

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

- **H.R. 2661/S. 1267 - State Mineral Revenue Protection Act.** On May 25, [H.R. 2661](#), known as the State Mineral Revenue Protection Act, was introduced by Rep. Liz Cheney (R-WY). The bill would allow states to collect their own federal mineral royalties which effectively would eliminate a collection fee charged by the federal government, which amounts to around \$40 million per year. “For years, the federal government has been withholding 2 percent of mineral revenues that belong to western states,” said Cheney. The identical companion Senate bill, [S. 1267](#), was also introduced on May 25 by Sen. Mike Enzi (R-WY). “Mineral royalties are supposed to be split 50-50, but by charging an unfair collection fee, the federal government is squeezing the states for more dollars to pad its own coffers,” said Enzi. “By empowering states to collect their own mineral revenue, they would no longer have to worry about the federal government snatching up mineral royalties that are rightfully theirs.” [Read more.](#)

FEDERAL – Regulatory

- **BLM Methane Emissions Rule.** On June 15, the Bureau of Land Management (BLM) published a Notice, *Waste Prevention, Production Subject to Royalties, and Resource Conservation; Postponement of Certain Compliance Dates* ([82 Fed. Reg. 27430](#)), delaying full implementation of the Obama-era Waste Prevention Rule ([81 Fed. Reg. 83008](#)), which would have been effective as of January 17, 2017. Industry groups and certain states had challenged the rule in court, which is now pending in the U.S. District Court for the District of Wyoming ([Wyoming v. U.S. Dept. of the Interior](#); Case No. 2:16-CV-0285-SWS). In light of those challenges, and the current Administration’s opposition to the rule, “the BLM has concluded that justice requires it to postpone the compliance dates for certain sections of the Rule pursuant to the Administrative Procedure Act, pending judicial review.” The Act allows agencies to postpone effective dates of action if “justice so requires.” According to a BLM statement, “operators should not be required to expend substantial time and resources to comply with regulatory requirements that may prove short-lived as a result of pending litigation or the administrative review that is already under way”. In May, Congressional Republicans failed to pass a measure that would have repealed the rule entirely without a need for agency delay. [Read more.](#)
- **EPA Oil and Gas Emission Standards Rule.** Last Tuesday, the U.S. Environmental Protection Agency (EPA) proposed extending by two years its delay of key parts of a rule aimed at curbing methane emissions from new and modified oil and gas

infrastructure. In its proposed rule, *Oil and Natural Gas Sector: Emission Standards for New, Reconstructed, and Modified Sources: Stay of Certain Requirements* ([82 FR 27645](#)) the EPA said it wants to make sure that some provisions of the Obama-era New Source Performance Standards, finalized in 2016 ([81 Fed. Reg. 35823](#)), for the oil and natural gas industry are delayed while the agency reviews the rule. The move extends a 90-day delay the EPA announced in May. “Under the proposal, sources would not need to comply with these requirements while the stay is in effect,” the EPA said in a press release. [Read more.](#)

- **National Petroleum Reserve – Alaska.** (from *Oil & Gas Journal*, June 1, 2017) On May 31, Interior Secretary Ryan Zinke issued [Order No. 3352](#), to “jump-start oil production within the National Petroleum Reserve – Alaska”. Zinke said Interior will work with the Alaska Native community to identify areas within the 22.8 million-acre reserve where responsible energy development makes the most sense and devise a plan to extract resources. “This is land that was set up with the sole intention of oil and gas production. However, years of politics over policy put roughly half of the NPR-A off-limits,” Zinke said during the signing ceremony at the Alaska Oil & Gas Association’s annual meeting. [Read more.](#)

