

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

- **H.R. 2907 – Planning for American Energy Act of 2017.** On June 15, [H.R. 2907](#), known as the Planning for American Energy Act of 2017, was introduced by Rep. Scott Tipton (R-CO). The bill would require the Energy Information Administration to project U.S. energy needs over the next 30 years and the Departments of the Interior and Agriculture to develop four-year energy production plans that include wind, solar, hydropower, geothermal, oil, natural gas, coal, oil shale and minerals. The Planning for American Energy Act would preserve current environmental reviews and safeguards to support responsible development of all energy sources. [Read more.](#)

FEDERAL – Regulatory

- **Department of Interior Budget.** On June 20, Interior Secretary, Ryan Zinke, testified before the Senate Energy and Natural Resources Committee on President Trump's proposed 13 percent cut in funding to the department. Zinke defended the administration's \$1.6 billion in funding cuts, telling Senators that "this is what a balanced budget looks like." While many Democrats challenged the cuts, "Republicans, on the other hand, [applauded the Trump administration's proposals](#) to invest in energy exploration on public lands, including a [...] move to open the Arctic to oil and gas exploration after the Obama administration closed it." According to Committee Chairwoman Lisa Murkowski (R-AK), developing "one-ten-thousandth" of the Arctic refuge would generate tens of millions of dollars and create much-needed jobs. Zinke also stressed that "oil and gas revenue helps pay for land acquisition" as well as other conservation efforts. However, some plans won't "become reality", such as Trump's proposal to end offshore revenue sharing with U.S. coastal states, which will run up against strong congressional opposition. According to Murkowski, "Like most Alaskans, I want to expand revenue sharing, rather than end it. So frankly, I don't see that proposal going anywhere." [Read more.](#) Zinke also told the Senate panel that the administration's proposed budget cuts will reduce Interior Department staff by about 4,000 but will also boost appropriations for the Bureau of Land Management (BLM) by \$16 million for oil and gas permitting to meet the goal of increased energy production on Federal lands. [Read more.](#)
- **Federal Royalty Rates – U.S. Government Accountability Office.** On June 20, the U.S. Government Accountability Office (GAO) released its comprehensive study and report entitled, [Oil, Gas, and Coal Royalties](#). The study and resulting report were mandated by

Congress in 2016, and the results show that “increasing these rates may slightly decrease production on federal lands. However, it could increase revenue by millions of dollars annually.” In part of its study, GAO found that oil and gas production could decrease by less than two percent per year if royalty rates increased from their current 12.5 percent to 22.5 percent, based on fiscal year 2016 production data. Another study stated the effect on production could be “negligible” over 10 years if royalty rates increased to 18.75 percent, particularly if the increased federal royalty rate remained equal to or below the royalty rates for production on state or private lands. The report does not require the GAO to make any specific recommendations, but it was prepared with input from the Interior Department. [Read more.](#)

- **BLM Methane Emissions Rule.** (Update from 6/19/17 Weekly Report) According to Interior Secretary, Ryan Zinke, the agency will enforce an Obama-era regulation aimed at restricting methane emissions from oil and gas production, even as it seeks to rewrite the rule. Zinke said on June 20 that “Interior will enforce those parts of the methane regulation that have taken effect.” The promise comes despite an announcement the prior week that Interior is postponing parts of the rule that take effect next year. According to Zinke, “the Obama-era rule is poorly written and needs to be redone.” And has noted that his “intention, so you know, is to rewrite the rule” without imposing “undue costs” on industry. Originally, on June 15, the 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](#)), pending review. [Read more.](#)
- **BLM Leasing – Utah.** On June 2, BLM pulled proposed oil and gas leases on 4,730 acres bordering Utah’s Zion National Park in the wake of strong opposition from locals, state officials, and even the Republican governor himself who asked BLM state Director Ed Roberson to “protect these parcels, protect these public lands and not open them for leasing.” The BLM had previously announced that the parcels would be available for bidding at the agency’s June quarterly auction, but under pressure from the National Park Service and local elected officials, the BLM decided to re-evaluate leasing. In announcing the BLM’s hold on this part of the lease sale, Roberson said “based on the environmental review and recognizing the rapid growth of recreational visits and tourism on adjacent public lands, the BLM believes that deferring these parcels for further review is the right decision.” According to the National Park Service and the BLM, no federal lands are currently under lease, and no drilling has occurred in years in this area. [Read more.](#)

