

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

- **BLM Methane Emissions Rule.** On January 30, Senator John Barrasso (R-WY), chairman of the Senate Committee on Environment and Public Works, and Rep. Rob Bishop (R-UT), chairman of the House Committee on Natural Resources, introduced [S. J. Res. 11](#) and [H. J. Res. 36](#) (which passed the House on February 3). These are joint resolutions of disapproval under the Congressional Review Act related to the BLM's final rule on methane emissions from oil and gas operations on federal and Indian land. According to the Senate Committee, "If enacted, the resolution would ensure that BLM's final rule has no force or effect, and that BLM cannot issue a rule that is substantially the same without subsequent authorization from Congress." [Read more.](#)
- **BLM Planning 2.0 Rule.** On January 30, Sen. Lisa Murkowski (R-AK) and Rep. Liz Cheney (R-WY) introduced disapproval resolutions, [S. J. Res. 15](#) and [H. J. Res. 44](#), in their respective chambers to overturn the BLM's Resource Management Planning rule, known as "Planning 2.0". "Planning 2.0 represents a federal power grab that ignores expert knowledge and undermines the ability of state and local governments to effectively manage resources and land use inside their own districts," said Cheney. A criticism of Planning 2.0 is that "state, local, and tribal governments, as well as interested and affected stakeholders, will be deprived of opportunities to engage in the process and influence land management decisions on the public lands they rely on." [Read more.](#)
- **National Parks Drilling.** On January 30, Rep. Paul Gosar (R-AZ) introduced [H. J. Res. 46](#), which seeks to open up more oil and gas drilling within national parks. The current rules require detailed planning and set safety standards for oil and gas drilling inside the more than 40 national parks that have "split estate" ownership, where the federal government owns the surface but not the subsurface mineral rights, but also limits resource development. [Read more.](#)
- **Endangered Species Act Listings.** On January 27, Rep. Pete Olson (R-TX) introduced [HR 717](#) to reform listings under the Endangered Species Act (ESA) by eliminating arbitrary deadlines that he said limit the Department of the Interior's ability to prioritize listing petitions properly. The current process does not allow federal agencies to prioritize these listings by targeting the most endangered species first, he explained. Federal, state, and local entities responsible for implementing ESA provisions have limited resources and should have flexibility in the listing process, Olson said. [Read more.](#)

- **National Monuments.** On January 12, Sen. Mike Crapo (R-ID) introduced [S. 132](#), the *National Monument Designation Transparency and Accountability Act of 2017*. The bill would require congressional approval of a proposed national monument, as well as certifying compliance with the National Environmental Policy Act, and determining that the State in which the proposed national monument is to be located has enacted legislation approving the designation of the proposed national monument. The purpose of the bill would be to forestall attempts, similar to the Obama administration's eleventh-hour designation for Bears Ears, to shut down oil and gas resource development on public lands by executive fiat. The bill is similar to one introduced by Sen. Lisa Murkowski in early January, [S. 33](#), which was reported on in the January 23 issue of the AAPL Governmental Affairs Weekly Report. [Read more.](#)
- **Statement of Administration Policy.** On February 1, the White House issued a Statement of Administration Policy supporting actions taken by the U.S. House of Representatives to begin to "nullify unnecessary regulations imposed on America's businesses." Specifically, [H. J. Res. 36](#), which would nullify the BLM's final rule: *Waste Prevention, Production Subject to Royalties, and Resource Conservation* ([81 Fed. Reg. 83008](#)) which imposes venting and flaring regulations on oil and gas producers; and [H. J. Res. 41](#), which would nullify the final rule, *Disclosure of Payments by Resource Extraction Issuers* ([81 Fed. Reg. 49359](#)), which requires publicly traded companies engaged in resource extraction to report payments made to foreign governments for the commercial development of oil, natural gas, and minerals. [Update:](#) H. J. Res. 41 passed the House on February 1 and the Senate on February 3. The measure now moves to President Trump for signature. [Read more.](#)

FEDERAL – Regulatory

- **BLM Resource Advisory Council Meeting – Utah.** The BLM has announced a meeting of the Utah Resource Advisory Council ([82 Fed. Reg. 9220](#)). The meeting agenda includes an update on the BLM's Planning 2.0 rule, discussion of implementation of the greater sage-grouse plans, and updates on resource management planning efforts and major projects. A field tour of the Red Cliffs National Conservation Area is scheduled to follow the meeting. The meeting is scheduled for Feb. 23-24, 2017, in St. George, Utah. [Read more.](#)

