

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

- **Onshore Energy Development – S. 2319.** On January 18, five Republican senators introduced the *Opportunities for the Nation and States to Harness Onshore Resources for Energy Act*, or ONSHORE Act. The bill, [S. 2319](#), is aimed at reforming federal onshore oil and gas policies by giving states authority to manage permitting and regulatory responsibilities on federal land within their borders. “Punishing regulations and permitting delays have plagued the federal oil and gas permitting process for years,” said the bill’s primary sponsor, Sen. John Barrasso (R- WY), in a [sponsoring statement](#). “Our bill also eliminates unnecessary regulations and increases mineral revenue for states.” The legislation also would exempt oil and gas operations on nonfederal land from federal permitting and environmental review if the federal government holds less than a 50 percent mineral ownership interest. Further, it gives states and Indian tribes primacy over regulations, guidance, and permitting for hydraulic fracturing. This bill contains similar provisions to [H.R. 4239](#), introduced by Rep. Steve Scalise (R-LA) in November 2017 and which is still under House committee consideration. [Read more.](#)

FEDERAL – Regulatory

- **Onshore Oil and Gas Operations – BLM.** The Bureau of Land Management (BLM) has announced that it is proposing to renew an information collection with revisions regarding the authorization and management of onshore oil and gas leases on federal and Indian lands, except for the Osage Tribe. The revisions, *Agency Information Collection Activities; Submission to the Office of Management and Budget for Review and Approval; Onshore Oil and Gas Operations and Production* ([83 Fed. Reg. 2184](#)), address the addition of standards concerning operations, site security, and measurement of oil. The revisions also address the removal of the gas flaring collection activity and the continuation of the collection activity regarding hydraulic fracturing, which will be addressed in a future rulemaking. Public comments are due by February 15, 2018. [Read more.](#)
- **Grand Staircase-Escalante National Monument – Utah.** On January 16, the BLM published its notice, *Notice of Intent To Prepare Resource Management Plans for the Grand Staircase-Escalante National Monument-Grand Staircase, Kaiparowits, and Escalante Canyon Units and Federal Lands Previously Included in the Monument That Are Excluded From the Boundaries and Associated Environmental Impact Statement, Utah* ([83 Fed. Reg. 2179](#)) to seek public input in advance of preparing land use plans and environmental assessments for these units as modified by [Presidential Proclamation 9682](#)

which reduced the boundaries of these areas and which begins a public scoping process to determine planning for these areas which may include natural resource development. [Read more.](#)

- **BLM Lease Sale Administrative Protest – Montana.** On January 11, certain local landowners and environmentalists filed a formal [administrative protest](#) against the March 13, 2018 competitive [oil and gas lease sale](#) proposed by the BLM’s Butte Field Office. Of the 63,496 acres of federal public land up for auction throughout Montana, the groups charge that the sale could open up leasing along the Yellowstone River which could threaten the watershed and the local economy. The BLM has yet to respond to the protest. [Read more.](#)
- **BLM Lease Sale – Utah.** The BLM has [announced](#) that it will offer 43 parcels, totaling approximately 51,401 acres, in Grand and San Juan counties at its March 2018 quarterly online oil and gas lease sale. Various conservation and environmental groups filed a [formal protest](#) against the sale. Their concerns focus on “public lands near Bears Ears, Hovenweep and Canyons of the Ancients National Monuments, as well as in the culturally rich Alkali Ridge Area of Critical Environmental Concern and along the Green and San Juan rivers” which are included in the sale. For its part, the Acting BLM Canyon County District Manager Gary Torres said, “We carefully considered comments from the public and our partners in developing the list of parcels and resource protection measures for this lease sale” but that “the lease sale is in keeping with the Trump administration’s stated goal of strengthening America’s energy independence.” [Read more.](#)
- **BLM Online Lease Sales.** Ranking democrats on the U.S. House Natural Resources Committee have raised financial and legal concerns over EnergyNet, the Texas company that manages BLM online oil and gas lease sales. In their [letter to the BLM](#), they raised concerns over the 1.5 percent “buyer premium” which they believe discourages bids. They also questioned the transparency of the process, finding that bidder identities were not available in real-time as sales were taking place and required cross-referencing between EnergyNet and BLM websites. Additionally, they’ve asked the BLM Deputy Director of Programs and Policy to submit to Congress by February 1 its mandated and long-overdue report analyzing the impact of online lease sales. [Read more.](#)