FEDERAL – Judicial

- **Royalties; Leasing – Arkansas Federal Court.** On June 16, in [Connie Jean Smith v. SEECO, Inc. et al.](#) (Case No. 4:14CV00435 BSM), a jury in the U.S. District Court for the Eastern District of Arkansas issued a verdict in favor of Southwestern Energy Co. and its

subsidiaries in a class action suit brought by royalty owners alleging that the companies attempted to profit in violation of provisions in their lease agreements. The jury, after a 10-day trial, decided entirely against the thousands of landowners who made up the class connected in part through their similar lease provisions. Note: the verdict remains subject to post-trial motions before judgment is entered or released publicly. [Read more.](#)

STATE – Legislative

- **Notice; Hearings – Michigan.** On June 20, HB 4777 was introduced by Rep. William Sowerby (D). The bill would amend the state Natural Resources and Environmental Protection Act to impose certain hearing and notice requirements related to permitting and hydraulic fracturing. [Read more.](#)
- **Methane Emissions – Michigan.** On June 20, HB 4778 was introduced by Rep. Yousef Rabhi (D). The bill would amend the state Natural Resources and Environmental Protection Act to impose certain methane control or capture requirements for operating wells as well as the permitting process. [Read more.](#)

STATE – Regulatory

- **Energy Office – Colorado.** On June 20, Gov. Hickenlooper (D) failed to secure funding for the Colorado Energy Office, with the legislature’s Joint Budget Committee denying his request for \$3.1 million in funding. However, the office won’t close entirely since several programs are supported by federal funding. “Fundamentally, the energy office is not closing its doors on July 1,” said the office’s Executive Director Kathleen Staks. The Energy Office is tasked with promoting a variety of energy sources, including renewables such as wind and solar, and fossil fuels such as coal and gas. “Despite the work it does around the state, in a variety of energy sectors, the office became a political football during the last days of the 2017 legislative session when Democrats and Republicans couldn’t work out differences in proposals to change the office’s mission.” Colorado Senate Republicans “sought to have the office more actively promote all types of energy, rather than focus primarily on renewable energy. Democrats fought the proposal.” [Read more.](#) The Governor, however, has “left the door open to salvaging the office in some form” saying “w[e] will continue to explore all options to fund this important work,” but offered no specifics. [Read more.](#)
- **Railroad Commission – Texas.** As part of the Texas budget bill ([SB 1](#)) signed into law by Gov. Greg Abbott (R) on June 12, the Texas legislature has ordered that more of the Texas Railroad Commission’s (RRC) data and collected information be made publicly available online, with the help of more than \$4 million in funding over the next two years. “With the funds, the commission will put online records of fines and other penalties given to companies for violating state rules. The commission also will make

available complaints, and information about inspections.” The RRC will also use some of the state-allocated funds “to fill nearly 150 empty positions at the agency, including much-needed oil and gas well and pipeline inspectors.” [Read more.](#)

STATE – Judicial

- **Tax Assessments; Leaseholds – Colorado.** (from Welborn Sullivan Meck & Tooley, P.C. blog, 6/21/17) On June 19, in [Kinder Morgan CO2 Co., L.P. v. Montezuma County Board of Commissioners; Colorado Board of Assessment Appeals; and Colorado Property Tax Administrator](#) (Case No. 15SC595), “the Colorado Supreme Court ruled against the petition of Kinder Morgan CO2 Co., LP – the operator of oil and gas leaseholds – disputing the Montezuma County Assessor’s 2009 corrective tax assessment on leaseholds for the prior tax year which resulted in a retroactive assessment of over \$2 million in property taxes.” “Oil and gas leaseholds and lands are valued under Colorado statutes, Article 7 of Title 39, pursuant to which a lessee must submit an annual statement (reporting the volume and price of product sold at the wellhead), following which the county assessor determines property value and tax liability.” The case resulted from the Board of Assessment Appeals upholding the retroactive assessment which found that Kinder Morgan underreported the selling price of its production by over-deducting its costs. [Read more.](#)
- **Leasing – Indiana.** On May 30, in *B&R Oil Co., Inc., v. Stoler* (Case No. 71A04-1603-PL-608), the Court of Appeals of Indiana ruled in a case of first impression that a landowner/lessor could not circumvent a lessee’s right of first refusal to purchase the leased premises by submitting a third-party offer to the lessee in which the leased premises were bundled with other properties. [Read more.](#)
- **Quiet Title; Mineral Ownership – North Dakota.** On June 8, in *Huebner v. Furlinger* (Case No. 20160269), the North Dakota Supreme Court held that plaintiffs seeking to quiet title to oil and gas interests did not comply with a state statute requiring notice to a predecessor in interest that the mineral estate had lapsed and merged with the surface owner’s estate because the plaintiffs failed to conduct a reasonable inquiry to locate an address of record which was available. [Read more.](#)
- **Bonus Payments; Leasing; Divorce Decree – Ohio.** On June 5, in *Rochus v. Thompson* (Case No. 16-NO-0430), an Ohio appellate court held that a divorce decree gave a spouse the right to receive one half of all “rents” and “royalties” including one-half of a renegotiated signing bonus following an assignment of a pre-existing lease. The Court concluded that a bonus is the same as advance royalties and that the decree gave the spouse more than a mere non-participating royalty interest that does not necessarily carry with it the right to bonus payments for executing a lease. [Read more.](#)

