

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

- **House Blocks Funding for Obama-Era EPA Methane Rule.** In a victory for the industry, last Wednesday House Republicans blocked implementation of an Obama-era Environmental Protection Agency (EPA) methane emissions rule as part of a broader spending package working its way through Congress. In a 218-195 amendment vote, lawmakers stripped funding for the 2016 EPA rule ([81 Fed. Reg. 35823](#)), which was a critical part of Obama's second-term agenda. "Methane emissions from oil and natural gas have significantly declined in recent decades without multiple, overlapping federal regulations, and this is no exception," said Rep. Markwayne Mullin (R-OK), who supported halting the rule implementation. The Trump administration had already proposed a two-year delay for the rule and public comment on the proposal closed last month. The agency attempted to halt enforcement of the rule while it was working to adopt the two-year delay, but federal judges blocked that proposal. The EPA then said afterward that it would enforce the rule on a "case-by-case basis" and has yet to actively enforce it. Now all eyes are on this legislative fix, which could face a tougher vote in the Senate, where Democrats could filibuster the measure because of the chamber's 60-vote threshold and Republicans only hold 52 Senate seats. We will continue to provide updates as the measure moves ahead in Congress. [Read more.](#)

FEDERAL – Regulatory

- **BLM Information Collection.** On September 12, the Bureau of Land Management (BLM) published the notice: *Agency Information Collection Activities; Onshore Oil and Gas Operations and Production* to the Federal Register ([82 Fed. Reg. 42832](#)). According to the notice, "In accordance with the Paperwork Reduction Act of 1995, we provide the general public and other Federal agencies with an opportunity to comment on new, proposed, revised, and continuing collections of information." The BLM is seeking public comment on the information collection activities regarding the granting and managing of onshore oil and gas leases on federal land, specifically: "(1) Is the collection necessary to the proper functions of the BLM; (2) will this information be processed and used in a timely manner; (3) is the estimate of burden accurate; (4) how might the BLM enhance the quality, utility, and clarity of the information to be collected; and (5) how might the BLM minimize the burden of this collection on the respondents, including through the use of information technology." The public comment period is open until November 13. [Read more.](#)

- **BLM Leasing – New Mexico.** Democratic members of New Mexico’s congressional delegation are pushing the Interior Department and its Bureau of Land Management and Bureau of Indian Affairs to uphold an agreement that limits oil and gas leasing on public land near Chaco Culture National Historical Park. In a [letter dated September 6](#), Senators Tom Udall and Martin Heinrich and Representative Ben Ray Lujan asked Interior Secretary Ryan Zinke to defer leasing within a 10-mile buffer zone around the park as the agency works through its resource management plan in an effort to protect the area. Robert McEntyre, a spokesman for the New Mexico Oil and Gas Association, said “no one in the industry disputes the significance of Chaco or the strong desire to protect the area’s cultural resources for future generations [... and] regulations already in place require reviews to ensure important areas are not disrupted.” [Read more.](#)
- **BLM Lease Sale – New Mexico.** The BLM has released the results of their New Mexico September federal lease sale. Despite protests lodged by environmental groups like the Wilderness Society, New Mexico Wilderness Alliance, and WildEarth Guardians, the sale brought in a total of \$130 million. The leases cover more than 15,000 acres, or 62 parcels, in six New Mexico counties. [Read more.](#)
- **U.S. Geological Survey – North Dakota.** Senator John Hoeven (R-ND) has called upon the U.S. Geological Survey (USGS) to reevaluate the amount of recoverable oil in the state, saying “a new assessment likely would show stronger production potential and attract investment.” Hoeven wants the USGS to take into account other formations in western North Dakota’s oil patch that could be exploited using technology developed for the Bakken and the Three Forks directly below it. “The industry wants a broader study,” said the North Dakota Republican. “The industry feels it will show a larger resource if the other formations are included.” Hoeven said top officials at the USGS have given assurances that the study would be done, though it could take “a year or two” to begin. [Read more.](#)

FEDERAL – Judicial

- **Subsequent Purchaser Doctrine; Leasing: Assignments – 5th Circuit (Louisiana).** In *Guilbeau v. Hess Corp.* (Case No. 16-30971), an April 2017 decision just released publicly, the U.S. Court of Appeals for the Fifth Circuit held in favor of a lessee/operator regarding property owner claims of oil and gas operations damages by applying Louisiana’s “subsequent purchaser doctrine”. The Court affirmed the lower court ruling dismissing the landowner’s property damage claims by concluding that a Louisiana property owner without assignment or subrogation of rights cannot sue a third-party lessee of mineral rights for pre-purchase damages inflicted on the property. [Read more.](#)
- **Royalty Class Action; Leasing – Pennsylvania District Court.** On September 5, in *Slamon v. Carrizo (Marcellus) LLC*, (Case No. No. 16-2187), the U.S. District Court for the Middle District of Pennsylvania denied a motion to dismiss plaintiff’s claims that a lessee and its partners improperly paid royalties that are lower than the NYMEX spot price and/or

the local market price and improperly deducted post-production costs from royalty payments. The Court did, however, [dismiss the plaintiff's claim](#) against the lessee for breach of fiduciary duty. [Read more.](#)

