

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

- **BLM Onshore Site Security Final Rule.** On November 17, BLM published its final rule, *Onshore Oil and Gas Operations; Federal and Indian Oil and Gas Leases; Site Security* ([81 FR 81356](#)), known as Onshore Oil and Gas Order No. 3, which AAPL Governmental Affairs has been informing our members of throughout the year. The rule “establishes minimum standards for oil and gas facility site security, and includes provisions to ensure that oil and gas produced from Federal and Indian (except Osage Tribe) oil and gas leases are properly and securely handled, so as to ensure accurate measurement, production accountability, and royalty payments, and to prevent theft and loss.” Access the final rule [Fact Sheet](#) here. [Read more.](#)
- **BLM Onshore Site Oil Measurement Rule.** On November 17, BLM published its final rule, *Onshore Oil and Gas Operations; Federal and Indian Oil and Gas Leases; Measurement of Oil* ([81 FR 81462](#)). This final rule updates and replaces Onshore Oil and Gas Order No. 4, Measurement of Oil with new regulations, of which AAPL Governmental Affairs has been informing our members throughout the year. The rule “establishes minimum standards for the measurement of oil produced from Federal and Indian (except Osage Tribe) leases to ensure that production is accurately measured and properly accounted for.” Access the final rule [Fact Sheet](#) here. [Read more.](#)
- **BLM Onshore Site Gas Measurement Rule.** On November 17, BLM published its final rule, *Onshore Oil and Gas Operations; Federal and Indian Oil and Gas Leases; Measurement of Gas* ([81 FR 81516](#)). This final rule, which AAPL Governmental Affairs has been informing our members of throughout the year, updates and replaces Onshore Oil and Gas Order No. 5 with a new regulation. The new rule “establishes minimum standards for accurate measurement and proper reporting of all gas removed or sold from Federal and Indian (except the Osage Tribe) leases, units, unit participating areas and areas subject to communitization agreements.” Access the final rule [Fact Sheet](#) here. [Read more.](#)
- **BLM Methane Emissions Final Rule.** On November 18, the BLM published its final rule, *Waste Prevention, Production Subject to Royalties, and Resource Conservation* ([81 FR 83008](#)) effective January 17, 2017. The rule, in process since the BLM’s proposed rule announcement on [February 8, 2016](#), and which AAPL has reported on throughout the year, “aims to reduce the waste of natural gas from mineral leases administered by the BLM. This gas is lost during oil and gas production activities through venting or

flaring of the gas, and through equipment leaks,” according to the final rule. However, the industry sees the rulemaking differently. “This is an 11th-hour shot by an administration that doesn’t fully understand how its rules impact our businesses,” said Dan Naatz, senior vice president of government relations at the Independent Petroleum Association of America. Oklahoma Senator James Inhofe dubbed the measure “a last-ditch effort to save the president’s crumbling climate legacy.” Access the rule [Fact Sheet](#) here. [Read more.](#)

