

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

- **BLM Lease Sale – Utah.** The BLM's Utah Canyon Country District is seeking public comments on an Environmental Assessment (EA) it prepared for its plan to offer 6,741 acres of southeastern Utah land it administers at a February 2017 oil and gas lease sale. The EA addresses issues raised during internal and external scoping such as air quality, wildlife, and the Old Spanish Historic Trail, BLM's Moab and Monticello field offices said in their joint announcement. Comments will be accepted until October 17. [Read more.](#) For more information on submitting comments [click here.](#)
- **BLM Resource Advisory Council Meeting – Utah.** On September 30, the BLM announced in the Federal Register ([81 FR 67377](#)) the postponement of a meeting and field tour by the Utah Resource Advisory Council. The meeting agenda includes discussion of the San Rafael Desert Master Leasing Plan ([plan info here](#)) and sage-grouse plan grazing thresholds. The field tour and meeting, scheduled for October 17 and 18, 2016, respectively, will be rescheduled at a later date. [Read more.](#)
- **BLM Permit Fees.** On September 26, the [BLM announced](#) that it will be adjusting the fee it charges to process oil and gas drilling permits (APDs) on public and Indian lands for inflation effective October 1, 2016. The adjustment will increase the fee charged for the permits from \$9,500 to \$9,610. Congress directed the BLM to adjust the APD fee annually for inflation over 10 years as part of the National Defense Authorization Act for Fiscal Year 2015. [Read more.](#)
- **Employee Misclassification.** The U.S. Department of Labor recently revised its [wage and hour poster](#) to include information on the misclassification of workers as independent contractors. The revised poster includes language informing workers on the importance of knowing the difference between being an employee versus a contractor "because employees (unless exempt) are entitled to the FLSA's minimum wage and overtime pay protections." [Read more.](#)
- **Sage-Grouse.** A broad effort to save the greater sage-grouse across the West without resorting to the Endangered Species Act is making progress, according to Interior Secretary Sally Jewell. "There's some really good work going on," Jewell said during a visit to a national wildlife refuge outside Denver on September 22, where she announced a year ago that the rare bird wouldn't be listed as endangered or protected. Instead, conservation agencies are relying on cooperation among federal, state and

local governments as well as help from oil and gas companies and ranchers. In its recently released [report](#), “Greater Sage-Grouse Conservation & the Sagebrush Ecosystem”, the Interior Department detailed the steps taken so far to save the birds. By 2020, the U.S. Fish and Wildlife Service plans to conduct its own review of how effective the sage-grouse efforts have been. [Read more.](#)

- **Species Conservation.** Petitioners who seek protections for plants and animals under the Endangered Species Act will now have to do it one species at a time, and not hit federal agencies with sometimes hundreds of species in one petition, the agencies said in its final rule published on September 27 ([81 FR 66461](#)). The U.S. Fish and Wildlife Service and the National Oceanic and Atmospheric Administration relented on one proposed requirement that environmental advocacy groups had opposed—a requirement for consultation with state agencies to gather information from them on a species before submitting a petition. Petitioners will only have to give state agencies in a species’ range a notification of a petition 30 days before the petition is filed. Even that trimmed-back requirement, which was signaled in a revised proposed rule in April, irked some environmental activists. [Read more.](#)

### **FEDERAL – Judicial**

- **Royalties – Pennsylvania Federal Court.** A federal judge in Pennsylvania, in [Municipal Water Authority of Westmoreland County v. CNX Gas Company, L.L.C.](#) (Case No. CV 16-422), denied a bid by a royalty owner to remand a case under the Class Action Fairness Act under the “local controversy” exception to federal subject-matter jurisdiction, reasoning that the royalty owner did not satisfy its burden to show that more than two-thirds of the putative class are residents of Pennsylvania. [Read more.](#)

### **STATE – Legislative**

- **Well Locations – Pennsylvania.** On September 23, Rep. Robert Matzie (D) introduced HB 2366, which was referred to the Environmental Resources and Energy Committee. The bill would amend current law to prohibit the drilling of unconventional gas wells within 4,000 feet of any existing dam or reservoir. In addition, the measure would prohibit the drilling of unconventional gas wells within 2,000 feet (measured horizontally) of any existing water well, surface water intake, or water supply extraction point used by a water purveyor without the written consent of the water purveyor. [Read more.](#)

### **STATE – Regulatory**

- **Production Moratorium – Maryland.** The state’s Department of the Environment (DEP) has proposed a new set of regulations to govern hydraulic fracturing, including the creation of buffer zones around drilling sites. The current moratorium completely banning the practice expires in 2017. In anticipation of that expiration, last Monday

the DEP sent the proposed rules to the legislature’s regulatory review committee, to be followed by a public comment period and possible hearings, with final rules expected by the end of the year. While some environmental groups and state lawmakers want to continue the ban, Governor Larry Hogan (R) supports the practice, saying it could provide economic benefits for Western Maryland, by tapping into the Marcellus, and with it bringing an influx of new revenue to the state. [Read more.](#)

