

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

- **Pearl Darter Final Rule – Mississippi; Louisiana.** On September 20, the U.S. Fish and Wildlife Service (FWS) published its final rule, *Endangered and Threatened Wildlife and Plants; Threatened Species Status for Pearl Darter* ([82 Fed. Reg. 43885](#)). According to the FWS, this rule will finalize the listing of the Pearl darter as a threatened species, rather than the more onerous endangered species classification. The Pearl darter, a 2 1/2-inch-long fish once found in numerous Louisiana parishes and Mississippi counties, and now found in less than half of its historic range, is already listed as endangered by Mississippi, but that classification does not provide any legal protection for the fish's habitat. The FWS threatened classification will provide federal protection before the species reaches extinction levels. According to the FWS [initial proposal](#), "hydraulic fracturing and horizontal drilling for oil and gas also pose a threat to the species, because drilling waste is stored in open pits or other storage facilities that can fail or overflow", though any protections that may interfere with resource development have not yet been announced or implemented. [Read more.](#)
- **Leasing; Units – Colorado; Utah.** (from *Welborn Sullivan Meck & Tooley, P.C law blog, 9/14/17*) "Non-governmental organizations that oppose oil and gas development have in the last few years begun to challenge not only Bureau of Land Management (BLM) decisions authorizing oil and gas drilling operations but also BLM decisions that could have the effect of continuing leases in effect that might otherwise expire. In two recent decisions, the Interior Board of Land Appeals (IBLA) reiterated its position that, in order to seek State Director review of a decision or to appeal a decision to the IBLA, the appellant must demonstrate that the 'legally cognizable interests' of it or its members will be adversely affected by the decision under review." It is noted that "legally cognizable interests can include cultural, recreational and aesthetic use and enjoyment of the lands. But there must be a causal relationship between the alleged injury to those interests and the BLM decision under review." [Southern Utah Wilderness Alliance, 190 IBLA 152 \(2017\) \(SUWA\)](#); [Citizens of Huerfano County, 190 IBLA 253 \(2017\) \(Huerfano\)](#). In the *SUWA* case, the IBLA held "that SUWA had failed to demonstrate that its members' health, recreational, spiritual, educational, aesthetic and other interests would be directly harmed by BLM's decision to approve the suspension of leases". In *Huerfano*, the Colorado State Director dismissed the request for lack of standing, and as in *SUWA*, "the IBLA upheld the State Director's decision because the appellants had not shown a causal connection between the alleged injuries to their property values and the decision approving the unit agreement." [Read more.](#)

- **BLM Lease Sale – New Mexico.** The BLM is seeking input on the analysis of 26 parcels in northern New Mexico for their March 2018 oil and gas lease sale. The parcels are located in Rio Arriba, Sandoval, and San Juan counties. Public comments will be accepted through October 20. [Read more.](#)
- **Interior Department Appointment.** *(Update to 7/24/17 Weekly Report)* On September 19, the U.S. Senate cleared President Trump’s nomination of Joseph Balash to be Assistant Secretary of the Interior Department for Land and Minerals Management. Balash, who was first nominated in July, previously served as Commissioner of the Alaska Department of Natural Resources and most recently served as Chief of Staff to Alaska’s junior senator Dan Sullivan. Interior Secretary Ryan Zinke said of Balash that “[h]e brings an incredible combination of state and federal experience to the table, and he will be very effective in helping the Department work with Congress to do the work of the American people.” Erik Milito, American Petroleum Institute group director of Upstream and Industry Operations, expects Balash “to be a tremendous asset in helping to prioritize energy development and further strengthen U.S. energy and national security. We look forward to continuing to work with the Department of Interior on policies that will help keep energy affordable, create jobs, and protect our environment.” As the Assistant Secretary for Land and Minerals Management, Balash will advise and oversee the Bureau of Land Management and its associated federal mineral and non-mineral resources. “I look forward to working with Secretary Zinke and his incredible team to seize on those opportunities and deliver on President Trump’s America First Energy Plan,” said Balash. [Read more.](#)