- **BLM Lease Sale – Colorado.** Last week, the BLM released a [preliminary environmental assessment](#) about potential oil and gas development in northwest Colorado. The BLM plans to offer 106 parcels totaling over 100,000 acres in a [May 2017 lease sale](#), but first the public has a chance to comment on the environmental assessment. Most of the leases are in areas on the Western Slope that have already seen significant oil and gas development. The BLM plans to protect just over 200 acres that have been identified as important habitat for mating sage grouse. [Read more.](#)
- **BLM Cancels Leases – Colorado.** On November 17, the Interior Department announced the cancellation of 25 leases in the Thompson Divide area based upon “deficiencies in the original environmental analyses and process used to support the initial issuance of oil and gas leases in the region.” Ursa Resources owns seven of the leases to be canceled, and SG Interests owns 18. The BLM says it will cost about \$1 million to reimburse the companies for what they paid in lease bid and rental fees. About half of that money was distributed by the federal government to the state, which will have to reimburse the federal government for its portion of the canceled leases. [Read more.](#)
- **BLM Cancels Leases – Montana.** On November 16, the Interior Department announced a settlement with Devon Energy for the cancellation of 15 oil and gas leases in the Badger-Two Medicine area of Montana on lands considered sacred by the Blackfeet Tribe. Interior Secretary Sally Jewell said the 15 leases canceled today were improperly issued, violating the National Environmental Policy Act, the National Historic Preservation Act and tribal trust responsibilities. Under the terms of the cancellation, Devon is entitled to a refund for all bids and other payments totaling \$206,058. [Read more.](#)
- **BLM Revised Management Plan – Colorado.** On November 17, the BLM announced it has fully adopted terms of a 2014 agreement settling litigation over a resource management plan for the Roan Plateau. Key to the deal, the plan bars oil and gas leasing of nearly 35,000 acres on top of the Roan for the life of the plan, which is expected to be about 20 years. That acreage had been leased, but under previously executed terms of the settlement the government canceled the 17 leases and reimbursed Bill Barrett Corp. \$47.6 million for them. The revised management plan also subjects other leases covered by the plan to conditions aimed at reducing their impacts. [Read more.](#)

FEDERAL – Judicial

- **BLM Methane Emissions Final Rule – Wyoming Federal Court.** On the same day the BLM announced its final methane emissions rule for natural gas (see above story), the Western Energy Alliance and the Independent Petroleum Association of America, in [*Western Energy Alliance v. Jewell*](#) (Case number not yet reported) filed suit in U.S. district court to stop the rule, calling it “a vast overreach” by the Department of the Interior. And beyond the legal challenge, the rule’s future is very much in doubt after President-elect Donald Trump’s election win. Trump has made it clear that his administration will reduce regulation and expand oil and natural gas drilling on federal lands. [Read more.](#)

STATE – LEGISLATIVE

- **Employee Misclassification – Ohio.** (Update to 5/23/2016 Weekly Report) HB 568, introduced on May 17, 2016 by Rep. Debbie Phillips (D), and with no action since, was referred to the House Commerce and Labor Committee on November 10. This bill would prohibit an employer from retaliating against an individual who opposes employee misclassification and would protect individuals from being required to enter into an agreement that would result in the misclassification of the individual as an independent contractor or otherwise does not accurately reflect the individual’s relationship with an employer. However, the bill is not specific to landmen, and does not change existing state law which still protects independent contractor relationships. In fact, this bill retains the factor tests used to determine whether a worker is an independent contractor or an employee, thus continuing the protections independent contractors have by satisfying the factor test analysis. [Read more.](#) (See more below under State-by-State Legislative Session Overview)
- **Plugged and Abandoned Wells – Ohio.** (Update to 6/20/2016 Weekly Report) HB 582, introduced on June 9, 2016 by Rep. Andy Thompson (R), and with no action since, was referred to the House Energy and Natural Resources Committee on November 10. The bill would amend existing law to allow a landowner to report an idle and orphaned well, or abandoned well; to require the Chief of the Division of Oil and Gas Resources Management to inspect and classify such well; and to require the Chief to begin plugging a well classified as distressed-high priority within a specified time period. [Read more.](#) (See more below under State-by-State Legislative Session Overview)
- **Royalties – Texas.** Bill pre-filing has begun for the 85th legislative session beginning in January 2017. On November 14, Rep. Tom Craddick (R) introduced HB 129, a bill relating to the manner in which a payor of proceeds derived from the sale of oil or gas production is required to provide certain information to a royalty interest owner. [Read more.](#) (See more below under State-by-State Legislative Session Overview)
- **Unit Operations – Texas.** Another pre-filed bill, SB 177, was filed by Sen. Van Taylor (R)

on November 14. The bill relates to unit operations for oil, gas, or oil and gas production from depleting reservoirs or carbon dioxide storage and also authorizes the collection of certain fees. [Read more](#). (See more below under State-by-State Legislative Session Overview)

- **Ad Valorem Taxes – Texas.** HB 302, prefiled by Rep. Craig Goldman (R) on November 14, relates to the exemption from ad valorem taxation of mineral interests having a value of less than a certain amount. [Read more](#).

