

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

- **BLM Resource Management Plan – Colorado.** The BLM's Uncompahgre Field Office is in the final stages of drafting a [Resource Management Plan](#) (RMP), which will outline how 675,800 surface acres, and more than 900,000 acres of subsurface mineral property, will be managed for at least the next 20 to 30 years. The RMP for this area hasn't been undertaken since 1985. The area includes public lands in San Miguel County, Ouray County and Montrose County, and reaches from Paradox to Gunnison. It does not include the land designated for the Gunnison Gorge National Conservation Area. The original deadline for community stakeholders and members of the public to comment on the RMP has been extended by the BLM to November 1. [Read more.](#)
- **BLM Lease Sale – New Mexico.** The scheduled October 19 lease sale offered no parcels for auction. According to the BLM, there were three parcels totaling 2,122 acres in the San Juan Basin near Farmington, New Mexico that had been under evaluation to be offered at the October sale. However, the National Environmental Policy Act (NEPA) review and tribal consultation for those parcels has still not concluded since the original delay announcement in June. The BLM intends to complete the NEPA and tribal consultation process, and will then determine whether those parcels are available to be offered at a subsequent sale. [Read more.](#)

FEDERAL – Judicial

- **Royalties; Post-Production Costs – Pennsylvania Federal Court.** (from Cozen O'Connor's *All the Well Weekly*) In *Pollock v. Energy Corporation of America* (Case Nos. 15-2648 and 15-2649), the Third Circuit Court of Appeals upheld a Pennsylvania jury's verdict that a lessee improperly deducted post-production costs for transporting and marketing natural gas before paying royalties, holding that the jury had sufficient evidence to conclude that the lessee deducted post-production costs from royalty payments after it sold natural gas to its affiliate and that the lessee could not share those with the lessor because the lessee did not actually incur them. [Read more.](#)
- **Overriding Royalties – West Virginia Federal Court.** (from Cozen O'Connor's *All the Well Weekly*) In *Decker v. Statoil USA Onshore Properties, Inc.* (Case No. 5:15CV114), a federal district court in West Virginia denied an early bid by a production company to dismiss a claim to overriding royalties (ORRI) in a participation agreement that gave the ORRI holder an express right to participate in some leases but not others, holding that the

production company's motion was premature and the parties should finish discovery before filing cross-motions for relief based on the agreement. [Read more.](#)

STATE – Regulatory

- **Conservation Easements – Colorado.** Last week, the Longmont City Council passed conservation easement agreements on key open-space properties despite calls from several members of the community to table the issue until more public information is available. Though some community activists fear new oil and gas development on those lands, Longmont Natural Resources Manager David Bell told the council and the audience at a public meeting that the conservation easements don't grant any new rights that weren't already there. For example, TOP Operating, an oil and gas operator in Longmont, does already have a lease on mineral rights on land near Union Reservoir in the county, and some think this will open the spaces up to more drilling operations that cannot be regulated at the local level. [Read more.](#)

STATE – Judicial

- **Bonus Payments – Ohio.** (from Cozen O'Connor's *All the Well Weekly*) In the case, *Kish v. Magyar* (Case No. 2015-A-0059), an Ohio appellate court revived a case brought by a seller of property against the buyer who didn't honor a reservation of the seller's right to certain lease bonus payments, holding that the seller alleged enough to state claims for fraud, breach of contractual good-faith obligations, and unjust enrichment and remanding the matter for discovery and trial. [Read more.](#)
- **Deed Provisions – Pennsylvania.** (from Cozen O'Connor's *All the Well Weekly*) In the case, *In re: Estate of Krasinski* (Case No. 165 WDA 2015), the Superior Court of Pennsylvania sent back a dispute over the rights to certain oil and gas payments after the trial court improperly took judicial notice of a deed and its provisions, noting that although judicial notice of public records is appropriate in the state, the trial court did not entertain the estate's request to challenge the judicially noticed facts. [Read more.](#)
- **Deed Reformation – Pennsylvania.** (from Cozen O'Connor's *All the Well Weekly*) In the case, *George v. George* (Case No. 816 WDA 2015), the Superior Court of Pennsylvania, in relying on testimony that the seller of property meant to retain the oil, gas, and mineral rights forever and not for a period of years, concluded that the parties made a mutual mistake in reducing the conveyance to writing such that the trial court properly reformed a deed to reflect the parties' actual agreement. [Read more.](#)
- **Floating Royalty; Deeds – Texas.** (from Cozen O'Connor's *All the Well Weekly*) In the case, *Greer v. Shook* (Case No. 08-15-00040), a Texas appellate court concluded that a deed conveying a 1/2 mineral interest that included a 1/2 royalty interest created a

