

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

- **Federal Energy Policy.** On October 31, Rep. Rob Bishop (R-UT) introduced a [Discussion Draft](#) of proposed legislation that would empower states to manage the development and production of oil and gas on available Federal land; directly pay to states shares of federal onshore royalties and revenue they now receive that presently are deposited in the U.S. Treasury, and rescind fees which are imposed to cover costs of distributing that money from the Treasury; designate preferred onshore oil and gas leasing areas; prevent enforcement of any federal regulation covering hydraulic fracturing on public land and defer to any state or tribal regulations governing the process; and share offshore oil and gas revenues with affected coastal states, among other provisions. The proposed legislation will be examined by the House Energy and Mineral Resources Subcommittee on November 7. [Read more.](#)
- **H.R. 4126.** On October 25, Rep. Alan Lowenthal (D-CA) introduced [H.R. 4126](#), the “Transparency in Energy Production Act of 2017”. The bill would “provide for the accurate reporting of fossil fuel production and emissions from public lands.” According to the bill sponsor, the measure would require the Interior Department to create an online database of greenhouse gas emissions from fossil fuels extracted from public lands, including all vented, flared, and leaked natural gas and all fossil fuels used on-site. The bill would also mandate an annual Interior Department report on the amounts of energy produced by renewable energy projects on public lands. Additionally, the Interior Department would be required to submit an annual report to Congress on the department’s efforts to reduce greenhouse gas pollution from fossil fuel development on public lands. Although the bill has been referred to the House Committee on Natural Resources, it is unlikely that it will move forward under the Republican-controlled chamber. [Read more.](#)
- **H.R. 4103.** On October 24, Rep. Alan Lowenthal (D-CA) introduced H.R. 4103, the “Having Open Access to Relevant Data Act”, or the “HOARD Act”. The bill, which has been referred to the House Committee on Natural Resources, would require the Interior Secretary to submit an annual report to Congress on certain statistics related to applications for a permit to drill an oil or gas well. The prospects for this bill moving forward, as with H.R. 4126 above, are slim given the Republican majority. [Read more.](#)
- **H.R. 2606.** On October 4, the House Natural Resources Subcommittee on Indian, Insular and Alaska Native Affairs held a hearing on [H.R. 2606](#), a bill which was introduced by Rep. Tom Cole (R-OK) in May 2017. The bill would amend the Stigler Act with respect to restrictions applicable to Indians of the Five Civilized Tribes of Oklahoma. Specifically,

the measure would remove the ½ degree of Native American blood heritage requirement. According to the bill’s sponsor, in so doing “it would provide the opportunity for heirs and devisees to take title to the land, and allow the parcel to maintain its ‘restricted’ status.” [Read more.](#)

FEDERAL – Regulatory

- **BLM Sage-Grouse Land Use Plans.** On November 1, the BLM published a technical correction ([82 Fed. Reg. 50666](#)) to its *Notice of Intent To Amend Land Use Plans Regarding Greater Sage-Grouse Conservation and Prepare Associated Environmental Impact Statements or Environmental Assessments* ([82 Fed. Reg. 47248](#)), originally published on October 11, 2017. The October Notice of Intent (as covered in the 10/16/17 Governmental Affairs Weekly Report) begins the public scoping process (i.e., Environmental Impact Statement process and public comments) to consider the possibility of amending some, all or none of the BLM land use plans that were amended or revised in 2014 and 2015 regarding Greater Sage-Grouse conservation in the States of California, Colorado, Idaho, Nevada, Oregon, Wyoming, North Dakota, South Dakota, Utah and Montana. [Read more.](#)
- **Interior Board of Land Appeals.** (from *Welborn Sullivan Meck & Tooley, P.C.*) “Until recently, it was unclear whether a decision granting, denying or lifting a suspension of a federal oil and gas lease was a decision issued under the Part 3160 regulations, and therefore subject to State Director review, or was a decision issued under the Part 3100 regulations appealable directly” to the Interior Board of Land Appeals (IBLA). The reason for this uncertainty was that regulations pertaining to suspensions of leases are found in both Part 3160 (43 C.F.R. §3165.1) and Part 3100 (43 C.F.R. § 3103.4-4). In [Southern Utah Wilderness Alliance](#), 190 IBLA 152 (2017), “the IBLA addressed the ambiguity as to the proper appeal route from suspension decisions. It acknowledged that suspensions are addressed in both parts of the regulations but noted that the regulation at § 3165.1(b) directs the authorized officer to act on suspension applications filed under § 3103.4-4, so that the decision-making authority is more clearly placed in the Part 3160 regulations.” With the *Southern Utah* decision, “it is now clear that review of any BLM decision granting or denying a suspension of an oil and gas lease must first be reviewed by the State Director under the regulation at § 3165.3(b).” [Read more.](#)

