

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

- **Bears Ears National Monument – Utah.** (Update to 7/25/2016 Weekly Report) On December 28, 2016, President Obama [issued a proclamation](#) establishing Bears Ears as a national monument ([82 FR 1139](#)), protecting 1.35 million acres of federal land from oil and gas resource development. Utah Senator Orrin Hatch called the lame-duck designation an “attack on an entire way of life” and an “astonishing and egregious abuse of executive power” and vows to reverse the designation under the incoming Trump administration. [Read more.](#)
- **BLM Lease Sale – Alaska.** In mid-December, the BLM auctioned off oil and gas leases across 1.4 million acres of public lands in northern Alaska. Despite protests, the sale proceeded as scheduled. The sale was only the 13th held in the National Petroleum Reserve since 1999. Revenue totals have not yet been announced. [Read more.](#)
- **BLM Resource Management Plan Notice – California.** On January 6, the BLM published in the Federal Register ([82 FR 1754](#)) a *Notice of Availability of the Draft Central Coast Resource Management Plan Amendment and Draft Environmental Impact Statement for Oil and Gas Leasing and Development, California* which opens up the public comment period for oil and gas leasing on federal lands administered by the Central Coast Field Office. [Read more.](#)
- **BLM Lease Sale – Ohio.** (Update to 12/5/2016 Weekly Report) The BLM reports more than \$1.7 million in revenue for their mid-December lease sale in Wayne National Forest, covering 759 acres. Environmental groups protested the federal government’s auctioning of mineral rights in the southeast Ohio forest, with the BLM receiving 100 “valid” complaints calling for a stop to the leasing during its 30-day comment period. All complaints were denied by the agency, allowing the sale to proceed. [Read more.](#)
- **BLM Lease Sale – Utah.** The BLM reported it received bonus bids totaling \$192,072 for 19 parcels covering 9,049.97 acres at the quarterly oil and gas lease sale conducted online in mid-December. The BLM sold 19 of the 24 offered parcels. In addition to the bonus bids, the sale grossed \$13,581.00 in rental fees and \$3,040.00 in administrative fees, for \$208,693.00 in total receipts from this lease sale. [Read more.](#)
- **Western Governors Association.** At their mid-December winter meeting, the Western Governors Association adopted a [policy resolution](#) calling for shares of federal revenue

and royalties from oil and gas operations on public land and offshore to continue going directly to states and counties and not be reduced to offset cuts elsewhere in the federal budget. The governors also urged Congress and federal regulatory agencies to involve states earlier and more substantially in the development, prioritization, and implementation of federal environmental statutes, policies, rules, programs, reviews, budget proposals, budget processes and strategic planning. [Read more.](#)

## **FEDERAL – Judicial**

- **Leasing; Easements – Pennsylvania Federal Court.** On December 2, 2016, in [Red Bend Hunting & Fishing Club v. Range Resources – Appalachia, LLC](#) (Case No. 4:16-CV-00864), a federal judge in Pennsylvania denied a bid by the plaintiff to dismiss its lessee’s counterclaim for a declaratory judgment that the terms of the parties’ oil and gas lease governed the lessee’s site restoration requirements rather than a separate easement agreement that has since expired, concluding over the objections of the lessor that the counterclaims based on those agreements have merit, are compulsory, and satisfied federal pleading standards. [Read more.](#)
- **BLM Leasing – Utah Federal Court.** On December 13, 2016, in [EnerVest v. Jewell](#) (Case No. 2:2016-cv-01256), the Houston-based energy company filed suit against the BLM in Utah District Court for denying drilling permits in the Uinta Basin. EnerVest filed for applications for permits to drill in September 2016 expecting to start drilling in January 2017, but the BLM claimed that a new environmental assessment was required to gauge greenhouse gas emissions. EnerVest contends that an environmental impact statement finalized by BLM in 2010 sufficiently addressed air quality concerns. EnerVest estimates that BLM’s delay and inaction on the permits have already cost the company \$46 million in lost revenue and pipeline commitments. [Read more.](#) In a recent development, the federal judge in the case has ordered the BLM to issue the permits and last week the BLM complied with the judge’s order and has issued the long-delayed permits. [Read more.](#)
- **Leasing; Pooling – West Virginia Federal Court.** On December 5, 2016, in [Stern v. Columbia Gas Transmission, LLC](#) (Case No. 5:15-CV-98), a West Virginia federal judge dismissed a landowner’s claim that an oil and gas lease did not expressly authorize his lessee to pool his property with other properties and pay him proportionate royalties on any production from the unit, but the lessor’s alternative claims that the lessee engaged in bad-faith pooling survived the motion with the judge reasoning that those claims raise different issues about a lessee’s implied obligations that may require some fact development and resolution at a later stage in the proceeding. [Read more.](#)

