

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

- **Permitting; Spacing Units – S. 2151.** On November 16, S. 2151 was introduced by Senator John Hoeven (R-ND) and referred to the Senate Committee on Energy and Natural Resources. The measure “would streamline the oil and gas permitting process and recognize fee ownership for certain oil and gas drilling or spacing units.” In particular, the bill states that a drilling permit shall not be required by the Bureau of Land Management if less than 50 percent of the minerals within an oil and gas drilling or spacing unit are minerals owned by the federal government and if the federal government does not own or lease the surface estate within the boundaries of that drilling or spacing unit. [Read more.](#)
- **Arctic National Wildlife Refuge – Alaska.** (*Update to 11/20/17 Weekly Report*) Last week, the Senate Budget Committee voted to approve legislation which will open up a part of the Arctic National Wildlife Refuge (ANWR) in Alaska, known as the “1002 Area” or Coastal Plain, to oil and gas drilling, as part of the congressional budget package, [H.R. Con. Res. 71](#). The measure was later added as a provision for [inclusion as a rider](#) to the current tax bill despite objections by Senate Democrats, but the measure’s sponsor, Senator Lisa Murkowski (R-AK), says the amendment is expected to move forward in conference between the two chambers as they hash out the final measure for the President’s signature. The justification for its inclusion in the tax bill is that profits from any oil and gas development would help offset a budget deficit and this would allow its inclusion. The measure “requires the Interior Department to offer two drilling rights leases of at least 400,000 acres in ANWR’s coastal plain within 10 years.” We will keep you informed as the measure moves forward. [Read more.](#)

FEDERAL – Regulatory

- **Greater Sage-Grouse.** The U.S. Forest Service has published a notice, *Amendments to Land Management Plans for Greater Sage-Grouse Conservation* ([82 Fed. Reg. 55346](#)) announcing its intention to prepare an environmental impact statement for potential land management plan amendments for the greater sage-grouse for national forests in Colorado, Idaho, Montana, Nevada, Utah, and Wyoming. The agency seeks comments on sagebrush focal area designations, mitigation standards, disturbance and density caps, and potential modification of habitat boundaries to reflect new information. Public comments are due by January 5, 2018. [Read more.](#)

FEDERAL – Judicial

- **Royalties; Leasing – 5th Circuit Court of Appeals.** On November 3, in *Griffin v. Hess Corporation* (Case No. 17-30165), the U.S. Court of Appeals, Fifth Circuit, addressed a Louisiana case involving claims of failure to pay royalties to a decedent pursuant to an oil and gas lease and the three-year prescriptive period for royalty claims under state law. The Court ruled against the royalty claimants holding that the claimants had a reasonable basis to pursue a claim against the defendants more than three years prior to instituting the case and therefore were subject to the prescriptive period for bringing this case which they did not in the required prescriptive period. [Read more.](#)
- **Cotenancy; Leasing – West Virginia Federal Court.** On November 13, in *Bezilla v. Tug Hill Operating, LLC* (Case No. 5:17CV123), the U.S. District Court for the Northern District of West Virginia held that in an action seeking to terminate the defendant’s lease, the lessor cannot unilaterally terminate a lessee’s ability to develop acreage under a lease without the consent of all of the cotenants. In so ruling, the Court dismissed the lawsuit without prejudice, allowing the plaintiff to refile with the consent of other cotenants to challenge the lease. [Read more.](#)

STATE – Regulatory

- **Local Regulations – Colorado.** Boulder County officials told the Colorado Oil and Gas Conservation Commission (COGCC) that Crestone Peak Resources’ new drilling well pads should be located along a state highway and farther away from residential areas, but Crestone says it is taking environmental concerns into account in its second draft Comprehensive Drilling Plan (CDP), which incorporates public comments made on their initial plan. The CDP describes the 216 well project within a 12-mile area of Boulder County, which includes areas within Erie’s town limits. According to Bloomberg News, this is the first time a company has used the state’s voluntary CDP process (COGCC Rule 216), implemented in 2009, and the first plan offered for hydraulic fracturing and other oil and gas activities in Boulder County since the May 1, 2017 expiration of a five-year moratorium on new drilling permits. The public comment period on the second draft runs through December 8, and the COGCC is expected to hold hearings on the final draft CDP in March 2018. [Read more.](#)
- **Methane Reductions – Pennsylvania.** A final draft plan by the Pennsylvania Department of Environmental Protection (DEP) to reduce methane leaks from hydraulic fracturing operations released November 30 is being met with concern by industry groups who disfavor the new general permits. “While we remain concerned about the use of permits to regulate a proposed methane limit that has no scientific basis, we do welcome the opportunity to work with DEP to address serious concerns our industry has with regard to permitting and regulatory certainty,” said David Spigelmyer, president of the Marcellus Shale Coalition in a statement to Bloomberg News. The [draft plan was first announced](#) in