- **Leasing; Non-Appportionment – Pennsylvania.** On June 8, in *Hildebrand v. EQT Corp* (Case No. 1046 WDA 2016), the Superior Court of Pennsylvania held that certain modifications to an oil and gas lease that created a lesser-interest clause did not change the non-apportionment language in the lease and therefore did not authorize the lessee to apportion the plaintiff-landowner’s royalties on production from their lease to all other interest owners in proportionate shares. [Read more.](#)
- **Local Ordinance – Pennsylvania.** On June 7, in *Delaware Riverkeeper Network v. Middlesex Township Zoning Hearing Board* (Case Nos. 1229 CD 2015, 1323 CD 2015 and 2609 CD 2015), the Pennsylvania Commonwealth Court rejected a challenge by environmentalists to halt oil and gas development by challenging a local ordinance. Instead, the Court upheld Middlesex Township’s 2014 ordinance authorizing oil and gas development within mixed residential and agricultural districts based on zoning provisions already authorizing similar uses in those districts such as for public utility structures and facilities. [Read more.](#)
- **Deeds; Mineral Interests – Texas.** On May 27, in *Davis v. Mueller* (Case No. 16-0155), the Texas Supreme Court held that a grant of “all the mineral, royalty and overriding royalty interest owned by grantor in Harrison County” unambiguously conveyed all the grantor’s mineral interests in that county and rejected the argument that the deed contained an ambiguity merely because it also identified specific parcels of property within the county. [Read more.](#)
- **Remaindermen; Cotenants; Leasing – Texas.** On June 7, in *ConocoPhillips v. Ramirez* (Case No. 04-15-00487-CV), a Texas appellate court confirmed that contingent remaindermen must also execute an oil and gas lease executed by the life tenant for leases to be binding upon them, and the Court held that the remaindermen are unleased cotenants entitled to an accounting. [Read more.](#)
- **Royalties – West Virginia.** On May 26, in *Leggett v. EQT Prod. Co.* (Case No. 16-0136), the West Virginia Supreme Court held that so-called “flat-rate” leases subject to West Virginia Code § 22-6-8 (which requires that flat rate leases be upgraded to production-based royalty leases before issuing well-drilling permits) “may be subject to *pro-rata* deduction or allocation of all reasonable post-production expenses actually incurred by the lessee,” and that “an oil or gas lessee may utilize the ‘net-back’ or ‘work-back’ method to calculate royalties.” This is different from the way West Virginia has interpreted royalty clauses in leases that are not subject to the statute. West Virginia is a “marketable product” state, meaning that when interpreting royalty clauses without certain specific language demonstrating that the parties intended to share in post-production costs, the lessor cannot share in those costs. The result is that the lessee must bear all the cost of post-production to the point that the oil or natural gas is first “marketable”. [Read more.](#)

- **NPRI; Leasing; Pooling – West Virginia.** On May 31, in *Gastar Expl., Inc. v. Contraquerro* (Case No. 16-0429), the West Virginia Supreme Court held that a lessee may pool the interests of holders of nonparticipating royalty interests (NPRI) with other leases to form a unit without the NPRI holder’s consent when those interest holders have conveyed their oil and gas rights (along with the executive interests) in exchange for retaining a royalty. The Court rejected the cross-conveyance theory which treats all interest holders in a unit as sharing interests in production from the unit. At issue in this case was a situation where a lessee designates tracts of land for pooling regarding horizontal drilling and production of oil and gas from the Marcellus Shale Formation, which included NPRI. The lessor and lessee signed a lease under which 700 acres were designated for purposes of pooling the oil and gas interests held by various individuals and entities. The Supreme Court reversed the lower circuit court, holding that the circuit court erred in ruling that the validity of the pooling provision in the lease and the designated unit were void until such time as pooling was consented to and ratified by the plaintiffs. [Read more.](#)

