therefore, whether the City may exercise control over appropriated funds is dependent on its contractual agreement with the Park Board.

A special district may not appoint more members to a district's board of directors than are permitted by statute. Tex. Att'y Gen. Op. No. KP-0450 (2023).

The Hood County Attorney requested a Texas Attorney General opinion regarding whether Texas Local Government Code Chapter 383 authorizes the Hood County Development District No. 1 (the "District") board of directors to appoint a sixth director. The Attorney General determined that a county development district may not add a sixth director because Chapter 383 establishes that a county development district should be governed by only five directors.

The Attorney General interpreted provisions in Chapter 383 related to the government of county development districts by looking at their plain language and construing the text in light of the statute as a whole. Based on this analysis, the Attorney General determined that language in subsection 383.048(d), allowing a district to appoint "another director" to "assist the secretary," could not be construed as independent authority for the District to add an additional board member in context of the chapter as a whole.

Madison Huerta is an Associate in the Firm's Governmental Relations, Water, and Districts Practice Groups. If you would like additional information or have questions related to these or other matters, please contact Madison at 512.322.5825 or mhuerta@lglawfirm.com.

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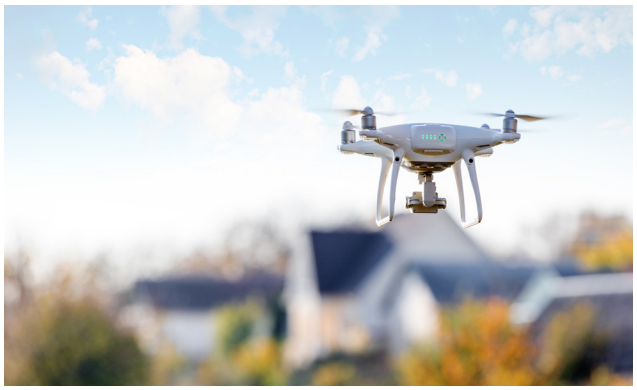
are also not subject to disclosure, inspection, or copying under Chapter 552 of the Texas Government Code (public information), and are not subject to discovery, subpoena, or other means of legal compulsion for their release. *Id*.

On the positive side, there are over twenty exceptions to the Drone Laws that insulate many common-sense and important uses of drone images from the above-mentioned ramifications. *See* Tex. Gov't Code 423.002(a), *et seq*. Below are a few exceptions that are most relevant to LG's clients.



First, there is no violation of the Drone Laws if the person taking the drone images receives consent to do so from the private property owner. *Id*. at § 423.002(a)(6). Other permitted actions include capturing drone images of public real property or a person on that property or from no more than eight feet above ground level in a public place. *Id*. at § 423.002(a)(14–15).

Electric or natural gas utilities or telecommunications providers may capture and use drone images for: (a) operating and maintenance of facilities for system reliability and integrity; (b) inspecting facilities for repair, maintenance, or replacement needs during and after construction of such facilities; (c) assessing vegetation growth for the purpose of maintaining clearances or easements; and (d) facility routing and siting for the purpose of providing the respective service. *Id*. at § 423.002(a)(5).

Drone images may be taken at the scene of a spill, or a suspected spill, of hazardous materials. *Id*. at § 423.002(a)(10).

Registered professional land surveyors and licensed professional engineers may capture drone images in connection with their practice provided that no individual is identifiable. *Id*. at § 423.002(a)(19–20).

Law enforcement is allowed to conduct aerial surveillance using drones in a variety of situations relevant to public safety. *Id*. at § 423.002(a)(8–9).

In a world that is exceedingly geared toward using innovative technologies, navigating whether drone images may violate the Drone Laws can be daunting—especially in light of the statutory damages permitted to aggrieved private landowners. Before capturing images via a drone, clients should review the exceptions found in Section 423.002 of the Drone Laws. Clients are likewise welcome to reach out to the Litigation Practice Group for further clarification on the Drone Laws and the potential applicability and risks in any particular situation in which capturing drone images may be useful.

Sydney Sadler is an Associate in the Firm's Litigation Practice Group. If you have any questions or would like additional information related to this article or other matters, please contact Sydney at 512.322.5856 or ssadler@lglawfirm.com.

WATER AND SEWER UTILITY RATE CHANGES

by David J. Klein and Lauren A. Binger

Chapter 13 of the Texas Water Code (the "TWC") bestows jurisdiction to the Public Utility Commission ("PUC") to establish a regulatory system to regulate retail public utilities to assure rates, operations, and services are just and reasonable to the consumers and to the retail public utilities. PUC must also set a rate that maintains the financial integrity of the utility. A water or sewer utility may require a rate change for many different reasons including, but not limited to: imposition of tariffs, regular rate changes, surcharges, rate changes by a Class D utility, introduction of new customer classes, system improvement charges, cash needs method, and phased and multi-step rate changes. The process with which a utility can change rates depends on the classification of the utility in the TWC. The TWC defines a "Retail Public Utility" as "any person, corporation, public utility, water supply or sewer service corporation, municipality, political subdivision or agency operating, maintaining, or controlling in this state facilities for providing potable water service or sewer service, or both, for compensation." TWC § 13.002(19). Water service corporations, water districts and cities have elected board of directors or city council members that are responsible for setting the rates and service policies for their customers. PUC has appellate jurisdiction over the retail water, sewer and drainage fees charged by water service corporations, water districts (both inside and outside the water district's corporate boundaries) and cities (outside the city's corporate boundaries only). Municipal-owned utilities and political subdivisions do not have to initiate an application process at PUC in order to institute a rate change. Additionally, the TWC and PUC Rules do not have requirements for notice to ratepayers within a water district.

Alternatively, a specific class of Retail Public Utilities are investor-owned utilities ("IOUs"). IOUs provide retail water and sewer service outside the corporate limits of a city and must file with PUC to change their rates and service policies. There are different rate applications and filing requirements varying in complexity based on the number of connections served by

the IOU. An IOU providing service inside the corporate limits of a city must file or apply with the city to change its rates and service policies unless the municipality has surrendered its jurisdiction over IOUs to PUC.[1]

Ratepayers served by certain types of retail public utilities, including a water service corporation; water districts or river authority; IOU operating inside a city; municipal-owned utilities serving customers outside the city; county; and affected county (within 50 miles of the U.S.-Mexico border), may file an appeal in the form of a petition regarding the decision made by a retail public utility to change the water, sewer or drainage fees. The petition must be signed by the lesser of ten percent or 10,000 of the affected ratepayers (customers) eligible to appeal.

[1]The following cities have surrendered jurisdiction over IOUs that serve inside their corporate limits to the PUC:

City of Coffee City – effective 12/4/1993;
City of Nolanville – effective 04/18/1996;
City of Aurora – effective 04/04/1997;
City of Arcola – effective 05/05/1998;
City of Waco – effective 02/07/2012;
City of San Antonio – effective 01/30/2014; and
Village of Jones Creek – effective 12/04/2014.

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TIGHTENING THE SCREWS ON LEAD AND COPPER: THE LEAD AND COPPER RULE IMPROVEMENTS

by Nathan E. Vassar and Jessie S. Powell

The United States Environmental Protection Agency ("EPA") has published its proposed updates to the already recently-revised lead and copper rule, styled as the Lead and Copper Rule Improvements (the "LCRI"). The proposed rule carries broad implications for water providers and will increase compliance costs even beyond those proposed just a few years ago in the original 2019-2020 lead and copper rule updates. Among other changes, upon implementation, the LCRI will require Public Water Systems ("PWSs") to replace all service lines classified as lead and/or galvanized requiring replacement within a ten-year period—significantly expediting the previous timeframe set under the Lead and Copper Rule Revisions (the "LCRR").[1] The proposed rule mandates that PWSs fully fund replacement costs for both public and private properties when a service line is "under the control" of the system, and the LCRI does not allow for partial replacements. PWSs must also provide pitcher filters or point-of-use devices following disturbances to lead, galvanized requiring replacement, and unknown material service lines (*e.g.*, after full or partial service line replacements, water meters, connectors, or any other disturbance caused while taking inventory of the system). The impacts of the LCRI are far-reaching for PWSs that must now comply with expedited deadlines, particularly as such PWSs are already under an October 2024 deadline for inventories of lead and copper lines.

