

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

- **Congressional Recess.** The U.S. Senate and U.S. House of Representatives recessed two weeks earlier than scheduled to focus on the midterm elections. The Congress is out of session until November 13, 2018. [Read more.](#)

FEDERAL – Regulatory

- **Federal Waters Oil & Gas Drilling – Alaska.** On October 24, the Interior Department announced that the agency has [issued conditional approval](#) for what could be the first oil and gas production facility in federal waters off the coast of Alaska. An artificial gravel island will be developed in the Beaufort Sea about 20 miles east of Prudhoe Bay about five miles off the coast. Four artificial islands built to produce oil and gas currently operate nearby in state waters. “As part of its conditional approval, the Interior Department stipulated that oil and gas drilling may only occur during solid ice conditions and placed seasonal restrictions on operations and vessel traffic to allow for subsistence whaling activity on the nearby Cross Island.” [Read more.](#)
- **BLM Resource Advisory Council – Colorado.** On October 23, the Bureau of Land Management (BLM) announced its *Notice of Public Meetings, Southwest Resource Advisory Council, Colorado* ([83 Fed. Reg. 53497](#)) for the Southwest Advisory Resource Council (RAC) meetings to be held on January 11, 2019 and March 8, 2019 from 9 a.m. to 4 p.m. A public comment period regarding matters on the agenda will be held at 11:30 a.m. at each meeting. The 15-member RAC advises the Secretary of the Interior, through the BLM, on a variety of public land issues in the Southwest District, which includes the Grand Junction, Uncompahgre and Tres Rios field offices, as well as Canyons of the Ancients National Monument in Colorado. [Read more.](#)
- **BLM Lease Sale – Colorado.** On October 19, the BLM announced that is removing 142 parcels containing Greater Sage-Grouse habitat totaling approximately 141,478 acres from its December oil and gas lease sale. The move will leave only about 75,500 acres of public lands for lease, most of which are in western Colorado. “This decision is based on input from the state of Colorado,” said BLM spokesman Steven Hall. The decision followed letters sent to the BLM in September by Gov. John Hickenlooper (D) and Sen. Michael Bennet (D) when they asked the agency to postpone the lease sale. “Both expressed worries that the drilling would have a negative impact on the habitat of wildlife including the sage grouse. There were also concerns by area residents

about the sale of oil and gas leases on 2,380 acres of public land in the North Fork Valley of southwestern Colorado.” The BLM will now hold the amended sale on December 13, rather than December 6. [Read more.](#)

FEDERAL – Judicial

- **Climate Change Lawsuit – U.S. Supreme Court.** *(Update to 10/22/18 Weekly Report)* In a victory for the oil and gas industry, on October 19, the U.S. Supreme Court granted the Trump administration’s emergency request for a stay in the climate change lawsuit [Juliana et al. v. United States of America](#) (Case No. 6:15-cv-01517), which has been pending in the U.S. District Court for the District of Oregon. In [Order No. 18A410](#), Chief Justice of the U.S. Supreme Court, John Roberts, ordered that discovery and trial in the case is stayed pending a briefing from the eco-activist lawyers to provide a more thorough response to specific issues raised in the case. The case was originally set to go to trial on October 29. “The plaintiffs are a group of 21 young activists that assert their generation bears the brunt of climate change and that the government has an obligation to protect natural resources for present and future generations.” The government has repeatedly argued that directing climate policy is outside the scope of the courts and is a legislative function that needs to be addressed through the political process. “The Supreme Court is acknowledging what we have really known all along: this is a policy issue that belongs in the Halls of Congress, not the courts,” said Frank Maisano, a partner at the federal legal and government relations consultancy, the Policy Resolution Group. Once the plaintiffs file their updated brief with the U.S. Supreme Court we will provide further updates. [Read more.](#)

