

Please note: Due to the Labor Day holiday, the next Weekly Report will be distributed on Tuesday, September 5.

WEEKLY HIGHLIGHTS AT-A-GLANCE

FEDERAL – Legislative

- **H.R. 3608 – Endangered Species Transparency and Reasonableness Act.** Rep. Tom McClintock (R-CA) introduced H.R. 3608, the *Endangered Species Transparency and Reasonableness Act*, which has initially introduced on July 28 and has since been referred to the House Natural Resources Committee for further consideration. The bill would “amend the Endangered Species Act of 1973 (ESA) to require publication on the Internet of the basis for determinations that species are endangered species or threatened species.” The bill would also impose disclosure of legal expenditures made by the federal government in litigation involving the ESA. [Read more.](#)

FEDERAL – Regulatory

- **Interior Department Greater Sage-Grouse Plan.** On August 7, Interior Secretary Ryan Zinke [announced a new federal plan](#) to protect the Greater Sage-Grouse by granting more flexibility to the 11 western states inhabited by the birds, as well as identifying new habitat boundaries, modifying policies for energy and mineral development, and giving states the power to set Sage-Grouse population targets. The plan will preserve the species while also expanding opportunities for energy development in the states where they live. The move is reported as a win for the oil and gas industry which had long argued that the plan developed by former President Obama was too restrictive. The updated plan comes as the Department of the Interior [Sage-Grouse Review Team submitted a report](#) regarding possible plan and policy modifications to complement state efforts to improve Greater Sage-Grouse conservation and economic development on public lands. The report is the final product required by [Secretarial Order 3353](#) (“Greater Sage-Grouse Conservation and Cooperation with Western States”), issued June 7, 2017, which ordered a review of a 2015 plan put in place by the Obama administration. The plan will allow the federal government and the states to protect the species while not slowing economic growth. “I’ve directed Deputy Secretary David Bernhardt to begin implementation of the recommendations and to direct the Bureau of Land Management, in coordination with the U.S. Fish and Wildlife Service, the U.S. Geological Survey, and other offices in the Department, to immediately follow through on the short- and long-term recommendations,” said Secretary Zinke. [Read more.](#)

- **Federal Oil & Gas Royalty Valuation Reform.** The Trump administration is repealing an Obama-era regulation governing how royalties are calculated for oil and gas extracted on federal lands. On August 7, the Interior Department’s Office of Natural Resources Revenue (ONRR) published a Final Rule, *Repeal of Consolidated Federal Oil & Gas and Federal & Indian Coal Valuation Reform* ([82 Fed. Reg. 36934](#)), which will reinstate the valuation regulations governing the valuation of federal oil and gas effective September 6, 2017. This action fully repeals the *Consolidated Federal Oil & Gas and Federal & Indian Coal Valuation Reform Final Rule* (2017 Valuation Rule) that ONRR published under the Obama administration ([81 Fed. Reg. 43338](#)), which reportedly had “created confusion and uncertainty regarding how companies report and pay royalties on energy,” according to the Interior Department. The new rule cites “defects” in the prior measure and its repeal reinforces President Trump’s commitment to reducing regulatory burdens on domestic energy development. “The Obama Administration’s changes to royalties for coal, oil, and natural gas was just one in a series of barriers it put up to hold back energy production on federal lands,” said Rep. David McKinley (R-WV). The Interior Department intends “to further evaluate changes that may be warranted to the long-established oil, gas and coal regulations through the Royalty Policy Committee and publicly-vetted rulemaking, ensuring that valuation and revenue collection for the nation’s mineral and hydrocarbon resources remain transparent and consistent.” Interior Secretary Ryan Zinke said “[r]epealing the Valuation Rule provides a clean slate to create workable valuation regulations.” [Read more](#). On August 9, the law firm Holland & Hart also published a detailed overview and analysis of the ONRR repeal. [Read more](#).
- **BLM Lease Sale – Nevada.** The Bureau of Land Management (BLM) has announced that it is seeking public comments to assist in preparing an environmental assessment for 38 oil and gas parcels set for a lease sale in March 2018, totaling approximately 67,311.79 acres in the Elko District. The parcels are in the following areas: Pinion Range, Pine Valley, South Fork Reservoir, Twin Creeks, Mitchell Creek, and Cherry Creek Range areas. Comments will be accepted until September 24. [Read more](#).
- **BLM Lease Sale – Wyoming.** On August 9, the [BLM announced](#) that it will offer 45 parcels totaling 72,843.75 acres in the High Desert District at its December 2017 oil and gas lease sale. Three parcels will be offered in Laramie County, seven parcels in Sweetwater County, four parcels in Uinta County, and 31 parcels in Lincoln County. [Read more](#).
- **BLM Lease Sale – National Petroleum Reserve in Alaska.** On August 7, the BLM [announced a call for nominations and comments](#) on 900 tracts on approximately 10.3 million acres in the National Petroleum Reserve in Alaska (NPR-A) to be made available for leasing (*Call for Nominations and Comments for the National Petroleum Reserve in Alaska Oil and Gas Lease Sale*; [82 Fed. Reg. 36827](#)). Nomination and comments on tracts for consideration are due by September 7. Offering these tracts for leasing “will jump-start