- **Department of Environmental Protection – Pennsylvania.** Governor Wolf has nominated Pat McDonnell, acting Pennsylvania Department of Environmental Protection (PADEP) Secretary, to fill the role on a permanent basis, stating in a press release that McDonnell “has been a dedicated steward of the environment and a leader in advancing Pennsylvania’s energy development in a responsible way.” The Pennsylvania Senate has to confirm the nomination. McDonnell took over after former PADEP Secretary John Quigley resigned amidst controversy over his emails to environmental groups urging their support of (and urging them to pressure lawmakers to support) then-pending revisions to oil and gas regulations. [Read more.](#)

### **STATE – Judicial**

- **Lease Terms – Ohio.** Following the Ohio Supreme Court’s decision in [State ex rel. Clauqus Family Farm, L.P. v. Seventh Dist. Court of Appeals](#), 47 N.E.3d 836 (Ohio 2016), the state Court of Appeals for the Seventh District, in [Oxford Oil Co. v. West](#) (Case No. 13 BE 0031), rejected the suggestion that a typical lease creating a primary term of fixed duration followed by a secondary term of indefinite duration created an unlawful “no-term” lease, reasoning that delay rentals held the lease for the primary term only and that the indefinite term is subject to additional conditions and requirements. The court also granted the lessee’s request for “equitable tolling” or “equitable extension” of the primary term, reasoning that the lessee understandably delayed operations while the court sorted out the lease-invalidity claim and therefore should get back the time it took to litigate the case. [Read more.](#)

### **INDUSTRY NEWS FLASH:**

◆ **Institute for 21st Century Energy Releases its Second.** The second report in the U.S. Chamber of Commerce’s Energy Institute’s *Energy Accountability Series* finds that America’s economy would be much weaker today if certain politicians and special interest groups had gotten their way and oil and natural gas resources had not been developed. The *Energy Accountability Series* takes a substantive look at what would happen if energy proposals from anti-energy production candidates and interest groups, like the “Keep in the Ground Movement” movement, were actually adopted. This report, [What if America’s Energy Renaissance Had Not Actually Happened?](#), uses data from 2009 through 2015 to imagine what the American economy would look like had the energy revolution not occurred.

In short, America would have lost 4.3 million jobs and \$548 billion in annual GDP. And were it not for the growth and development of oil and natural gas, today's electricity prices would be 31 percent higher, and motor fuels would cost 43 percent more. [Read more.](#)

◆ **OPEC agrees to limit oil output.** Last Wednesday, OPEC members agreed, for the first time since 2008, to cut their oil output from 33.24 million bpd to 32.5 million bpd. Oil prices jumped more than 5 percent after the unexpected announcement. [Read more.](#)

## State-by-State Legislative Session Overview

**Massachusetts**, **New Jersey** and **Ohio** 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. The **United States** Congress is 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.

**New Mexico** convened a special session on September 30 to address the state's budget deficit, criminal sentencing and a proposal to reinstate capital punishment. A proclamation from the office of Republican Gov. Susana Martinez authorizing the session can be found [here](#).

**California** Democratic Gov. Jerry Brown and **Rhode Island** Democratic Gov. Gina Raimondo have until September 30 to act on legislation or it becomes law without signature. **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](#), [Georgia House](#) and [Senate](#), [Hawaii](#), [Idaho](#), [Indiana](#), [Iowa](#), [Louisiana](#), [Kansas](#), [Kentucky](#), [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 York Assembly](#) and [Senate](#), [North Carolina](#), [North Dakota](#), [Oklahoma House](#) and [Senate](#), [Oregon](#), [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

Democratic Gov. Jerry Brown signed **California SB 1089/Chapter 481** into law on September 22. Effective January 1, this law will add four public members to the Wildlife Conservation Board. The Assembly Speaker will be responsible for one appointment, the Senate Rules Committee will be responsible for one appointment, and the governor will appoint the other two members. The members will be voting members and would serve four-year terms. The qualifications will be that each public member has a demonstrated interest and expertise in land acquisition for conservation purposes.

## Oil and Gas

### Bundling & Pooling

**Michigan SB 903** passed the House on September 22 without amendments and was returned to the Senate. 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.

## Royalty Payments

**Pennsylvania HB 1391** was removed from the table – meaning it will now be considered – in the House on September 26. The bill would require the minimum royalty payment to a lessor for unconventional gas well production to not be less than one-eighth of the lessor's percentage ownership in the production from the production, calculated on the total price received by the operator for the production in an arm's-length transaction. No deductions of any costs could result in a royalty payment less than the one-eighth requirement. This requirement would apply to all leases for unconventional gas well production existing on or after the effective date of the bill. The bill would further provide for legal remedies and penalties, up to treble damages, for failure to pay the minimum royalty. If enacted, the bill would take effect 60 days after passage.

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