- **Royalties – U.S. Supreme Court.** As reported by the *West Virginia Gazette-Mail* on September 11, 2017: “The U.S. Supreme Court is being asked to review West Virginia Supreme Court Justice Beth Walker’s participation in a high-stakes natural gas royalty case that could have had significant financial implications for energy companies in which her husband owned stock. Late last week, attorneys for Katherine Leggett and other plaintiffs in the case urged the federal court to hear an appeal of the case, in which the West Virginia court reversed its own ruling after Walker was elected and replaced Justice Brent Benjamin. In the case, the state Supreme Court ultimately ruled — once Walker took office — that natural gas drillers can deduct post-production costs for things like gathering, transporting and treating natural gas after it is extracted from the royalties paid to certain types of mineral owners. The finding was a significant victory for the industry, with millions of dollars riding on the outcome for natural gas companies and mineral owners in the state’s Marcellus Shale gas region.” The case, decided on May 26, 2017, is [Leggett v. EQT Production Company](#) (Case No. 1:13-cv-00004-FPS). [Read more.](#)

STATE – Legislative

- **Independent Contractors – Pennsylvania.** On September 12, Rep. Fred Keller (R) introduced [HB 1781](#). The measure, which has been referred to the House Labor and Industry Committee for consideration, would provide a method to certify whether an individual is an independent contractor for the purposes of workers’ compensation and for Federal income tax purposes. According to the bill sponsor’s memo, “there is often confusion between employers and insurers over whether an individual performing services is an employee or an independent contractor. My legislation would allow a business to register independent contractors with the Department of Labor and Industry, if the individual is considered an independent contractor for federal tax purposes and signs an affidavit certifying that he knows he will not be considered an employee for the purposes of workers’ compensation.” Keller further notes that “this legislation does not change anything for those businesses and independent contractors who do not utilize this registration process. It would simply create a process to expeditiously determine that an individual is an independent contractor in situations where both the employer and the independent contractor agree that no employer-employee relationship exists. [Read more.](#) (See more below under *State-by-State Legislative Session Overview*)
- **Revenue Bill; Severance Tax – Pennsylvania.** Last Wednesday, House legislators finally approved a revenue bill, [HB 453](#), after a months-long impasse. The budget was passed earlier this summer but it wasn’t accompanied by the revenue streams to pay for a multi-billion dollar deficit and a slight increase in overall spending. “The plan, pushed forward by the Republican majority, seeks to close a \$2.2 billion deficit in part by selling a

portion of the state's landmark tobacco settlement fund, expanding gaming, and pulling money from special funds that pay for things like mass transit, environmental projects, and parks." In July, the Senate passed its own version of the revenue package that included a gross receipts tax on natural gas, electric, and telecommunications and also a severance tax on natural gas production. While Democratic Gov. Tom Wolf said he supported the Senate's proposal, the House Republicans have rejected it, and in welcome news for the industry, any new taxes, including any talk of a gross receipts tax on natural gas or a severance tax, are off the table if the governor wants a revenue bill enacted. HB 453 now heads to the Senate where they can either amend the bill – sending it back to the House – or can pass the bill as currently written. The Senate returns this week to begin consideration. [Read more.](#)

STATE – Regulatory

- **Delaware River Basin Drilling Moratorium – Pennsylvania.** On September 13, the Delaware River Basin Commission (DRBC) [voted to adopt a resolution](#) to begin the process of implementing a permanent moratorium on horizontal drilling and hydraulic fracturing in the river basin. In a pre-vote statement, the Commission said, "If the proposed resolution is approved by the commission on Sept. 13, the revised draft rules to be published on a later date would include prohibitions related to the production of natural gas utilizing horizontal drilling and hydraulic fracturing within the Delaware River Basin." The DRBC, which oversees the water supply of 15 million people, directs the commission's staff to prepare revised rules that would be brought up for public comment at hearings by November 30. The announcement marks the first time since 2011 that the DRBC has addressed the regulation of hydraulic fracturing in the basin. The commission announced in December 2010 that it would stop reviewing drilling permits until it finalized regulations, but its draft rules soon stalled and the effort was put on hold, thus creating an unofficial ban. On September 12, the Marcellus Shale Coalition and Pennsylvania Chamber of Business and Industry sent a letter to Governor Tom Wolf (D) urging that the Governor "reject this resolution" ([Access the letter here](#)). [Read more.](#) For those wishing to submit comments, and for more detailed information on the regulatory proposal and upcoming hearings, you may access the [DRBC's regulatory information page here](#).

