



**BREAKING ELECTION NEWS:** Colorado voters reject well setback ballot measure and takings amendment —

On November 6, Colorado Proposition 112 — the 2,500 foot well setback ballot measure — was defeated by Colorado voters in a big win for the oil and gas industry, AAPL members and citizens who rely on the revenue generated by resource development in the state.

AAPL was instrumental in fighting Proposition 112 through a generous donation to Coloradans for Responsible Energy Development that included AAPL-sponsored advertising to educate voters prior to the election. AAPL's work with our

local chapter — the Denver Association of Professional Landmen — and our stakeholder members was crucial in achieving this success. We thank everyone for their efforts.

Voters also rejected state Constitutional Amendment 74 — a takings measure and firewall against Prop. 112 if it had passed — that would have allowed property owners to seek compensation from government any time a government action or regulation devalues a person's property. As of last count, that measure was also defeated with only 46 percent support. The amendment needed 55 percent of the vote for adoption.

Read more here about [Proposition 112](#) and [Amendment 74](#).

**WEEKLY HIGHLIGHTS AT-A-GLANCE**

**FEDERAL – Legislative**

- **H.R. 4239 – SECURE American Energy Act.** (*Update to 11/13/17 Weekly Report*) After nearly a year without any legislative action, on November 2, [H.R. 4239](#), known as the “Strengthening the Economy with Critical Untapped Resources to Expand American Energy Act” or the “SECURE American Energy Act,” was placed on the House calendar for floor vote consideration after being voted out of the Natural Resources Committee last year. The bill’s [House Report 115-1000](#) summary states that the legislation would “distribute revenues from oil and gas leasing on the outer Continental Shelf to certain coastal States, to require sale of approved offshore oil and gas leases, to promote offshore wind lease sales, and to empower States to manage the development and production of

oil and gas on available Federal land,” among other purposes. According to the bill sponsor House Majority Whip Rep. Steve Scalise (R-LA), the “SECURE American Energy Act enables states with established regulatory programs to manage certain federal permitting and regulatory responsibilities for oil and gas development on federal lands.” [Read more.](#)

- **H.R. 3117 – Transparency and Honesty in Energy Regulations Act.** (*Update to 12/11/17 Weekly Report*) On November 2, the House Natural Resources Committee issued its Committee Report on [H.R. 3117](#), the *Transparency and Honesty in Energy Regulations Act*, which was introduced by Rep. Evan Jenkins (R-WV) in 2017. (See [House Report 115-999](#)). In November 2017, the bill passed the House Natural Resources Committee and is awaiting a full floor vote. The bill would bar the use of the social cost of carbon, methane and nitrous oxide in energy and environment rules. According to Jenkins, the measure “would prohibit the federal government from using the flawed social cost of carbon and social cost of methane metrics in the rulemaking process.” The companion Senate version of the bill, [S. 1512](#), was introduced by Senator James Lankford (R-OK) last June. The bills build upon President Trump’s [Executive Order No. 13783](#), which removed the government’s use of these metrics as rationales for burdensome environmental regulations. [Read more.](#)
- **H.R. 6087 – Removing Barriers to Energy Independence Act.** (*Update to 7/2/18 Weekly Report*) On November 2, [H.R. 6087](#), known as the “Removing Barriers to Energy Independence Act,” and introduced by Rep. Liz Cheney (R-WY), was placed on the House calendar for floor vote consideration after being voted out of the Natural Resources Committee earlier this year. On the same date, the Committee also released its House Report on the bill. (See [House Report 115-1005](#)). The bill would impose fees on those protesting federal oil and gas lease programs, and would include “administrative protests of lease sales, drilling permit applications, and pipeline right-of-way applications.” According to Rep. Cheney, “Currently no fee is required and some groups have taken advantage of the ability to file protests for free by flooding the permitting agencies with frivolous protests that have severely delayed the federal permitting process and hurt our economy in Wyoming.” [Read more.](#)
- **H.R. 6107 – Ending Duplicative Permitting Act.** (*Update to 7/2/18 Weekly Report*) On November 2, [H.R. 6107](#), known as the “Ending Duplicative Permitting Act,” and introduced by Rep. Steve Pearce (R-NM), was placed on the House calendar for floor vote consideration after being voted out of the Natural Resources Committee earlier this year. On the same date the Committee also released its House Report on the bill. (See [House Report 115-1004](#)). The bill would clarify that the Bureau of Land Management shall not require permits for oil and gas activities conducted on non-Federal surface estates to access a subsurface mineral estate that is less than 50 percent Federally-owned. [Read more.](#)