Alaskan energy production in the National Petroleum Reserve in Alaska,” said Katharine MacGregor, Acting Assistant Secretary for Lands and Minerals Management. [Read more.](#)

STATE – Legislative

- **Permitting; Notice – Pennsylvania.** On August 16, Rep. Scott Conklin (D) introduced HB 1721. The bill would require that public notice be given for all natural gas permit applications. Well operators would be obligated to make the notice available to the public through newspaper publications in the locality for the permitted use. The notice would have to be made prior to the actual filing of the application with the state Department of Environmental Protection and would be required to be published once a week for four consecutive weeks. Well operators would also be required to include proof of the publication with their permit applications. [Read more.](#)
- **Royalties – Pennsylvania.** On August 16, Rep. Jason Ortity (R) introduced HB 1708. The bill would detail which kinds of post-production costs are allowed to be deducted from the proceeds of the sale of natural gas from unconventional wells in leases entered into after the bill’s enactment. The bill would also give landowners the ability to receive a written summary of any deductions taken and the ability to inspect the records to confirm the authenticity of those deductions. The bill also seeks to provide clarity for the natural gas industry by attempting to codify the point of valuation for royalty purposes and would apply the minimum royalty standard based on the value at the wellhead. [Read more.](#)

STATE – Judicial

- **Leasing; Damages – Pennsylvania.** On August 7, Cabot Oil & Gas Corporation filed suit against a Pennsylvania resident and lessor who the company claims has been attempting to harass and extort the company. In [Cabot Oil & Gas Corp. v. Speer et al.](#) (Case No. 2017-936-CP), the oil and gas company filed a \$5 million lawsuit against the resident and his lawyers, asserting they tried to extort the company through a frivolous lawsuit alleging the company polluted their water. The suit “takes issue with a federal lawsuit that Kemble and his lawyers filed in April but withdrew two months later. That suit accused Cabot of continuing to pollute Kemble’s water supply. The company said the claims in Kemble’s suit were the subject of a 2012 settlement between Cabot and dozens of Dimock residents — including Kemble — and were barred by the statute of limitations.” Cabot’s suit also alleges that defendant Kemble breached the 2012 settlement by publicly talking about the company.” [Read more.](#)
- **Statute of Frauds – Texas.** (from Welborn Sullivan Meck & Tooley, P.C. law blog) The Texas Court of Appeals for the First District ruled in [Khoury v. Tomlinson](#) (Case No. 01-16-00006-CV) that merely having your name in the “From” field of an email constitutes a signature for purposes of satisfying the Texas Statute of Frauds. Although decided in

March, the case has been garnering attention for those relying on the protection and interpretation of the Statute of Frauds. This case involved a breach of contract claim arising from the transport of oil. The question at issue addressed what constitutes a signature under the Uniform Electronic Transactions Act (UETA), which has been adopted by Texas and all other states except Illinois, Washington and New York. “The email at issue in *Khoury* was not signed, did not include a name in the body of the email and did not have a signature block at the end of the email. Nevertheless, based on the language of the UETA, and cases in other states that held that an email header and the ‘From’ field in an email constitute an electronic ‘signature’ under the UETA, the court held that the mere inclusion of the defendant’s name in the ‘From’ field was evidence sufficient to establish that the email was ‘signed’ and thus satisfied the signature requirement of the Texas Statute of Frauds.” [Read more.](#)

State-by-State Legislative Session Overview

California and **Massachusetts** are in regular session. **Puerto Rico** is also in regular session.