The replacement deadlines come with certain flexibility under a couple of circumstances. PWSs may request a deferred deadline to complete service line replacements in two scenarios. In the first scenario, if a PWS has a high proportion of lead and galvanized requiring replacement service lines compared to households and exceeds the threshold ratio, EPA may allow additional time for the system to complete the required replacements. In the second scenario, PWSs with over 100,000 lead and/or galvanized requiring replacement service lines (not counting unknown lines) will qualify for a deferred deadline if the system is replacing 10,000 lead and/or galvanized requiring replacement lines per year. PWSs that meet either of the criteria and choose to request a deferred deadline must submit information to the state demonstrating applicability of the criteria by the compliance deadline.[2]

Like the original LCRR requirements, under the new rule, PWSs must identify all service line materials, including any unknown material, and create a publicly available service line replacement plan.[3] The LCRI does not change the deadline for PWSs to report an initial inventory of all lead service lines to the Texas Commission on Environmental Quality ("TCEQ"), which is October 16, 2024. The inventory must include both system- and customer-owned service lines and categorize each line as "lead," "galvanized requiring replacement," "lead status unknown," or "non-lead" and must be publicly available. The LCRI increases the frequency of inventory updates—requiring PWSs to update inventories annually. The LCRI add two new requirements for service line replacement plans: (1) identification of any state and local laws and water tariff agreements relevant to the water system's ability to gain access to conduct service line replacements; and (2) a communication strategy to inform both consumers and owners of rental properties about the replacement program. These new requirements are in addition to the elements required under the LCRR: (1) identification of strategies for identifying unknowns; (2) procedures for full service line replacement; (3) a customer communication strategy; (4) flushing instructions; (5) a strategy to prioritize replacements based on factors including but not limited to the targeting of known lead and galvanized requiring replacement service lines as well as service line replacements for local communities, such as those disproportionately impacted by lead, and populations most sensitive to the effects of lead; and (6) a funding strategy. Also, PWSs must submit a list to TCEQ detailing each elementary school and childcare facility that the system serves and notify such schools and facilities of health risks from lead exposure and a proposed schedule for lead testing.

Additionally, the LCRI lower the lead action level from 15 µg/L to 10 µg/L and mandate more stringent sampling requirements. When a PWS's lead sampling results exceed the action level, the PWS must inform the public, take action to reduce lead exposure,

and work towards replacing all lead pipes. The LCRI also propose to modify the protocols for tap sampling by requiring PWSs to collect first liter and fifth liter samples at sites with lead service lines and use the higher of the two values when determining compliance with the rule. Under the LCRI, PWSs must report sampling results and violations electronically and notify the public of any exceedances.

EPA plans to host a virtual public hearing on January 16, 2024, and the public comment closes January 29, 2024. EPA anticipates finalizing the LCRI prior to October 16, 2024. Should you have any questions regarding this article, the proposed LCRI, or otherwise, please do not hesitate to contact Nathan Vassar at 512.322.5867 or nvassar@lglawfirm.com, or Jessie Powell at 512.322.5815 or jpowell@lglawfirm.com, at your convenience.

[1]Under EPA's previous rule, PWSs were effectively on a 30-year replacement schedule and would be required annually to replace three percent of lines classified as lead and/or galvanized requiring replacement until fully replaced. 40 C.F.R. § 141.84(g).

[2]The compliance deadline is three years following the publication of the final rule in the *Federal Register*. See 40 C.F.R. §§ 141.80(a)(3), 141.90(e)(13).

[3]PWSs serving more than 50,000 people must post their service line replacement plan and inventory online.

Nathan Vassar is a Principal in the Firm's Water, Compliance and Enforcement, Litigation, and Appellate Practice Groups. Jessie Powell is an Associate in the Firm's Water and Compliance and Enforcement Practice Groups. If you have any questions or would like additional information related to this article or other matters, please contact Nathan at 512.322.5867 or nvassar@lglawfirm.com, or Jessie at 512.322.5815 or jpowell@lglawfirm.com.

COURT OF APPEALS DISMISSES CLAIMS AGAINST POWER GENERATORS ARISING FROM WINTER STORM URI

by James F. Parker

On December 14, 2023, the First Court of Appeals in Houston granted a writ of mandamus ordering the district court in the Winter Storm Uri Multi-District Litigation to dismiss the suits brought by thousands of retail electricity customers against Texas power generators arising from the loss of electricity during the February 2021 freeze.

In the course of the winter storm, an estimated 4.5 million Texas homes and businesses lost power. In what has colloquially come to be referred to as a "grid failure," power generators did not generate enough electricity to meet demand. The result was that ERCOT required transmission and distribution utilities to cut power to customers to prevent catastrophic damage to the grid.

Alleging that they were injured by the power generators' failure to provide sufficient electricity to the grid, thousands of retail electric customers sued hundreds of Texas power generators. The customers asserted claims for negligence, gross negligence, negligent undertaking, nuisance, tortious interference with a contract, and civil conspiracy resulting from the power generators' actions. Specifically, the customers claimed that the power generators' failures to (1) weatherize and maintain their equipment to prevent the loss of power, (2) assure that they had adequately trained staff, (3) provide reserve power to the grid, and (4) provide electricity to the grid were actionable under Texas common law.

The various cases were consolidated in a single multidistrict litigation case in Houston, in which the power generators filed a motion to dismiss on the basis that the plaintiffs did not assert a cause of action that had any basis in Texas law. The trial court agreed in part and dismissed the claims for tortious interference with a contract and conspiracy, but left the negligence, gross negligence, negligent undertaking, and nuisance claims to proceed. The power generators applied to the court of appeals for a writ of mandamus to instruct the trial court to dismiss those remaining claims.

The court of appeals agreed with the power generators.

As stated by the court, "the initial controlling question before us is whether the wholesale power generators owed a duty to the retail customers to continuously supply them with electricity under the factual allegations presented." The court answered that question in the negative.

Historically, electric utilities in Texas were authorized by law to operate as regulated, vertically integrated monopolies. In any geographic area, a single, vertically integrated electric utility was authorized to provide electricity to every retail customer. Under that regime, an electric utility controlled every principal component of how electricity reached each retail customer in its area: (1) generation of electrical power, (2) the transmission of that power on high-voltage lines over long distances, and (3) the distribution of electricity over shorter distances to the ultimate retail customer.

But in 2002, the Texas Legislature dismantled that structure and implemented a competitive retail market for electricity. Under this new regime, every retail customer that is not in a city that operates its own utility chooses an electric provider, with rates set by competition. This required the non-municipal vertically integrated electric utilities to "unbundle" into separate units: (1) a power-generation company, (2) a retail electric provider, and (3) a transmission and distribution utility. The end result is that non-municipal power generators have no contracts with retail customers to provide them with electricity. Instead, the power generators generate power that is put into the grid and distributed by entirely different entities.

It is worth observing that Lloyd Gosselink attorneys represented two Municipal-Owned Utilities ("MOUs") in this litigation, both of which were dismissed nearly a year ago. While those MOUs made similar arguments to the other power generators, they also asserted jurisdictional arguments that were available only to MOUs. On the basis of those jurisdictional arguments and the unique procedural advantages that those arguments provided, the plaintiffs opted to dismiss the MOUs represented by Lloyd Gosselink at a very early stage in the case.

As to the remaining power generators, the court concluded that "Texas does not currently recognize a legal duty owed by wholesale power generators to retail customers to provide continuous electricity to the electric grid, and ultimately to the retail customers." Moreover, the court concluded that it should not recognize a new legal duty, as the plaintiffs requested.

With no legal duty that was breached, the plaintiffs were left with no claim they could pursue against the power generators. The court therefore ordered the trial court to dismiss the plaintiffs' claims against the power generators.

The court' s full opinion may be found at *In re Luminant Generation Co.*, No. 01-23-00097-CV, 2023 WL 8630982 (Tex. App.—Houston [1st Dist.] Dec. 14, 2023).

James Parker is a Principal in the Firm's Litigation, Appellate, Business Services, and Employment Law Practice Groups. If you would like additional information or have questions related to this article or other matters, please contact James at 512.322.5878 or jparker@lglawfirm.com.

ASK SARAH

Dear Sarah,

I have an employee who complains a lot. Sorry, but there isn't a better way to say it! Some of their complaints are valid and others are not. All are relatively minor, and they're eating up my time! What can I do?

Tired

Dear Tired,

Since I am, first and foremost, a lawyer, I'll start with the legal answer! Legally, employers are obligated to investigate complaints of illegal behavior, such as harassment, discrimination, or other violations of law. Some laws, such as sexual harassment laws, obligate employers to take prompt or immediate action after receiving the complaint. Failing to address these issues can lead to legal risk and potential liability.

If you receive a complaint from an employee that alleges a violation of law, you should take steps to address the complaint, which usually requires an investigation into the allegations. This is true even if the employee has complained about many other things in the past. When investigating, it is essential to approach it methodically and impartially. Start by determining who will conduct the investigation. Depending on the allegations, you may select legal counsel, human resources, another unbiased representative of the employer, or an outside consultant.

The first step for the investigator is documenting the complaint and gathering all relevant information, including any supporting evidence or witnesses. Then, interview the individuals involved separately to ensure unbiased accounts. If you are a governmental employer and are investigating allegations of criminal behavior, issue a Garrity Warning to any witness who may be asked questions about alleged illegal behavior.

Maintain confidentiality throughout the process to protect the privacy of all parties involved. Analyze the gathered information objectively, considering company policies, legal requirements, and precedents. This step helps determine the appropriate course of action, whether it involves disciplinary measures, mediation, policy changes, or further investigation.

Throughout the investigation, keep detailed records of interviews, evidence, and decisions made. When finished, communicate the outcome to the involved parties, while respecting confidentiality.

By following a structured investigative process, employers demonstrate a commitment to addressing employee concerns and upholding a fair and respectful work environment. This approach also helps protect the organization from potential legal ramifications associated with unresolved complaints.

When dealing with frequent complaints that do not involve illegal behavior, consider implementing strategies to minimize general grievances. Encourage an open-door policy where employees can voice concerns directly to their managers or HR. This allows for early intervention and resolution.

