

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

- **State Management of Onshore Oil & Gas on Federal Lands.** On October 13, the U.S. House Committee on Natural Resources held a hearing on its recently released [Discussion Draft](#) (or draft legislative proposal) that would “achieve domestic energy independence by empowering States to manage the development and production of oil and gas on available Federal land.” The legislation, known as the “Opportunities for the Nation and States to Harness Onshore Resources Act”, or the “ONSHORE Act”, would allow the Interior Department Secretary to delegate a state exclusive authority to issue and enforce drilling permits and plans on federal land within the state. “A state seeking this responsibility would have to demonstrate that it has adequate funding and personnel, has solicited and obtained public comments and held a hearing, and has determined that approval of the application would not reduce leasing and royalty payments to the federal government.” In addition, states “also would receive their shares of federal onshore lease payments and royalties directly instead of having to wait for a distribution from the federal treasury, where they now are deposited. A 2% payment processing fee that BLM imposed a few years ago would be waived, except in states without approved programs.” We will keep you updated once the measure is officially introduced as a bill for consideration. [Read more.](#)

FEDERAL – Regulatory

- **BLM Lease Sale – Utah.** The BLM will be offering 75 parcels for oil and gas production in Duchesne, Uintah, and Emery counties in its December lease sale, including one parcel near Utah’s Dinosaur National Monument. BLM’s final environmental assessment, released on September 1, removed two parcels closest to the southwest boundary of the monument after receiving a [request from Utah Governor Gary Herbert \(R\)](#) to take a closer look at parcels located near the monument. “As the parcels are near the boundary of Dinosaur National Monument, the State wishes to ensure leasing of these parcels does not impact visual resources or cause light or sound disturbances within the National Monument,” Herbert wrote in his letter. BLM officials honored Herbert’s request by removing the two parcels closest to the monument. [Read more.](#)

FEDERAL – Judicial

- **Public Lands; Royalties – California Federal Court.** On October 17, the Attorneys General of California and New Mexico filed a complaint in the U.S. District Court for the Northern District of California challenging the decision by the Office of Natural Resources Revenue

("ONRR") to repeal its rules governing the calculation of royalties on oil, gas, and coal extracted from federal and Indian lands. In this case, [Becerra v. U.S. Dept. of the Interior](#) (Case No. 3:17-cv-05948), plaintiffs claim the Interior Department's latest repeal of the royalties rule was arbitrary and capricious because the agency "failed to supply a reasoned basis" for its decision. Further, their complaint states that "ONRR's repeal of the Rule has impacted the amount of royalties received by the States from the extraction of these resources." The Obama-era rule (*Consolidated Federal Oil & Gas and Federal & Indian Coal Valuation Reform*; [81 Fed. Reg. 43338](#)) was finalized in 2016 and took effect on January 1, 2017. The Trump administration, however, proposed a new rule to repeal the higher royalty values which took effect on September 6 (*Repeal of Consolidated Federal Oil & Gas and Federal & Indian Coal Valuation Reform*; [82 Fed. Reg. 36934](#)). "Repealing the Valuation Rule restores our economic freedom by ensuring our energy independence," said Interior Secretary Ryan Zinke. "The increased costs associated with the Valuation Rule had the potential to decrease exploration and production on federal lands, both onshore and offshore, making us rely more and more on foreign imports of oil and gas." We will continue to monitor this case once the Interior Department responds. [Read more.](#)

