

WEEKLY HIGHLIGHTS AT-A-GLANCE**FEDERAL – Legislative**

- **EPA Emissions Rule – Washington, DC.** On January 6, U.S. House of Representatives Republicans used their power under the Congressional Review Act to target the recently finalized Environmental Protection Agency (EPA) methane emissions rule. The rule is aimed at reducing methane emissions from new, modified and reconstructed oil and gas wells and is one of several environmental rules expected to come under fire in the new Republican-dominated Washington. If passed by Congress, and signed by Donald Trump when president, the joint resolution of disapproval ([H.J. Res. 22](#)) introduced by Rep. Scott Perry (R-PA) would negate the EPA rule and bar the agency from creating a rule that is substantially similar to it in the future. [Read more.](#)
- **BLM Leasing – Alaska.** On January 3, Rep. Don Young (R-AK) introduced HR 49, known as the “American Energy Independence and Job Creation Act” to direct the Secretary of the Interior to establish and implement a competitive oil and gas leasing program for the exploration, development, and production of the oil and gas resources of the Coastal Plain of Alaska. The bill directs the first lease sale to contain no less than 200,000 acres of public lands for auction. [Read more.](#)
- **Indian Lands Oil and Gas Resource Development.** On January 3, Rep. Don Young (R-AK) introduced HR 210. The bill seeks to facilitate the development of energy on Indian lands by reducing Federal regulations that impede tribal development. [Read more.](#)

FEDERAL – Regulatory

- **BLM Leasing – Colorado.** The BLM’s Tres Rios office has elected to defer portions of proposed oil and gas leases that are within Lone Mesa State Park north of Dolores from its upcoming March 9 lease sale. About 1,000 acres from three parcels within the park were taken out of the sale. Colorado Parks and Wildlife and the Division of Wildlife requested that the BLM make the state park ineligible for oil and gas leasing. However, the BLM did not grant the request for ineligibility, but only approved a deferral for the upcoming lease sale. [Read more.](#)
- **BLM Onshore Order No. 1 Amendment.** On January 10, the BLM published its final order for *Onshore Oil and Gas Operations; Federal and Indian Oil and Gas Leases; Onshore Oil and Gas Order Number 1, Approval of Operations* in the Federal Register ([82 FR 2906](#)). With this order, the BLM amends its existing Onshore Oil and Gas Order

Number 1 to require the electronic filing (or e-filing) of all Applications for Permit to Drill (APD) and Notices of Staking (NOS). Previously, Onshore Order 1 stated that an “operator must file an APD or any other required documents in the BLM Field Office having jurisdiction over the lands described in the application,” but allowed for e-filing of such documents as an alternative. This change makes e-filing the required method of submission, subject to limited exceptions. The BLM reports it is making this change to improve the efficiency and transparency of the APD and NOS processes. [Read more.](#)

- **BLM Oil Shale Rule.** On January 10, the BLM finalized its [Oil Shale Management rule](#). The final rule, to be published in the Federal Register, gives the Secretary of the Interior flexibility in setting rates lease-by-lease and requires oil shale operations to include environmental protection plans. The final rule will apply royalty rates set in 2008 as the minimum for federal commercial oil shale leases and rates may be set higher on a lease-by-lease basis. The prior, existing rule required commercial operators to pay 5% royalties in the first year of production, increasing by 1%/year until reaching a maximum 12.5% rate. In considering the public comments on the proposed rule, published in 2013, BLM said it determined that improvements to the 2008 oil shale regulations were necessary to better promote oil shale leasing and development policies which Congress established. [Read more.](#)
- **BLM Rights-of-Way Rule.** In December 2016, the BLM published a final rule, *Competitive Processes, Terms, and Conditions for Leasing Public Lands for Solar and Wind Energy Development and Technical Changes and Corrections* in the Federal Register ([81 FR 92122](#)). Although this rule is intended “to facilitate responsible solar and wind energy development on BLM-managed public lands” by amending regulations concerning rights-of-way for those renewable energy projects, according to the law firm, Wellborn Sullivan Meck & Tooley, P.C., the rule, which takes effect January 18, may also affect, to a lesser extent, oil and gas operators who seek Federal Land Policy and Management Act rights-of-way for roads or water pipelines, or Mineral Leasing Act rights-of-way for oil and gas pipelines. [Read more.](#)
- **BLM Lease Cancellations – Montana.** In the ongoing battle over BLM leases in the Badger-Two Medicine area within the Lewis and Clark National Forest in northwest Montana, last week the BLM announced cancellation of the final two oil and gas leases in the area. The lease cancellations occur after 30 years of administrative, legal and legislative actions and reflect the significance of the area to the Blackfoot Tribe and concerns regarding lease issuance. [Read more.](#)
- **BLM Lease Sale – New Mexico.** The BLM will hold its first online oil and gas lease sale of the year on January 25. The sale was originally scheduled for January 18, but had been rescheduled. The BLM’s Farmington Field Office will offer four parcels totaling 842.66 acres. [Read more.](#)

