

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

- **Historic Offshore Drilling Plan.** In a huge win for the oil and gas industry, on January 4 the Trump administration unveiled a new five-year plan that would open up nearly all federal waters for oil and gas drilling, giving the energy industry access to fields in the Pacific and Atlantic oceans and parts of the Gulf of Mexico that have been off limits for decades. According to the [Interior Department announcement](#), the plan “would open the door for drilling in areas far beyond the U.S. epicenter of offshore drilling in the central and western Gulf of Mexico, giving oil and gas companies the opportunity to explore areas left out of leases for decades.” [Read more.](#)
- **Rescission of BLM Hydraulic Fracturing Rule.** On December 29, the Bureau of Land Management (BLM) published its final rule, *Oil and Gas: Hydraulic Fracturing on Federal and Indian Lands; Rescission of a 2015 Rule* ([82 Fed. Reg. 61924](#)), which repeals the Obama-era federal lands hydraulic fracturing regulation, *Oil and Gas; Hydraulic Fracturing on Federal and Indian Lands* ([80 Fed. Reg. 16128](#)) which sought tighter controls over hydraulic fracturing and specifically focused on three areas: “mandating that companies disclose the chemicals they use to frack, requiring them to cover surface ponds that house fracking fluids and setting standards for the construction of the wells.” However, that Obama rule never took effect since it was overturned by a federal court which held that the BLM never had the authority to regulate hydraulic fracturing. “The rescinding of this burdensome rule, which was never enacted due to IPAA and Western Energy Alliance’s ongoing legal challenge, will save our member companies and those operating on federal lands hundreds of millions of dollars in compliance costs without any corresponding safety benefits,” said Barry Russell, president of the Independent Petroleum Association of America. [Read more.](#)
- **Shale Development Project Funding – Department of Energy.** On January 3, the U.S. Department of Energy (DOE) announced the selection of six onshore projects to receive nearly \$30 million in federal funding for research and development focused on hydraulic fracturing shale recovery. One of the projects aims to improve hydraulic fracturing techniques on Anadarko and Shell acreage in the Delaware Basin. Another project in the Eagle Ford will improve the effectiveness of shale oil production and enhanced oil recovery methods. According to the DOE, all “six projects represent a critical component of DOE’s portfolio to advance the economic viability” and “increasing the supply of U.S. oil and natural gas resources to enhance national energy dominance and security.” [Read more.](#)

- **Migratory Bird Treaty Act Revisions.** On December 22, in a decision hailed by the energy industry, the U.S. Department of the Interior’s Office of the Solicitor issued a Memorandum ([M-37050](#)) which loosens the enforcement of the Migratory Bird Treaty Act (MBTA). This issuance “has quietly rolled back an Obama-era policy aimed at protecting migratory birds, stating in a solicitor’s opinion that it will no longer prosecute oil and gas, wind and solar operators that accidentally kill birds.” According to the law firm, Welborn Sullivan Meck & Tooley, P.C, the [Memorandum limits](#) “the reach of the MBTA to intentional, unlawful acts of hunting and poaching.” [Read more.](#)
- **Resource Management Planning.** On December 12, the BLM published its final rule, *Effectuating Congressional Nullification of the Resource Management Planning Rule under the Congressional Review Act* ([82 Fed. Reg. 60554](#)), which finalizes the revocation and nullification of the Resource Management Planning Rule (“Planning 2.0 Rule”) put in place by the Obama administration and which established procedures used to prepare, revise, or amend land use plans pursuant to the Federal Land Policy and Management Act. Many argued that Obama’s rule would have reduced the efficiency of resource planning and caused “few opportunities for state and local government input”. The Planning 2.0 Rule was originally published in December 2016 ([81 Fed. Reg. 89580](#)) and became effective January 11, 2017. On February 7, 2017, the U.S. House of Representatives passed a resolution of disapproval ([H.J. Res. 44](#)) for the rule. The Senate then passed its resolution of disapproval ([S.J. Res. 15](#)) on March 7, 2017. President Trump then signed the resolution into law as [Public Law No. 115-12](#) on March 27, 2017 stating “such rule shall have no force or effect.” The oil and gas industry was highly critical of the Obama rule and welcomed the repeal. “The final [Obama] rule allowed for all planning documents to be changed at any moment, which does not allow for a set understanding of expectations and long-term planning,” said Dan Naatz, senior vice president of government relations for the Independent Petroleum Association of America. [Read more.](#)