1/2 floating royalty interest in any production on the land described in the deed based on the “legacy of the 1/8th royalty” and “estate misconception” doctrines. [Read more.](#)

- **Habendum Clause; Leasing – Texas.** (from Cozen O’Connor’s *All the Well Weekly*) In the case, *Mayo Foundation v. Courson Oil & Gas, Inc.* (Case No.07-16-00022-CV), a Texas appellate court denied a lease-busting bid brought by the owner of a reversionary interest in oil and gas, rejecting the claim that the habendum clause of a lease provided for automatic termination of individual production units as they ceased to produce, given that the lessee could maintain the lease by banking drilling credits or engaging in continuous operations if a unit stopped producing in the secondary term. [Read more.](#)
- **Royalties; Leasing – Texas.** (from Cozen O’Connor’s *All the Well Weekly*) In the case, *Laborde Properties, L.P. v. U.S. Shale Energy II, LLC* (Case No. 04-16-00168), a Texas appellate court concluded that a deed reserving “an undivided one-half (1/2) interest in and to” royalties coupled with a phrase that said “the same being equal to one-sixteenth (1/16) of the production” created a “fixed fractional” non-participating royalty interest equal to one-sixteenth (1/16) of production rather than a “fraction of” or “floating” royalty that would be based on the lessor’s reservation of royalties in a future lease. [Read more.](#)
- **Title Dispute; Royalties – Texas.** (from Baker Energy Blog) The long-running case, [Longoria v. ExxonMobil Corp.](#) (Case No. 16-0808), has been revived and is now on a second petition for review before the Texas Supreme Court. After first being denied in 2008, in their new petition, the heirs to a claimed royalty interest acquired in late 1800s in a 9,200-acre tract in Texas continue to assert their claims for superior title and unpaid royalties against multiple oil and gas companies. [Read more.](#)
- **Quitclaim Deed – Texas.** (from Cozen O’Connor’s *All the Well Weekly*) In the case, *Jackson v. Wildflower Prod. Co., Inc.* (Case No. 07-15-00070), a Texas appellate court concluded that a buyer who acquired an interest in property before the seller recorded a prior conveyance of that same property to another still couldn’t enjoy bona-fide purchaser status even though the buyer lacked notice of the earlier conveyance given that the buyer took title by quitclaim deed. [Read more.](#)
- **Lease Forfeiture – West Virginia.** (from Cozen O’Connor’s *All the Well Weekly*) In the case, *Wilhelm v. Jay-Bee Production Co.* (Case No. 15-0768), the Supreme Court of Appeals of West Virginia declined to declare that a lessee forfeited its oil and gas lease for failure to pay royalties in full, reasoning that monetary relief could resolve the claims and that the lessor did not suffer material injury or irreparable harm despite the lessee’s willful and unreasonable delay in payment. [Read more.](#)

INDUSTRY NEWS FLASH:

◆ **Making a case for local control over energy and environmental policy.** On October 24, the Heritage Foundation offered its take on development of resources on federal lands. Citing the recent U.S. Geological Survey discovery that Colorado has 40 times more technically recoverable natural gas resources than previously estimated, the authors assert that the federal land management plans do not reflect the vast resource availability. In their assessment, and detailed plan, they call for decisions to be made at the local, state, and regional levels. [Read more.](#)