FEDERAL – Judicial

- **Marketable Product Rule; Royalties – 10th Circuit (New Mexico).** On January 9, in *Anderson Living Tr. v. Energen Res. Corp.* (Case No. 16-2124), the U.S. Court of Appeals for the Tenth Circuit (New Mexico) held that New Mexico does not follow the “marketable condition” rule for calculating royalties and therefore lessees may account for a lessor’s proportionate share of all post-production costs using the netback or workback method for estimating the market value of gas at the well where no such market exists to establish

royalties to be paid. The Court noted that although lessees have a duty to market the gas for the benefit of the royalty owners and that duty is implied, a lessee is under no obligation to bear those costs alone either under the parties' oil and gas lease or under state law. [Read more.](#)

- **Local Ordinances – Pennsylvania Federal Court.** On January 5, in *Pennsylvania Gen. Energy Co., LLC v. Grant Twp.* (Case No. CV 14-209-ERIE), the U.S. District Court for the Western District of Pennsylvania sanctioned an attorney and environmental group for challenging legal oil and gas activity based on “unreasonably, pursuing discredited legal theories, misrepresenting facts, and unnecessarily multiplying litigation.” The Court noted that the litigants repeatedly sought to enforce a local ordinance that was previously struck down by the Court as unconstitutional because it purported to overturn longstanding constitutional rights of corporations and ignored the established preemptive effect of valid federal and state permits and environmental regulations. The Opinion also noted in ruling in favor of the Pennsylvania General Energy Company and the Pennsylvania Independent Oil & Gas Association that the “Court is not a mechanism of harassment or unbridled obstruction” in the “continued pursuit of frivolous claims and defenses.” [Read more.](#)
- **Royalties; Post-Production Costs – Pennsylvania Federal Court.** On December 21, in [Municipal Authority of Westmoreland County v. CNX Gas Company, LLC](#) (Case No. 2:16-CV-422), the U.S. District Court for the Western District of Pennsylvania held that attorney-client privilege did not shield from discovery certain emails concerning “general business discussions” regarding proper deduction of post-production costs within the lessee’s organization even if a lawyer was copied on the emails absent actual attorney-client communication and legal advice. [Read more.](#)
- **Royalties; Leasing; Arbitration – Pennsylvania Federal Court.** On December 21, in *Abrams v. Chesapeake Energy Corp.* (Case No. 4:16-CV-1343), the U.S. District Court for the Middle District of Pennsylvania dismissed a number of landowner lawsuits alleging improper royalty payments and other related claims because those litigants failed to pursue arbitration as required by their oil and gas leases. However, the Court has allowed certain landowners whose leases do not contain mandatory arbitration clauses to proceed with their claims in federal court. [Read more.](#)

STATE – Legislative

- **Taxes; Leasing – Alaska.** On January 16, HB 288 was introduced by Rep. Geran Tarr (D). The bill provides 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.](#)

- **Severance Taxes – Mississippi.** On January 15, HB 1350 was introduced by Rep. Angela Cockerham (D). The bill deletes the repeal of tax provisions that established a reduced rate for certain severance taxes on the initial oil and gas produced from certain horizontally drilled wells and horizontally drilled recompletion wells. The bill’s prospects for further consideration are unlikely in the Republican-led legislature. [Read more.](#)
- **Pooling; Unitization; Integration of Interests – Mississippi.** On January 15, HB 1351 was introduced by Rep. Angela Cockerham (D). The bill would increase the threshold percentage amount by owners of oil drilling rights in a drilling unit from 33 percent to 80 percent for operators to petition the state oil and gas board for alternate charges. The bill also increases from three-sixteenths to one-third the amount paid to the lessor in certain instances of pooling and integration and alternate charges. The bill’s prospects for further consideration are unlikely in the Republican-led legislature. [Read more.](#)
- **Severance Taxes – Mississippi.** On January 12, HB 968 was introduced by Rep. Gary Staples (R). The bill would include the term “carbon dioxide” within the definition of the term “gas” for purposes of the gas severance tax and provide a tax exemption for the production of carbon dioxide that is sold or otherwise used for industrial or commercial purposes, among other provisions. [Read more.](#)
- **Employee Misclassification – Virginia.** On January 10, HB 1106 was introduced by Del. Jennifer Boysko (D). The bill would allow the state Attorney General to conduct an investigation into possible wrongful employee misclassification upon cause to believe that a person is wrongfully misclassifying employees as independent contractors. The Attorney General would also have the authority to file a complaint in the court where such person is located seeking recovery of all amounts owed to departments and commissions of Virginia, unpaid wages or overtime for employees, and any other losses of benefits, amounts due under the law, and damages employees suffered as a result of the wrongful misclassification. [Read more.](#) *(See more below under Legislative Session Overview)*