The following are in recess and are expected to convene on the dates provided: **United States** Congress (September 5), **Michigan** House and **Ohio** Senate (September 6), **Michigan** Senate (September 7), **Wisconsin** (September 12), **Ohio** House (September 13) and the **District of Columbia** Council (September 19). **New Jersey** and **Pennsylvania** are recessed to the call of the chair.

Illinois convened a special session related to education funding on July 27. The **Connecticut** Senate convened a special session related to budget issues on July 31, [The Connecticut Mirror](#) reports. **Wisconsin** convened a special session on August 2 to consider legislation that would create an information technology manufacturing zone. **North Carolina** convened a special session on August 18 to redraw state legislative and congressional district maps.

North Carolina Democratic Gov. Roy Cooper has until September 2 to act on legislation from the most recently adjourned special session or it becomes law. **Texas** Republican Gov. Greg Abbott has until September 4 to act on legislation from the special session or it becomes law. **Alaska** Independent Gov. Bill Walker has 15 days, Sundays excepted, to act on legislation from the regular and special sessions or it becomes law. **Delaware** Democratic Gov. John Carney has 10 days, Sundays excepted, to act on legislation or it becomes law. **Maine** Republican Gov. Paul LePage has until three days after the next meeting of the legislature to act on legislation or it becomes law. **New Hampshire** Republican Gov. Chris Sununu has five days, Sundays excepted, to act on legislation or it is pocket vetoed. **New York** Democratic Gov. Andrew Cuomo has 10 days from presentment, Sundays excepted, to act on legislation from the regular and special sessions or it becomes law. **South Carolina** Republican Gov. Henry McMaster has until two days after the next meeting of the legislature to act on regular session legislation presented after May 6 and special session legislation or it becomes law.

Oregon Democratic Gov. Kate Brown had a signing deadline on August 18. **Rhode Island** Democratic Gov. Gina Raimondo has acted on all legislation from the regular session.

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

The following states are currently posting bill drafts, prefiles and interim studies for the 2018 session: [Alabama](#), [Arkansas](#), [Florida Senate](#), [Georgia](#), [Kentucky](#), [Maine](#), [Montana](#), [Nebraska](#), [North Dakota](#), [Oklahoma prefiles](#) and [House](#) and [Senate](#) interim studies, [Utah](#) and [Wyoming](#).

Lands

Public Lands

On August 21, the Assembly decided to reconsider the veto by Democratic Gov. Jerry Brown of **California** [AB 1472](#) but they have not taken a vote yet. The bill was vetoed on July 24. Existing law gives the State Lands Commission control over certain public lands. With respect to oil, gas, and mineral leases, the assignment, transfer or sublet of public lands to another person is subjected to approval by the commission and certain provisions apply. In considering the approval of a transfer of assignment on public lands, this bill would have authorized the commission to consider whether the proposed assignee is likely to comply with all provisions of the lease for the duration of the lease term.

Oil and Gas

Oil and Gas General

During an August 23 hearing, **California** [SB 44](#) was automatically referred to the Assembly Appropriations Committee's suspense file (i.e., set aside by the committee for possible later consideration) because it carries a fiscal impact exceeding \$150,000. This bill would require the State Lands Commission in the Natural Resources Agency to administer a legacy oil and gas well removal, plugging and remediation program. Carrying out this program is contingent on appropriation of funds by the legislature.

This bill is sponsored by Sen. Hannah-Beth Jackson, D-Santa Barbara, chair of the Senate Judiciary Committee.

California [SB 465](#) was heard in the Senate Appropriations Committee on August 23 and was referred to the suspense file (i.e., set aside by the committee for possible later consideration due to its fiscal impact). This bill would further detail the role of the oil and gas supervisor

in the state and their responsibility regulating oil and gas production and encouraging safe development of oil and gas resources. The bill would require the supervisor to oversee the drilling, operation, maintenance and abandonment of wells, tanks and facilities in oil and gas production. It would require all operators to file a written notice of intent to start drilling with the supervisor. The bill would clarify definitions for idle well as a well that has not been in production for over 24 months, and a long term idle well is one that has not been in operation for eight years or more.

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