January 2016 by Governor Tom Wolf (D), and following a lengthy public comment period, permits conforming with the plan are expected to be issued in the early 2018. [Read more.](#)

- **Hydraulic Fracturing Ban – Pennsylvania.** On November 30, the Delaware River Basin Commission published draft amendments to its regulations to put in place a formal ban on drilling and hydraulic fracturing within the watershed area, which stretches 330 miles from the Delaware River’s headwaters in New York to the mouth of the Delaware Bay. The draft also puts additional restrictions on the industry disposing wastewater within the watershed or using water from the river and its tributaries. The commission imposed a moratorium on drilling and hydraulic fracturing in 2010 and voted in September to start the process of a ban. Public hearings will begin on January 23, 2018 and advanced registration to [attend a public hearing](#) will remain open until December 31, 2017. Public comments are also being solicited and that period will be open until February 28, 2018. [Read more.](#)
- **Chinese Investment in Shale Projects – West Virginia.** Last month, the West Virginia Department of Commerce announced that China Energy Investment Corporation plans to invest \$83.7 billion in shale gas development and chemical manufacturing projects in West Virginia. President Donald Trump and Chinese President Xi Jinping witnessed West Virginia Secretary of Commerce H. Wood Thrasher and China Energy representative Ling Wen sign a Memorandum of Understanding that “marks the first step in a series of commitments China Energy plans to make” in the state. “This is a great day for the state of West Virginia,” said West Virginia Governor Jim Justice (R). “I’ve been saying for the last couple months that the tides are turning in West Virginia and this is proof. Today is another sign as we joined with my good friend President Trump to announce the largest investment in our state’s history.” [Read more.](#)

STATE – Legislative

- **Tax Exemptions – Ohio.** On November 29, Rep. Tim Schaffer (R) introduced H.B. 430, a bill that amends current law to expand certain sales tax exemptions for oil and gas production property. The measure removes certain sales taxes related to the production of crude oil and natural gas and those engaged in rendering related services, among other provisions under Sec. 5739.02(42) of state law. [Read more.](#)

STATE – Judicial

- **Ad Valorem Taxes – Colorado.** On November 13, in *OXY USA Inc. v. Mesa Cty. Bd. of Commissioners* (Case No. 2017 CO 104), the Colorado Supreme Court held that state law allows for abatement and refund for illegally or erroneously levied taxes based on overvaluation caused by taxpayer error in a case where Oxy mistakenly overpaid its property taxes on oil and gas produced from leaseholds in Mesa County. In this case, Oxy failed to deduct certain costs that it was entitled to deduct, but by the time the

mistake was realized the protest period had expired. While the Mesa County Board of Commissioners maintained that since Oxy was the sole source of the error the abatement-and-refund provision does not apply, the Supreme Court disagreed. The Court stated that the plain language of the statute allows for abatement for any overvaluation, “[e]ven when it is caused by taxpayer error” and that the statute is silent as to the source of the error, thus in a win for Oxy, the “silence suggests the source of the error does not matter.” [Read more.](#)

- **Overriding Royalties; Top Leases – Louisiana.** On November 2, in *Suire v. Oleum Operating Co.* (Case No. 2017-117), the Louisiana Third Circuit Court of Appeal held that an overriding royalty interest (ORRI) carved out of an old lease, which was ratified by an amendment in a subsequent settlement agreement, maintained the ORRI in full force and effect and rejected a claim that a subsequent top lease extinguished the ORRI. [Read more.](#)
- **Royalties Class Action – Oklahoma.** On November 2, in *Chieftain Royalty Co. v. BP America Production Co.* (Case No. 16-CV-444-JHP), a case where the plaintiff class sought royalties from “fuel gas” from wells in which the class owns mineral interests, the U.S. District Court for the Eastern District of Oklahoma denied a request to dismiss the royalty class action based on failure to pay proper royalties (i.e., without deductions for post-production costs) under the express terms of the agreement. The Court held that a prior decision denying similar claims based on implied marketing covenants did not bar the plaintiffs here from suing based on the express terms of the lease. [Read more.](#)
- **Deeds; Mineral Reservations; Estates – Texas.** On November 8, in *Dragon v. Trial* (Case No. 04-16-00758-CV), the Texas Court of Appeals, Fourth District, held in a case involving a dispute over the ownership of a mineral interest, that a deed conveying “all that certain parcel or tract of land” purported to convey all the interest in the property even though the plaintiffs’ predecessors conveyed one-half of the interest to the decedent’s wife. Thus, the deed purported to convey what the grantor did not own in violation of the warranty clause and the Court applied the estoppel by deed doctrine which prohibits the assertion of title in contradiction or breach of the warranty. [Read more.](#)
- **Accommodation Doctrine; Surface Use – Texas.** On November 8, in *VirTex Operating Co. v. Bauerle* (Case No. 04-16-00549-CV), the Texas Court of Appeals, Fourth District, held that a surface owner established a breach of the accommodation doctrine when an oil and gas lessee proposed to install overhead power lines across the plaintiff’s ranch to generate power to its wells. The Court found that evidence presented by the surface owners supported the trial court’s conclusions that the proposed power lines would completely “preclude or substantially impair” the plaintiffs’ existing use and that an “alternative reasonable, customary, and industry-accepted method” was available to the defendant for the extraction of minerals from the property. [Read more.](#)