STATE – Judicial

- **Landman Licensing – Ohio.** *(Update from 11/13/17 Weekly Report)* In the ongoing Ohio Supreme Court landman real estate licensing case, [Dundics v. Eric Petroleum Corp.](#) (Case No. 2017-0448), last week AAPL filed its amicus brief in support of the appellant landman challenging the appellate court decision holding that landmen are subject to the requirements of state law, R.C. Chapter 4735, requiring real estate broker’s licenses in order to be entitled to compensation for brokering deals with landowners on behalf of oil and gas companies. Agreeing with the trial court, the appellate court had held that “real estate,” for purposes of the statute, was broadly defined to include “leaseholds as well as any and every interest or estate in land” – which, under Ohio law, includes oil and gas rights. For more information about this case, check out the Vorys Energy & Environmental Law Blog [here](#). You may also access the AAPL [amicus brief here](#).

INDUSTRY NEWS FLASH:

◆ **U.S. on pace for highest-ever level of fossil fuels production.** On January 18, the U.S. Energy Information Administration (EIA) forecasted that total fossil fuels production in the United States will reach its highest-ever recorded level of production in 2018, surpassing records set in the 1970s, and then break another record in 2019. According to the EIA report, “Record production levels are largely attributable to increased production of natural gas and crude oil enabled by the use of hydraulic fracturing techniques in tight rock formations. EIA expects increases in natural gas production to be the leading contributor to overall fossil fuels production growth in 2018 and increases in crude oil production growth to be the leading contributor in 2019.” [Read more.](#)

◆ **API’s Jack Gerard to step down after a decade of leadership.** Last Wednesday, Jack Gerard, President and CEO of the American Petroleum Institute (API), announced he will leave his post in August after serving the influential oil and gas association for a decade. “As head of API, Mr. Gerard has been at the forefront of a massive expansion in domestic oil and natural gas drilling over the past decade. During his tenure, the U.S. has become a global leader in oil and gas development, reversing America’s longstanding status as an importer of energy.” [Read more.](#)

State-by-State Legislative Session Overview

Alabama, Alaska, Arizona, California, Colorado, Delaware, Florida, Georgia, Hawaii, Idaho, Illinois, Indiana, Iowa, Kansas, Kentucky, Maine, Maryland, Massachusetts, Michigan, Mississippi, Missouri, Nebraska, New Hampshire, New Jersey, New Mexico, New York, Ohio, Pennsylvania, Rhode Island, South Carolina, South Dakota, Tennessee, Vermont, Virginia, Washington, West Virginia and Wisconsin are in regular session. The **District of Columbia** Council, **Puerto Rico** and the **United States** Congress are also in regular session.

Oklahoma convened its second special session to address budget issues on December 18, [KGOU](#) reports. **North Carolina** convened a special session to address a broad range of matters on January 10, [WNCT](#) reports.

The following states are expected to convene for the 2018 legislative session on the dates provided: **Utah** (January 22); **Oklahoma** and **Oregon** (February 5); **Connecticut** (February 7); **Arkansas** and **Wyoming** (February 12) and **Minnesota** (February 20).

New York Democratic Gov. Andrew Cuomo has until January 30 to act on legislation from 2017 or it is pocket vetoed. **Illinois** Republican Gov. Bruce Rauner has 60 days from presentment to act on all legislation passed during the veto session or it becomes law.