## **STATE – Legislative**

- **Drilling Regulations – Maryland.** A Maryland legislative panel has placed a temporary hold on the state’s proposed hydraulic fracturing regulations amid sharp disagreements

over its use in the state. The rare action by the Joint Committee on Administrative, Executive and Legislative Review prevents the state's environmental department from implementing drilling bans in parts of western Maryland until February 27, giving the General Assembly time to consider the drilling practice. A state-wide moratorium on the practice is set to expire in October 2017, and there has been a push by resource development advocates, included the state's governor, to lift the bans. [Read more.](#)

- **Severance Taxes; Ad Valorem Taxes – Mississippi.** On January 3, HB 141 was introduced by Rep. Randy Boyd (R) and referred to the House Energy Committee. The bill amends current law to make changes to severance tax law providing that taxes on oil and gas shall be paid by the interest owner of those minerals, and surface owners may be exempt from paying 25 percent of ad valorem taxes, among other provisions. [Read more.](#)
- **Lake Sakakawea – North Dakota.** The North Dakota Petroleum Council (NDPC) has promoted draft legislation regarding mineral ownership and states that the State's ownership under Lake Sakakawea is limited to the historical Missouri River riverbed, and the historical Missouri River bed is defined by the Corps of Engineers survey done in connection with Garrison Dam. For more information on the draft bill please visit the [NDPC website](#) or contact Alexis Brinkman-Baxley, NDPC Government Affairs Manager at 701.223.6380. The possible bill sponsor is Senator Kelly Armstrong (R), and you can reach his office [here](#).
- **Audit Privilege Act – North Dakota.** The North Dakota Petroleum Council is also considering sponsoring an Audit Privilege bill similar to one already codified in Texas. Under the Texas Audit Act, certain documents and information gathered as part of an environmental self-audit are privileged from disclosure. The Audit Act also provides certain immunities from administrative or civil penalties for violations voluntarily disclosed and corrected within a reasonable amount of time. We will keep you updated if/when a bill is proposed/introduced in North Dakota. [Read more.](#)

## **STATE – Judicial**

- **Royalties; Class Action – Arkansas.** In December 8, 2016, in [SEECO, Inc. v. Snow](#) (Case No. CV-15-197), the Arkansas Supreme Court upheld an order certifying a class of royalty owners in Arkansas who alleged underpayment of royalties resulting from post-production cost deductions, concluding that the class plaintiffs met the test for certification and the order did not violate the state or federal constitutional due process rights of the class defendant. [Read more.](#)
- **Ballot Measure Challenge – California.** (Update to 11/14/2016 Weekly Report). Aera Energy and Chevron have filed separate lawsuits against Monterey County, alleging the passage of Measure Z will shut down oil production in the county. Measure Z – a ballot

measure banning hydraulic fracturing within the county – passed with 56 percent of the vote during last November’s election. In its complaint, Chevron says the county will be liable for millions of dollars in damages “resulting from the illegal termination of oil and gas property rights.” Proponents of the measure claim the ban does not prohibit continued operations on the existing 1,500 oil and gas wells within the county, but only bans new oil and gas wells. [Read more.](#)

