

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

- **Sage Grouse.** On January 13, House Natural Resources Chairman Rob Bishop (R-Utah) introduced legislation to facilitate state plans for the greater sage grouse. The bill, [H.R. 527](#), is reportedly a reintroduction of a measure the congressman introduced last year that would allow governors to block federal actions to protect the sage grouse. [Read more.](#)
- **Coastal Plain Leasing Program – Alaska.** On January 5, Senator Lisa Murkowski (R-AK) introduced, [S. 49](#), the *Alaska Oil and Gas Production Act*, to allow development of up to 2,000 surface acres within a 1.5-million acre area of the Arctic National Wildlife Refuge, which represents just a fraction of the 19-million acre refuge. [Read more.](#)
- **National Monument Designations.** On January 5, Senator Lisa Murkowski (R-AK), and other co-sponsors, introduced [S. 33](#), the *Improved National Monument Designation Process Act*, to facilitate greater local input and require state approval before national monuments can be designated on federal lands and waters. The bill comes in the wake of Obama Administration actions that locked up certain lands, like Bears Ears in Utah, from resource development. [Read more.](#)

FEDERAL – Regulatory

- **Interior Department.** At his confirmation hearing last week, Rep. Ryan Zinke, who was tapped by President Trump to head the Department of the Interior, said he would consider scrapping some of former President Obama's environmental initiatives, including reviewing curbs on oil drilling on federal lands. Trump "has said that we want to be energy independent. I can guarantee you it is better to produce energy domestically under reasonable regulation than overseas with no regulation," Zinke noted in his testimony. [Read more.](#) Zinke also said "he would work to have more federal land management decisions reached outside of Washington, DC, as a product of closer collaboration with states and stakeholders if he is confirmed." [Read more.](#)
- **BLM Onshore Oil and Gas Operations.** On January 19, the BLM published in the Federal Register its final rule: *Onshore Oil and Gas Operations—Annual Civil Penalties Inflation Adjustments* ([82 FR 6305](#)). The rule adjusts the level of civil monetary penalties contained in the BLM's regulations governing onshore oil and gas operations as required by the Federal Civil Penalties Inflation Adjustment Act Improvements Act

of 2015. The adjustments made by this final rule constitute the annual inflation adjustments contemplated by the Act, and are consistent with applicable Office of Management and Budget guidance. [Read more.](#)

- **BLM Resource Management Plan – Alaska.** On January 19, the BLM published in the Federal Register their notice: *Eastern Interior Proposed Resource Management Plan: BLM Director’s Response to Alaska Governor’s Appeal* ([82 FR 6634](#)). The notice contains the Director of the BLM’s response to the Alaska Governor’s appeal of the BLM Alaska State Director’s response to the State of Alaska’s Governor’s consistency review letter for the Eastern Interior Proposed Resource Management Plan and Final Environmental Impact Statement. The BLM Director determined not to accept the recommendations of the Alaska Governor regarding resource management plans in the state. [Read more.](#)
- **Forest Service Leasing – Wyoming.** On January 17, the U.S. Forest Service issued a [record of decision](#) (ROD) withdrawing the leases comprising 30 parcels covering 39,490 acres in the eastern slope of the Wyoming Range. The ROD supersedes the prior Forest Service decision to authorize the BLM to offer oil and gas leases made in 2005. The 30 parcels in the northeast corner of the Bridger-Teton forest near the Upper Hoback River were issued in December 2005 and April 2006. The Forest Service first decided to cancel and withdraw the leases in 2011 but withdrew that decision after two of the energy companies appealed. [Read more.](#)