FEDERAL – Judicial

- **Area of Mutual Interest; Prospect Fees – Ninth Circuit (Montana).** On December 8, in *Energy Investments, Inc. v. Greehey & Company, Ltd.* (Case No. 16-35245), the U.S. Court of Appeals for the Ninth Circuit (Montana) held in a case [on appeal](#) involving a dispute over payments for lease acquisitions within an Area of Mutual Interest (AMI), that the acquiring company had the obligation to pay a prospect fee of \$50 per net mineral acres for any acquisition within the AMI for the duration of the agreement even though the non-acquiring company did not contribute to securing the lease. [Read more.](#)
- **Subsurface Easements; Leasing – Sixth Circuit (Ohio).** On November 30, in *Eclipse Res.-Ohio, LLC v. Madzia* (Case No. 17-3145), the U.S. Court of Appeals for the Sixth Circuit (Ohio) addressed a disagreement as to whether an oil and gas lease granted Eclipse the right to drill a wellbore through Madzia’s property to access certain resources, and, if so, whether a subsurface-easement agreement subsequently conveyed by Madzia to Eclipse

modified the lease so that Eclipse no longer held the contractual right to conduct such drilling. The court found in favor of the oil and gas driller, holding that the oil and gas lease authorized the transportation of oil and gas from other lands and because the subsurface-easement agreement did not modify the lease, Eclipse had the right to drill the wells through Madzia's property. The Court also rejected the lessor's claims that a faulty affidavit submitted with permit applications constituted a breach of the "compliance with all laws" provision of the lease. [Read more.](#)

- **Title Opinions; Conflict of Interest – Pennsylvania Federal Court.** On December 13, in *Brenco Oil, Inc. v. Blaney* (Case No. 17-3938), an oil and gas company alleged in a breach of contract action that its law firm committed "two cardinal sins of oil-and-gas law practice: (1) carelessly misidentifying the holders of title to land, and (2) representing both sides of a land sale in a concurrent conflict of interest." The U.S. District Court for the Eastern District of Pennsylvania held rather that a production company procuring title opinions from a law firm that did not properly identify the title holders in question and represented both sides to the oil and gas deal stated a cause of action in tort rather than contract. The Court also noted that the plaintiff did not state a claim for "conflict of interest" under the Pennsylvania Rules of Professional Conduct given that those rules do not create a cause of action but rather is adjudicated through disciplinary proceedings. [Read more.](#)
- **NPRIs; Royalties; Deeds – Pennsylvania Federal Court.** On December 7, in *Leavitt v. Ballard Expl. Co., Inc.* (Case No. 01-16-00536-CV), a case involving a dispute over an NPRI, the Texas Court of Appeals, First District (Houston) held that in a dispute over title as contemplated by Texas Natural Resources Code § 91.402(b)(1) the lessee had the authority to withhold royalty payments to the plaintiff-trustee until that dispute was resolved. [Read more.](#)
- **Royalty Reporting – Interior Board of Land Appeals.** On December 13, the U.S. Department of Interior Board of Land Appeals (IBLA) upheld an Office of Natural Resources (ONRR) civil penalty of more than \$3 million relating to underpaid royalties and reporting by an operator. In the case [Quinex Energy Corp.](#) (192 IBLA 88, 2017), the "IBLA specifically held that ONRR is not required to consider the amount of the royalty underpayment in determining the appropriate amount of civil penalties to assess for knowing or willful failure to correct inaccurate royalty reports. Consequently, even a *de minimis* royalty underpayment could trigger a substantial civil penalty if the associated incorrect royalty report is not timely corrected." [Read more.](#)

STATE – Legislative

- **Worker Misclassification – Indiana.** On January 3, Senator David Niezgodski (D) introduced SB 166. The bill would require that the state's Department of Revenue, Department of Labor, Department of Workforce Development, and Worker's Compensation Board t

report to the legislature's interim study committee on employment and labor those employers who improperly classified workers as independent contractors, the number of those workers, certain cost estimates to the state related to improperly classified workers, and penalties and interest assessed against employers misclassifying workers.