FEDERAL – Judicial

- **Royalties – D.C. Federal Court.** On January 31, in *Continental Resources, Inc. v. Jewell* (Case No. 15-5333), the U.S. Court of Appeals for the D.C. Circuit delivered some good news to Continental in a dispute over additional royalties supposedly owing to the federal government. The Court said Continental Resources Inc. could fight a \$1.7 million royalty charge for gas produced from federal leases in Wyoming, reversing a lower court ruling that upheld the U.S. Department of the Interior's conclusion that the driller waited too long to challenge the agency's decision. [Read more.](#)

STATE – Legislative

- **Drilling Notice; Application Requirements – Kansas.** On January 26, the House Committee on Water and Environment introduced HB 2189, a bill that imposes new requirements in the application to drill process, including showing the location and relative distances of all proposed wells, structures on the surface property involved, and water wells on the surface property involved, as well as proof of right to enter on the surface property where the proposed wells are to be drilled. The bill also establishes minimum setback and notice requirements, among other provisions. [Read more.](#)
- **Mineral Estates – Mississippi.** On January 31, HB 1252, introduced by Rep. Michael Evans (D), died in committee. The bill would have provided that mineral estates separated from the surface estate would revert to the surface estate owner after 10 years of nonproduction. [Read more.](#)
- **Severance Taxes – Mississippi.** On January 31, HB 141, introduced by Rep. Randy Boyd (R) died in committee. The bill would have provided that severance taxes on oil and gas would be paid by the interest owner of the oil and gas, regardless of whether the interest owner resided in the state. [Read more.](#)
- **Mineral Estates – Mississippi.** On January 31, HB 661, introduced by Rep. Randy Boyd (R) died in committee. The bill would have provided that mineral estates separated from the surface estate would revert to the surface estate owner after 20 years of nonproduction. [Read more.](#)
- **Oil and Gas Act – New Mexico.** On February 1, SB 307 was introduced by Sen. Richard Martinez (D). The bill would amend current law relating to certain penalties and violations of the Oil and Gas Act. [Read more.](#)
- **Hydraulic Fracturing Ban – South Dakota.** On February 2, HB 1181 was introduced by Rep. Shawn Bordeaux (D). The bill would ban hydraulic fracturing in the state. Given the Republican-majority legislature, and Republican governor, the prospect of this Democratic bill moving forward is unlikely. [Read more.](#)
- **Mineral Ownership – South Dakota.** On January 24, HB 1081 was introduced by Rep. Timothy Johns (R). The bill amends current law to allow an entity or party who holds an interest in a particular tract of land to petition a court in the county where the land is situated to establish a trust in favor of an unlocated or unidentified mineral owner, and provides the procedures for administering such a trust. [Read more.](#)
- **Uniform Unclaimed Property Act – Tennessee.** On February 2, HB 420 was introduced by Rep. Andrew Farmer (R). The bill sets forth provisions for how abandoned property,

including mineral rights, would be addressed by apparent owners and those claiming an interest. The Senate version of this bill, [SB 371](#), was also introduced on February 2. [Read more.](#)