- **Leasing; Class Actions; Royalty Dispute – Oklahoma Federal Court.** On September 13, in *Nichols v. Chesapeake Operating, LLC* (Case No. 16- 1073), the U.S. District Court for the Western District of Oklahoma rejected the plaintiff-lessors' motion to move their putative class action royalty dispute case back to state court (which they deem more favorable for their case) because under the applicable Class Action Fairness Act, the plaintiff class failed to establish that more than two-thirds of the class plaintiffs resided in Oklahoma, thus dealing a blow to the plaintiffs' case by maintaining the case in federal court. [Read more.](#)
- **Local Ordinances – Pennsylvania Federal Court.** (*Update to 7/31/17 Weekly Report*) On September 29, in *Seneca Resources Corp. v. Highland Township* (Case No. 16-cv-289), a Magistrate Judge for the U.S. District Court for the Western District of Pennsylvania ruled in favor of an oil and gas exploration and production company by striking parts of a local ordinance passed by Highland Township that barred oil and gas companies from storing hydraulic fracturing waste in the town, saying it was preempted by federal and state law and also unconstitutional. [Read more.](#)
- **Resource Data Collection; Lands – 10th Circuit (Wyoming).** On September 7, 2017, in [Western Watersheds Project, et al. v. Michael, et al.](#) (Case No. 16-8083), the U.S. Circuit Court of Appeals for the Tenth Circuit held that Wyoming statutes concerning data collection on public and private lands violates the First Amendment. The Court ruled in favor of environmentalists, photographers and other critics of Wyoming's data-trespassing laws, which makes it illegal for people to cross private property to take photos or collect data on public lands. This case is a federal constitutional challenge to recently enacted Wyoming statutes (the "Data Laws") that are designed to prevent the public from

gathering “resource data” on public or private “open land” in the State of Wyoming and which increase penalties, both civil and criminal, for such data collection. In its decision, the Court reasoned that increasing the penalty for trespass based on an individual’s exercise of free speech violates the First Amendment by increasing the penalty for trespassing simply because someone creates speech after the trespass occurs, and in effect sanctions differential treatment based on the creation of speech. The Court in so ruling has reversed the District Court’s decision to dismiss the case and has now sent the case back to the District Court for a further ruling based on this decision. [Read more.](#)

STATE – Judicial

- **Leasing; Interests in Land – Ohio.** On September 29, in *Schlabach v. Kondik* (Case No. 16 HA 0017), the Court of Appeals of Ohio, Seventh District, held that the holder of an interest in an oil and gas lease with the right to approve well locations, access roads, and pipelines and other activities on the leased premises did not retain an “interest in land” for purposes of applying a 21-year statute of limitations for recovering title and possession of real property but rather the 10-year statutory period applies. [Read more.](#)
- **Leasing; Shut-In Provision; Unitization Clause – Ohio.** On September 21, in *Bond v. Halcon Energy Properties, Inc.* (Case No. 15 MA 0178), the Court of Appeals of Ohio, Seventh District, sent the case back to the trial court for further review after determining that there was ambiguity in the lease regarding whether a “well unit for gas” as used in the lease did not necessarily cover an oil well drilled by the lessee because the lease was ambiguous about whether an oil well that might produce gas is “capable of producing gas” based on a separate shut-in provision. [Read more.](#)
- **Deeds; Leasing; Royalties – Pennsylvania.** On September 21, in *Clutter v. Brown* (Case No. 1542 WDA 2016), the Pennsylvania Superior Court held that a conveyance “[r]eserving, also from this conveyance one half of the oil and gas royalty” in a 1919 deed created a reservation of the royalty payments from the oil and gas leases then in effect, not one-half of the oil and gas. [Read more.](#)
- **Leasing; Limitation of Forfeiture Clause – Pennsylvania.** On September 12, in *L.D. Oil & Gas Enterprises, Inc. v. Loop* (Case No. 1883 WDA 2016), the Pennsylvania Superior Court held that a trial court erred by granting judgment in favor of a landowner in a lease termination suit, concluding that an ambiguity in the oil and gas lease authorized parol, or outside, evidence to determine whether the lease expired at the expiration of its primary term even though the landowner did not give the lessee notice of termination under the limitation of forfeiture clause and the lessee resumed operations and produced oil within the cure period following the expiration of the primary term. [Read more.](#)