[Read more.](#)

- **Mineral Estates – Mississippi.** On January 2, Rep. Randy Boyd (R) introduced HB 238. The bill provides that mineral estates separated from the surface estate shall revert to the owner of the surface estate after 20 years of non-production. [Read more.](#) A similar bill, HB 274, introduced on January 2 by Rep. Michael Evans (D), provides that the mineral estates revert to the surface owner after 10 years of non-production. [Read more.](#)
- **Power of Attorney – Mississippi.** On January 2, Rep. Thomas Reynolds (D) introduced HB 277. The bill provides that a durable power of attorney created under the existing Uniform Durable Power of Attorney Act may be made effective upon the occurrence of a future event or contingency. [Read more.](#)
- **Severance Taxes – Mississippi.** On January 2, Rep. Randy Boyd (R) introduced HB 273. The bill provides that severance taxes on oil and gas shall be paid by the interest owner of the oil and gas, and shall be paid by the interest owner regardless of whether the owner resides in the state. Additionally, the bill provides that the owner of surface rights under which oil, gas or other mineral interests are owned or held separately may be exempt from paying 25 percent of the ad valorem taxes otherwise due on the real estate, among other provisions. [Read more.](#)

STATE – Judicial

- **Deeds – Pennsylvania.** On December 14, in *Ford v. Oliver* (Case No. 670 WDA 2016), the Pennsylvania Superior Court held, in a case involving a disagreement over a deed's validity pertaining to certain mineral rights, that a plaintiff challenging the validity of a voidable deed had four years to bring a declaratory judgment action. "To have the voidable deed declared void, the Fords had to bring an action seeking that relief within the limitations period applicable to declaratory judgment actions" but since they failed to do so their claim was untimely. [Read more.](#)
- **Royalties; Leasing – Pennsylvania.** On December 8, in *Niverth v. Equitrans, L.P.* (Case No. 400 WDA 2017), the Pennsylvania Superior Court denied landowner claims alleging that leases violated the Minimum Royalty Act or court precedent on the deduction of post-production costs. Finding in favor of the lessee, the court held that the landowners never offered evidence that their royalties ever fell below the statutory minimum even if the lease authorized deductions for post-production costs and thus the court refused to grant a remedy. [Read more.](#)

- **Mineral Deeds – Texas.** On December 14, in [Haywood WI Units, Ltd. v. B&S Dunagan Investments, Ltd., et al.](#) (Case No. 13-15-00454-CV), the Texas Court of Appeals for the Thirteenth District (Corpus Christi) “addresses mineral deed interpretation issues and the recoverability of attorneys’ fees under the declaratory judgment statute where non-possessory interests such as royalties are being adjudicated.” Here the Court found that a reserved royalty was a vested, present interest with a right to a share of future production, rather than a contingent interest that may never vest. [Read more.](#)
- **Royalties; Deed Reservatons – West Virginia.** On November 17, in *Kidder v. Montani Energy, LLC et al.* (Case No. 16-0119), the West Virginia Supreme Court of Appeals held that deeds which reserved the right to royalties on production and marketing after drilling but were devoid of language regarding control over the drilling or production or marketing conveyed a royalty interest, not a mineral interest as alleged by the petitioners. [Read more.](#)

INDUSTRY NEWS FLASH:

◆ **U.S. E&Ps raise most since 2014 to finance drilling and production growth.** Despite a dip in equity financing, U.S. E&Ps have raised more from bond sales in 2017 than in any year since the slump in oil prices began in 2014. For example, over the past few weeks, Whiting Petroleum, Continental Resources and Endeavor Energy Resources have each raised \$1 billion in debt, which helps finance increased activity in U.S. shale reserves. Phillip Tamplin, head of energy high-yield capital markets at Credit Suisse, said he expected 2018 to be “a good year” with plenty of refinancings if oil stayed at present levels. “You’ll probably see an increase in use of proceeds for drilling dollars.” [Read more.](#)

◆ **Permian Basin production hits all-time record.** According to business research firm, IHS Markit, “Permian production hit 815 million barrels in 2017, blowing past the previous record of 790 million barrels set in 1973.” IHS also reports that the “Permian is now a model for development of more than 25 onshore ‘super basins,’ each with more than 5 billion barrels of cumulative production and more than 5 billion barrels of remaining production.” Their estimates project that those basins “hold more than 840 billion barrels of oil, far more than required to meet 2040 global demand.” [Read more.](#)

State-by-State Legislative Session Overview

California, Indiana, Kentucky, Maine, Massachusetts, Mississippi, Missouri, Nebraska, New Hampshire, New Jersey, New York, Ohio, Pennsylvania, Rhode Island, Vermont and Wisconsin are in regular session. **Puerto Rico**, the **United States Congress** and the **District of Columbia Council** are also in regular session.