Additionally, providing clear channels for feedback, such as anonymous suggestion boxes or regular surveys, can help address underlying issues before they escalate. Training managers in conflict resolution and communication skills is also valuable in preempting and handling complaints effectively.

A positive work culture can help to reduce complaints. Recognizing and rewarding employee contributions, fostering a supportive environment, and ensuring fair and transparent policies contribute to a healthier workplace dynamic.

Lloyd Gosselink's Employment Law Practice Group regularly assists employers with workplace investigations. We conduct investigations and help employers assess appropriate employment actions after the investigation is concluded.

"Ask Sarah" *is prepared by Sarah Glaser, Chair of the Firm's Employment Law Practice Group. If you would like additional information or have questions related to this article or other employment matters, please contact Sarah at 512.322.5881 or sglaser@lglawfirm.com.*

Water Cases

Travis Cnty. Mun. Util. Dist. No. 10 v. Waterford Lago Vista, LLC, No. 07-23-00182-CV, 2023 WL 8042570 (Tex. App.—Amarillo, Nov. 20, 2023).

A developer and a municipal utility district (the "MUD") entered into an agreement (the "Agreement") that provided for the acquisition of sites and the design and construction of water, sewer, and drainage facilities to serve property owned by the developer and within the MUD's jurisdiction. The Agreement also provided for cost allocation, in which the developer was responsible for payment for the costs of the project, and the MUD was to "obtain approval for the sale of bonds" to reimburse the developer. The developer defaulted, and following foreclosure, the property and all rights were conveyed to Waterford LT Partners ("Waterford"), including the right to reimbursement. Waterford requested reimbursement, but the MUD refused payment, claiming that the contract assignment was not properly executed. Waterford sued to recover costs. Following a plea to the jurisdiction, the trial court held that the MUD waived its governmental immunity by entering a contract for services, and Waterford had standing to sue despite being a non-party in the agreement. The MUD appealed, claiming the trial court erred in its holding for both governmental immunity and standing. The appellate court affirmed the trial court on both issues.

On appeal, the MUD argues that the agreement is not the type of contract in which immunity may be waived. However, the Appellate Court argues that Section 271.152 of the Local Government Code "provides a clear and unambiguous waiver of governmental immunity from suit in the context of a breach of contract claim." A waiver is triggered by the act of entering into a contract for goods and services executed on behalf of a local governmental entity. Moreover, the Court noted that "services" is a broad term that includes an array of activities, even ones not for the primary purpose of the agreement so long as they are "neither indirect nor attenuated." Here, the Court concluded that when the developer and the MUD entered into the contract to buy the sites and to design and construct the water, sewer, and drainage facilities, the "services" performed by the developer were directly to fulfill the purpose of the contract – *i.e.*, serve real property within the MUD's jurisdiction.

Regarding standing, the MUD argued that the developer lacked standing to pursue a claim under Local Government Code Chapter 271 because (1) the developer lost its waived immunity through the assignment of the contract, and (2) the contractual rights for reimbursement were not assigned. The Appellate Court turned to precedent on Chapter 271 that states "the legislature waived sovereign immunity for suits brought by assignees of those who enter into contracts." Because the developer is an assignee, immunity survives the assignment. The Appellate Court dismissed the second part of this issue because the ability to be reimbursed under the contract is not an issue of standing but capacity.

Cockrell Inv. Partners, L.P. v. Middle Pecos Groundwater Conservation Dist., 676 S.W.3d 677 (Tex. App.—El Paso, Jul. 10, 2023).

Cockrell Investment Partners, L.P. ("Cockrell") owns property in Pecos County, where it holds permits issued by the Middle Pecos Groundwater Conservation District (the "District"). Fort Stockton Holdings, L.P. ("FSH") owns a groundwater estate of approximately 18,000 acres of land in the same county, also owning permits issued by the District. In 2017, the District entered into a settlement agreement with FSH, approving permit applications in favor of FSH: (1) a permit amending the amount of production in its historical and existing use permit, and (2) an export permit giving it the right to produce and export 28,400 acre-feet of groundwater for a three-year term. Cockrell filed suit against the District, and on appeal was dismissed for failing to exhaust its administrative remedies before seeking judicial review.

In 2020, FHS sent a letter to the District about its application to renew the 2017 Regular Production Permit for an additional three-year term and requested the District consider the letter as a renewal application under Section 36.1145 of the Texas Water Code. Cockrell filed a written request for party status in any hearing on the permit renewal. The District granted its renewal request such that FHS "satisfactorily addresses Special Permit Conditions." Cockrell then sought a declaration under the Texas Uniform Declaratory Judgments Act ("UDJA") as to whether a three-year export permit could be renewed or extended without the construction of a water conveyance system. Cockrell also sought a review of the District's failure to conduct a permit renewal hearing and permit its party status.

At trial court, Cockrell filed a motion for partial summary judgment, alleging that the District had improperly renewed the permit under the Texas Water Code. The District filed a cross motion for partial summary judgment, claiming no hearing was required for the request for permit renewal. The trial court denied Cockrell's motion and granted the District's but did not specify the basis for these rulings. Cockrell appealed, and the issues on appeal are whether the trial court erred in denying its motion for partial summary judgement regarding the proper construction of Section 36.122 of the Texas Water Code, and whether Cockrell had party status to the application to renew FHS's 2017 permit.

Cockrell asserted a claim under the UDJA requesting an interpretation of portions of the Texas Water Code because it alleged that the District renewed the permit outside of the scope of Chapter 36. The Court noted that the UDJA is "merely a procedural device for deciding cases already within a court's jurisdiction" and such actions are barred by sovereign immunity when against political divisions. Accordingly, the Court held that "the UDJA does not enlarge the trial court's jurisdiction" to decide cases such as this one. Generally, a party may seek a declaration of their rights under the UDJA, but if the action is against a party with governmental immunity, they must also plead a waiver of immunity. Cockrell sought an interpretation of the Water Code, not a declaration of its rights, and the UDJA does not waive the District's immunity for that purpose.

Regarding party status, Cockrell argued that it had exhausted its administrative remedies before filing its suit by sending a motion for rehearing to the District on July 6, 2020 that the District did not formally act on. A request for rehearing is deemed denied 90 days after submitted. Cockrell filed the underlying suit on September 11, 2020, but the denial would not have been until October 5, 2020. The Court noted that filing a suit before a motion for rehearing has been ruled on is premature, and such a prematurely filed suit does not exhaust administrative remedies. Therefore, the Court held that Cockrell lacked standing to pursue a complaint on the District's denial of party status. Accordingly, absent party status, Cockrell could not challenge the District's decision to renew the permit.

Based on Cockrell's lack of party status, it cannot challenge the District's renewal of FSH's application. Because Cockrell did not establish the prerequisite (a waiver of immunity) for filing a suit to challenge the District's renewal of FSH's permit, the Court upheld the trial court's granting of the motion for partial summary judgment.

Litigation Cases

Sanders v. Boeing Co., No. 23-0388, 2023 WL 8285824 (Tex. Dec. 1, 2023). (Certified Question from the United States Court of Appeals for the Fifth Circuit).

Deciding certified questions from the United States Fifth Circuit Court of Appeals, the Texas Supreme Court recently interpreted the limitations-savings statute for jurisdictional defects. The Supreme Court decided that a case's statute of limitations may be tolled if a party refiles even when a plaintiff could have invoked jurisdiction but failed to do so in their pleading. Further, the tolling begins 60 days after all appellate remedies have been exhausted if an appeal is filed and not 60 days after the trial court that dismissed the claims loses its plenary powers.

This case was brought by a group of flight attendants against Boeing and others after a smoke alarm's ringing burst the flight attendants' eardrums on a Boeing plane. Suit was filed in three different trial courts in this case. First, the plaintiffs brought their case in a federal court in Houston, but then voluntarily dismissed it. They then refiled in a federal court in Dallas, which dismissed the case *sua sponte* because the plaintiffs did not adequately plead diversity jurisdiction. Plaintiffs then filed in a Houston state court.

Boeing removed the case to federal court and moved to dismiss on the grounds that limitations had expired. Plaintiffs argued that under Texas Civil Practice & Remedies Code Section 16.064, the jurisdiction-saving statute, limitations were tolled because the Dallas lawsuit was dismissed for lack of jurisdiction and the plaintiffs refiled the lawsuit less than 60 days after that dismissal. The Fifth Circuit later certified two questions for the Texas Supreme Court: (1) can the savings statute be invoked based on a lack of jurisdiction even if the jurisdiction could have been properly pleaded, and (2) when does a decision become "final" to trigger the 60-day refiling requirement under Section 16.064(a)(2)?

First, the Texas Supreme Court held that if a case is dismissed based on a lack of jurisdiction, regardless of whether it was the correct result or not, then Section 16.064 applies. Even though the flight attendants could have pleaded diversity but did not, the Dallas federal court's reason for dismissal was lack of jurisdiction, and thus, under the plain language of the statute, Section 16.64 applied to the dismissal of the flight attendants' claims.

Second, the flight attendants argued that if a party appeals a dismissal order, the 60-day refiling requirement should start running when the appellate remedies are exhausted. Boeing argued the decision was final earlier, or when the court that dismissed the action lost plenary power. The Texas Supreme Court agreed with the flight attendants and found that "final" for the purposes of Section 16.064 was when all appeals from the dismissal were exhausted and the appellate court lost plenary power.