INDUSTRY NEWS FLASH:

◆ **In the Bakken, natural gas production increases at faster rate than oil.** According to a November 28 report from the U.S. Energy Information Administration (EIA), natural gas production in the Bakken region has increased at a rate faster than oil production. The ratio of natural gas production relative to crude oil, known as the gas-oil ratio, has been gradually increasing since 2008 and has increased at an even faster rate since 2014. According to the EIA, recent efforts by the North Dakota Industrial Commission to reduce flared gas has led to a higher rate of marketed natural gas and a roughly 40 percent decline in gas flared.

[Read more.](#)

State-by-State Legislative Session Overview

Michigan, New Jersey and Pennsylvania are in regular session. The **District of Columbia** Council, **Puerto Rico** and the **United States** Congress are also in regular session. **Massachusetts** is in informal session.

Ohio is in recess until December 5. **Rhode Island** is in recess to the call of the chair.

Vermont held a general legislative briefing on issues related to the fiscal situation and mental health and addiction policy on November 30. The briefing agenda can be found [here](#).

Montana adjourned a special session related to budget issues on November 17, [MTPR](#) reports, and a list of bills considered during the session can be found [here](#). **Oklahoma** adjourned a special session related to budget issues on November 17, [KOCO](#) reports.

Oklahoma Republican Gov. Mary Fallin has until December 2 to act on special session legislation or it is pocket vetoed. **Connecticut** Democratic Gov. Dannel Malloy has 15 days from presentment to act on legislation or it becomes law. **Delaware** Democratic Gov. John Carney has 10 days, Sundays excepted, to act on legislation or it becomes law. **Illinois** Republican Gov. Bruce Rauner has 60 days from presentment to act on all legislation passed during the veto session or it becomes law. **Montana** Democratic Gov. Steve Bullock has 10 days from delivery 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 has six days, Sundays excepted, to act on legislation or it becomes law. Bills must be presented to the governor by December 7.

North Carolina Democratic Gov. Roy Cooper had a signing deadline on November 16. **Alaska** Independent Gov. Bill Walker and **Maine** Republican Gov. Paul LePage had acted on all legislation from the regular and special sessions as of November 30.

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](#), [Nevada](#), [New Hampshire House](#) and [Senate](#), [New Mexico](#), [New York House](#) and [Senate](#), [North Carolina](#), [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](#), [West Virginia](#) and [Wyoming](#).

The following states are currently posting bill drafts, prefiles and interim studies for the 2018 session: [Alabama](#), [Arizona](#), [Arkansas](#), [Colorado](#) (proposed legislation appears on interim committee pages), [Florida House](#) and [Senate](#), [Georgia Study Committees](#), [House](#) and [Senate](#) prefiles, [Indiana](#), [Iowa](#), [Kansas](#), [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, [South Carolina](#), [Utah](#), [Virginia](#), and [Wyoming](#).

Lands

Public Lands

New York AB 8797, sponsored by Asm. James Skoufis, D-Woodbury, was referred to the Assembly Governmental Operations Committee on November 27. The bill would provide the Commissioner of General Services with the right of first refusal in federal land transfers to private entities within the state. The right of first refusal would not apply to:

- The conveyance of federal public lands pursuant to a conservation plan.
- The renewal of a lease in existence as of January 1, 2017.
- The conveyance of federal public lands to a federally recognized Native American tribe.

The bill would take effect 120 days after becoming law.

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