STATE – Legislative

- **Setbacks – Michigan.** On January 11, Rep. Peter Lucido (R) introduced HB 4007, a bill which amends current law to change permitting for certain county population sizes, proposed well setbacks, and public hearing requirements. [Read more.](#)
- **Oil and Gas Best Practices – Michigan.** On January 11, Rep. Peter Lucido (R) introduced HB 4008, a bill which directs the state Department of Technology, Management, and Budget to produce a study on best practices in oil and gas exploration, drilling and production operations in residential areas. [Read more.](#)
- **Notifications – Montana.** On January 8, Senator Tom Richmond (R) introduced SB 93, a bill which amends current law to require notifications of oil and gas drilling operations and completions to certain dwelling owners. [Read more.](#)
- **Mineral Rights – North Dakota.** On January 9, Rep. Michael Brandenburg (R) introduced HB 1281, a bill encouraging Congress to return land and mineral rights underlying Lake Oahe to the state of North Dakota. [Read more.](#)
- **Ad Valorem Taxes – Texas.** On November 14, 2016, HB 119 was pre-filed by Rep. Tom Craddick (R) and no action has yet been taken. The bill relates to the listing of separate interests in minerals in place in ad valorem tax appraisal records. [Read more.](#)
- **Royalties – Texas.** On November 14, 2016, HB 129 was pre-filed by Rep. Tom Craddick (R) and no action has yet been taken. The bill relates to the manner in which a payor of proceeds derived from the sale of oil or gas production is required to provide certain information to a royalty interest owner. [Read more.](#)
- **Railroad Commission – Texas.** On November 14, 2016, HB 237 was pre-filed by Rep. Rafael Anchia (D) and no action has yet been taken. The bill seeks to change the name of the Railroad Commission to the Texas Energy Resources Commission and makes changes to its operations. [Read more.](#) A similar name-change bill, HB 642, was introduced on December 19, 2016 by Rep. Larry Phillips (R). [Read more.](#) Rep. Phillips also introduced a constitutional amendment, HJR 47, to change the name. The amendment would put the vote to the public, unlike the other bills. [Read more.](#)
- **Railroad Commission – Texas.** On November 14, 2016, HB 247 was pre-filed by Rep. Rafael Anchia (D) and no action has yet been taken. The bill would require the Railroad Commission to post certain enforcement information on its website. [Read more.](#)
- **Ad Valorem Taxes – Texas.** On November 14, 2016, HB 302 was pre-filed by Rep. Craig Goldman (R) and no action has yet been taken. The bill relates to the exemption from ad valorem taxation of mineral interests having certain amounts. [Read more.](#)