- **Unit Production Proceeds – Colorado.** On December 1, 2016, in [Grant Bros. Ranch, LLC v. Antero Res. Piceance Corp.](#) (Case No. 15-CA-2063), a Colorado appellate court concluded that in the absence of a payment agreement a non-consenting landowner who is force-pooled into a unit and who is entitled to production proceeds after payout must exhaust administrative remedies in the Colorado Oil and Gas Conservation Commission, particularly as to questions of whether and when payout occurred and the final amount owed. [Read more.](#)
- **Overriding Royalty Interest – Louisiana.** On November 16, 2016, in [Encana Oil & Gas \(USA\) Inc. v. Brammer Eng’g, Inc.](#) (Case No. 51,045-CA), the Court of Appeal of Louisiana reversed a trial court’s prior order that an agent engaged to execute a lease on behalf of mineral owners could recover an agreed-upon cash bonus plus an overriding royalty for any percentage above a “standard” 1/8 royalty the agent negotiated with lessees, reasoning instead that the agreement between the parties entitled the agent to an override only if it secured one from the lessee, and having failed to do so, the agent could not claim an overriding royalty carved out of the lessor’s royalty interest as the agent claimed. [Read more.](#)
- **Leases; Royalties – Pennsylvania.** On November 21, 2016, in [Rohe v. Meehan](#) (Case No. 353 MDA 2016), the Pennsylvania Superior Court concluded that a 1954 assignment of a one-half interest in a 1949 oil and gas lease and any future leases of the same property created within the lease’s original primary term transferred a 1/16th royalty interest to the assignee, but the assignee could not claim any future royalty interests for leases covering the same property executed after the expiration of the original 10-year primary term. [Read more.](#)
- **Deeds; Royalties – West Virginia.** On November 15, 2016, in [Anderson v. Jones](#) (Case No. 15-0460), the Supreme Court of West Virginia concluded that a deed granting the “exclusive right to make and execute and deliver all such oil and gas leases ... and to receive all rentals and bonuses” (i.e., language which tends to create a mineral interest) conveyed title to the oil and gas in place while the same deed conveying to another grantee a one-eighth royalty on any oil or gas “found and produced in paying quantities” created a royalty interest. [Read more.](#)
- **Taxes; Royalties – West Virginia.** On November 18, 2016, in [Hill v. Lone Pine Operating Co.](#) (Case No. 16-0219), the Supreme Court of West Virginia denied an attempt by

surface owners to acquire title to oil and gas underlying their property by paying taxes assessed on the oil and gas, concluding that the true owners properly paid taxes on the oil and gas and they were not required to pay duplicate taxes on their related royalty interests. [Read more.](#)

### **PRESIDENTIAL TRANSITION CABINET APPOINTMENT UPDATE:**

This week we feature the current list of Trump Cabinet nominees for those agencies impacting our industry. If any of the nominees should change we'll provide further updates:

- ★ **Department of Interior Secretary: Ryan Zinke** (U.S. Representative from Montana; member of House Natural Resources Committee; former Navy SEAL)
- ★ **Department of Energy Secretary: Rick Perry** (former Texas governor; former Texas agriculture commissioner, two-time presidential candidate)
- ★ **Department of Labor Secretary: Andrew Puzder** (CEO, CKE Restaurants Inc., parent company of Carl's Jr. and Hardee's restaurants)
- ★ **Environmental Protection Agency Administrator: Scott Pruitt** (Oklahoma attorney general; former state senator)

To learn more about President-elect Trump's selections, [click here.](#)

### **INDUSTRY NEWS FLASH:**

◆ **American Petroleum Institute Releases 2017 State of American Energy Report.** On January 4, the American Petroleum Institute (API) released its [2017 State of American Energy](#) report. At a press conference for the release, API President, Jack Gerard, said the election results created a "once-in-a-generation opportunity" and the "21st century American energy renaissance offers a solution" to today's most pressing issues. Gerard said API will ask Trump administration officials and members of the 115th Congress to consider which federal regulations are unnecessary and duplicate what states are doing already, specifically mentioning onshore venting and flaring regulations that encroach on existing state enforcements. [Read more.](#)

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

**Kentucky** convened its 2017 legislative session on January 3, [WLKY](#) reports. Following victories in the November elections, Republicans control the governor's mansion and both chambers of the legislature for the first time since 1921. The party picked up 17 seats in the House for a new 64-36 advantage, and maintained their 27-11 advantage in the Senate. The House elected Rep. Jeff Hoover, R-Jamestown, as House Speaker by acclamation. Senate

President Robert Stivers, R-Manchester, was re-elected. The General Assembly holds short legislative sessions in odd numbered years, lasting 30 legislative days.