STATE – Legislative

- **Royalties; Rental Payments – Alaska.** *(Update to 5/8/17 Weekly Report)* On October 24, HB 238, sponsored by Rep. David Guttenberg (D), died in committee pursuant to adjournment. The bill would have amended current law by removing the Department of Natural Resources Commissioner’s ability to waive rental and royalty payments during the first five years of an oil shale lease, among other provisions. [Read more.](#)
- **Taxes; Leasing – Alaska.** *(Update to 1/22/18 Weekly Report)* On October 24, HB 288, sponsored by Rep. Geran Tarr (D), died in committee pursuant to adjournment. The bill would have provided for a minimum tax imposed on oil and gas produced from leases or properties that include land north of 68 degrees North latitude and the rates which vary by whether the oil and gas was produced prior to January 1, 2019 or after that date. [Read more.](#)
- **Lease Royalty Audit; Disclosures – Alaska.** *(Update to 3/19/18 Weekly Report)* On October 24, HB 330, sponsored by the House Rules Committee by Request of the Governor, died in committee pursuant to adjournment. The bill would have authorized

the Department Natural Resources Commissioner to disclose confidential information as part of investigations and proceedings including a lease royalty audit appeal or request for reconsideration. The bill would have also required the Commissioner to provide notice to all parties including any third party whose information will be disclosed. However, the bill would have allowed the Commissioner to limit the persons who have access to the information and limit the use of the information only to matters relating to royalty or net profit share audits or appeals. The Senate companion bill, [SB 175](#), also died in committee pursuant to adjournment. [Read more.](#)

- **Oil and Gas Production Tax – Alaska.** On October 24, [HB 411](#), sponsored by the House Finance Committee, died in committee pursuant to adjournment. The bill would have amended the Oil and Gas Production Tax by repealing the per-barrel credits for Gross Value Reduction (GVR) on GVR oil; lowered the tax rate to 25 percent of net profits applicable to both GVR and non-GVR oil; and added three supplemental tax brackets with five percent increases to each. [Read more.](#)

STATE – Judicial

- **Permitting; Rulemaking – Colorado.** (*Update to 3/12/18 Weekly Report*) On October 16, oral argument was held in the Colorado Supreme Court case [Martinez v. Colo. Oil & Gas Conservation Cmm'n](#) (Case No. 17-SC-297), which has been pending before the court. ([Access oral argument video here](#)) In the case, plaintiffs have asked regulators to halt new drilling permits pending a safety review of hydraulic fracturing. The Colorado Court of Appeals ruled that the Colorado Oil & Gas Conservation Commission (COGCC) erred when it declined to hold a rulemaking hearing on a petition filed by the plaintiffs to that effect. The Court of Appeals ruling was the first time a higher Colorado court has said the commission has the authority to promulgate and enforce rules prioritizing public health, safety and the environment over oil and gas development. According to Tracee Bentley, executive director of the Colorado Petroleum Council, “the petitioners in this case hope to persuade the COGCC to ban oil and natural gas development in Colorado, in conflict with state law and policy.” [Read more.](#)
- **Climate Change Lawsuit – New York.** On October 24, the New York attorney general filed suit against ExxonMobil, accusing the company of fraudulently downplaying the risks of climate change to its shareholders. The suit, [New York v. ExxonMobil Corp.](#) (Case No. 452044/2018), filed in New York State court, follows three years of investigation by the New York attorney general’s office that looked into whether the company deceived investors and the public over the risks of climate change. It did not address how ExxonMobil might have played a role in exacerbating the effects of climate change, but leaves the door open to additional lawsuits. An ExxonMobil spokesman told *The Hill* that there “is no evidence to support these allegations” and “The company looks forward to refuting these claims as soon as possible and getting this meritless civil lawsuit dismissed.” [Read more.](#)

- **Royalty Payments; Leasing; Cotenants – Texas.** The Texas Supreme Court recently denied a petition for review of a case regarding whether an oil company cotenant owed royalty payments to the other co-tenant oil company's lessors. In [Devon Energy Production Co. v. Apache Corporation](#) (Case No. 11-16-00105-CV), the Texas Eleventh Court of Appeals upheld the trial court decision which concerned the statutory liability under the Texas Natural Resources Code of a producing oil and gas operator/lessee to make royalty payments directly to lessors with whom the producing operator/lessee did not have a lease. The trial court determined that the producing operator/lessee was not responsible for paying royalties directly to the lessors with whom they were not in contractual privity. On October 19, the Texas Supreme Court denied review of the case (See [Case Notice No. 18-0538](#)). The full case docket can be [accessed here](#). For a further case summary and analysis: [Read more](#).

State-by-State Legislative Session Overview

New Jersey and **Pennsylvania** are in regular session. **Ohio** is in skeleton session. The **District of Columbia** and **Puerto Rico** are in regular session.