FEDERAL – Judicial

- **Dakota Access Pipeline – D.C. Federal Court.** Last Wednesday – in a temporary setback for the Trump administration’s pro-energy agenda – a federal judge ordered the administration to conduct further environmental reviews of the Dakota Access Pipeline, but stopped short of halting the operations, pending further hearings. In the Court’s memorandum opinion in [Standing Rock Sioux Tribe v. U.S. Army Corps of Engineers](#) (Case No. 16-1534), U.S. District Judge James E. Boasberg found that the U.S. Army Corps of Engineers “largely complied with the National Environmental Policy Act” but “failed to adequately consider the impacts of an oil spill on Standing Rock’s fishing and hunting rights and on environmental justice, and in February 2017, it did not sufficiently weigh the degree to which the project’s effects are likely to be highly controversial in light of critiques of its scientific methods and data.” The judge noted that the standard remedy in this situation would be to vacate the pipeline’s permits and easement, thereby halting pipeline operations until the Army Corps is in compliance with environmental procedures, however, he noted that such a move “would carry serious consequences that a court should not lightly impose” and will give the Trump administration an opportunity to argue its case without shutting down the already-operational pipeline. The pipeline spans nearly 1,200 miles from North Dakota to Illinois, and the operator, Energy Transfer Partners, says it can carry 520,000 barrels of oil daily, which it has already begun transporting over the last few weeks. [Read more.](#)
- **Surface Use Agreement – Kansas Federal Court.** On May 8, in *Doce Ltd. P’ship v. Sandridge Expl. & Prod., LLC* (Case No. 16-1045-EFM-KGG), the U.S. District Court

for Kansas held that an oil and gas lessee had the right to dispose of produced water from operations off the leased premises based on a surface agreement that said the lessee acquired the right to dispose of water “produced from oil and gas operations operated by or on behalf of the lessee”. The Court reasoned that this clause had no limitation and that the parties could have limited disposal operations to on-lease operations only but never limited the agreement in that way. [Read more.](#)

- **Forced Pooling – Fifth Circuit (Louisiana).** On May 12, in *TDX Energy, L.L.C. v. Chesapeake Operating, Inc.* (Case No. 16-30450), the U.S. Court of Appeals, Fifth Circuit, held that a unit operator under the state’s forced pooling statute forfeits the right to demand contribution from the “owner or owners of the unleased oil and gas interests for the costs of the drilling operations of the well” if it fails to notify owners of interests in lands for which the operator has no lease. This is a case of first impression, where the Court was interpreting that phrase for the first time to include owners of working interests on lands in which the unit operator has no lease. [Read more.](#)
- **Purchase and Sale Agreement – Sixth Circuit (Ohio).** On May 23, in *Atlas Noble, LLC v. Krizman Enterprises* (Case No. 15-4385), the U.S. Court of Appeals, Sixth Circuit, sent back to the lower court a dispute revolving around a failed purchase and sale agreement to buy and sell oil and gas leases in Ohio. The lower court will determine the issue of breach and the damages to be awarded to the parties. [Read more.](#)
- **Leasing; Bonus Payments – West Virginia Federal Court.** On May 11, in *Reynolds v. Ascent Res.-Marcellus, LLC* (Case No. 1:16CV77), the U.S. District Court for the Northern District of West Virginia, denied the parties’ competing motions for summary judgment seeking a judge’s decision as a matter of law, rather than on the evidence. The case will now move forward to trial. In the case, the plaintiff alleges that the defendant failed to make proper bonus payments after the lessee discovered a pre-existing lease on the property. At this stage, the Court concluded that the lessee didn’t establish whether the prior lessee had superior title as required by West Virginia law to state a breach of the lessor’s warranty-of-title clause. [Read more.](#)

STATE – Legislative

- **Spacing Units – Oklahoma.** (Update to 5/30/17 Weekly Report) On May 31, [SB 867](#) was signed into law by Gov. Mary Fallin (R). The Act, known as the Oklahoma Energy Jobs Act of 2017, authorizes the Corporation Commission to create well spacing units for horizontal oil or gas wells of up to 1,280 acres. An application for a horizontal spacing unit larger than 640 acres must include the basis for requesting a larger unit. Unless reasonable cause is shown, the horizontal lateral must be at least 7,500 feet in order to receive a spacing unit larger than 640 acres. Further, the drilling of a multiunit horizontal well is not allowable as the initial unit well for a horizontal spacing unit, unless the contemplated completed portion of the lateral is to extend 10,560 feet.