STATE – Judicial

- **Statute of Limitations – Oklahoma.** On October 25, in *Scott v. Peters* (Case No. 114,913), the Supreme Court of Oklahoma rejected a landowner’s claim that he intended to reserve oil and gas rights some 14 years ago, holding that he was on notice that the deed did not contain any reservation of mineral interests. The Court also rejected the argument that the statute of limitations should start to run when the landowner actually learned that he failed to reserve the oil and gas rights long ago, and held that “[i]f this were not the case, real property transactions across the state could be set aside at almost any time which could leave all real property transactions unsettled indefinitely.” [Read more](#).
- **Bonus Payment – Pennsylvania.** On October 24, in *Stull v. Armstrong Gas Company, LLC* (Case No. 1952 WDA 2015), the Superior Court affirmed an order dismissing a complaint, which alleged lessees failed to pay their lessors a proper bonus, and barred the new lawsuit because the lessors first filed a lawsuit that the trial court dismissed and, more than a year later, filed essentially the same lawsuit against the same parties in the same court raising the same legal theories they could have (but didn’t) raise in the prior action. [Read more](#).
- **Deed Reservation – Pennsylvania.** On October 25, in *Black Wolf Rod & Gun Club, Inc. v. International Development Corp.* (Case No. 1972 MDA 2015), the Superior Court concluded that a 1925 deed “excepting and reserving” oil and gas rights “as fully as” the grantor reserved them in a prior 1893 deed that preceded a tax sale merging the surface and subsurface estates properly reserved those rights based on the deed’s plain language even though a prior tax sale merged those interests. [Read more](#).
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- **Mineral Lien – Texas.** On October 26, in *Shell Wester E&P, Inc. v. Pel-State Bulk Plant, LLC* (Case No. 04-15-00750), a Texas appeals court affirmed a cumulative \$3 million judgment obtained by an oilfield services company after it perfected a lien on a mineral lease held by a well operator, concluding that the parties’ master service agreement and related agreements constituted one contract and the Texas mineral lien statute did not limit the operator’s liability for the cumulative amount owed on the parties’ integrated agreement. [Read more.](#)
- **Lease Option – Texas.** On October 28, in *North Shore Energy, L.L.C. v. Harkins* (Case No. 14-0552), the Supreme Court of Texas concluded that an option contract giving a lessee the right to lease more than a thousand acres of land did not include a right to lease a 400-acre portion of the premises described in the related lease agreement. The Court reasoned that the related oil and gas lease gave the lessee the right to develop the acreage described in the granting clause “save and except” the disputed 400 acres and rejecting the production company’s claim that it nevertheless had a right to choose which acreage it could develop under the option agreement. [Read more.](#)
- **Methane Reservation – West Virginia.** On October 26, in *Poulos v. LBR Holdings, LLC* (Case No. 15-0907), the West Virginia Supreme Court concluded that a reservation of “oil and gas” did not include a reservation of coalbed methane, reasoning that the general consensus at the time of the conveyance was that the methane was hazardous and a nuisance such that the parties could not have intended that “gas” included the coalbed methane. [Read more.](#)

INDUSTRY NEWS FLASH:

◆ **\$900 Billion Oil Treasure in West Texas.** One portion of the Permian Basin, known as the Wolfcamp formation, was recently found to hold 20 billion barrels of oil trapped in four layers of shale beneath the desert in West Texas. That’s almost three times larger than North Dakota’s Bakken play and the single largest U.S. unconventional crude accumulation ever assessed, according to the U.S. Geological Survey announcement last Tuesday. At current prices, that oil is worth almost \$900 billion. The estimate lends credence to Pioneer Natural Resources Co. CEO Scott Sheffield’s assertion that the Permian’s shale endowment could hold as much as 75 billion barrels, making it second only to Saudi Arabia’s Ghawar field. [Read more.](#)

