

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

- **BLM Online Lease Sale.** The BLM announced that in its first online lease auction, held September 20, all of its parcels were sold, but did not disclose the overall proceeds. The highest bid was \$184/acre for an 86.21-acre parcel, according to the BLM. The auction offered 4,400 acres, covering mostly two national forests in Mississippi and a small amount of acreage on U.S. Army Corps of Engineers managed land in Kentucky. [Read more.](#)
- **EPA Methane Emissions Report.** As reported in the October 11 issue of Sidley Austin's *Shale and Hydraulic Fracturing Report*, the EPA reports that the oil and gas sector's methane emissions decreased last year. In tallying the 2015 results from its Greenhouse Gas Reporting Program, the EPA observed that methane emissions associated with oil and gas production, processing and storage infrastructure dropped 3.8 percent last year, from 73.1 million metric tons of carbon dioxide equivalent in 2014 to 70.3 million metric tons in 2015. The oil and gas sector's methane emissions have decreased for four years in a row. In Texas alone, methane emissions associated with oil and gas production dropped by 3.58 million metric tons of carbon dioxide equivalent from 2011 to 2015. These decreases occurred prior to the Obama administration's recent efforts to regulate methane emissions from the oil and gas industry. [Read more.](#)

FEDERAL – Judicial

- **Lease Validity – Ohio Federal Court.** (from Cozen O'Conner's *At the Well Weekly*) Following a trial confirming the validity of an oil and gas lease, the federal Sixth Circuit Court of Appeals, in *Carizzo (Utica) LLC v. City of Girard* (Case No. 16-3210), upheld the trial court's denial of the lessee's bid to amend the lawsuit to claim breach of contract and slander of title against the lessor and others, holding that the lessee lacked good cause to amend the lawsuit and others in the case would be prejudiced by the late amendment. [Read more.](#)
- **Working Interests – Texas Bankruptcy Court.** (from Cozen O'Conner's *At the Well Weekly*) A Texas bankruptcy court, in *In re Primera Energy* (Case No. 15-51396-CAG), held that a working interest in oil and gas is a real property interest for purposes of stating a cognizable claim for statutory fraud in a real estate transaction pursuant to Tex. Bus. & Comm. Code § 27.01. (Public case link not yet available.) [Read more.](#)

- **Bonus Payments – West Virginia Federal Court.** (from Cozen O’Conner’s *At the Well Weekly*) A West Virginia federal judge, in *Reynolds v. Ascent Resources – Marcellus* (Case No. 16-77), denied a bid to dismiss a breach of contract case against an oil and gas lessee after the lessee tendered a partial bonus payment, rejecting the lessee’s claim that it had “sole discretion” to reduce the bonus payment if the lessor had less than completely clear title. [Read more.](#)

STATE – Regulatory

- **New Regulations – Pennsylvania.** New regulations governing the extraction of natural gas through hydraulic fracturing went into effect on October 8 in Pennsylvania, the first overhaul in years, and under development since 2011. The new rules allow the state’s department of environmental protection to require additional measures if fracking is taking place near public resources, and requires drillers to restore water supply that is degraded or damaged through the extraction process. Pennsylvania Independent Oil & Gas Association president Daniel Weaver blasted the new regulations in a statement, saying they grew out of a “flawed, pre-determined and antagonistic development process.” [Read more.](#)

STATE – Judicial

- **Mineral Rights Beneficiaries – Kansas.** (from Cozen O’Conner’s *At the Well Weekly*) The Kansas Court of Appeals, in *Cline v. Peterson* (Case No. 113,851), concluded that a contract in which a seller sold his property to another while reserving the right to live on the property for life and agreed to split proceeds from mineral development with the buyer didn’t create a third-party beneficiary contract that inured to the benefit of the seller’s children. Those children sued to recover proceeds from mineral leases on the property executed by the buyer, reasoning that the children lacked standing as third-party beneficiaries because (a) the agreement said the seller “may” (but was not required to) leave his mineral rights to his children and (b) he never did. [Read more.](#)
- **Permitting – Montana.** (from Cozen O’Conner’s *At the Well Weekly*) The Montana Supreme Court, in *Carbon County Resource Council v. Montana Board of Oil and Gas Conservation* (Case No. DA 15-0613), disagreed with a trial court’s ruling that the challenge to the well permit application of an oil and gas production company brought by a group opposed to hydraulic fracturing before the state’s conservation board wasn’t “ripe” for review but denied the claim that the state board denied the group its right to participate, noting that the board allowed the group to present evidence about its concerns for well stimulation activities at the well site. [Read more.](#)
- **Royalties – Ohio.** (from Cozen O’Conner’s *At the Well Weekly*) Despite the still unsettled issue of whether the courts in Ohio follow the “at the well” rule or the “marketable product” rule for calculating royalties and post-production cost sharing, an Ohio federal

judge, in *Henceroth v. Chesapeake Exploration, L.L.C.* (Case No. 15-2591), concluded that royalty owners stated a plausible claim for relief that their lessee shorted them on royalty payments by taking improper post-production cost deductions. [Read more.](#)