The measure also allows for horizontal spacing units to be established for a common source of supply for which there are already non-horizontal drilling and spacing units. The bill also renames the 2011 Shale Reservoir Development Act to the Extended Horizontal Well Development Act. The amended Act allows multiunit wells in any targeted reservoir or more than one targeted reservoir and no longer refers specifically to any one particular reservoir or source of supply. [Read more.](#)

- **Notaries – Texas.** On June 1, [HB 1217](#) was signed into law by Gov. Greg Abbott (R). The Act provides for authorizing a notary public to conduct online notary services. The Act requires the Secretary of State to develop standards and rules for online notarization, and online notarization services will be only be applicable to certain types of documents. [Read more.](#)
- **Royalty Payments – Texas.** (Update to 5/30/17 Weekly Report) On May 29, HB 129 was signed into law by Gov. Greg Abbott (R). Under the Act, when submitting payment, this measure allows a payer of a royalty interest to provide required information in another form other than on the check stub, if the interest owner gives written permission. The new law will take effect on September 1, 2017. [Read more.](#)
- **Wells – Texas.** On June 15, Gov. Greg Abbott (R) vetoed HB 3025. The bill would have changed the number of days after a landowner or other person who possesses an abandoned well has to plug or cap the well from 180 days to 30 days after discovering it. The bill would have also added a new section to existing law that says no later than 10 days after a landowner who possesses a deteriorated well learns of its condition the landowner would have to have the well plugged. The measure also contained a requirement that owners or a lessee of land with deteriorated wells plug or repair the well sufficiently to prevent pollution of any water, including ground water. [Read more.](#)

STATE – Regulatory

- **Department of Environmental Protection – Pennsylvania.** On May 23, Acting Secretary Patrick McDonnell was confirmed to serve as Secretary of the Pennsylvania Department of Environmental Protection (PADEP). McDonnell had been heading up the agency as Acting Secretary for nearly a year after the abrupt departure of his predecessor, John Quigley. During McDonnell's Senate confirmation hearing, he was grilled by Republican members regarding how the PADEP will implement [new controls on methane emissions](#) from the oil and gas industry. A longtime state government employee, McDonnell previously served as the agency's Political Director in the Office of Pollution Prevention. Before that, he worked for the state's Public Utility Commission. McDonnell has received support from both the pro-energy Marcellus Shale Coalition as well as various environmental groups. [Read more.](#)

STATE – Judicial

- **Delay Rentals; Leasing – Ohio.** On June 1, in [Bohlen et al. v. Anadarko E&P Onshore, L.L.C.; Alliance Petroleum Corporation et al.](#) (Case No. . 2017-OHIO-4025), the Ohio Supreme Court was asked to determine a lessor’s right to terminate an oil and gas lease when a lessee fails to make minimum annual-rental or royalty payments. In a unanimous decision affirming the rights of lessees, the Court held that the provision in the lease requiring the lessee to pay a minimum annual rental of \$5,500 does not invoke the termination provision in the unrelated delay-rental clause and that the lease is not void as against public policy. [Read more.](#)
- **Local Control; Zoning – Pennsylvania.** On May 18, in *EQT Production Co. v. Borough of Jefferson Hills* (Case No. 1184 CD 2016), the Pennsylvania Commonwealth Court affirmed a lower court ruling against the City Council of the Borough of Jefferson Hills, which voted unanimously to disapprove an unconventional well pad site as a conditional use under the zoning ordinance. The Court concluded that the trial court properly reversed that local decision for lack of any evidence, apart from general complaints from residents, to demonstrate that the well site represented a threat to the public health, safety, or welfare of the community. [Read more.](#)
- **Executive Rights; Leasing – Texas.** On May 17, in *Texas Outfitters Limited, LLC v. Nicholson* (Case No. No. 04-16-00392-CV), a Texas Court of Appeals (San Antonio), in upholding the lower court decision, concluded that the holder of the executive right to lease – who has a duty of utmost good faith to the holders of non-participating oil and gas interests – breached that duty by refusing to execute a lease solely to protect the existing uses of the surface enjoyed only by the holder of the executive rights. [Read more.](#)