- **Texas Workforce Commission – Texas.** On November 16, 2016, HB 373 was pre-filed by Rep. Ramon Romero (D) and no action has yet been taken. The bill relates to administrative penalties assessed by the Texas Workforce Commission against certain employers for failure to pay wages. [Read more.](#)
- **Permitting; Injection Wells – Texas.** On November 14, 2016, SB 189 was pre-filed by Senator Carlos Uresti (D) and no action has yet been taken. The bill would impose requirements in the permit application process for an injection well which is within the territory, or certain distances, of a groundwater conservation district. [Read more.](#)
- **Well Permit Disclosures – Virginia.** On January 11, Delegate Roxann Robinson (R) introduced HB 1679, a bill which authorizes the Department of Mines, Minerals, and Energy to receive certain disclosures, specifically, the Department may require an application for a well, a supplement thereto, and a well completion report to include chemical ingredient names, the chemical abstracts numbers for chemical ingredients, or the amount or concentration of chemicals or ingredients used to stimulate a well, provided there is an exclusion from mandatory disclosure under the Virginia Freedom of Information Act. [Read more.](#)
- **Oil and Gas Taxation – Wyoming.** On January 9, the Joint Revenue Interim Committee introduced HB 10, a bill relating to oil and gas taxation; required reporting by the operator of a well or property; and providing for reporting by an owner of production to the operator. [Read more.](#)

STATE – Regulatory

- **New Cabinet Secretary – New Mexico.** Governor Susana Martinez has named Ken McQueen as the new Secretary of the New Mexico Energy, Minerals and Natural Resources Department. Martinez’s appointment of McQueen, who has over 35 years of domestic and international energy experience, comes at a time when city and state officials are struggling with a \$69 million budget shortfall due in part to the prior downturn in oil and natural gas prices. [Read more.](#)

STATE – Judicial

- **Continuous Production; Leasing – Ohio.** (From Kegler, Brown, Hill & Ritter’s Ohio Energy + Environment). On December 30, 2016, in [Potts v. Unglaciated Industries, Inc.](#) (Case No. 2016-Ohio-8559), the Ohio Court of Appeals for the Seventh District considered what evidence was sufficient to demonstrate production satisfactory to maintain an approximately 121 year old oil and gas lease. Although the court specifically declined to set any precedent, it found that, absent any evidence of lack of production presented by the landowners, the statement of the company president and some evidence of

payments made by a third party oil purchaser was sufficient to support a finding in favor of the lessee. [Read more.](#)

- **Oil and Gas Rights – Pennsylvania.** On December 20, 2016, in *Detillo v. Huzdovich* (Case Nos. 941 and 993 WDA 2015), a panel of the Superior Court upheld a trial court’s decision to deny a wife’s claim to future revenue from oil and gas rights, holding that laches (or “delay”) barred her claim and that in any event she failed to propound evidence to support her claim other than the speculative value of future revenues from any oil and gas leases. [Read more.](#)
- **Mineral Rights – Pennsylvania.** On December 21, 2016, in *Cornwall Mountain Investments, L.P. v. Thomas E. Proctor Heirs Trust* (Case Nos. 941 and 993 WDA 2015), the Superior Court concluded that a landowner acquired the oil and gas rights by tax sale in 1932 and could lease them over the objection of a competing landowner claiming title to the oil and gas, holding that “mineral rights” included oil and gas rights for purposes of a tax sale despite the state’s “*Dunham Rule*” (which says that the word “minerals” in a private conveyance generally does not include “oil and gas”). [Read more.](#)
- **Cases to Watch in 2017 – Texas.** The law firm, McGinnis Lochridge, has published “10 Oil and Gas Cases to Watch in 2017” on its Oil and Gas Law Digest website. We will also actively monitor these cases throughout the year and report on any developments of interest to our landmen members. [Read more.](#)

INDUSTRY NEWS FLASH:

◆ **North Texans for Natural Gas Releases Special Report.** The pro-industry group, North Texans for Natural Gas, which is supported by four of the region’s leading energy producers: Devon Energy, EnerVest, EOG Resources, and XTO Energy, has just released its report entitled, “MESSING WITH TEXAS: Exposing the Campaign to Shut Down Oil and Natural Gas in the Lone Star State”. The report details efforts by out-of-state environmental groups to block Texas oil and gas resource production. Access the report [here](#).