- **Mineral Ownership; State Lands – North Dakota.** On September 28, in *Wilkinson v. Bd. of Univ. & Sch. Lands* (Case No. 20160199), the North Dakota Supreme Court reversed the district court’s decision, and sent the case back to that court, for consideration of whether a recently enacted statute, [N.D.C.C. Ch. 61-33.1](#) (State Ownership of Missouri Riverbed), applies and governs ownership of the minerals at issue; and also the landowners’ takings claim if it decides the state owns the disputed minerals. This case “involved an ownership dispute for minerals under land along the Missouri River that the United States acquired for operation of the Garrison Dam and Reservoir (also known as Lake Sakakawea). Central to the case is whether the current or historic ordinary high water mark controls ownership.” ([Read more](#)). The Court ruled that the lower court erred in determining ownership of the surface estate, “because that claim was not asserted in the pleadings and because the United States appears to have an interest in the surface that would be affected.” The Court also queried whether Chapter 61-33.1, which now governs mineral rights of land inundated by Pick-Sloan Missouri basin project dams and limits State sovereign ownership “to the ordinary high water mark” of the “historical Missouri riverbed channel” with limited exceptions, applies to the minerals in dispute since that statute is retroactive to “the date of closure of the Pick-Sloan Missouri basin project dams.” The Court reasoned that because the statute “is retroactive and was enacted while the appeal was pending, the Court concluded that the district court should have an opportunity to consider the new statutory provisions when deciding ownership of the disputed minerals.” [Read more](#).

INDUSTRY NEWS FLASH:

◆ **U.S. crude oil production expected to set record in 2018.** The U.S. Energy Information Administration (EIA) forecasts in its [Short-Term Energy Outlook](#) that “U.S crude oil production will average 9.4 million barrels per day (b/d) in the second half of 2017, 340,000 b/d more than in the first half of 2017. Production in 2018 is expected to average 9.9 million b/d, surpassing the previous high of 9.6 million b/d set in 1970,” based on EIA projections released October 11. [Read more](#).

State-by-State Legislative Session Overview

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

New Jersey and **Rhode Island** are in recess to the call of the chair.

North Carolina adjourned on October 17.

West Virginia adjourned a special session related to transportation funding issues on October 17, [WV Metro News](#) reports. A list of legislation considered during the session can be found [here](#).

Oklahoma convened a special session related to budget issues on September 25, [HPPR](#) reports. The session is recessed to the call of the chair.

Alaska is expected to convene its fourth special session related to budget issues on October 23, the [Wrangell Sentinel](#) reports. **Vermont** is scheduled to convene a special session the same day to address any necessary matters related to changes made by federal legislation. **Maine** is also expected to convene a special session the same day, the [Portland Press Herald](#) reports. **Illinois** is expected to convene a veto session on October 24, [NPR Illinois](#) reports.

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 and **West Virginia** Democratic Gov. Jim Justice must act on legislation from the second special session by the same day or it becomes law. **North Carolina** Democratic Gov. Roy Cooper has until November 16 to act on legislation 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. **Connecticut** Democratic Gov. Dannel Malloy has 15 days from presentment to act on special session legislation 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.

California Democratic Gov. Jerry Brown had a signing deadline on October 15.

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 House](#) and [Senate](#), [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](#), [Colorado](#) (proposed legislation appears on interim committee

pages), [Florida House](#) and [Senate](#), [Georgia](#), [Iowa](#), [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 profiles](#) and [House](#) and [Senate](#) interim studies, [Utah](#) and [Wyoming](#).

Lands

Land Permits

Pennsylvania [HB 1009](#) passed the House Appropriations Committee and the House on October 16. This bill would release Project 70 restrictions on a parcel of property and structure located in West Newton Borough in Westmoreland County in return for the development of park and open space in the West Newton Borough in Westmoreland County. The bill would take effect immediately.

Pennsylvania [SB 900](#) passed the Senate State Government Committee on October 17. The bill is currently awaiting second consideration in the Senate. The bill would transfer the title for a portion of Project 70 lands, known as the Jordan Creek Parkway, owned by Lehigh County to Whitehall Township. The bill would transfer the lands with all existing Project 70 restrictions still in place. The bill would take effect immediately.

Oil and Gas

Oil and Gas General

Pennsylvania [HR 515](#) was adopted following a 101 to 83 vote on October 17. This resolution urges the Delaware River Basin Commission to suspend its consideration of a moratorium on natural gas drilling in Northeast Pennsylvania. According to Rep. Jonathan Fritz's, R-Honesdale, [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 was joined and supported by officials from New York and Delaware. This resolution would send a message from the Pennsylvania House of Representatives to the commission to request they stop these efforts.

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