FEDERAL – Judicial

- **Federal Leases; Hydraulic Fracturing – Nevada.** On September 11, environmental groups, the Center for Biological Diversity and the Sierra Club, [filed a lawsuit](#) in Nevada federal district court challenging the Bureau of Land Management’s (BLM) June 2017 sale of oil and gas leases in Nevada. The complaint alleges that “the BLM sidestepped the National Environmental Protection Act in neglecting to update its environmental assessment for the sale” and that “the outdated assessment used did not adequately evaluate the effects of fracking in and near Nevada’s rare wetlands.” Although BLM spokesman Steve Clutter said the agency does not comment on pending litigation he said federal law directs the agency to conduct quarterly sales of drilling leases and that those federal mineral leases don’t automatically allow companies to drill but provide a 10-year window to apply for permits for gas and oil exploration. Additionally, the BLM disputes whether hydraulic fracturing would be used on any of those leases noting “it does not have to examine site-specific effects until a developer submits a formal plan to pursue such a tactic.” Acting State Director Marcia Todd said any such analysis “would amount to speculation” when initially denying the environmentalists’ protest of the June lease sales and notably only about 20 hydraulic fracturing permits have even been issued in Nevada, with only seven wells actually drilled using the process. Once the

Court makes a publicly available copy of the complaint, we will provide it in a future update. [Read more.](#)

- **BLM Hydraulic Fracturing Rule – 10th Circuit Court.** (*Update to 7/31/17 Governmental Affairs Weekly Report*) On September 21, the 10th Circuit Court of Appeals dismissed a lawsuit over the validity of a BLM hydraulic fracturing regulation instituted by the Obama administration. In [Wyoming v. Zinke](#) (Case No. 16-8068), the Appeals Court held in its review of an appeal from the Wyoming District Court, that a lawsuit challenging the rule is unnecessary because the Trump administration is currently working to repeal it (see *Oil and Gas; Hydraulic Fracturing on Federal and Indian Lands; Rescission of a 2015 Rule* ([82 Fed. Reg. 34464](#))). In so doing, the Court also vacated the lower judge’s ruling that the BLM had overstepped its bounds by trying to regulate hydraulic fracturing. According to *Bloomberg Government*, this 10th Circuit ruling has left the status of the regulations unclear, and federal agencies didn’t immediately respond to requests for comment. Environmentalists now claim the rules are in force until the Trump administration formally revokes them, and that process will take months or get tied up in court. However, industry groups said the government won’t enforce regulations it plans to repeal. The rule was originally an Obama administration effort to tighten oil and gas drilling regulations on federal land, but in a blow to that administration the lower court ruled against the regulation in 2016, saying Congress had previously blocked the Interior Department from regulating hydraulic fracturing. [Read more.](#)

STATE – Legislative

- **Abandoned and Plugged Wells – California.** On September 18, [SB 724](#) was enrolled and sent to Governor Jerry Brown (D) for signature. If signed, the bill would authorize the state Division of Oil, Gas, and Geothermal Resources to make expenditures of up to \$3 million for four years to plug abandoned hazardous or deserted wells or hazardous or deserted production facilities. The measure extends the valid time period for notices of intention to drill or re-work wells by extending the time period to commence operations from one year to 24 months before the notice is deemed canceled and would prohibit the notice from being extended, and would also require the cancellation to be noted in the division’s records. The bill also authorizes the state’s Oil and Gas Supervisor or district deputy to order the decommissioning of a production facility. [Read more.](#)

STATE – Regulatory

- **Overriding Royalty Interests – Colorado.** (*Beatty & Wozniac, P.C. Client Alert, 9/19/17*) At its September 11th hearing in Durango, Colorado, the Colorado Oil and Gas Conservation Commission (COGCC) considered, for the first time, an issue of great concern to any party who owns or pays an overriding royalty interest (ORRI). Specifically, the Commission determined that under Colorado’s compulsory pooling statute (C.R.S. § 34-60-116(7)), consenting owners *do not have to pay* ORRI owners

whose interests derive from a working interest (WI) that is nonconsenting until the consenting owners have recovered well costs.” The implication, according to Beatty & Wozniac, P.C., is that the “COGCC’s ruling may be appealed to district court and eventually the Colorado Supreme Court. If it is upheld on appeal, the obvious result will be that operators will move ORRIs that arise from nonconsenting WIs from the ‘before payout’ column to the ‘after payout’ column of their DOI decks. While the issue is being appealed, however, operators should consider suspending such ORRIs.” [Read more.](#)