Michigan is in recess until November 7. The **United States** Congress is in recess until November 13. **Illinois**, **Massachusetts**, **New York**, **Rhode Island** and **Wisconsin** are in recess to the call of the chair.

Hawaii's Senate held a two-day special session, that began on October 24, to consider the nomination of First Circuit Court Judge Keith Hiraoka to the Intermediate Court of Appeals, reports [The Garden Island](#).

West Virginia's second special session to discuss the Supreme Court Justices' impeachment proceedings has been an ongoing battle since June. On October 1, according to the [Jurist](#), the Senate voted to allow Supreme Court of Appeals Justice Beth Walker to remain on the bench. The Senate reconvened on October 15, where they were scheduled to hear the impeachment trial of Supreme Court Chief Justice Margaret Workman. However, the acting Supreme Court Justices ruled the impeachment process as unconstitutional due to the separation of powers, reports [WTRF](#). This placed a temporary hold on the impeachment process while next steps are discussed. The Senate is scheduled to reconvene on October 29.

Wisconsin Republican Gov. Scott Walker issued a statement on October 2 calling for an extraordinary session to begin on November 12 to allow the Senate to take up [AB 963](#). The Assembly passed a tax incentive package aimed at keeping two paper mill facilities of Kimberly-Clark from closing their doors in central Wisconsin, reports [The Journal Times](#).

Georgia Republican Gov. Nathan Deal announced a special session for November 13 to discuss cleanup costs associated with Hurricane Michael, reports the [AJC](#).

Illinois Republican Gov. Bruce Rauner has 60 days from presentment to act on all legislation passed during the veto session or it becomes law. **Maine** Republican Gov. Paul LePage has three days after the next meeting of the legislature to act on special session legislation or it becomes law without signature. **Missouri** Republican Gov. Mike Parson has 45 days from presentment to act on legislation or it becomes law without signature. **New York** Democratic Gov. Andrew Cuomo has 10 days from presentment, Sundays excepted, to sign or veto legislation or it becomes law without signature. **North Carolina** Democratic Gov. Roy Cooper has 10 days from presentment to act on special session legislation or it becomes law without signature. **Rhode Island** Democratic Gov. Gina Raimondo has six days from presentment, Sundays excepted, to act on legislation or it becomes law without signature. **West Virginia** Republican Gov. Jim Justice has 15 days from adjournment of the special session, Sundays excepted, to act on legislation or it becomes law without signature.

The following states are currently holding 2019 interim committee hearings: [Alabama](#), [Alaska](#), [Arizona](#), [Arkansas](#), [California Assembly](#) and [Senate](#), [Colorado](#), [Connecticut](#), [Florida House](#), [Hawaii](#), [Idaho](#), [Illinois Senate](#), [Indiana](#), [Iowa](#), [Kansas](#), [Kentucky](#), [Maine](#), [Maryland](#), [Minnesota](#), [Mississippi Senate](#), [Missouri House](#) and [Senate](#), [Montana](#), [Nevada](#), [New Hampshire House](#) and [Senate](#), [New Mexico](#), [New York Assembly](#) and [Senate](#), [North Carolina](#), [North Dakota](#), [Oklahoma House](#), [Oregon](#), [Rhode Island](#), [South Carolina](#), [South Dakota](#), [Tennessee](#), [Texas House](#) and [Senate](#), [Utah](#), [Vermont](#), [Virginia](#), [Washington](#), [West Virginia](#), [Wisconsin](#), and [Wyoming](#).

The following states are currently posting 2019 bill drafts, profiles and interim studies: [Florida Senate](#), [Iowa](#), [Kentucky](#), [Montana](#), [Nevada](#), [New Hampshire](#), [North Dakota](#), [Oklahoma House](#) and [Senate](#), [Utah](#) and [Virginia](#).

General Oil and Gas

General

Oregon Democratic Gov. Kate Brown has issued an [Executive Order 18-28](#) on October 24. The order bans offshore drilling along the Oregon coast. The order also prohibits the construction of any infrastructure associated with drilling. According to the [Statesman-Journal](#), the state had previously sought an exemption from the federal government but has not received one.

Public Lands

The **Utah** Commission for the Stewardship of Public Lands is scheduled to meet on November 13 at 8:30 AM. The full agenda for the meeting has not been released but the meeting notice can be viewed [here](#). At the previous meeting the committee discussed U.S. [HR 4558](#) and [HR 5727](#).

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