The following states adjourned their 2017 legislative sessions on the dates provided: **Michigan** (December 28), **Ohio** (December 31) and **Massachusetts** (January 2). The **District of Columbia** Council adjourned on December 31 and the **United States** Congress adjourned on January 3 and convened its 2018 session the same day.

Oklahoma convened its second special session to address budget issues on December 18, [Public Radio Tulsa](#) reports.

Connecticut is expected to convene a special session on January 8 to reverse funding cuts to the Medicare Savings Program, [CT News Junkie](#) reports. The session had been scheduled for January 5, [NBC CT](#) reports, but the session was postponed. CT News Junkie also [reports](#) that Democratic Gov. Dannel Malloy has presented a deficit reduction [plan](#) to lawmakers to address a \$208 million shortfall. **North Carolina** is expected to convene a special session on January 10. The agenda for the session has not yet been made public, but may be broad in scope.

New Jersey is expected to adjourn its 2017 session on January 9.

The following states are expected to convene for the 2018 legislative session on the dates provided: **Arizona, Georgia, Idaho, Iowa, Kansas** and **Washington** (January 8); **Alabama, Delaware, Florida, New Jersey, South Carolina, South Dakota** and **Tennessee** (January 9); **Colorado, Illinois, Maryland, Michigan, Virginia** and **West Virginia** (January 10); **Alaska** and **New Mexico** (January 16), **Hawaii** (January 17) and **Utah** (January 22).

Illinois Republican Gov. Bruce Rauner has 60 days from presentment to act on all legislation passed during the veto session or it becomes law. **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.

Connecticut Democratic Gov. Dannel Malloy, **Delaware** Democratic Gov. John Carney, **New Hampshire** Republican Gov. Chris Sununu and **Rhode Island** Democratic Gov. Gina Raimondo had acted on all 2017 legislation as of January 2.

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](#), [Iowa House](#) and [Senate](#), [Kansas](#), [Louisiana](#), [Maryland](#), [Minnesota](#), [Montana](#) (2019 interim hearings) [Nevada](#) (2019 interim hearings) [New Mexico](#), [North Carolina](#), [North Dakota](#) (will not convene in 2018, interim hearings will be held until 2019), [Oklahoma House](#) and [Senate](#), [Oregon](#), [South Carolina House](#) and [Senate](#), [South Dakota](#), [Tennessee](#), [Texas House](#) and [Senate](#) (2019 interim hearings), [Utah](#), [Virginia](#), [Washington](#), [West Virginia](#) and [Wyoming](#).

The following states are currently posting bill drafts, prefiles and interim studies: [Alabama](#), [Arizona](#), [Arkansas](#), [Colorado](#) (proposed legislation appears on interim committee pages), [Delaware](#), [Florida House](#) and [Senate](#), [Georgia Study Committees](#), [House](#) and [Senate](#) prefiles,

[Iowa](#), [Kansas](#), [Maryland House](#) and [Senate](#), [Montana](#) (2019 interim studies), [New Mexico](#), [North Dakota](#) (2019 interim committee bills), [Oklahoma prefiles](#) and [House](#) and [Senate](#) interim studies, [South Carolina](#), [Utah](#), [Virginia](#), [Washington](#) and [Wyoming interim studies](#) and [prefiles](#).

Franchise Tax

Wisconsin AB 734, sponsored by Rep. Rob Stafsholt, R- New Richmond is scheduled for a hearing in the Assembly Workforce Development Committee on January 10 at 12:30 PM. The bill would provide an income and franchise tax deduction for tuition expenses paid by an individual to participate in an apprenticeship program that is approved by the Department of Workforce Development. The bill would apply to taxable years beginning after December 31, 2017. The bill's companion, [SB 620](#), is currently pending in the Senate Revenue, Financial Institutions and Rural Issues Committee.

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