- **Drilling Permits – Texas.** On September 11, the Texas Railroad Commission reported that it had issued a total of 1,125 original drilling permits in August 2017, compared with 660 in August 2016. “The August total included 987 permits to drill new oil or gas wells, 14 to re-enter plugged well bores and 124 for re-completions of existing well bores. The breakdown of well types for those permits issued August 2017 included 298 oil, 74 gas, 666 oil or gas, 64 injection, two service and 21 other permits.” [Read more.](#)
- **Texas Railroad Commission – Texas.** Christi Craddick, the Chairman of the Texas Railroad Commission, announced that she is seeking re-election in 2018. “During my first term at the Railroad Commission, I oversaw a modernization of the agency and provided common sense regulatory oversight of a robust energy industry while carefully balancing our state’s economic and environmental concerns,” said Craddick in a press release. “I am respectfully asking the voters of Texas to re-elect me to a second term.” Craddick is the only member of the three-person commission up for re-election next year. Commission members serve staggered six-year terms on the panel that oversees the Texas oil and gas industry. [Read more.](#)
- **Proposed Title Examination Standards – Texas.** The Texas Title Examination Joint Editorial Board is [proposing to add 13 additional standards](#) and is inviting the public to submit comments and any recommendations. Comment and suggestions may be submitted until October 15. To submit your comment and learn more about the proposed standards: [Read more.](#)

INDUSTRY NEWS FLASH:

◆ **U.S. to reach record crude production, despite Hurricane Harvey.** According to the mid-September forecast from the Energy Information Administration, U.S. crude oil production will grow in the remaining months of this year and reach its highest-ever annual average in 2018, despite the impact of Hurricane Harvey. [Read more.](#)

State-by-State Legislative Session Overview

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

The following states are in recess until the dates provided: **Michigan** (September 26), **North Carolina** (October 4) and **New Jersey** (October 5).

Missouri held a one-day veto session on September 13. **California** adjourned on September 15.

Wisconsin adjourned a special session related to the creation of an information technology manufacturing zone on September 14. [ABC News](#) reports that Republican Gov. Scott Walker signed [AB 1x/2017 Wisconsin Act 58](#), which contains the proposal, on September 18.

Connecticut adjourned a special session related to the budget on September 15 after lawmakers passed a Republican proposal. According to [WNPR](#), Democratic Gov. Dan Malloy has promised to veto the budget proposal, which will likely result in an additional special session. **Rhode Island** held a one-day special session on September 19 to address various issues left unresolved at the end of the regular session, [WPRI](#) reports. **Utah** held a one-day special session on September 20 related to health and human services measures, [The Salt Lake Tribune](#) reports.

Oklahoma is expected to convene a special session related to budget issues on September 25, [Reuters](#) reports. **Colorado** is expected to convene a special session on October 2 to address marijuana taxation, [Aspen Public Radio](#) 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. **Utah** Republican Gov. Gary Herbert has until October 10 to act on special session legislation or it becomes law. **California** Democratic Gov. Jerry Brown has until October 15 to act on legislation presented after September 15 or it becomes law. **Connecticut** Democratic Gov. Dannel Malloy has 15 days from presentment to act on special session legislation 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. **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.

Wisconsin Republican Gov. Scott Walker had acted on all special session legislation as of September 21.

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](#), [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](#).

Lands

Public Lands

California SB 50 was enrolled on September 20 and delivered to Democratic Gov. Jerry Brown. Governor Brown has until October 15 to act on the bill or it becomes law. 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 enrolled on September 20 and is now awaiting delivery to Democratic Gov. Jerry Brown. Once he receives the bill, he will have until October 15 to sign it or it will become law. 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.

Pennsylvania [HR 515](#) was introduced on September 15 and referred to the House Environmental Resources and Energy Committee. Sponsored by Rep. Jonathan Fritz, R-Susquehanna, this resolution urges the Delaware River Basin Commission to suspend its consideration of a moratorium on natural gas drilling in Northeast Pennsylvania. According to Representative Fritz's [sponsor memo](#), the Delaware River Basin Commission approved a resolution to begin the process of creating a proposal to ban natural gas drilling in the watershed. Democratic Gov. Tom Wolf supports the ban and was joined and supported by officials from New York and Delaware. This legislative resolution would send a message from the Pennsylvania House of Representatives to the commission to request they stop these efforts.

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