◆ **Energy Department Declares U.S. Oil Production Declines Have Ended.** The decline in U.S. oil production during the two-year bust is over, according to a U.S. Energy Information Administration (EIA) [outlook report](#) released last Tuesday. EIA Administrator Adam Sieminski noted that American oil production increased in the last three months of the year, marking the first quarterly increase since early 2015. In addition, U.S. natural gas production is expected to rise in the next two years, reversing the first annual decline in more than a decade, as natural gas prices rise. [Read more.](#) The EIA has also just released their “Annual Energy Outlook 2017” which provides projections for domestic energy production. Access the report [here](#).

State-by-State Legislative Session Overview

Arizona, Arkansas, California, Colorado, Connecticut, Delaware, Georgia, Idaho, Illinois, Indiana, Iowa, Kansas, Kentucky, Maine, Maryland, Massachusetts, Michigan, Minnesota, Mississippi, Missouri, Montana, Nebraska, New Hampshire, New Jersey, New York, North Carolina, North Dakota, Ohio, Pennsylvania, Rhode Island, South Carolina, South Dakota, Tennessee, Texas, Vermont, Virginia, Washington, Wisconsin and Wyoming are in regular session. The District of Columbia Council, Puerto Rico and the United States Congress are also in regular session.

Oregon convened on January 9 for organizational days, and is in recess until February 1. A list of legislation introduced during the organizational days can be found [here](#). West Virginia held an organizational day on January 11 and is also in recess until February 1, but did not introduce any legislation.

Illinois and New Jersey adjourned their 2016 sessions and convened their 2017 sessions on January 9.

Wisconsin Republican Gov. Scott Walker called the legislature into special session and issued agency directives related to efforts to control heroin and opioid use on January 5. A press release from Governor Walker's office about the special session and agency directives can be found [here](#). According to legislative staff, the special session will run concurrently with the regular 2017 session, which convened on January 11.

The following states are expected to convene their 2017 sessions on the dates provided: Alaska and New Mexico (January 17), Hawaii (January 18), Utah (January 23) and Oregon (February 1).

Illinois Republican Gov. Bruce Rauner has 60 days from presentment to act on legislation or it becomes law without signature. Michigan Republican Gov. Rick Snyder has 14 days from presentment to act on legislation from the 2016 session or it is pocket vetoed.

District of Columbia Democratic Mayor Muriel Bowser and Ohio Republican Gov. John Kasich had a signing deadline for legislation from the 2016 session on January 10.

The following states are currently posting bill draft requests/prefiles for the 2017 session: Alabama [House](#) and [Senate](#), Alaska, Florida, Nevada, New Mexico, Oklahoma [House](#) and [Senate](#) bill drafts and [prefiles](#), and Utah (draft requests appear on individual committee pages).

Endangered Species

Montana [HB 211](#) was introduced on January 10 by Rep. Bradley Hamlett, D-Cascade, and referred to the House Natural Resources Committee. This bill would require the Department of Fish, Wildlife and Parks to report the current sage grouse population numbers to the Montana sage grouse oversight team and the environmental quality control on an annual basis.

Oil and Gas

Oil and Gas General

California [SB 44](#) was referred to the Senate Natural Resources and Water Committee and Senate Environmental Quality Committee on January 12. This bill would require the State Lands Commission in the Natural Resources Agency to administer a legacy oil and gas well removal 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.

Montana [SB 93](#) is scheduled to be heard in the Senate Energy and Telecommunications Committee on January 17. This bill would require oil and gas developers and operators to give notice upon completion of their operation to the owner of an occupied dwelling within 660 feet of a borehole. This bill is sponsored by Sen. Tom Richmond, R-Bills.

Mineral Rights

Michigan [HB 5571/PA 523'16](#) was signed by Republican Gov. Rick Snyder on December 31. Effective immediately, this law authorizes the state administrative board to purchase land in Calhoun County. The state will not receive the mineral rights; however, if a lessee of the property derives any revenue from the development of minerals found on the property, half the revenue must be paid to the state.

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