State-by-State Legislative Session Overview

The **North Carolina** legislature has cancelled a call for a special session to redraw district maps, [The News & Observer](#) reports. Democratic Gov. Roy Cooper had issued a [proclamation](#) for a special session to begin on June 8 following a ruling on June 5 by the U.S. Supreme Court that the General Assembly had misinterpreted federal law in establishing 28 state legislative districts in 2011. House Rules Committee Chairman David Lewis, R-Dunn, filed a constitutional point of order at the beginning of the June 8 session claiming that Governor Cooper lacked the authority to call the extraordinary session for a variety of reasons, including that the General Assembly is currently in regular session and that Cooper failed to seek advice from the Council of State, a group of elected agency heads which includes the lieutenant governor and attorney general. The House backed Representative Lewis’ point of order on a 71-44 party line vote, and a similar point of order was approved in the upper chamber by Republican Lieutenant Governor Dan Forest, who serves as Senate president. Senate Majority Leader Phil Berger, R-Guilford, said that

legislative leaders plan to draw new districts but that they need to await instructions from the court and public input.

Texas is set to convene a special session on July 18, the [Austin-American Statesman](#) reports. The special session is set to last 30 days, and will focus on a broad list of conservative policy initiatives. Republican Gov. Greg Abbott's full agenda for the special session can be found in a press release, [here](#). The regular session adjourned on May 29 amid chaos over [SB 4/Chapter 4](#), approved by Republican Gov. Greg Abbott on May 7, which creates a tough new anti-“sanctuary cities” law, and tension between the upper and lower chambers that had simmered throughout the session.

California, Delaware, Illinois, Maine, Massachusetts, Michigan, New Hampshire, New Jersey, New York, North Carolina, Ohio, Oregon, Pennsylvania, Rhode Island and **Wisconsin** are in regular session. The **District of Columbia** Council, **United States** Congress and **Puerto Rico** are also in regular session.

Kansas is in recess until June 26.

Wisconsin convened a special session on January 5 that will run concurrently with the regular session. **West Virginia** convened a special session related to budget issues on May 4. **Alaska** convened its first special session on May 18. A press release from the office of Independent Gov. Bill Walker about the special session can be found [here](#) and Governor Walker's proclamation authorizing the special session can be found [here](#). **Washington** convened its second special session on May 24 immediately following the adjournment of its first special session. **Louisiana** adjourned its regular session on June 8 and immediately convened a special session related to budget issues, the [Miami Herald](#) reports. **Missouri** convened a special session set to focus on abortion related issues on June 12, [The News & Observer](#) reports.

Mississippi and **South Carolina** adjourned special sessions related to budget issues on June 6. **Florida** adjourned a special session related to education funding on June 9. **South Dakota** adjourned a special session related to public access to non-meandered waters on June 12, the [Yankton Daily Press](#) reports.

The following states adjourned on the dates provided: **Nevada** (June 6), **Connecticut** (June 7) and **Louisiana** (June 8).

Vermont is expected to convene a veto session on June 21 to address budget issues. **Texas** is expected to convene a special session on July 18.

The following states are expected to adjourn their legislative sessions on the dates provided: **Maine** (June 27) and **Delaware, New Hampshire** and **Rhode Island** (June 30).