INDUSTRY NEWS FLASH:

- ◆ **Chamber of Commerce Renames Energy Advocacy Institute; Broadens Focus.** On the 10th anniversary of the Institute for 21st Century Energy’s formation, the U.S. Chamber of Commerce broadened its energy advocacy group’s focus and renamed it the Global Energy Institute. “The redesignation reflects the country’s dramatic energy progress since 2007 and heralds a new emphasis on using its new position as the world’s top oil and gas producer to help other countries grow, speakers said during a June 20 event” at the Chamber’s headquarters. [Read more.](#)

State-by-State Legislative Session Overview

The **Alaska** legislature passed a state operating budget on June 22 for fiscal year 2018 and has averted a government shutdown, the [Juneau Empire](#) reports. Legislators had been meeting in the biennium’s second special session, called by Independent Gov. Bill Walker on June 16. Governor Walker’s proclamation, which listed omnibus state operating budget bill [HB 57](#) as the only matter to be considered, can be found [here](#). The fiscal year 2018 budget had been tangled in a lengthy legislative fight over how to best resolve the state’s multi-billion dollar deficit. A substantial portion of Alaska’s [revenue](#) is derived from the petroleum related industries, which have suffered from depressed prices in recent years. The version of the budget passed cuts \$64.4 million in unrestricted general fund money and fully funds K-12 education. The state still faces a multibillion-dollar annual deficit.

California, Delaware, Illinois, Maine, Massachusetts, Michigan, New Hampshire, New Jersey, 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 and is expected to adjourn that day.

West Virginia convened a special session related to budget issues on May 4, and is expected to adjourn on June 26. **Alaska** convened its second special session on June 16, immediately following the adjournment of its first special session. 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](#). **Missouri** convened a special session set to focus on abortion related issues on June 12, [The News & Observer](#) reports. **Illinois** convened a special session related to budget issues on June 21, the [Chicago Tribune](#) reports. **Washington** convened its third special session the same day immediately following the adjournment of its second special session.

New York adjourned its session on June 21 and recessed to the call of the chair.

Louisiana adjourned their second extraordinary session on June 16. **Vermont** adjourned a one-day veto session after reaching a compromise on the state's fiscal year 2018 budget on June 21, [Seven Days](#) reports.

Texas is expected to convene a special session on July 18 on issues such as approving a \$1,000 pay raise for public school teachers, prohibiting local ordinances that restrict homeowners and businesses, cutting off local money to abortion providers, restricting cities' ability to annex property and studying the causes of maternal deaths in Texas, the [Dallas Morning News](#) reports.

The following states are expected to adjourn their legislative sessions on the dates provided: **Kansas** (June 26) and **Delaware, New Hampshire** and **Rhode Island** (June 30). **Maine** was expected to adjourn on June 21 but voted to extend its session by five days to deal with budget issues, the [Portland Press Herald](#) reports.

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 and special session legislation 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 Greitens 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.

New York Democratic Gov. Andrew Cuomo has 10 days from presentment, Sundays excepted, 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.

Franchise Tax

New York [SB 138](#) passed the Senate on June 19 and was referred to the Assembly Ways and Means Committee. This bill would offer taxpayers a personal income or business franchise tax credit of 25 percent of their property taxes if their land is committed to forestry stewardship or habitat conservation, or both. If this bill becomes law it will take effect immediately.

The Assembly companion, [AB 1874](#), is pending in the Assembly Ways and Means Committee.

Oil and Gas

Oil and Gas General

California [SB 809](#) is scheduled to be heard in the Assembly Natural Resources Committee on June 26. Existing law requires the State Oil and Gas Supervisor to appoint a chief deputy and at least one district deputy for each district and to prescribe their duties. This bill instead would require the director to fix the number and boundaries of the districts, and would authorize the director and supervisor to redefine the districts as needed to ensure the efficient administration of provisions regulating oil and gas. The bill would require the director and supervisor to solicit public input before revising the districts. The bill would narrow the definitions of “idle well” and “long-term idle well” by excluding active observation wells from those definitions.

This bill is sponsored by Sen. Robert Hertzberg, D-Van Nuys.

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