Going forward, parties on both sides should be aware that the jurisdiction-saving provision under Section 16.064 maintains a party's ability to toll the statute of limitations while a dismissal is being analyzed on appeal, thus extending the length of time parties may be engaged in litigation before reaching the merits of the underlying suit.

Ass'n of Club Execs. v. City of Dallas, 83 F.4th 958 (5th Cir. 2023).

The Fifth Circuit Court of Appeals recently upheld Dallas's zoning ordinance requiring sexually oriented businesses to cease

operations between 2 a.m. and 6 a.m. Dallas's city council initially enacted the ordinance in response to an increase in violent gun crimes around sexually oriented businesses ("SOBs") in the early morning hours. The council based its decision in part on data analyses from Dallas's crime reports, academic studies, and similar reports from other Texas cities.

After enacting the ordinance, a trade association for owners and operators of SOBs sued the City in federal court, arguing that the ordinance violated their First Amendment right to free speech. The district court agreed with the trade association and enjoined Dallas's enforcement of the ordinance, finding that the ordinance was not designed to combat the undesirable secondary effects of SOBs.

In October 2023, the Fifth Circuit vacated the injunction and remanded the case back to the district court for further proceedings. The Fifth Circuit analyzed the trade association's likelihood of success on the merits based on the Supreme Court's precedent regarding regulations for SOBs in *City of Renton v. Playtime Theatres*, 475 U.S. 41 (1986). Based on *Renton*, the Fifth Circuit acknowledged that Dallas's ordinance must be upheld if (1) it was designed to serve a substantial governmental interest and (2) it allowed for reasonable alternative avenues of communication. The appellate court found that the ordinance was "designed to serve a substantial government interest and allow[ed] for reasonable alternative avenues of communication." Unlike the district court, which held the city council to a higher evidentiary standard than required by Supreme Court precedent, the Fifth Circuit agreed the council relied on evidence that the council "reasonably believed to be relevant" in enacting the ordinance, rather than "shoddy" evidence. While the trade association argued that the evidence was not reasonably related to the ordinance, the court clarified that the applicable standard does not require an "ironclad connection" to support enacting the ordinance. Instead, the city council was permitted to "reasonably infer" based on the evidence presented that SOBs were responsible for the secondary effects (*i.e.*, violent crime) targeted by the ordinance. The court restated the precedent that "a city must have latitude to experiment in addressing secondary effects" and that courts "should not be in the business of second-guessing fact-bound empirical assessments of city planners" who know their cities better than the courts.

At the temporary injunction phase in cases challenging similar regulations, cities should be prepared to present their statistical evidence to support their decision while also highlighting the significance of the courts' support for cities to determine what is best for their own communities.

City of Kemah v. Joiner, No. 01-23-00105-CV, 2023 WL 8041040 (Tex. App.—Houston [1st Dist.] Nov. 21, 2023, no pet. h.).

Joiner previously served as the mayor of the City of Kemah (the "City"). During his term, the City undertook a large renovation project on various City properties. The City later hired a law firm to investigate whether the contracts for the renovation project were fulfilled and if there were any irregularities. The law firm issued a two-part report of its findings to the city council in January and May 2022. Joiner alleged that the purpose of the investigation was "the City's drive to uncover alleged self-dealing, misappropriation of funds and/or mismanagement on [Joiner's] part as Mayor of Kemah during the Renovation Project."

Joiner alleged that he saw the investigation report, but the city council refused to publicly release it. Joiner requested that the report be made public, arguing that the city council waived any attorney-client privilege when a city council member discussed the purpose of the investigation at a public meeting.

When the city council did not release the report publicly, Joiner filed suit seeking a declaratory judgment that the report was not privileged and ordering the report be made public. In response, the City filed a plea to the jurisdiction, arguing in part that Joiner had not alleged a waiver of its governmental immunity. The trial court denied the plea to the jurisdiction.

On appeal, the Houston Court of Appeals reversed and remanded, finding no applicable waiver of immunity. Joiner argued that the City's immunity was waived under the Uniform Default Judgment Act ("UDJA"), the Texas Open Meetings Act (the "TOMA"), and the Texas Public Information Act (the "TPIA"). The court disagreed.

First, the UDJA waives immunity for claims challenging the validity of statutes or ordinances—it does not waive immunity when a plaintiff, like Joiner, seeks a declaration only of his rights under a statute or law. Second, the court found that the TOMA's waiver did not apply because it does not extend to suits for declaratory judgment. Third, the waiver of immunity under the TPIA does apply to declaratory judgments, but only in suits brought by a district or county attorney or the attorney general based on information provided by a person who claims to be a victim of the TPIA violation. Joiner, as mayor, could not bring such a case. The court remanded to the trial court to afford Joiner the opportunity to replead a waiver of immunity, if possible. On December 18, 2023, Joiner filed an amended petition, dropped his declaratory-judgment action and now seeks a writ of mandamus.

Although the question of whether the City waived its attorney-client privilege remains, government agencies and entities should be mindful to balance public transparency and open government with the protections afforded by the attorney-client privilege.

Air and Waste Cases

Court Denies Negligence Claim Tied to CERCLA claim. In 2020, Banfield Realty LLC ("Banfield") purchased a property in New Hampshire that allegedly contained heavy metals, asbestos, and other toxins that the property owner had remediated. However, when further cleanup activities became necessary, Banfield was required to pay for cleanup costs. In light of these costs, Banfield sued the sellers for contribution under the Comprehensive Environmental Response, Compensation, and Liability Act ("CERCLA"), as well as for negligence. While the court

upheld Banfield's CERCLA claim, it denied the negligence claim, stating that "it would be a substantial stretch to conclude that, by dumping building and construction waste on privately owned property, with the permission of Property's prior owners, [the sellers] somehow breached a common law duty owed to Banfield Realty, a subsequent owner of the Property some forty years later." *Banfield Realty LLC v. Copeland*, No. 22-CV-0573-SM, 2023 WL 6796216 (D.N.H. Oct. 13, 2023).

Supreme Court Denies Free-market Group's Petition to reopen 2009 GHG Case for Lack of Standing.

Earlier this year, free-market groups initiated litigation to reopen the 2009 greenhouse gas ("GHG") case, *Concerned Household Electricity Consumers Council et al v. EPA*, urging the D.C. Circuit to reconsider a lower court decision that human-caused GHGs are the biggest contributor to climate change. The groups asserted they have standing to bring the case on the basis that overturning the lower court's finding would prevent the opportunity for rulemaking—rulemaking which would increase electricity prices for power plants which would in turn harm the groups' members and interests. EPA found that the groups had no standing, and the groups petitioned the Supreme Court for review, which the Supreme Court denied, effectively leaving in place the lower court's holding.

"In the Courts" *is prepared by Lora Naismith in the Firm's Water Practice Group; Sydney Sadler in the Firm's Litigation Practice Group; and Mattie Neira in the Firm's Air and Waste Practice Group. If you would like additional information or have questions related to these cases or other matters, please contact Lora at 512.322.5850 or lnaismith@lglawfirm.com, or Sydney at 512.322.5856 or ssadler@lglawfirm.com, or Mattie at 512.322.5804 or mneira@lglawfirm.com.*

AGENCY HIGHLIGHTS

U.S. Environmental Protection Agency ("EPA")

EPA's Role in a Post-Sackett Water World. In the months following the Supreme Court's decision in *Sackett v. EPA*, Army Corps of Engineers ("Corps"), EPA, and Department of the Army (collectively the "Agencies") have issued procedures for their coordination on jurisdictional determinations ("JDs"). On September 27, 2023, the Agencies issued joint memorandums on their coordination plans to "ensure accurate and consistent implementation" of the *Sackett* precedent. Under Section 404 of the Clean Water Act ("CWA"), the Corps makes a determination on whether waters are "jurisdictional" and therefore subject to the requirements of a dredge-and-fill permit, which EPA may subsequently reconsider, hence the need for a coordinated approach. EPA has committed to addressing issues that may arise in the implementation of the pre-2015 waters of the United States ("WOTUS") definition, as 27 states have blocked EPA's 2023 rule. While *Sackett* significantly reduced the number of jurisdictional wetlands, CWA Section 402 pollutant discharge permits may still be required for point source discharges into non-jurisdictional waters. Therefore, even though there will be a reduction in the Agencies' JDs, EPA may find other routes to wetlands protection.

EPA's Final 401 Certification Rule. On September 14, 2023, EPA issued the final CWA Section 401 Water Quality Certification Improvement Rule. The rule will not apply retroactively to 401 decisions made under the 2020 rule and will go into effect 60 days after publication in the *Federal Register*. Under the CWA, a federal agency may not issue a permit or license that results in a discharge into WOTUS without first obtaining a 401 water quality certification or waiver. Under the new rule, EPA is allowing certifying authorities to play a role alongside the agency in determining the length to review the request for certification. This change allows the certifying authority the ability to collaborate with the permitting agency to establish "reasonable periods of time" before receiving the request. However, if the two authorities fail to reach an agreement, the time will default to six months, according to the EPA fact sheet. The final rule also establishes a 1-year statutory maximum timeframe for certification review. Another significant change from the prior rule is that the new rule no longer limits oversight to "discharges" associated with federal projects. Instead, the new rule permits states to consider, more broadly, the issues related to water quality impacts.