- **Easements – Texas.** On January 19, HB 1135 was introduced by Rep. Paul Workman (R). The bill relates to requirements for acquisition of a conservation easement and its application to eminent domain actions by a state enforcing entity. [Read more.](#)
- **Land Use – Texas.** On January 19, HB 1168 was introduced by Rep. Poncho Nevarez (D). The bill relates to the mineral use of land that has been subdivided for energy development resulting in the generation of electricity. [Read more.](#)
- **Unit Operations – Texas.** On January 25, SB 177 was introduced by Sen. Van Taylor (R). The bill relates to unit operations for oil, gas, or oil and gas production from depleting reservoirs or carbon dioxide storage. [Read more.](#) Companion bills to this measure are [HB 3313](#) and [SB 118](#), both refiled from the previous legislative session.
- **Eminent Domain Reporting – Texas.** On February 1, SB 379, prefiled by Sen. Charles Perry (R) last year, was referred to the State Affairs Committee on February 1. The bill would impose certain penalties for noncompliance with certain eminent domain reporting requirements. [Read more.](#)
- **Ad Valorem Taxes – Texas.** On February 1, SB 403, prefiled by Sen. Lois Kolkhorst (R) last year, was referred to the Finance Committee on February 1. The bill would put a temporary prohibition on increasing market value of certain real property if the market value of the property as determined by the chief appraiser is reduced by at least 15 percent. [Read more.](#)
- **Railroad Commission – Texas.** On January 20, SB 568 was introduced by Sen. Jose Rodriguez (D). The measure is the companion bill to [HB 247](#) pre-filed last year by Rep. Rafael Anchia (D) with no action yet taken. Both measures would require the Railroad Commission to post certain enforcement information on its website. [Read more.](#)
- **Right of Entry; Eminent Domain – Virginia.** On February 1, HB 2124 was introduced by Del. Randy Minchew (R). The bill would amend current law to add a new fourth provision (italicized) in connection with any project wherein the power of eminent domain may be exercised, [by] any locality or any petitioner exercising the procedure set forth in Sec. [25.1-300](#), acting through its duly authorized officers, agents or employees, may enter upon any property without the written permission of its owner if (i) the petitioner has requested the owner's permission to inspect the property as provided in subsection B, (ii) the owner's written permission is not received prior to the date entry is proposed, and (iii) the petitioner has given the owner notice of intent to enter as

provided in subsection C, and (iv) the petitioner complies with the payment provisions contained in subsection E. Subsection E of the amended law details the requirements for “just compensation” [Read more](#).

- **Employee Classification – Wyoming.** On February 2, HB 1300, a bill introduced in late-January was considered in the House Committee on Labor & Workplace Standards. The bill sets definitions for determining who is an independent contractor or employee and sets forth the process for addressing misclassification. While the bill is not specific to landman, it does set forth conditions under which one may claim to be an independent contractor. [Read more](#).
- **Division and Transfer Orders – Wyoming.** On January 19, HB 178 was introduced by Rep. Tom Walters (R). The bill provides that if the party responsible for sending any division order to an interest owner pursuant to current law fails to send the division order in accordance with that law, that party is liable to the interest owner in the amount of one hundred dollars for each month that the division order is not provided to the interest owner subsequent to the payment due date. The bill also sets an effective date and prescribes certain information to be included in the division order. [Read more](#).

STATE – Judicial

- **Assignments; Overriding Royalties – Wyoming.** On February 1, in *Questar Exploration and Production Co. v. Rocky Mountain Resources, LLC* (Case No. 2017 WY 10), the Wyoming Supreme Court overruled the district court decision which held that the State lease assignment form contained an anti-washout provision and when a subsequent lease was issued by the State the four percent overriding royalty interest extended to the subsequently issued lease. The Supreme Court disagreed and held that the language in the State assignment form did not contain any such anti-washout provision and thus the overriding royalty interest did not attach to the subsequent lease. [Read more](#).
- **Tax Sale; Notice Requirements – Utah.** On January 10, in the Utah Supreme Court case, *Jordan v. Jensen* (Case No. 2017-UT-1), the record mineral interest owners challenged a tax sale because they had not received notice. The Court held that the county’s failure to provide notice violated the interest owners’ due process rights thus invalidating the sale. The Court held the tax title was void to the extent that it purported to convey the mineral interest. [Read more](#).

INDUSTRY NEWS FLASH:

◆ **Oil production on the rise again.** The U.S. Energy Information Administration reports that U.S. crude output rose for the second consecutive month in November. “While the government data is from November, weekly rig reports from driller Baker Hughes suggest that U.S. crude output has continued [to] rise since then. The number of active oil rigs has climbed for 12 of the past 13 weeks.” [Read more.](#)

◆ **Trump suggests using energy royalties to fund infrastructure projects.** President Trump has pitched using royalties from domestic energy production on federal lands to help fund new infrastructure projects. Currently, much of the royalty revenue from federal energy leases goes to states and a reclamation fund, but key lawmakers said the plan is feasible. “Theoretically it can be done,” U.S. Rep. Rob Bishop (R-UT), chairman of the House Natural Resources Committee, said last week. “Congress has to be involved,” he added, with lawmakers needing to authorize using royalties for a particular purpose. [Read more.](#)

◆ **North Texans for Natural Gas expands reach.** North Texans for Natural Gas is expanding its focus statewide, and changing its name to [Texans for Natural Gas](#). The advocacy group fights activists protesting oil and gas development in Texas. It started in Dallas and has added 220,000 members, including “significant membership” in the Permian Basin, South Texas and along the Gulf Coast. [Read more.](#)

◆ **Push for Maryland Hydraulic Fracturing Ban.** On February 2, Real Clear Energy offered readers an op-ed on the push to ban hydraulic fracturing in Maryland once the current moratorium expires in October 2017, and why such a ban is based on bad science. [Read more.](#)

State-by-State Legislative Session Overview

Louisiana Democratic Gov. Jon Bel Edwards has announced that he intends to call a special session for February 13-23 to address the fiscal year 2017 budget deficit, [The National Law Review](#) reports.