- **Dormant Minerals Act – Ohio.** (Update to 9/19/16 Weekly Report) The law firm, Jones Day, provides an overview and assessment of the impact on ownership rights in the Utica and Marcellus shale following the recent Ohio Dormant Minerals Act decisions by the Ohio Supreme Court, triggered by their September 15 opinion in [Corban v. Chesapeake Exploration L.L.C.](#) (Case No. 2016-Ohio-5796). As noted in our earlier report, in *Corban*, the Ohio Supreme Court confirmed that the 1989 version of the Ohio Dormant Minerals Act “was not self-executing and did not automatically transfer ownership of dormant mineral rights by operation of law.” [Read more.](#)
- **Oil and Gas Act – Pennsylvania.** (Update to 10/10/16 Weekly Report) The Dinsmore law firm provides a section-by-section detailed analysis of the changes to Act 13, the state’s Oil and Gas Act, following the September 28 decision by the Pennsylvania Supreme Court, in [Robinson Township v. Commonwealth of Penn.](#) (Case No. 104 MAP 2014), in which the Court held that parts of Act 13 violated state constitutional rights regarding clean air and water. [Read more.](#)

INDUSTRY NEWS FLASH:

◆ **Federal Reserve Reports Increase in Energy Activity.** On October 7, the Federal Reserve Bank of Kansas City reported in their third quarter [Energy Survey](#) that for the first time in two years, oil and gas firms reported rising business activity and revenues in a region that encompasses Colorado, Nebraska, Oklahoma, Wyoming and part of New Mexico. With oil prices rising, most firms projected spending in 2017 to be flat to slightly higher, with a few even expecting sizeable increases. [Read more.](#)

ELECTION ALERT:

🗳️ **Hillary Clinton Gets it Wrong on U.S. Energy Independence.** In the October 9 town hall debate, Hillary Clinton inaccurately said that the United States has achieved energy independence, but the country still imports millions of barrels a day of oil and petroleum products, according to CNBC. In response to a town hall question on how she would meet America’s energy needs, Clinton said: “You know that we are now for the first time ever energy independent. We are not dependent upon the Middle East.” But, in fact, the U.S. imported 9.4 million barrels of crude and petroleum products in 2015, and imports are on the rise this year, according to the U.S. Energy Information Administration. Of the 2015 total, 2.9 million barrels came from OPEC countries, and 1.5 million came from Persian Gulf countries. [Read more.](#)

State-by-State Legislative Session Overview

Massachusetts and **New Jersey** are in regular session. The **District of Columbia** Council is also in regular session.

Pennsylvania is in recess until October 17. **Michigan** is in recess until October 19. **Ohio** and the **United States** Congress are in recess until November 15. **Illinois** is in recess until November 15 and is expected to convene a veto session on that day. **California** is in final recess until November 30 and is scheduled to adjourn sine die on that day; the legislature will convene its 2017 legislative session on December 5.

Nevada convened a special session on October 10 to consider a financing proposal to fund construction of a 65,000 seat stadium, the [Nevada Appeal](#) reports. [SB 1](#), which contains the proposal, passed the Senate on October 11.

Alaska Independent Gov. Bill Walker has 20 days from presentment, Sundays excluded, to act on legislation or it becomes law without signature. **Delaware** Democratic Gov. Jack Markell and **New York** Democratic Gov. Andrew Cuomo have 10 days from presentment to act on legislation or it becomes law without signature. **Illinois** Republican Gov. Bruce Rauner has 60 days from presentment to act on legislation or it becomes law without signature.

The following states are currently holding interim committee hearings: [Alabama](#), [Alaska](#), [Arizona](#), [Arkansas](#), [Colorado](#), [Connecticut](#), [Delaware](#), [Georgia House](#) and [Senate](#), [Hawaii](#), [Illinois](#), [Idaho](#), [Indiana](#), [Iowa](#), [Kansas](#), [Kentucky](#), [Louisiana](#), [Maine](#), [Maryland](#), [Minnesota](#), [Mississippi House](#) and [Senate](#), [Missouri House](#) and [Senate](#), [Montana](#), [Nebraska](#), [Nevada](#), [New Hampshire House](#) and [Senate](#) (committee hearings published in calendar), [New Mexico](#), [New York Assembly](#) and [Senate](#), [North Carolina](#), [North Dakota](#), [Oklahoma House](#) and [Senate](#), [Oregon](#), [Rhode Island](#), [South Carolina](#), [Tennessee](#), the [Texas House](#), [Senate](#) and [Joint](#), [Utah](#), [Vermont](#), [Virginia](#), [Washington](#), [West Virginia](#) and [Wyoming](#).

The following states are currently posting bill draft requests/prefiles for the 2017 session: [Alabama House](#) and [Senate](#), [Colorado](#), [Florida Senate](#), [Kentucky](#), [Montana](#), [Nevada](#), [New Hampshire](#), [North Dakota](#), [Oklahoma House](#) and [Senate](#), [Utah](#), [Virginia](#) and [Wyoming](#) (draft requests appear on individual committee pages).

Endangered Species

New Jersey [AB 3527](#) was transferred from the Assembly Agriculture and Natural Resources Committee to the Assembly Environment and Solid Waste Committee on October 13. AB 3527 was reported favorably by the committee without amendments and sent to second reading. In an attempt to end hunting season on black bears, this bill would designate black bears as a nongame species and require that it be protected in the same manner as other nongame species that are protected by the state's endangered species act. If enacted, this bill would take effect immediately.

The Senate companion bill, [SB 2141](#), was introduced in May and is pending in the Senate Environment and Energy Committee.

Oil and Gas

General Oil and Gas

New Jersey [AB 4031](#) passed the Assembly Transportation and Independent Authorities Committee on October 13 with amendments. The amendments have not been printed and made available yet. This bill would create the New Jersey Crude Oil by Rail Safety Task Force. The main goal of the task force would be to study the public health and safety risks and impact of transporting crude oil by rail. The task force would also be responsible for making recommendations on emergency response measures for personnel in the event of a derailment of a train carrying crude oil. Thirteen members will make up the task force and will be required to present their findings and legislative and regulatory recommendations to the legislature

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