Proposed PFAS Rules. On September 28, 2023, EPA finalized a new reporting rule that will provide the agency and the public with the largest dataset of per- and polyfluoroalkyl substances ("PFAS") manufactured and used in the

United States. The rule falls under the Toxic Substances Control Act ("TSCA") and will require all manufacturers and importers of PFAS and PFAS-containing articles since 2011 to report information related to chemical identity, uses, volumes, byproducts, and more to EPA. The data is due to EPA within 18 months of the effective date of the final rule. This rule builds on the progress of this Administration's PFAS action plan and is an important step in EPA's PFAS Strategic Roadmap. Additionally, EPA maintains that by January 2024, it will finalize the Safe Drinking Water Act ("SDWA") limitations for six specific PFAS: perfluorooctanesulfonic acid ("PFOS"), perfluorooctanoic acid ("PFOA"), hexafluoropropylene oxide ("HFPO"), dimer acid (also referred to as a GenX substance), perfluorononanoate ("PFNA"), perfluorohexanesulfonic acid ("PFHxS"), and perfluorobutane sulfonic acid ("PFBS"). The proposed rule will set a maximum contaminant level for PFOA and PFAS, and the remaining four substances will be regulated through a "hazard index approach."

PFAS CERCLA Designation and NPDES Permits. After receiving comments on its draft rule, EPA has slightly extended its deadline to February 2024 for its plans to finalize a Comprehensive Environmental Response, Compensation and Liability Act ("CERCLA") designation rule for PFOA and PFOS. EPA claims that by August 2025, it will release a proposed rule to regulate other additional PFAS under CERCLA. EPA has consistently held that it plans to avoid targeting passive receivers of PFAS in its enforcement. However, industry sector commenters argue that EPA lacks the authority to insulate them from third-party claims under CERCLA. Additionally, EPA's long-term agenda includes its plans to add PFAS requirements in National Pollutant Discharge Elimination System ("NPDES") permits, with a proposed rule set to be released in February 2025. While some states remain reluctant, EPA continues to urge states to include PFAS provisions in their state implemented NPDES permits for the time being. EPA's push for PFAS provisions in NPDES permits can be best previewed in the new best management practices ("BMP") fact sheet. The BMP fact sheet encourages permit writers and pretreatment coordinators to monitor for PFAS in facilities where they may be suspected.

Post-Sackett "Assumption Rule". Environmental groups have recently targeted EPA's proposal to regulate state and tribal authority over CWA Section 404 dredge-and-fill permits ("404 Permits"). Primarily, they contend that EPA has failed to address how the Supreme Court's *Sackett* decision will affect the 404 Permit program as it curtailed the number of jurisdictional wetlands. The Supreme Court's recent decision in *Sackett* dramatically scales back the number of wetlands covered under the CWA, which is a crucial part of the 404 Permit program. The rollback of jurisdictional wetlands has increased uncertainty among the states' dredge and fill permitting. EPA is currently proposing to "streamline and clarify the requirements and steps necessary" for state 404 Permit programs. EPA's nearly 200-page Assumption Rule fails to provide any context on *Sackett* except for two footnotes. Environmental groups urge EPA to provide greater clarity and substance such that the public may more meaningfully comment on the proposed Assumption Rule, upholding the tenets of the Administrative Procedure Act.

EPA On Toxics. On October 19, 2023, EPA announced its proposed new framework for how it evaluates the risks of existing chemicals under TSCA. The new framework proposes to codify policies already implemented by the Biden Administration, as well as reform the data-gathering process and review of vulnerable communities. EPA stated that the proposal "would ensure that EPA's processes better align with the law, support robust evaluations that account for all risks associated with a chemical, and provide [] the foundation for protecting workers and communities from toxic chemicals." EPA is already conducting evaluations for 20 "high priority" chemicals it identified in 2019. EPA now argues that TSCA requires the agency to make a single risk determination of a chemical substance in each risk evaluation rather than making separate risk determinations for each condition of use. EPA contends that direct evaluations should consider both the cumulative effects of multiple chemical exposures and aggregate exposures of one substance. Moreover, EPA plans to propose the scope of evaluation for chemicals in the "prioritization" step of the TSCA process. EPA remains steadfast in the notice and comment rulemaking procedure for listing a substance for high-priority designation to allow the agency to gather public and stakeholder inputs.

Tougher Maui Groundwater Permitting Requirements and Its Effect On NPDES. On October 30, 2023 the Office of Management and Budget ("OMB") officially completed its review of the groundwater permitting guidance, implementing the Supreme Court's ruling in *County of Maui v. Hawaii Wildlife Fund* ("*Maui*"). The OMB final guidance helped mold EPA and state water agencies' considerations for groundwater discharges that flow to navigable waters, invoking the NPDES permits. On November 21, 2023, EPA released its draft guidance for applying *Maui*, which is subject to public comment for the following 30 days. The 2019 Supreme Court decision, authored by Justice Stephen Breyer, held that if a groundwater discharge is a "functional equivalent" of a discharge into protected surface waters, the discharging party must obtain a permit. *Maui* outlined a seven-factor "functional equivalent" test that considers: (1) the pollutant's transit time, (2) the distance traveled, (3) the medium of travel, (4) the chemical dilution or change, (5) the discharge quantity, (6) the manner of entry to navigable waters, and (7) the degradability of the specific chemical. Although time and distance remain the most important, they are not always determinative. However, because the OMB guidance was issued shortly before the Supreme Court's ruling in *Sackett v. EPA*, some commenters argue that it could have been an opportunity to broaden protections for wetlands.

SDWA Cyber Security Update. On October 12, 2023, EPA decided to rescind its previous interpretive memorandum issued on March 3, 2023, "Addressing Public Water System Cybersecurity in Sanitary Surveys of an Alternate Process," due to ongoing litigation in *State of Missouri, et al. v. U.S. EPA*. Despite such rescission, EPA urges that even in

the absence of a formal policy, states should continue to voluntarily review the cybersecurity programs of public water systems to minimize public health impacts. EPA plans to support states by providing cybersecurity risk assessments, as well as training and funding. For example, technical and funding programs are actively available to water utilities to combat cyber threats like EPA's Water Sector Cybersecurity Evaluation Program, drinking water state-revolving fund, Cybersecurity Technical Assistance Program, and the Drinking Water System Infrastructure Resilience and Sustainability grant program. Moreover, EPA's Office of Ground Water and Drinking Water offers a free self-assessment tool for water utilities, the Water Cybersecurity Assessment Tool. EPA's greatest concern is the "basic lapse of cybersecurity practices" making utilities vulnerable to attacks. Currently, EPA has a greater capacity to conduct additional cybersecurity assessments for utilities through its cybersecurity evaluation program, and the agency touts that each assessment provides utilities with a "comprehensive report and risk mitigation plan," which aims to resolve current gaps in cybersecurity.

Lead Service Lines ("LSL") Funding. The White House Office of Management and Budget is reviewing EPA's proposed lead and copper rule improvements ("LCRI") that will set a 10-year timeline for water systems to replace 100% LSLs. The LCRI is expected to lower the lead action levels, prioritize environmental justice communities, and strengthen the Trump-era Lead and Copper Rule Revisions ("LCRR"). EPA announced its plans to assist underserved communities in identifying and planning for the removal of LSLs. EPA's Get the Lead Out ("GLO") initiative will identify 200 communities that will receive up to $15 billion in funding from the Bipartisan Infrastructure Law ("BIL"). In addition, EPA is requesting that states and drinking water systems update their responses to a 2021 survey that provided data to the agency for funding requirements to replace LSLs. This one-time opportunity to update the state and water systems' original responses to EPA's 7th Drinking Water Infrastructure Needs Survey and Assessment will inform the BIL, specifically the Drinking Water State Revolving Loan Fund for the LSL Replacement funding distribution, which is set to start in fiscal year 2024.

Bolstering EJ Considerations Regulatory Analysis. On November 15, 2023, EPA released a 130-page draft of its environmental justice ("EJ") guidance, "Technical Guidance for Assessing Environmental Justice in Regulatory Analysis," to the *Federal Register*. This guidance updates the first EJ technical guidance released in 2016 and is aimed at aligning the agency with the Biden Administration's EJ goals. EPA notes that this guidance reflects "the state of the science" and provides the agency with "priorities and direction." EPA now recognizes that it is necessary to understand variability across diverse populations while also considering preexisting factors driving the different responses. Accordingly, the draft guidance seeks to fill data and research gaps in the relationship between demographic characteristics and their responses to environmental stressors that have adverse health implications. Moreover, EPA plans to consider non-chemical stressors, life stages, preexisting conditions, and genetic factors that may increase susceptibility. The main takeaway is that EPA recommends that EJ be considered in *every* regulatory action. For example, on September 7, 2023, $19 million was allotted to the Drinking Water System Infrastructure Resilience and Sustainability grant program to improve the climate resilience of the nation's water infrastructure largely for the benefit of disadvantaged communities. Going forward, it is clear that EPA plans to use the "best professional judgment to decide on the type of analysis that is feasible and appropriate," while also tailoring its analysis to the appropriate context and incorporating new data as it becomes available. The guidance document is available for a 60-day public comment period through January 15, 2024.