INDUSTRY NEWS FLASH:

♦ **U.S. Senator Pete Domenici, New Mexico's powerhouse lawmaker on energy issues, dies.** On September 13, former Senator Pete Domenici (R-NM) died following complications from an abdominal surgery. Domenici served as Chairman of the Senate Energy and Natural Resources Committee from 2002 until 2007, and in 2005, Domenici partnered with his New Mexico Democratic colleague, then-Senator Jeff Bingaman, to author the Energy Policy Act of 2005 and 2007. "The laws ushered in a new era in domestic oil and gas production that ultimately resulted in the U.S. being the nation's leading exporter of refined oil and on the brink of energy independence in 2017." [Read more.](#)

State-by-State Legislative Session Overview

California, Massachusetts, Michigan, Pennsylvania, the **Ohio** House and **Wisconsin** are in regular session. **Puerto Rico** and the **United States** Congress are also in regular session.

The following states are in recess until the dates provided: the **District of Columbia** Council (September 19), the **Ohio** Senate (September 20) and **North Carolina** (October 4). **New Jersey** is recessed to the call of the chair.

The **Connecticut** Senate convened a special session related to budget issues on July 31, the [Record Journal](#) reports. **Wisconsin** convened a special session on August 2 to consider legislation that would create an information technology manufacturing zone.

California is expected to adjourn on September 15.

Rhode Island is expected to convene a one-day special session on September 19 to address bills unresolved at the end of the regular session in June, the [Providence Journal](#) reports. The Senate is holding a series of [committee hearings](#) this week in which legislation will be considered.

Oklahoma is expected to convene a special session related to budget issues on September 25, [Reuters](#) reports. **Alaska** is expected to convene its fourth special session related to budget issues on October 23, the [Juneau Empire](#) reports. **Vermont** is scheduled to convene a special session the same day to address any necessary matters related to changes made by federal legislation.

North Carolina Democratic Gov. Roy Cooper has until September 30 to act on legislation from the second special session or it becomes law. **Illinois** Republican Gov. Bruce Rauner has until October 28 to act on special session legislation or it becomes law. **Hawaii** Democratic Gov. David Ige has until November 3 to act on legislation from the first 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.

The following states are currently holding interim committee hearings: [Alabama](#), [Alaska](#), [Arizona](#), [Arkansas](#), [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](#), [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](#), [Florida House](#) and [Senate](#), [Georgia](#), [Kentucky](#), [Maine](#), [Montana](#), [Nebraska](#), [New Hampshire Legislative Service Requests](#) and [Withdrawn LSRs](#), [North Dakota](#), [Oklahoma prefiles](#) and [House](#) and [Senate](#) interim studies, [Utah](#) and [Wyoming](#)

Landmen

Employee Classification

Pennsylvania HB 1781 was introduced on September 12 and was referred to the House Labor and Industry Committee. Sponsored by Rep. Fred Keller, R-Snyder, this bill would allow businesses to register independent contractors with the Department of Labor and Industry if the person is considered an independent contractor for federal tax purposes. The individual would be required to sign an affidavit certifying that they know they will not be considered an employee with regards to workers' compensation. The independent contractor would be able to withdraw their affidavit at any time. The bill would only apply to those who use the registration process and would not change anything for businesses and independent contractors who would not use the process.

Lands

Public Lands

On August 21, the Assembly decided to reconsider the veto by Democratic Gov. Jerry Brown of **California AB 1472**, but the bill was officially stricken from the file on September 11 and is dead. 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.

The Senate agreed with the Assembly amendments to **California SB 50** and it was ordered to be enrolled on September 14. This bill would establish a policy for the state to discourage conveyances of federal public lands in California to third parties by giving the State Lands Commission the right of first refusal or the right to arrange the transfer to a third party. It also establishes a process at the State Lands Commission to implement this policy. It would exempt routine conveyances from the federal government and could exempt certain leases, tribal conveyances and conveyances that are done as part of a conservation plan.

Sen. Ben Allen, D-Santa Monica, is the sponsor of this bill.

Oil and Gas

Oil and Gas General

California [SB 44](#) was ordered to be enrolled on September 8. 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 sent to the inactive file by Asm. Ian Calderon, D-Whittier, on September 11 and is likely dead. 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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