## **FEDERAL – Regulatory**

- **BLM Lease Sale – Nevada.** On November 5, the Bureau of Land Management (BLM) announced that it will offer 17 parcels totaling approximately 32,923.96 acres in the Ely and Winnemucca districts at its December quarterly oil and gas lease sale. Despite [multiple protests](#) from environmental activist groups, the sale will continue as scheduled. [Read more.](#)

## **FEDERAL – Judicial**

- **Keystone XL Pipeline – Montana Federal Court.** On November 8, a federal judge temporarily blocked construction of the Keystone XL pipeline, ruling that the Trump administration failed to justify its decision in granting the permit for the 1,200-mile long project. In [Indigenous Environmental Network, et al. v. U.S. Department of State, et al.](#) (Case No. 4:17-cv-00029-BMM), the U.S. District Court for the District of Montana held that the administration “disregarded prior factual findings related to climate change” and in so doing ran afoul of the National Environmental Policy Act (NEPA) and the Administrative Procedure Act (APA). The court has ordered the U.S. State Department to complete a supplemental Environmental Impact Statement that complies with the requirements of NEPA and APA before any construction or operation can resume. “It’s clear that this decision tonight will delay the pipeline significantly,” said Sierra Club Senior Attorney Doug Hayes, who noted that a proper environmental impact statement of this scope usually takes about a year to complete. “TransCanada does not have an approved pipeline at this point.” The Trump Administration has yet to indicate if it will appeal the order. [Read more.](#)
- **Climate Change Lawsuit – U.S. Supreme Court.** *(Update to 10/29/18 Weekly Report)* On November 2, the U.S. Supreme Court lifted a Trump administration-requested 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](#), the Supreme Court said the Trump administration must first seek “adequate relief” in the U.S. Court of Appeals for the Ninth Circuit through “ordinary dispositive motions” although the Supreme Court does indicate that an immediate appeal of some key legal questions should happen before trial. In late October, Supreme Court Chief Justice John Roberts issued a [temporary stay](#) in the case which sent the plaintiffs scrambling to put together a brief in time to keep the case moving forward on schedule. But the latest order denies the government-requested stay, even though both Justices Clarence Thomas and Neil Gorsuch would have granted the application. The case was originally set to go to trial on October 29 and with this order all parties will now prepare for trial, though a new date has yet to be set. The case stems from allegations made by a group of 21 teens and children led by environmental activists to hold the government liable for climate change and alleges 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. Now, in the wake of the Supreme Court's latest order, "the federal government will head to court to argue that there is no constitutional right to an environment free of climate change and that the children don't have standing to make such a claim. [Read more.](#)

- **State Control Over Federal Lands – California Federal Court.** In a win for the oil and gas industry, on November 1, a California federal judge struck down as unconstitutional a California state law that aimed to give the state power to override the sale of federal lands. In [U.S. v. State of California, et al.](#) (Case No. 2:18-cv-00721-WBS-DB), the court held that the law unconstitutionally regulates the U.S. government and discriminates against people seeking to buy federal public land. Passed in late 2017, California state law, [SB50](#), sought to give the state Land Commission "the first right to purchase federal lands or to arrange for a specific buyer and included fines for failing to do so" and was seen by many, including legislators supporting the measure, as a means to stop the Trump administration from allowing more logging, oil and gas drilling or development on some of the 46 million acres of federally-owned land within the state. The U.S. Department of Justice successfully argued in the lawsuit that California had no power to interfere with federal land sales, citing the Constitution and the 1850 act of Congress that admitted California to the union. "The court's ruling is a firm rejection of California's assertion that, by legislation, it could dictate how and when the federal government sells federal land," said Attorney General Jeff Sessions. [Read more.](#)