FEDERAL – Judicial

- **Royalties; Post-Production Costs – Ohio Federal Court.** (from *Vorys, Sater, Seymour and Pease LLP*) On October 25, in [Lutz v. Chesapeake Appalachia, L.L.C.](#) (Case No. 4:09-cv-02256-SL), the U.S. District Court for the Northern District of Ohio, Eastern Division, “concluded that Ohio would adopt the ‘at the well’ rule regarding the deduction of post-production costs, the first time the issue has been squarely addressed under Ohio law.” In this royalty dispute case, the Court held that the “at the well” language “in the lease

was clear and unambiguous.” If the Court applied the marketable product rule, as urged by the plaintiffs, this “runs the risk of giving the lessor the benefit of a bargain not made.” [Read more.](#)

- **BLM Venting and Flaring Rule – Wyoming Federal Court.** On October 27, in [Wyoming et al. v. U.S. Dept. of the Interior et al.](#) (Case No. 2:16-cv-00285-SWS), the Western Energy Alliance and the Independent Petroleum Association of America (IPAA) sought a preliminary injunction to stop the January 2018 compliance date for the BLM’s venting and flaring rule from taking effect. The rule, *Waste Prevention, Production Subject to Royalties, and Resource Conservation* ([81 Fed. Reg. 83008](#)), finalized under the Obama administration, has certain provisions that require compliance by January but the filing claims that for some operators that “may be impossible”. The Trump administration has sought to delay the rule’s implementation, and on October 5, 2017 the BLM published a proposed rule to suspend or delay for twelve months the majority of the provisions of the Rule at issue, including all the requirements that would take effect on January 17, 2018 (see *Waste Prevention, Production Subject to Royalties, and Resource Conservation; Delay and Suspension of Certain Requirements*; [82 Fed. Reg. 46458](#)), but the petitioners note in their court filing that there’s no certainty that the suspension rule will be finalized by the proposed deadline of December 8, 2017, and they need to halt the impending compliance requirements now or the operators will suffer “immediate and irreparable harms”. According to Dan Naatz, IPAA’s senior vice president of government relations, “The timing for our member companies to make business decisions on the final rule is fast approaching, and it makes little sense for companies to spend hundreds of thousands of dollars to prepare for compliance with a rule that will inevitably change under the Trump administration.” [Read more.](#)

STATE – Legislative

- **Production Taxes – Oklahoma.** Last week, the Oklahoma House of Representatives approved [HB 1085](#), sponsored by Rep. Kevin Wallace (R), to increase the gross production tax on oil and gas to seven percent for some wells after defeating a Democrat proposal to impose the maximum seven percent rate on all wells. The Republican-led chamber also defeated a Democrat proposal to raise the rate to four percent for all wells currently taxed at less than four percent. Oklahoma legislators are in the sixth week of a special legislative session to plug a \$215 million budget shortfall and continue to look for long-term solutions to chronic shortfalls that have forced deep agency and service cuts in the state. The bill now heads to the Republican-led Senate. However, “Senate Republicans said they will not go above four percent on the gross production tax, adding that they won’t have the votes for anything higher.” [Read more.](#)
- **Committee Studies – Texas.** At the end of last month, Lieutenant Governor and President of the Texas Senate Dan Patrick and Texas House Speaker Joe Straus issued their list of interim charges for the next legislative session. Charges are issues that committees

must study during the interim period between legislative sessions. The [Senate charges](#) include monitoring the Texas Railroad Commission sunset provisions and funding. The [House charges](#) include examining whether current statutes are adequate to encourage reactivation of non-producing oil and gas wells, studying whether eminent domain statutes ensure a balance between necessary infrastructure growth and fair compensation for landowners, and evaluating the impact energy exploration and production have on state and county roads and to make recommendations on how to improve road quality in those areas. [Read more.](#)

STATE – Judicial

- **Deed Reservations – Ohio.** (from *Vorys, Sater, Seymour and Pease LLP*) The Ohio Court of Appeals for the Seventh District recently held in [Sheba v. Kautz](#) (Case No. 2017-Ohio-7699) that a deed executed in 1848 reserving “all of the minerals and coal” did not reserve oil and gas. In reaching its decision, the Court applied ordinary principles of contract interpretation and reasoned that the parties to the deed did not intend to reserve oil and gas because the deed predated the development of oil and gas in Ohio. [Read more.](#)
- **Contracts – Texas.** (from *Winstead PC*) On October 3, in [Le Norman Operating LLC v. Chalker Energy Partners III, LLC](#) (Case No. 01-15-01099-CV), the Court of Appeals of Texas, First District, Houston, held that in a case involving the sale of oil and gas assets that emails—even ones circulated within an organization—may provide evidence of a binding contract sufficient to overcome summary judgment, and that an email address in the “from” line may suffice as an electronic signature to form a contract. The dispute in *Le Norman Operating* originated in the sale of oil and gas assets pursuant to a bid process. The sellers were a group of working interest owners in oil and gas properties in the Texas Panhandle and Le Norman Operating LLC expressed interest in participating in the bid process and the discrepancy arose as to whether an email was an acceptance of the sale. While under the facts of this case, the appeals court held that an email could meet the standards of contract acceptance, other Texas appeals courts (such as in the Second District) have ruled differently, so the issue remains unsettled statewide. [Read more.](#)