"Once In Always In" Emissions Policy Proposed to be Reinstated. For years, facilities that were classified as major emission sources had to maintain the same standards for emissions controls even if they downgraded their operations to qualify as an "area" source under EPA's "Once In Always In" policy of the National Emission Standards for Hazardous Pollutants program. While EPA reversed this policy under the previous administration, EPA has recently proposed a rule that would allow reclassification from major source to area source only when the following criteria are met: (i) permit limitations are federally enforceable; and (ii) any such permit limitations contain safeguards to prevent emission increases after reclassification. Reclassification will only become effective once a permit has been issued containing enforceable conditions reflecting the requirements proposed in this action and electronic notification has been submitted to EPA. If finalized, the rule would apply to all sources that have reclassified from 2018 onward. The comment period closed on November 13, 2023. EPA is currently reviewing comments with no anticipated date for finalizing the rule proposal.

EPA Adds Dozens of PFAS to TRI Reporting Requirements and Classifies all PFAS as Chemicals of Special Concern. On October 31, 2023, EPA promulgated a final rule that added dozens of PFAS chemicals to the Toxic Release Inventory ("TRI") list and classified all PFAS under TRI as "chemicals of special concern." Previously, PFAS were subject to a 100-pound threshold and a *de minimis* exception to TRI reporting was allowed, both of which have been removed under the final rule. Under the final rule, information on PFAS must be reported regardless of the amount of PFAS released into the air or water, disposed of, or recycled. As PFAS are now chemicals of special concern, the reports must be made on EPA's "Form R," which requires more detailed information and can't be reported in ranges.

Public Utility Commission of Texas ("PUC")

Oncor Electric Delivery Company ("Oncor") Files a Second Distribution Cost Recovery Factor ("DCRF") Application. On September 15, 2023, Oncor submitted a DCRF application – its second for 2023. Under that application, the utility sought to increase its distribution revenues by another $56,536,428. Under a settlement

agreement with the Steering Committee of Cities Served by Oncor ("OCSC") and others, the utility agreed to reduce its recovery by $3 million. PUC has not yet approved this settlement, which can be found under PUC Docket No. 55525. On November 30, 2023, PUC Commissioners agreed when discussing Oncor's second DCRF that parties have no right to hearings in DCRF proceedings. Chair Kathleen Jackson concluded this in part because of the Legislature's adoption in 2023 of SB 1015, which includes a 60-day deadline for consideration of DCRF cases. She also stated that the opportunity for a hearing will occur in the next base rate proceeding.

Oncor to Pay Penalty for Reliability Violations. Pursuant to a recently proposed settlement agreement by PUC, Oncor will pay $322,000 in penalties for repeated service and quality violations. In this agreement, Oncor agreed that it committed multiple violations of PUC's service and quality standards during 2020 and 2021. Each of the violations pertained to the agency's System Average Interruption Duration Index ("SAIDI") and System Average Interruption Frequency Index ("SAIFI"). Whereas SAIDI measures the average amount of time a customer's service is interrupted during the reporting period, SAIFI measures the number of times that a customer's service is interrupted. Lower SAIDI and SAIFI scores represent better reliability. According to the proposed settlement agreement, Oncor exceeded average SAIDI and SAIFI scores by more than 300% on multiple occasions and on multiple feeders. PUC will consider the proposed settlement during an upcoming open meeting. More information can be found under PUC Docket No. 55804.

PUC Rulemaking Update. PUC Staff's current rulemaking calendar for 2023 can be found under Docket No. 54455. As of November 30, 2023, the following projects are being prioritized:

- Project No. 55153 – Review of § 22.52
- Project No. 54589 – Rule Review of Chapter 26
- Project No. 53924 – Water and Sewer Utility Rates after Acquisition
- Project No. 55323 – Review of Renewable Portfolio Standard
- Project No. 54585 – Emergency Pricing Program
- Project No. 55566 – Generation Interconnection Allowance
- Project No. 55826 – Texas Energy Fund In-ERCOT Generation Loan Program
- Project No. 55812 – Texas Energy Fund Completion Bonus Grant Program
- Project No. 55250 – Transmission and Distribution System Resiliency Plans
- TBD – Review of Voluntary Migration Plans

Other rulemaking projects that are being prioritized but do not yet have a determined schedule include:

- Project No. 53404 – Power Restoration Facilities and Energy Storage Resources for Reliability
- Project No. 52059 – Review of PUC's Filing Requirements
- Project No. 54233 – Technical Requirements and Interconnection Processes for Distribution Energy Resources ("DERs")
- Project No. 54224 – Cost Recovery for Service to DERs
- Project No. 52301 – ERCOT Governance and Related Issues
- Project No. 55249 – Regional Transmission Reliability Plans
- Project No. 54584 – Reliability Standard for ERCOT Market
- Project No. 51888 – Critical Load Standards and Processes
- Project No. 53981 – Review of Wholesale Water and Sewer Rate Appeals
- TBD – Review of § 25.243. Distribution Cost Recovery Factor ("DCRF")
- TBD – Water Financial Assurance

Summary of Expected Filing Dates of Electric Utilities' Comprehensive Rate Proceedings.

Below is a list of comprehensive rate cases currently expected to be filed by electric utilities during the 2024-2027 timeframe.

- March 2024 – CenterPoint Energy Houston
- April 2024 – AEP Texas
- Late 2024 – Bryan Texas Utilities; Brazos Electric Cooperative
- December 2024 – Texas-New Mexico Power; Wind Energy Transmission Texas
- 2024-2025 – El Paso Electric
- January 2025 – Cross Texas Transmission
- February 2025 – Electric Transmission Texas; Lone Star Transmission
- Summer 2025 – CPS San Antonio
- July 2025 – Sharyland Utilities
- 2025-2026 – Southwestern Electric Power; Southwestern Public Service
- Mid 2026 – Pedernales Electric Cooperative
- 2026-2027 – Austin Energy

Electric Reliability Council of Texas ("ERCOT")

Will McAdams and Carrie Bivens Resign. PUC Commissioner Will McAdams and Director of Independent Marketing Monitor ("IMM") team for ERCOT Carrie Bivens have both resigned. McAdams's term was set to expire on September 1, 2025, but he chose to resign by the end of this year. He was first appointed as Commissioner after Winter Storm Uri by Governor Greg Abbott. McAdams is resigning to focus more on his family and health. His final open meeting as Commissioner occurred on December 14, 2023. McAdams's departure leaves two vacancies on the five-person commission, which was expanded from three after Winter Storm Uri. Peter Lake resigned as Chair of PUC in June 2023. Kathleen Jackson is currently Chair.

Bivens was appointed Director of IMM in April 2020. According to 16 Tex. Admin. Code § 25.365(c), IMM is responsible for monitoring ERCOT wholesale electric market to detect and prevent market manipulation strategies and market power abuses and evaluating the operations of the wholesale market and the current market rules and proposed changes to the market rules. IMM also recommends measures to enhance market efficiency. Bivens often criticized Texas energy market reforms. Most recently, she said that ERCOT Contingency Reserve Service ("ECRS") has squeezed the energy market and raised the cost of electricity by $8-10 billion. At an October meeting,

ERCOT officials rejected Bivens' allegations in her report on ECRS. Disagreements like this led some to believe that PUC was trying to limit the power and independence of IMM. Bivens' contract was set to expire in December, but she chose to resign in November. IMM still lacks a director.

PUC to Implement Emergency Pricing Program ("EPP"). PUC approved the EPP at its open meeting on November 30, 2023. EPP was required by Senate Bill 3 of the 87th Texas Legislature and will limit energy costs during events such as Winter Storm Uri. EPP will set energy prices at a low threshold until the later of 72 hours after EPP activation or 24 hours after ERCOT exits emergency operations. ERCOT must issue a notice to market participants both when EPP is activated and when EPP ends. At the open meeting on November 30, 2023, David Smeltzer addressed PUC Staff's Proposal for Adoption on EPP, and Commissioner Lori Cobos discussed her memo on the matter. Smeltzer recommended the inclusion of a definition for emergency conditions to apply whenever there is an Energy Emergency Alert ("EEA"). Staff also included additional language requiring attestation which will help with recovery related to fuel cost recovery. Smeltzer then mentioned that Staff modified the rule so that ERCOT can implement EPP immediately to ensure that EPP is available in the winter. In her memo, Cobos stated that ERCOT should not approve reimbursement for an entity's fuel costs if attestation is not provided. Ultimately, a motion to adopt the Proposal for Adoption with language from Commissioner Cobos's memo was passed.

ERCOT Increased "System Administration Fee" By 13.5%. ERCOT's budget will grow 40% in 2024, which will lead to an increase of nearly $119 million to its current $287 million budget. Much of this increase stems from a 13.5% increase in the System Administration Fee on wholesale energy from 55 cents per megawatt hour to 63 cents. PUC approved the change at its November 2 open meeting by a 4-0 vote. ERCOT will begin collecting the higher fee in January, and it will remain in effect through at least 2025. Pablo Vegas stated that ERCOT will likely not seek another increase prior to 2028.