◆ **Historic First for America’s Natural Gas Industry.** The U.S. oil and gas industry just set a milestone, doing something never done before in American history: becoming a net exporter of natural gas. Platts energy information service reported last Monday that its proprietary data showed U.S. natural gas exports exceeding imports in early November, with the country’s gas balance netting an outflow of 1 billion cubic feet per day. That’s the first time ever that American producers have exported more gas than it imports. In fact, imports were down from Canada by 21 percent in the same period. [Read more.](#)

State-by-State Legislative Session Overview

November 14 was the first day for legislators in **Texas** to begin pre-filing bills for the 2017 legislative session, [The Texas Tribune](#) reports. As of today, lawmakers have filed 391 [House bills](#) and 238 [Senate bills](#). The two major parties' legislative priorities for the upcoming session began to come into focus on the first day of the legislative season. Democrats said they would focus on reforming the state's school finance system, improving access to health care and removing obstacles to voter registration. Some Democrats and school officials had been hoping for a ruling in a recent case from the state Supreme Court that would have declared the state's current funding system unconstitutional, mandating a legislative fix. That [ruling didn't occur](#), but the court asserted that it could be improved. Republicans have indicated that their list of priorities will reflect the conservative ideas that propelled Republican President-elect Donald Trump into power last week. [The Houston Chronicle](#) reports that Republican Lt. Gov. Dan Patrick's newly released list of legislative priorities includes an education voucher program, bathroom legislation, a reduction of the spending cap, property tax reduction and tuition reform at state colleges and universities. Republicans currently hold a trifecta in Texas – Republican Gov. Greg Abbott will be working with 95-55 and 20-11 Republican majorities in the House and Senate, respectively.

Massachusetts, **New Jersey** and **Pennsylvania** are in regular session. The **District of Columbia** Council and the **United States** Congress are also in regular session.

Illinois convened a veto session on November 15 and is in recess until November 29.

Utah held a special session on November 16 related to Senate consideration of gubernatorial appointments, funding for class B and C roads and legislation related to solid waste regulation. A proclamation from the office of Republican Gov. Gary Herbert authorizing the session can be found [here](#) and a list of bills passed during the special session can be found [here](#).

Michigan and **Ohio** are in recess until November 29. **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.

Utah Republican Gov. Gary Herbert has until December 6 to act on legislation from the fourth special session or it becomes law.

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](#), [Arkansas](#), [Colorado](#), [Florida Senate](#), [Georgia House](#) and [Senate](#), [Kentucky](#), [Montana](#), [Nevada](#), [New Hampshire](#), [North Dakota](#), [Oklahoma House](#) and [Senate](#) bill drafts and [prefiles](#), [Texas House](#) and [Senate](#), [Utah](#), [Virginia](#) and [Wyoming](#) (draft requests appear on individual committee pages).

Franchise Tax

A number of bills were prefiled in **Texas** on November 14 that, if enacted, would have an effect on the state's franchise tax.

[HB 86](#) would offer a franchise tax credit for businesses that hire and employ former offenders. This bill is sponsored by Rep. Ryan Guillen, D-Rio Grande City, and would become effective January 1, 2018, if enacted.

[HB 102](#) relates to the timing and qualifications of exemptions from franchise taxes for certain businesses during an initial period of operation in the state. If this bill is enacted, it will become effective on January 1, 2018. Rep. Ryan Guillen, D-Rio Grande City, sponsors this bill.

[HB 388](#), which was prefiled on November 16, would begin phasing out the franchise tax in 2018 by decreasing it every year until it is repealed in 2021. This bill is sponsored by Rep. Jim Murphy, R-Houston.

[SB 72](#) would decrease the franchise tax by a percentage each year until it is ultimately phased out. If enacted, the bill would become effective on September 1, 2017. This bill is sponsored by Sen. Jane Nelson, R-Flower Mound.

[SB 112](#) would decrease the rate of the franchise tax until it is eliminated. If this bill is enacted, it would take effect on January 1, 2018. Sen. Don Huffines, R-Dallas, sponsors this bill.