Nevada Republican Gov. Brian Sandoval has until June 16 to act on legislation presented after May 30 or it becomes law. **Texas** Republican Gov. Greg Abbott has until June 18 to act on legislation or it becomes law. **Hawaii** Democratic Gov. David Ige has until July 3 to act on legislation presented after April 25 or it becomes law. **Alaska** Independent Gov. Bill Walker has

15 days, Sundays excepted, to act on legislation from the regular session or it becomes law. **Arizona** Republican Gov. Doug Ducey has 10 days from presentment, Sundays excepted, to act on legislation presented after May 5 or it becomes law. **Connecticut** Democratic Gov. Dannel Malloy has 15 days from presentment to act on legislation or it becomes law. **Florida** Republican Gov. Rick Scott has 15 days from presentment to act on regular session legislation presented after May 1 and special session legislation or it becomes law. **Louisiana** Democratic Gov. John Bel Edwards has 20 days from presentment to act on regular session legislation presented after May 29 or it becomes law. **Minnesota** Democratic Gov. Mark Dayton has three days from presentment, Sundays excepted, to act on legislation or it becomes law. **Mississippi** Republican Gov. Phil Bryant has 15 days from presentment, Sundays excepted, to act on legislation from the regular and special sessions or it becomes law. **Missouri** Republican Gov. Eric Greitins has 45 days from presentment to act on legislation from the regular session or it becomes law. **Montana** Democratic Gov. Steve Bullock has 10 days after delivery to act on legislation 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. **Tennessee** Republican Gov. Bill Haslam has 10 days, starting the day after presentment, to act on legislation or it becomes law. **Vermont** Republican Gov. Phil Scott has five days from presentment, Sundays excepted, to act on legislation presented after May 15 or it is pocket vetoed.

Colorado Democratic Gov. John Hickenlooper had a signing deadline on June 9. **Oklahoma** Republican Gov. Mary Fallin had a signing deadline on June 10. **Alabama** Republican Gov. Kay Ivey and **Nebraska** Republican Gov. Pete Ricketts had acted on all legislation as of June 15.

South Dakota Republican Gov. Dennis Daugaard had acted on all special session legislation as of June 12.

Lands

Permits

Pennsylvania [SB 303](#) passed the Senate on June 13 and was referred to the House State Government Committee on June 14. Sponsored by Sen. Judith Schwank, D-Reading, this bill would release the Project 70 restrictions on certain pieces of land owned by the borough of Topon, Berks Country, in exchange for imposing the same restrictions on other sections of land in the town.

Public Lands

California [AJR 15/Res. Chapter 85](#) was enacted on June 13. This resolution urges the U.S. President, the Secretary of the U.S. Department of the Interior, and the Secretary of the U.S. Department of Agriculture to protect federal public lands. It also supports the enactment and use of the [Antiquities Act of 1906](#) as a critical tool for protecting the public good by authorizing the designation of national monuments under the Antiquities Act and to honor and protect the integrity of all national monuments.

Oil and Gas

Oil and Gas General

California [SB 44](#) was referred to the Assembly Natural Resources Committee on June 15. 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.

Louisiana [SR 159](#) was enrolled, signed by the Senate president and is enacted. The resolution is a request to the Louisiana State Law Institute to study the classification of mineral royalties under current law for the purposed of bankruptcy proceedings.

New York [SB 568](#) passed the Senate Environmental Conservation Committee on June 7 and was referred to the Senate Rules Committee. This bill would require solid waste management facilities accepting waste from oil and gas operations to screen the waste for radioactivity.

Sen. Cathy Young, R-Olean, is the sponsor and the bill will take effect immediately if enacted.

Pennsylvania [HB 1530](#) was introduced on June 12 and referred to the House Environmental Resources and Energy Committee. Under this bill, an interest in oil or gas shall be abandoned if a permit to drill is not issued by the department or actual production is not happening on the land. The bill offers protection of interests from abandonment if the owner files a notice with the county to preserve the interests allowing an owner of the rights to not produce oil or gas in order to maintain their ownership.

This bill is sponsored by Rep. Garth Everett, R-Muncy.

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