FEDERAL – Judicial

- **Ohio Dormant Mineral Act – U.S. Supreme Court.** On January 17, the U.S. Supreme Court denied review of [Walker v. Shondrick-Nau](#), an Ohio Supreme Court case decided last year involving the interpretation and application of the Ohio Dormant Mineral Act. ([Access case background here](#)) With the denial, *Walker* (and its Ohio Supreme Court companion case, [Corban v. Chesapeake Exploration, L.L.C.](#)) remain the law in Ohio. ([Access case background here](#)) In *Corban*, the Ohio Supreme Court held the 2006 version of the Ohio Dormant Mineral Act (ODMA), which is codified at Ohio Rev. Code Sec. 5301.56, applies to all claims asserted after June 30, 2006, and that a payment of a delay rental is neither a title transaction nor a saving event. *Walker* followed *Corban*, with the Ohio Supreme Court holding that the 1989 ODMA was not self-executing and that the 2006 ODMA applies to all claims asserted after 2006 to declare mineral rights abandoned. [Read more.](#)
- **Greater Sage Grouse – D.C. Federal District Court.** On January 5, in [Otter v. Jewell](#) (Case No. 2017 BL 2523), the U.S. District Court for the District of Columbia, ruled against a lawsuit brought by Idaho’s governor because the plaintiffs failed to convince the court they had yet been harmed regarding federal protections for the greater sage grouse. The Court focused overwhelmingly on anticipated economic injuries and potential interference in the abilities of the governor and legislature to perform their

sovereign duties, such as wildlife management. Losses of economic activity and tax revenues from blocked oil and gas activities were among the expected harms. “I am extremely disappointed in the ruling from Judge Sullivan,” Gov. Butch Otter (R) said in a statement issued in response to the decision. “We are still weighing our options moving forward, one of which is an appeal.” [Read more.](#)

- **BLM Venting and Flaring Rule – D.C. Federal District Court.** On January 5, in the consolidated cases [Wyoming v. Jewell](#) (Case No. 2:16-CV-0285-SWS) and [Western Energy Alliance v. Jewell](#) (Case No. 2:16-CV-0280-SWS), the U.S. District Court for Wyoming denied a preliminary injunction against the BLM’s venting and flaring rule. Petitioners—which included the Independent Petroleum Association of America, the Western Petroleum Association, and the states of Wyoming, North Dakota, and Montana—did not demonstrate that a preliminary injunction was warranted, according to the Court. The Court held that it could not conclude at this stage that “the Rule enacted exceeds the Secretary’s authority or is arbitrary and capricious” (which is the standard for preliminary injunctions). As such, the cases continue against the Interior Department while the rule remains in effect pending the litigation process. [Read more.](#)
- **Royalties – Texas Federal Court.** On January 6, in [Seeligson v. Devon Energy Prod. Co., L.P.](#) (Case No. 3:16-CV-00082-K), a Texas federal district court certified a class of royalty owners alleging that their lessee breached the implied covenant to market production based on claims that the lessee marketed gas to its affiliate for 82.5 percent of its value and for failing to then recoup profits from subsequent sales by the affiliate. [Read more.](#)
- **Royalties – Wyoming Federal Court.** On January 6, in [Kinney v. CNX Gas Co. LLC](#) (Case No. 5:15-CV-160), a Wyoming federal district court certified a class of royalty owners with leases that authorize the deduction of a fixed amount from royalty payments. The class members claim that flat-rate royalties are illegal in West Virginia despite the parties’ agreement that the fixed amount represented “actual and reasonable” post-production costs. [Read more.](#)

STATE – Legislative

- **Tax Notices on Mineral Interests – Arkansas.** On January 11, Senator Bart Hester (R) introduced SB 114, a bill which amends the requirements for publishing notice of delinquent taxes on mineral interests. [Read more.](#)
- **Mineral Estates – Mississippi.** On January 13, Rep. Randy Boyd (R) introduced HB 661, a bill that provides that mineral estates separated from the surface estate shall revert to the owner of the surface estate after 20 years of nonproduction, and defines nonproduction as it applies to this bill. [Read more.](#)