Former **New Jersey** Republican Gov. Chris Christie had a signing deadline for legislation from the 2016-2017 biennium on January 16, and his term of office expired the same day. **South Carolina** Republican Gov. Henry McMaster had a signing deadline for 2017 legislation on January 11.

The following states are currently holding interim committee hearings: [Arkansas](#), [Connecticut](#), [Louisiana](#), [Minnesota](#), [Montana](#) (2019 interim hearings), [Nevada](#) (2019 interim hearings), [North Carolina](#), [North Dakota](#) (2019 interim hearings), [Oklahoma House](#) and [Senate](#), [Oregon](#), [Texas House](#) and [Senate](#) (2019 interim hearings), [Utah](#) and [Wyoming](#).

The following states are currently posting bill drafts, prefiles and interim studies: [Arkansas](#), [Montana](#) (2019 interim studies), [North Dakota](#) (2019 interim committee bills), [Oklahoma prefiles](#) and [House](#) and [Senate](#) interim studies, [Utah](#) and [Wyoming interim studies](#) and [profiles](#).

Landmen

Independent Contactors

Virginia [HB 1106](#), sponsored by Del. Jennifer Boysko, D-Herndon, was referred to the House Courts of Justice Committee on January 10. The bill would authorize the attorney general, upon reasonable cause to believe the person is wrongly misclassifying employees as independent contractors, to issue subpoenas and compel the production of pertinent records. If the attorney general finds probable cause, the bill would authorize the attorney general to file a complaint in civil court to recover amounts owed to state agencies and any unpaid wages or overtime pay on behalf of any individuals who were not paid the proper amounts owed. The bill would take effect the July 1 following adjournment.

Washington [HB 1300](#) was heard in the House Appropriations Committee on January 15 and was also scheduled for an executive session in the same committee on January 17 and 18; however, no action was taken. As substituted, this bill would prohibit employers from misclassifying employees as independent contractors, charge them a fee to be an independent contractor, require an employee to enter into an agreement that would result in a change of their employment classification to independent contractor or evade detection of their goal to misclassify employees. The Department of Labor would be permitted to conduct investigations into the misclassification of employees and provide penalties if companies are found to have misclassified employees. The substitute also clarifies that employees and independent contractors have the same meaning in the bill, and includes provisions regarding court orders in the final judgment for violation of the bill.

Washington [SB 5527](#) was heard in the Senate Commerce, Labor and Sports Committee on January 17. The committee took testimony from the Washington State Labor Council, the Washington Retail Association and the Association of Washington Businesses among others. This bill would create the employee fair classification act with the goal of simplifying and enforcing employment status to ensure fairness to employers and employees and address the underground economy. The bill would prohibit employers from charging an employee who has been misclassified as an independent contractor for violations that arise out of the employee

being misclassified. It would also prohibit people from requiring employees to enter into agreements that would result in them being misclassified as well as prohibiting employees from evading enforcement or detection of this act.

Under this bill, the Department of Labor can conduct an investigation if they receive information that an employer may be in violation of this chapter and misclassifying employees, but investigations cannot date back more than three years. The bill details process and penalties for investigations and punishment. The bill would take effect 90 days after adjournment, which is tentatively scheduled for March 8.

Lands

Public Lands

Washington [SB 6103](#), sponsored by Sen. Kevin Ranker, D-Orca Island, was heard in the Senate Agriculture, Natural Resources and Parks Committee on January 16 and has been scheduled for a hearing in that committee on January 25 at 1:30 PM. The bill is scheduled for a hearing in that committee on January 16 at 1:30 PM. The bill would state that it is the policy of the state to discourage conveyances of federal public lands that transfer ownership from the federal government. The bill would void conveyances of federal public lands where the state natural resources board was not provided the right of first refusal. The board, in conjunction with other state agencies, would be required to undertake all feasible efforts to protect against future unauthorized land conveyance or any repeal of a federal land designation. The bill would not apply to the conveyance of lands pursuant to a conservation plan, the renewal of a lease in existence as of January 1 or the conveyance of lands to federal recognized Native American tribe. The bill would take effect 90 days after adjournment, which is tentatively scheduled for March 8.

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