ERCOT Announces a Rulemaking Regarding the Performance Credit Mechanism ("PCM"). In a recently released memo, ERCOT requested guidance from PUC on whether load side resources, such as energy efficiency, demand response, and distributed energy resources ("DERs"), will be eligible for PCM. PCM was established in HB 1500 and is a market mechanism that rewards performance credits ("PCs") to generators that are available during hours of highest reliability risk. During the November 2 Open Meeting, ERCOT said that it will publish a strawman in January 2024 specifying which PCM components will be developed through a PUC rulemaking or ERCOT stakeholder process. PUC will open a stand-alone project providing stakeholders the opportunity to comment on PCM policy.

Cities File Generation Interconnection Allowance Rulemaking Comments. On September 19, 2023, PUC asked for comments on a rulemaking regarding the Generation Interconnection Allowance. Under HB 1500, the Commission must develop a rulemaking that (1) establishes an allowance on generation interconnection costs and (2) imposes costs more than the allowance on the interconnecting entity. The Legislature issued HB 1500 because it was concerned about unnecessarily high interconnection costs that would be borne by ratepayers. On October 13, 2023, Steering Committee of Cities Served by Oncor ("OCSC") and Texas Coalition for Affordable Power ("TCAP") (collectively, "Cities") filed comments highlighting that the rulemaking may frustrate the legislature's intent and increase costs. Therefore, the Cities urged the Commission to adopt an allowance only applicable to extraordinarily expensive interconnections. Commission staff agreed and recommended that the rule only applies to interconnections at or above the 85th percentile of interconnection costs. PUC plans to adopt a rule in February 2024.

ERCOT Updates Emergency Alert System. ERCOT raised the energy reserve threshold for energy emergency alerts since it believes the grid operator now requires additional reserves to operate the grid. The Emergency Alert System is used when ERCOT's operating reserves drop below certain levels. ERCOT stated that the need for more reserves stems from the increased presence of wind, solar, and battery storage resources during times of grid constraint. ERCOT will now initiate an Energy Emergency Alert ("EEA") 1 if reserves reach 2,500 MW (previously 2,300 MW) and are not expected to recover within 30 minutes. EEA 2 will occur if reserves reach 2,000 MW (previously 1,750 MW) and are not expected to recover within 30 minutes or if frequency has dropped below 59.91 hertz (Hz) for 15 minutes (previously 30 minutes). EEA 3 will occur if reserves drop below 1,500 MW (previously 1,430 MW) and are not expected to recover within 30 minutes or, alternatively, if frequency drops below 59.8 Hz for any period. If ERCOT initiates an EEA 3, transmission and distribution service providers must implement controlled outages.

Industrial Consumers Express Concern about ERCOT Rule. ERCOT is considering new rules that some industrial companies say could damage the state's ability to attract large manufacturing to the state. Anxiety over cryptocurrency mines in Texas has prompted the proposed changes. On June 9, 2023, Texas Governor Greg Abbott signed into law Senate Bill 1929, which grants explicit authority to ERCOT for registration of crypto loads. Under ERCOT proposals, any new facility with an average peak consumption of 75 MW or more would need to provide additional operational information to ERCOT and comply with other requirements. In addition, smaller consumers using 25 MW also would need to provide more information to ERCOT. ERCOT also wants to regulate when and how large-scale users ramp up and down their power consumption. This regulation will eventually head to ERCOT's board before it is considered by PUC.

Notably, a major industrial trade group has taken steps to intervene in the process, according to a report in the *Dallas Morning News*. Representatives of Texas Industrial Electric Consumers trade group ("TIEC") submitted comments opposing the rules and met with officials in both the governor's office and PUC about the regulation. Katie Coleman, who is counsel

for TIEC, said ERCOT would exert too much control over industrial users if the proposal goes into effect without changes.

ERCOT Unveils New "MORA" Report. On October 2, 2023, ERCOT launched a new Monthly Outlook for Resource Adequacy ("MORA") report. MORA report replaced ERCOT's Seasonal Assessment of Resource Adequacy ("SARA") report. The first MORA report provided an overall assessment for the reporting month of December 2023 and showed low risk for emergency alerts under typical conditions. According to Kristi Hobbs, ERCOT's Vice President, System Planning and Weatherization, "[o]ur goal is to manage a reliable grid under all situations. MORA report provides a more frequent advance look at resource adequacy with a focus on the likelihood of capacity shortage events for each month." MORA report will be released two months before each reporting month and accessible from the Resource Adequacy page of www.ercot.com.

Texas Railroad Commission ("RRC")

RRC Sets Emergency Disconnection Fines. On November 15, 2023, RRC adopted new rules pertaining to improper gas utility service disconnections during extreme weather emergencies. New rules, which correspond to provisions of Senate Bill 3 adopted in 2021 after Winter Storm Uri, include a classification system for fines that can be assessed for improper disconnections, as well as new prohibitions against demanding full payment of utility bills during weather emergencies. These rules modify 16 Tex. Admin. Code § 7.460.

RRC Conducts 7,200 Weatherization Inspections. This November, RRC reported that it conducted more than 7,200 weatherization inspections of critical natural gas infrastructure during the winter and summer seasons. The inspection process began again on December 1 when operators faced a deadline to submit attestations summarizing what weatherization methods they utilized at their facilities. RRC stated that inspections by its Infrastructure Division will resume right after that deadline.

Atmos Pipeline Rate Case. On May 19, 2023, Atmos Pipeline filed a rate case at RRC seeking to increase annual revenues by $119.4 million. Atmos Cities Steering Committee ("ACSC") intervened in this proceeding and worked with Atmos and other intervening parties to reach a settlement. On December 14, 2023, RRC issued a Final Order approving the parties' settlement agreement, which provided for a total revenue requirement of $841,924,105. Ultimately, Atmos Pipeline's revenue requirement increased by $11,968,126 because of this proceeding. This increase meant that Atmos Pipeline accepted an overall revenue requirement that was $109 million less than its requested $951.1 million. More information can be found on RRC's website under Case No. 00013758.

CoServ Gas, Ltd. (CoServ) Rate Case. On July 28, 2023, CoServ filed a rate case at RRC seeking to increase annual revenues by $10.3 million in incorporated areas. The proposed rates and tariffs would increase CoServ's annual revenues by approximately $12,118,404, or 7.7% including gas costs and 27.5% excluding gas costs. On November 14, 2023, the Steering Committee of Cities Served by CoServ Gas, Ltd. ("Cities") filed a two-day abatement of the November 14 deadline so that Cities and CoServ could continue to work towards settlement. RRC granted the abatement on November 16, 2023. Cities and CoServ are still working towards settlement. More information can be found on RRC's website under Case No. 00014771.

Texas Gas Service Company ("TGS") Rate Case. On June 30, 2023, TGS filed with the RRC a statement of intent to increase rates within the unincorporated areas served by TGS in the Rio Grande Valley Service Area. TGS sought to increase annual revenues within the unincorporated areas by $9.81 million, which is an increase of 16.10% including gas costs or 25.94% excluding gas costs. Cities served by TGS intervened in this proceeding and worked with TGS and RRC staff to reach a settlement. On November 6, 2023, TGS filed a unanimous settlement agreement, which, pending RRC approval, allows TGS to recover a systemwide revenue requirement increase in the amount of $5,875,000. More information can be found on RRC's website under Case No. 00014399.

SiEnergy, LP ("SiEnergy") Rate Case. On May 5, 2023, SiEnergy filed a rate case at RRC seeking to increase rates in the environs of North, Central, and South Texas. On June 20, 2023, SiEnergy filed its Petition for Review of the rate action taken by the City of Princeton (the "City"). SiEnergy stated that the City denied SiEnergy's requested rate change. This proceeding was docketed under OS-23-00014351. On August 9, 2023, SiEnergy, RRC staff, Cities Served by SiEnergy, and the City reached a Unanimous Settlement Agreement, which resulted in an annual revenue increase for SiEnergy totaling $5,500,000 – a reduction from the $9,694,308 initially requested by SiEnergy. RRC signed a final order affirming this annual revenue increase. More information can be found on RRC's website under Case No. 00013504.

CenterPoint Energy Resources Corp., d/b/a CenterPoint Energy Entex and CenterPoint Energy Texas Gas ("CenterPoint") Rate Case. On October 30, 2023, CenterPoint filed a rate case at RRC seeking to increase non-gas revenues by $37.4 million, which is a total aggregate revenue increase of about 3.1% including gas costs or 5.8% excluding gas costs. On November 1, 2023, Cities served by CenterPoint Gas filed its Motion to Intervene in this proceeding. This motion was granted during a prehearing conference on November 14, 2023. More information can be found on RRC's website under Case No. 00015513.

RRC Receives New Funding and Duties. Speaking recently in her hometown of Midland, RRC Chair Christi Craddick described new legislative funding for inspections, critical energy mapping, and other purposes. She also described new regulatory responsibilities for the agency. Her comments were reported in October by the Midland Reporter-Telegram.