- **Tax Liens and Tax Deeds – Montana.** On January 13, a new version of a bill originally introduced last year, HB 18, was made available after the Committee passed the measure. The bill revises the process for the sale of a tax lien and issuance of a tax deed, which includes the elimination of a tax lien sale, among other provisions. [Read more.](#)
- **Well Applications; Water Rights Notifications – New Mexico.** On January 12, Senator Carlos Cisneros (D) prefiled SB 86, a bill that would amend current law relating to the use of underground water and the application process for such use. [Read more.](#)
- **Local Regulations – Oklahoma.** On January 17, SB 193, was introduced by Senator Kay Floyd (D). The bill would preclude state law from limiting or restricting the rights of cities and towns to prevent oil and gas drilling as well as allowing the localities to promulgate their own rules for well-spacing units, drilling, or production. [Read more.](#)
- **Mineral Interests – Utah.** On January 12, a joint resolution, SJR 5, was introduced by Senator David Hinkins (R) and sent to the relevant agencies for fiscal input. The resolution endorses a yet-to-be introduced federal bill by Rep. Jason Chaffetz (R) that will transfer the Federal minerals in the subsurface of the McCracken Extension to the Utah Navajo Trust Fund. [Read more.](#)
- **Well Permit Disclosures – Virginia.** On January 10, Senator Benton Chafin (R) introduced SB 1291, which is the Senate companion bill to [HB 1679](#) (reported in last week’s report), which authorizes the Department of Mines, Minerals, and Energy to receive certain disclosures, specifically, the Department may require an application for a well, a supplement thereto, and a well completion report to include chemical ingredient names, the chemical abstracts numbers for chemical ingredients, or the amount or concentration of chemicals or ingredients used to stimulate a well, provided there is an exclusion from mandatory disclosure under the Virginia Freedom of Information Act. [Read more.](#)

STATE – Judicial

- **Leasing – Ohio.** On December 30, 2016, in [Potts v. Unglaciated Industries](#) (Case No. 15 MO 0003, 2016-Ohio-8559), an Ohio appeals court concluded that a well operator established production in “paying quantities” sufficient to keep a lease active despite a lack of any production reports on file with Ohio’s regulators, reasoning that the landowner failed to rebut evidence that at least one well on the leased premises generated revenues from sales to third parties. [Read more.](#)

INDUSTRY NEWS FLASH:

◆ **U.S. Energy under President Trump.** On January 16, the Energy Collective published its assessment of energy policies likely under the new Trump administration. “Trump and his appointees plan a major policy and regulatory shift for energy, focusing more on economic benefits and less on environmental impacts,” according to its author, Geoffrey Styles. “Donald Trump’s well-known preference for deals over dogma sets up the prospect of some big surprises, in addition to what we can already anticipate.” [Read more.](#)

◆ **Colorado Governor Address Energy Production in State of the State Address.** On January 12, Colorado Governor John Hickenlooper (D) touted the state’s energy production in his [State of the State address](#). Hickenlooper was focused on economic growth and the ability of the state’s businesses to compete equally on the global stage. [Read more.](#)

State-by-State Legislative Session Overview

Alaska convened its 2017 legislative session on January 17 with a new Democratic led leadership coalition in the House. [Alaska Dispatch News](#) reports that the new coalition, which includes 17 Democrats, two independents and three Republicans, will be working with a Senate that maintained a seven to three Republican advantage. The state faces an urgent budget problem amid a significant decline in energy prices in recent years – revenue from the energy industry that once funded nearly all state expenditures now only accounts for 30 percent of the state’s budget requirements. Remaining expenditures have been funded almost entirely through savings. Distinct ideological differences persist over how to solve the budget problem, and a long term solution was not reached last year after a regular session that ran through the constitutional 121 day maximum into a total of five special sessions. Independent Gov. Bill Walker had proposed restructuring the Permanent Fund, a state managed fund for energy revenue that pays dividends to residents, but [SB 128](#), which contained the proposal, was defeated in the House. Other proposals, like a carbon tax advocated by some Democrats and spending cuts proposed by Senate Republicans, will be considered during the session.

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

Oregon convened on January 9 for organizational days, and is in recess until February 1. A list of legislation introduced during the organizational days can be found [here](#). **West Virginia** held an organizational day on January 11 and is also in recess until February 1, but did not introduce any legislation.

Wisconsin is in special session. The session, which convened on January 5, will run concurrently with the regular legislative session.

The following states are expected to convene their 2017 sessions on the dates provided: **Utah** (January 23), **Nevada** and **Oklahoma** (February 6), and **Alabama** (February 7).

Illinois Republican Gov. Bruce Rauner has 60 days from presentment to act on legislation or it becomes law without signature.

Michigan Republican Gov. Rick Snyder had acted on all legislation from the 2016 session as of January 20.

The following states are currently posting bill draft requests/prefiles for the 2017 session: **Alabama** [House](#) and [Senate](#), **Florida**, **Nevada**, **Oklahoma** [House](#) and [Senate](#) bill drafts and [prefiles](#), and **Utah** (draft requests appear on individual committee pages).