ELECTION ALERT:

⊕ **Clinton and Trump hold energy policy Q&A with the American Oil & Gas Reporter.** Dubbed the “Election 2016 Energy Debate”, both presidential candidates offer their visions for U.S. energy policy. [Read more.](#)

⊕ **Trump, Clinton, and the Fate of Fossil Fuels on Public Lands.** The October 25 issue of the Bloomberg BNA Energy and Climate Report claims that the reality of what the presidential election could mean for fossil fuel production on public lands may not be so straightforward. Even with Clinton’s more hardline stance on resource production, according to John Cossa, an energy attorney at Beveridge & Diamond in Washington, DC, the Mineral Leasing Act and the Federal Land Policy and Management Act actually require the Interior Department to lease oil and gas resources. That makes a “blanket moratorium” for future oil and gas related public lands leasing more difficult, he said. [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.

Michigan is in recess until November 9. The **Pennsylvania** House is in recess until November 14, and the Senate is in recess until November 16. **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.

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.

Alaska Independent Gov. Bill Walker had acted on all legislation as of October 24. **New Mexico** Republican Gov. Susana Martinez had a signing deadline on October 26 for legislation from the second special session.

The following states are currently holding interim committee hearings: [Alabama](#), [Alaska](#), [Arizona](#), [Arkansas](#), [Colorado](#), [Connecticut](#), [Delaware](#), [Georgia House](#) and [Senate](#), [Hawaii](#), [Idaho](#), [Illinois](#), [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](#), [South Dakota](#), [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).

Landmen

The House Labor, Industrial, and Rehabilitative Services Committee released an interim study report on **New Hampshire** [HB 1512](#) on October 26 and recommended the bill for reintroduction in the next session. For the purpose of determining workers' and unemployment compensation, this bill clarifies the definition of employee in comparison to an independent contractor. An employee means every individual who may be required or directed by a single employer for compensation to provide services, unless the individual is an independent contractor who meets the following criteria:

- The individual has the essential right to control the detailed means and manner of the work, except the final results.
- The individual has the opportunity for profit and loss as a result of the service being performed.
- The individual performs a service that is customarily engaged in as an independently established trade, occupation and profession or business. This may be met even if the independent contractor only carries out these duties for one client.
- The individual hires and pays others as needed to carry out the work.
- Payment to the individual is based on factors that are directly tied to specifics laid out in the agreed on scope of work.

At least three of the following criteria must be met as well to classify as an independent contractor:

- The individual has a substantive investment in the facilities, tools, instruments, materials and knowledge used to complete the work.

- The individual is responsible for the work being done in a satisfactory manner as agreed upon, and that they would be the one responsible if it is unsatisfactory.
- The parties have a written contract defining the relationship and give each group contractual rights in the event the contract is terminated before the completion of the project.
- The work is outside the usual course of work for the group that hired the contractor.
- The work is performed outside all of the places of business of the hiring party.
- The Internal Revenue Service has classified the individual as an independent contractor.

Oil and Gas

Bundling & Pooling

The Senate gave **Michigan SB 903** an immediate effective date and ordered the bill enrolled on October 20. Any land lessee could file a plan with the oil and gas supervisor requesting approval to combine multiple oil and gas leases for operation as a single unit. In order for a plan to become effective, approval of the plan must be first given to the oil and gas supervisor. This bill aims to lower the required threshold for which affected parties can approve the plan. This bill would make the following changes to who would be able to approve the project so the oil and gas supervisor could make it effective:

- A person who would be required to pay at least 51 percent of the cost of the unit operation, a decrease from 75 percent, and also by a person who would be entitled to at least 51 percent of the production proceeds, a decrease from 75 percent.
- A person who under the plan would be entitled to at least 65 percent of all production or proceeds from the operation, a decrease from 90 percent.

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