## **STATE – Judicial**

- **Local Ordinances; Permitting – Pennsylvania.** In a victory for the oil and gas industry, on October 26, in *Frederick v. Allegheny Township* (Case No. No. 2295 C.D. 2015), the Commonwealth Court of Pennsylvania affirmed a lower court ruling allowing "oil and gas well operations in all zoning districts so long as they satisfied enumerated standards designed to protect the public health, safety and welfare." The plaintiffs had asserted certain environmental rights challenges to the local ordinance, but the court disagreed with their argument holding that a local ordinance authorizing oil and gas wells within a municipality does not violate the state constitution by failing to go "far enough" to protect environmental rights. The court reasoned that the local government's enactment of the ordinance was consistent with environmental protections under its statutory authority and that municipalities have no authority to go beyond their enabling legislation to impose additional requirements on oil and gas well permit applicants to further protect the environment. [Read more.](#)

## **INDUSTRY NEWS FLASH:**

◆ **Interior Department revenue and royalty payments to states jump 26 percent.** The U.S. Department of the Interior's Office of Natural Resources Revenue has just reported that in the current fiscal year it distributed \$8.93 billion in revenue and royalties from energy produced on federal managed public and Indian tribal land to states, tribes and three special funds – 26 percent more than the \$7.11 billion it distributed in fiscal 2017. Of the 35 states receiving federal energy revenue disbursements during the 12 months ended September 30, New Mexico received \$634.9 million, followed by Wyoming (\$563.9 million), Colorado (\$112.5 million), Louisiana (\$91 million), and Utah (\$76 million). [Read more.](#)

## **State-by-State Legislative Session Overview**

The governor's race between former Republican congressman Ron DeSantis and Tallahassee Democratic Mayor Andrew Gillum remains undecided. Gillum had conceded the race on Tuesday night when DeSantis was ahead by a margin of 49.7 to 49.1 percent, as [The New York Times](#) reported at the time, but later retracted that concession after new information about the number of uncounted ballots surfaced. [FOX 13](#) reports that DeSantis is now ahead by less than one-half of one percent, which should trigger an automatic recount. Unofficial counts from the [Division of Elections](#) can be found here.

The **District of Columbia, Michigan, New Jersey** and **Puerto Rico** are in regular session.

**Illinois** and the **United States** Congress are in recess until November 13. **Ohio** and **Pennsylvania** are in recess until November 14. **Massachusetts, New York, Rhode Island** and **Wisconsin** are in recess to the call of the chair.

**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 calendar days while the General Assembly is in session to act on legislation or it becomes law without signature. **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, prefiles and interim studies: **Florida Senate**, [Iowa](#), [Kentucky](#), [Montana](#), [Nevada](#), [New Hampshire](#), [North Dakota](#), [Oklahoma House](#) and [Senate](#), [Tennessee](#), [Utah](#) and [Virginia](#).

## Hydraulic Fracturing

### General

**Pennsylvania SB 1276**, sponsored by Sen. Vincent Hughes, D-Philadelphia, was referred to the Senate Environmental Resources and Energy Committee on October 25. The bill would establish a 3.5 percent severance tax on the gross value of the natural gas liquids or each unit of dry natural gas severed. The bill would allow a producer to deduct post production costs from the gross value subject to the tax but the amount of the deduction could not exceed 15 percent of the gross value. The bill would not permit the producer to deduct from the royalty payment for postproduction costs or the severance tax. The bill would not impose a tax on natural gas or natural gas liquids that are:

- Severed under a lease and provided to a lessor for no consideration for the lessor's own use.
- Severed from a stripper well.
- Severed from a storage field.

The bill would require a new producer to apply for a severance tax license before severing gas in the state with current producers being required to obtain a license within six months. Funds raised from the tax would be directed towards various school improvement projects. The tax would take effect immediately.

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