Franchise Tax

New York [AB 1874](#) was introduced on January 13 by Asm. Peter Lopez, R-Schoharie, and referred to the Assembly Ways and Means Committee. This bill would offer taxpayers a personal income or business franchise tax credit of 25 percent of their property taxes if their land is committed to forestry stewardship or habitat conservation, or both. If this bill becomes law it will take effect immediately. The Senate companion, [SB 138](#), is pending in the Senate Investigations and Government Operations Committee.

Tennessee [HB 65](#) was filed for introduction on January 17. This bill would exempt certain new companies from paying franchise tax or excise tax for their first two years in business if they employ no more than 25 people and revenue is below \$1.5 million. This bill is sponsored by Rep. Eddie Smith, R-Knoxville, and would become effective on July 1, 2017 if enacted.

Texas [HB 1052](#) was filed on January 17. This bill would repeal the franchise tax by May 15, 2018. Rep. Leighton Schubert, R-Caldwell, is the sponsor.

Landmen

Employee Classification

Washington [HB 1300](#) is scheduled for a public hearing in the House Labor and Workplace Standards Committee on January 23 at 1:30 p.m. 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. This bill is sponsored by Rep. Marcus Riccelli, D-Spokane.

Independent Contractors

New York [SB 1794](#) was introduced and referred to the Senate Labor Committee. This bill would require that independent contractors be paid the compensation earned as detailed in their agreed work terms no later than the last day of the month following the month in which the compensation is earned. The agreed terms need to be in writing and signed by both the client and the independent contractor. Work agreements would be required to be kept on record by the client for no less than six years. The bill would authorize the Department of Labor to investigate complaints with regard to compensation and other labor issues involving independent contractors. If enacted, this bill would take effect immediately. This bill is sponsored by Sen. Daniel Squadron, D-Carroll Gardens.

Lands

Public Lands

Alaska [HJR 4](#) is scheduled for a hearing in the House Resources Committee on January 27 at 1:00 p.m. This resolution urges the U.S. Congress to pass legislation that would open the coastal plain of the Arctic National Wildlife Refuge to oil and gas development. This resolution is sponsored by Rep. David Talerico, R-Healy.

New York [AB 1966](#) was introduced by Asm. Clifford Crouch, R-Bainbridge, on January 17 and referred to the Senate Environmental Conservation Committee. This bill would require that bids for oil and gas production leases on state lands would be required to include lease payment and royalty payment amounts. If this bill becomes law it would take effect 120 days after enactment.

Leasing

Nebraska [LB 535](#) was referred to the Senate Revenue Committee on January 20. This bill would exempt oil, gas or mineral lease conveyance from the requirement of filing a statement with the register of deeds. This bill would become effective three months after adjournment if enacted. This bill is sponsored by Sen. Dan Hughes, R-Venango.

New York [AB 1551](#), sponsored by Asm. Clifford Crouch, R-Bainbridge, was introduced and referred to the Assembly Environmental Conservation Committee. This bill would allow counties to lease land for natural gas exploration and production for not more than five years and if gas is produced, the lease shall continue until the production no longer is being produced in paying quantities. If enacted, this bill would take effect immediately.

New York [SB 2902](#) was introduced and referred to the Senate Judiciary Committee. This bill would require any changes in lease agreements involving the rights or interests in oil, gas, minerals or other similar natural resources to be recorded with the county clerk where the property is located. This bill is sponsored by Sen. Patty Ritchie, R-Heuvelton.

Oil and Gas

Oil and Gas General

New York [SB 1562](#) was introduced and referred to the Senate Labor Committee on January 10. This bill would require the Department of Labor, with assistance from the Department of Environmental Conservation, to enact rules and regulations for enhanced workplace safety requirements and employee training for those who work on oil and gas drilling operations in the state. The regulations would be related to chemical exposure, work hours, machinery safety, use of protective clothing and gear, living conditions, ground stability for equipment and other training. The bill would require employers to report any workplace accidents that happen on oil and gas operation sites. This bill would take effect 120 days after enactment if it becomes law.

This bill is sponsored by Sen. Tony Avella, D-Whitestone.

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