

# Clean Energy & Sustainability

## NEWSLETTER



### September 2022

Contact a DGS attorney in the [Clean Energy & Sustainability Group](#) if you have any questions about the contents of this newsletter or if we can assist you with any legal needs.

#### Upcoming Clean Energy Events:

**September 28**  
[Trials in the Pandemic](#)

**October 27-28**  
[FNREL's Commercial Renewable Energy Project Development](#)

**November 15**  
[Energy M&A and Financing Forum](#)

### Governor Polis Signs Bills to Require Disclosure of Chemical Additives in Oil & Gas Operations & Reduce the Use of PFAS Chemicals

by [Kelsey Johnson](#) & [Betsy Temkin](#)

Last month, Governor Jared Polis signed two bills into law in response to growing public concern in Colorado and elsewhere regarding chemicals used in oil and gas operations, other industrial operations, and in consumer products, with a particular focus on a broadly defined group of perfluoroalkyl and polyfluoroalkyl compounds (“PFAS chemicals”). [Read more...](#)

### The Phase I Decision Regarding Public Service 2021 Electric Resource Plan & First Clean Energy Plan

by [Judy Matlock](#)

Our June 2022 Clean Energy and Sustainability Group Newsletter included a status report on the Application of Public Service Company of Colorado for approval of its 2021 electric resource plan (“ERP”) and clean energy plan (“CEP”) in proceeding No. 21A-0141E (the “Application”). At the time of the writing of that status report, the Colorado Public Utilities Commission (the “Commission”) had held its first deliberations meeting,

on March 14, 2022, to consider the Application. Additionally, an Updated Non-Unanimous Partial Settlement Agreement had been filed on April 26, 2022 (the “Updated Settlement”), and an evidentiary hearing held on May 17, 2022 on the Updated Settlement. [Read more...](#)

## Like Inflation, Investment in Critical Minerals Isn’t Transitory

by [John Jacus](#), [Almira Moronne](#) & [Martine Ventello](#)

As part of ongoing attempts by the U.S. government to promote domestic availability of “critical minerals,” certain provisions of the Inflation Reduction Act (the “Inflation Act”) use tax credits as an incentive. DGS wrote about critical minerals in our [November 22, 2021](#) article on the Infrastructure Investment and Jobs Act (the “Infrastructure Act”). [Read more...](#)

## Senate Releases Permitting Bill to Expedite Infrastructure Projects

by [Katie Roux](#)

In *Northwest Landowners Association v. State*, No. 20210148, 2022 N.D. Lexis 152 (N.D. Aug. 4, 2022), the North Dakota Supreme Court held that portions of Senate Bill 2344 related to pore space violated the takings clauses of the North Dakota and United States constitutions. [Read more...](#)

## North Dakota Supreme Court Invalidates Key Provisions of Statute Governing Rights to Pore Space

by [John Jacus](#), [Almira Moronne](#) & [Martine Ventello](#)

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## USFWS Proposes to List the Tricolored Bat as Endangered, Citing Wind Energy-Related Impacts

by [Katie Schroder](#)

On September 14, 2022, the U.S. Fish and Wildlife Service (USFWS) published a [proposed rule](#) to list the tricolored bat as endangered under the Endangered Species Act (ESA). Notably, the USFWS declined to propose to designate critical habitat for the species after finding such a designation would not be prudent. [Read more...](#)