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, Oregon, Pennsylvania, Rhode Island, South Carolina, South Dakota, Tennessee, Texas, Utah, Vermont, Virginia, Washington, West Virginia, Wisconsin and Wyoming are in regular session. The **District of Columbia** Council, **Puerto Rico** and the **United States** Congress are also in regular session.

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

Nevada and **Oklahoma** are expected to convene on February 6 and **Alabama** is expected to convene on February 7.

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

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

Endangered Species

Arizona [SCM 1001](#) passed the Senate on February 1. This resolution urges the U.S. Congress to take action to repeal final rules expanding the definition of critical habitat and would require the Arizona secretary of state to bring this resolution to the president, the Senate president, the House speaker and every member of congress from Arizona.

Arizona [SCM 1009](#) was read in the Senate for a second time on February 1. This resolution urges the director of the U.S. Fish and Wildlife Service to delist the gray wolf from the endangered species act and would require the Arizona secretary of state to bring this resolution to the president, the Senate president, the House speaker and every member of congress from Arizona.

Washington [HB 1872](#) was introduced and referred to the House Agriculture and Natural Resources Committee on February 1. This bill prohibits the Fish and Wildlife Commission from designating or maintaining a designation for the gray wolf as an endangered, threatened, or sensitive species in a county east of the crest of the Cascade mountains that shares a border with Canada. This bill is sponsored by Rep. Joel Kretz, R-Wauconda.

Franchise Tax

New York [SB 138](#) passed the Senate Investigations and Government Operations Committee on January 31 and was sent to the Senate Finance 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 Assembly companion, [AB 1874](#), is pending in the Assembly Ways and Means Committee.

Tennessee [HB 65](#) was introduced and referred to the House Government and Operations Committee and the House Finance, Ways and Means Committee on February 1. 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.

Tennessee [SB 8](#) was referred to the Senate Finance, Ways and Means Committee on January 30 and the Senate Revenue Committee's subcommittee on January 31. 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.

Landmen

Employee Classification

Texas [HB 1304](#) was filed for introduction on January 26. Sponsored by Rep. Oscar Longoria, D-Mission, this bill would set penalties for employers who fail to properly classify people as employers and independent contractors. The penalty would be up to \$200 per employee if the employer is found to be in violation. If this bill is enacted, it would take effect on September 1, 2017.

Executive action was taken on **Washington [HB 1300](#)** in the House Labor and Workplace Standards Committee and the bill passed committee with a [substitute](#). 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 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 introduced, read for the first time and referred to the Senate Commerce, Labor and Sports Committee on January 27. 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. This bill is sponsored by Sen. David Frockt, D-Seattle.

Lands

Leasing

New York [AB 4062](#) was introduced on February 1 by Asm. Linda Rosenthal, D-Manhattan, and referred to the Assembly Judiciary Committee. This bill would require that all individuals involved who hold a title to a piece of property must sign the same lease, including oil and gas leases, for it to be legitimate. This bill would also require that all ratifications of gas, oil or mineral leases be subjected to the three day cancellation clause already afforded to landowners who enter into these types of leasing contracts.

Oil and Gas

Oil and Gas General

Montana [SB 93](#) passed the Senate Energy and Telecommunications Committee on February 1 with amendments. This bill would require oil and gas developers and operators to give notice upon completion of their operation to the owner of an occupied dwelling within 990 feet of a borehole, amended from 660 feet of a borehole.

This bill is sponsored by Sen. Tom Richmond, R-Billings.

DISCLAIMER: Links and/or information from non-governmental sources provided in this report may be among the many sources available to you. This report does not endorse nor advocate for any particular attorney or law firm, or other private entity, unless expressly stated. Any legal information contained herein is not legal advice. Links are provided for reference only and any cited outside source information is derived solely from material published by its author for public use.