INDUSTRY NEWS FLASH:

◆ **Ten leading oil and gas companies commit to “near-zero” methane emissions.** On November 1, the CEOs of ten top oil and gas companies pledged to move towards “near-zero” methane emissions through technology, innovation research, and increased transparency. The pledge comes on the heels of last month’s announcement by the CEO of XTO Energy, the subsidiary of ExxonMobil, to continuously reduce methane emissions from its U.S. production and midstream operations. [Read more.](#)

State-by-State Legislative Session Overview

Massachusetts, Michigan, Ohio, Pennsylvania and **Wisconsin** are in regular session. The **District of Columbia** Council, **Puerto Rico** and the **United States** Congress are also in regular session.

New Jersey and **Rhode Island** are in recess to the call of the chair.

Oklahoma convened a special session related to budget issues on September 25, [KOSU](#) reports. **Alaska** convened its fourth special session related to budget issues on October 23, the [Alaska Journal of Commerce](#) reports. A proclamation authorizing the session from Independent Gov. Bill Walker can be found [here](#). **Illinois** convened a veto session on October 24, [NPR Illinois](#) reports.

Maine convened a special session on October 23 to amend a food sovereignty bill and to address a host of other concerns, reports [U.S. News and World Report](#), and the session is in recess to the call of the chair. **Connecticut** reconvened its first special session on October 25 to address budget issues and recessed to the call of the chair on October 26, [Reuters](#) reports.

Hawaii Democratic Gov. David Ige has until November 3 to act on legislation from the first special session or it becomes law and **West Virginia** Republican Gov. Jim Justice must act on legislation from the second special session by the same day or it becomes law. **North Carolina** Democratic Gov. Roy Cooper has until November 16 to act on legislation 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. **Connecticut** Democratic Gov. Dannel Malloy has 15 days from presentment to act on special session legislation 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. **Rhode Island** Democratic Gov. Gina Raimondo has six days, Sundays excepted, to act on special session 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.

Illinois Republican Gov. Bruce Rauner had a signing deadline for legislation from the first special session on October 28.

The following states are currently holding interim committee hearings: [Alabama](#), [Alaska](#), [Arizona](#), [Arkansas](#), [California Assembly](#) and [Senate](#), [Colorado](#), [Connecticut](#), [Delaware](#), [Florida House](#) and [Senate](#), [Georgia House](#) and [Senate](#), [Hawaii](#), [Idaho](#), [Illinois House](#) and [Senate](#), [Indiana](#), [Iowa House](#) and [Senate](#), [Kansas](#), [Kentucky](#), [Louisiana](#), [Maine](#), [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 House](#) and [Senate](#), [Oregon](#), [Rhode Island](#), [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](#), [Colorado](#) (proposed legislation appears on interim committee pages), [Florida House](#) and [Senate](#), [Georgia](#), [Iowa](#), [Kentucky](#), [Maine Short Titles](#), [Preliminary Titles of Agency Requested](#) bills and [Study Items](#), [Montana](#), [Nebraska](#), [New Hampshire Legislative Service Requests](#) and [Withdrawn LSRs](#), [North Dakota](#), [Oklahoma prefiles](#) and [House](#) and [Senate](#) interim studies, [Utah](#) and [Wyoming](#).

Lands

Leasing

Pennsylvania [HB 674/Act 44](#) was signed into law by Democratic Gov. Tom Wolf on October 30 and took immediate effect. The law removes the expiration date of a provision of existing law that prohibits the Department of Environmental Protection from issuing new well permits in the South Newark Basin until a study is completed by the Department of Conservation and Natural Resources and legislation authorizes a county governing body to elect whether or not to impose a fee. Those provisions were originally set to expire January 1, 2018. The law also specifies that the lessor of an oil or gas well could not terminate the lease due to a period of nonproduction and the lessor waives their right to terminate the lease if prior to claiming the lease has terminated:

- Production is recommenced and the lessor accepts royalty payments for the production. Any royalty payment following a year of inactivity must be accompanied by an explanation, in plain terms that acceptance of the royalty payment constitutes acknowledgement of an existing lease.
- The operator, after notifying the lessor of its intent to drill a new well and giving the lessor 90 days to object, drills a new well under the lease.

The law does not waive existing requirements related to the commencement of operations or affect a lease provision expressly providing for lease termination following a fixed period of nonproduction.

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