[SB 130](#) would amend the way that the franchise tax is computed by taking the entity's total revenue and subtracting an amount equal to the sum of \$1 million, the cost of goods sold, and compensation. Franchise tax would then be calculated off that sum. If this bill is enacted, it would take effect on January 1, 2018. Sen. Brandon Creighton, R-Conroe, is the sponsor of this bill.

[SB 142](#) offers amendments to the way cost of goods is calculated for the purpose of determining a corporation's franchise tax. This bill would take effect on January 1, 2018 and is sponsored by Sen. Van Taylor, R-Plano.

[SB 178](#) would completely repeal the franchise tax on May 15, 2018. This bill is sponsored by Sen. Craig Estes, R-Wichita Falls.

Landmen

Employee Misclassification

After being introduced in May, **Ohio [HB 568](#)** was referred to the House Commerce and Labor Committee. This bill would prohibit an employer from retaliating against an individual who opposes employee misclassification. HB 568 would protect individuals from being required to enter into an agreement that would result in the misclassification of the individual as an independent contractor or otherwise does not accurately reflect the individual's relationship with an employer.

If the director of Commerce finds that an employer has misclassified employees, this bill would give the Director the authority to collect the amount of any wages, salary, employment benefits, or other compensation denied or lost to an individual due to the misclassification, among other actions.

HB 568 would encourage the Director of Commerce, the Director of Job and Family Services, the Tax Commissioner, and the Administrator of Workers' Compensation to share all information concerning any suspected misclassification by an employee. Upon finding violators, this bill would require them to all notify the other agencies so that appropriate action can take place. The bill would also create the Employee Classification Fund to finance the expenses related to the administration, investigation, and all other activities related to carrying out the duties laid out in this bill.

This bill is sponsored by Rep. Debbie Phillips, D-Athens.

Oil and Gas

General Oil and Gas

Ohio [HB 582](#) was assigned to the House Energy and Natural Resources Committee on November 10. This bill would allow a landlord who discovers an idle, orphaned, or abandoned well to report it to the Chief of the Division of Oil and Gas Resources Management. The chief would be required to inspect the well within 30 days, and provide the land owner with a report on the status of the well within 60 days. If the well is classified as a distressed-high priority, the chief would need to begin plugging the well no later than six months after the report is issued. The owner of the well would be required to pay for the corrective action concerning the abandoned well.

This bill is sponsored by Rep. Andy Thompson, R-Marietta.

Bundling & Pooling

Texas [SB 177](#) was prefiled on November 14. The “Majority Rights Protection Act” would establish a legal framework for protecting the property rights of oil field owners. It is also aimed at unlocking additional production in secondary and tertiary wells. The goal of the bill would be to updated the unitization procedures to allow a super majority of 70 percent or more of both working and royalty interest owners to enter into a pool to move forward with additional field operations to recover oil in secondary and tertiary wells. Current law requires that all rights holders of an oil field agree to any redevelopment of operations. The way the law is now, one owner, or a small group, can prevent the redevelopment of a reservoir. This limits the rights of all the other property rights owners to use methods to recover additional oil from the field.

According to a [press release](#) from the sponsor, Sen. Van Taylor, R-Plano, “New techniques in oil extraction continue to offer our state and nation immeasurable opportunities, however Texas law has failed to keep up with these advancements,” stated Taylor. “The Majority Rights Protection Act would unlock hundreds of billions of dollars of energy production by establishing a proven legal framework successfully used in 29 other states. Passing this bill has the potential to be the biggest job creation, investment expanding, and revenue generating legislation in a generation.”

Royalty Payments

Texas [HB 129](#) was prefiled on November 14. When submitting payment, this bill would allow a payer of royalty interest to provide required information in another form other than on the check stub, if the interest owner gives written permission. If this bill becomes law it will take effect on September 1, 2017.

This bill is sponsored by Rep. Tom Craddick, R-Midland.



Please Note: Due to the Thanksgiving holiday, there will not be a Weekly Report next Monday. The next report will be distributed on December 5. Wishing you all a happy holiday.

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