**California, Connecticut, Indiana, Kentucky, Maine, Massachusetts, Minnesota, Mississippi, Missouri, Montana, Nebraska, New Hampshire, New York, North Dakota, Ohio, Pennsylvania, Rhode Island and Vermont** are in regular session. The **District of Columbia** Council and the **United States** Congress are also in regular session.

The **District of Columbia** Council, **Michigan** and **Ohio** adjourned their 2016 legislative sessions on December 31. **Massachusetts, Wisconsin** and the **United States** Congress adjourned their 2016 legislative sessions on January 3.

**Illinois** and **New Jersey** are in recess until January 9 and are expected to adjourn their 2016 sessions that day.

The following are expected to convene their 2017 sessions on the dates provided: **Arizona, Arkansas, Georgia, Idaho, Iowa, Kansas, Puerto Rico and Washington** (January 9); **Delaware, Illinois, New Jersey, South Carolina, South Dakota, Tennessee, Texas and Wyoming** (January 10); **Colorado, Maryland, Michigan, North Carolina, Virginia, West Virginia and Wisconsin** (January 11); **Alaska and New Mexico** (January 17); **Hawaii** (January 18) and **Utah** (January 23).

**District of Columbia** Democratic Mayor Muriel Bowser has until January 10 to act on legislation from the 2016 session or it becomes law without signature. **Ohio** Republican Gov. John Kasich has until that day to act on 2016 session legislation presented after December 21 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. **Michigan** Republican Gov. Rick Snyder has 14 days from presentment to act on legislation from the 2016 session or it is pocket vetoed.

**Delaware** Democratic Gov. Jack Markell and **New York** Democratic Gov. Andrew Cuomo had acted on all legislation as of December 31. Former **North Carolina** Republican Gov. Pat McCrory had acted on all legislation from the third, fourth and fifth special sessions as of January 1, when Democratic Gov. Roy Cooper took office. **Massachusetts** Republican Gov. Charlie Baker and President Barack Obama had acted on all legislation from the 2016 session as of January 3.

The following states are currently posting bill draft requests/prefiles for the 2017 session: **Alabama** [House](#) and [Senate](#), **Arizona**, **Arkansas**, **Colorado**, **Delaware**, **Florida**, **Georgia** [House](#) and [Senate](#), **Iowa**, **Kansas** [House](#) and [Senate](#), **Maryland** [House](#), **Nevada**, **New Mexico**, **Oklahoma** [House](#) and [Senate](#) bill drafts and [prefiles](#), **South Carolina**, **Tennessee**, **Texas** [House](#) and [Senate](#), **Utah**, **Virginia**, **Washington** and **Wyoming** (draft requests appear on individual committee pages).

## Franchise Tax

**New York** [SB 138](#) was introduced by Sen. Betty Little, R-Queensbury and referred to the Senate Investigations and Government Operations 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.

**Tennessee** [SB 8](#) was prefiled on January 4. This bill would change the apportionment formula used to calculate franchise tax from a three-factor formula to a single-sales-factor formula.

This bill is sponsored by Sen. Mark Green, R-Clarksville, and would become law immediately if enacted.

## Lands

### Indian Lands

**New Mexico** [SJM 3](#) was prefiled on December 16. This resolution, sponsored by Sen. Cliff Pirtle, R-Roswell, is a request to the U.S. Congress to transfer 860 acres of land from the Lincoln National Forrest to the U.S. Department of the Interior for the use and benefit of the Mescalero Apache Tribe.

## Oil and Gas

### Leasing

**New York** [SB 548](#) was introduced by Sen. Cathy Young, R-Olean, on January 4 and referred to the Senate Local Government Committee. This bill would not allow for an increase of property value assessment when a lease or conveyance of oil and gas rights takes place unless other evidence of value such as land sale prices is available.

### Mineral Rights

**Michigan** [HB 5571](#) was delivered to Republican Gov. Rick Snyder on December 28, he has until January 11 or the bill will be pocket vetoed. This bill would authorize the state administrative board to purchase land in Calhoun County. The state would not receive the mineral rights; however, if a lessee of the property derives any revenue from the development of minerals found on the property, half the revenue must be paid to the state.

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