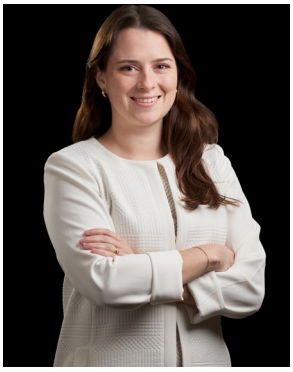
Highlights of Ms. Craddick's comments include the following:

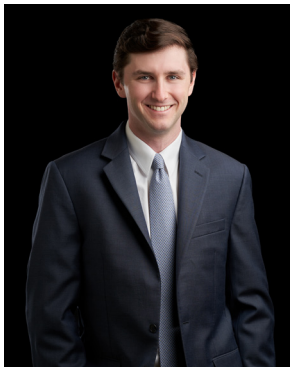
- In addition to its existing budget, RRC was awarded additional funding by the Texas Legislature this year to hire 50 additional inspectors and purchase more equipment. Ms. Craddick said the agency requires the extra personnel and equipment because it only has until next May to inspect about 100,000 miles of gathering lines, which is a new responsibility. She also said RRC received funding to hire five more people for environmental permits and to operate a public engagement office.
- Ms. Craddick said the Texas Legislature has tasked RRC with mapping critical infrastructure due to the aftermath of Winter Storm Uri. Some have partially blamed the massive power losses during the storm on gas infrastructure failures. Ms. Craddick said RRC received $3 million in funding to automate critical infrastructure maps.
- RRC increasingly has begun regulating new energy sources like hydrogen, a departure from its more traditional role overseeing the oil and gas industries. Ms. Craddick said the commission is sifting through 60 applications it received for the Texas Hydrogen Production Policy Council.
- Ms. Craddick said the agency awaits feedback from proposed changes to its Statewide Rule 8 that protects groundwater sources. Those changes include streamlining existing environmental protection regulations and updating requirements on the design, construction, operation, monitoring, and closure of waste management units. RRC released draft rules on October 9, 2023. However, according to recent media reports, some industry representatives began giving input into the rules more than two years ago.
- RRC is seeking primary designation from EPA for overseeing carbon capture and sequestration operations. Ms. Craddick said she hopes to receive an EPA response "sooner rather than later." She said two other states – North Dakota and Wyoming – already possess such authority.

Atmos Energy Reports Quarterly Earnings. On November 8, 2023, Atmos Energy reported consolidated net income of $885.9 million for the year ending September 30 and $118.5 million for the fourth fiscal quarter. It also reported capital expenditures of $2.8 billion for the year ending September 30 and expects capital expenditures to total approximately $2.9 billion for fiscal year 2024. For the fiscal year that ended September 30, 2023, Atmos Energy generated an operating cash flow of $3.5 billion, compared to $977.6 million in the prior year. The year-over-year increase primarily reflects the receipt of $2.02 billion from Texas Natural Gas Securitization Finance Corporation in March 2023 relating to gas costs incurred during Winter Storm Uri.

With respect to the three months that ended September 30, 2023, consolidated operating income increased $48.7 million to $154.1 million, compared to $105.4 million in the prior-year quarter. Moreover, distribution operating income increased $17.2 million to $53.9 million, compared to $36.7 million in the prior-year quarter.

"Agency Highlights" is prepared *by Chloe Daniels in the Firm's Water and Districts Practice Groups; Mattie Neira in the Firm's Air and Waste Practice Group; and Jack Klug in the Firm's Energy and Utility Practice Group. If you would like additional information or have questions related to these agencies or other matters, please contact Chloe at 512.322.5814 or chloe.daniels@lglawfirm.com, or Mattie at 512.322.5804 or mneira@lglawfirm.com, or Jack at 512.322.5837 or jklug@lglawfirm.com.*

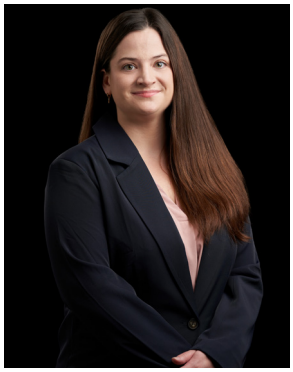




Sydney Sadler has joined the Firm's Litigation Practice Group as an Associate. Sydney represents clients in state and federal courts. She assists clients with matters relating to all aspects of litigation, from pre-trial resolution to the appeals process. Prior to joining Lloyd Gosselink, Sydney practiced business and commercial litigation in Dallas, Texas. Sydney received her doctor of jurisprudence from SMU Dedman School of Law and her bacherlor's from the University of Texas at Austin.

Jacobs Steen has joined the Firm's Water, Districts, and Litigation Practice Groups as an Associate. Jake's practice focuses on water-related legal and policy issues, including statutory and regulatory compliance, permitting, water rights, and water resource management and development. He also provides counsel in the governance, organization, and operation of local government entities. During law school, Jake developed his interest in environmental law by interning at the Texas Commission on

Environmental Quality and participating in the University of Houston Law Center Environmental Law Practicum. Jake clerked at Lloyd Gosselink prior to joining the firm. Jake received his doctor of jurisprudence from University of Houston Law Center and his bachelor's from Texas A&M University.



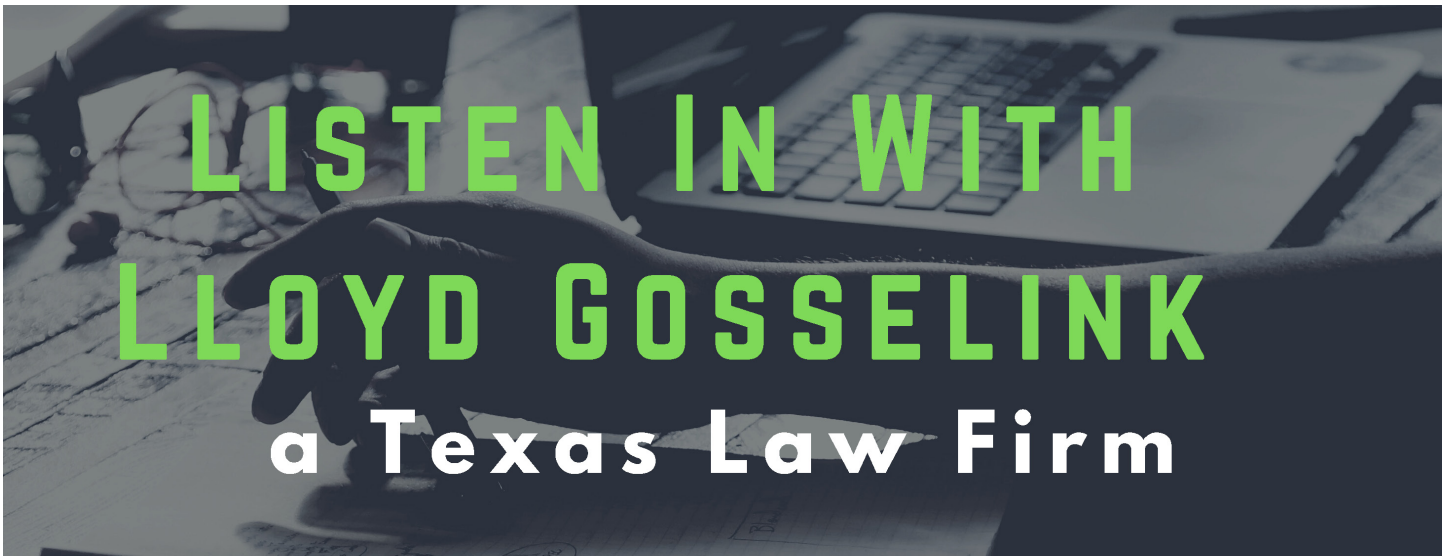
Michelle White has joined the Firm's Employment Law Practice Group as an Associate. Michelle's practice focuses on advising employers in all aspects of employment law, auditing employment policies and practices for legal compliance, and conducting workplace investigations. Prior to law school, Michelle worked for 7 years in human resources, ultimately working as Director of Human Resources for a multi-state private employer. While in law school, Michelle clerked at Lloyd Gosselink with a primary focus on the Employment Law Practice Group. Michelle received her doctor of jurisprudence from the University of Texas School of Law and her bachelor's from Texas A&M University.

Thomas Brocato will be discussing "Recent Trends in MOU Rate Cases - TCOS, GFT, and Other Issues" at the Texas Public Power Association 2024 Legal Seminar on February 6 in San Antonio.

Sarah Glaser will present "Employment Law for Governmental Employers" at the Texas State University Certified Public Manager Program on February 8 virtually.

Cole Ruiz will be presenting "Groundwater 101" at the Changing Face of Water Rights 25th Annual Course on February 21 in San Antonio.

Sarah Glaser will present an "Employment Law Update" at the Central Texas Compensation and Benefits Association on March 21 in Austin.



Lloyd Gosselink Rochelle & Townsend, P.C. has wrapped up its fifth season and is looking ahead to its sixth season of *Listen In With Lloyd Gosselink: A Texas Law Firm*, featuring various topics/attorneys throughout the Firm's practice groups. You can listen to all five seasons by visiting lg.buzzsprout.com or our website at lglawfirm.com. You can follow us on Twitter, LinkedIn, and Facebook to be notified when the latest episodes are released.

Season 5 Episodes

- Exploring the TCEQ's Audit Privilege Act Program | Jeffrey Reed
- Employment Law Update | Employment Law Practice Group
- What's Happening with My Gas Bill? An Update on Recent Rate Impacts for Customers of Investor-Owned Gas Utilities | Jamie Mauldin

More episodes coming this spring!

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