

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

- **H.R. 3354 – Department of the Interior, Environment, and Related Agencies Appropriations Act, 2018.** (Update to 7/24/17 Weekly Report) On July 21, Rep. Ken Calvert (R-CA), Chairman of the Interior and Environment Appropriations Subcommittee, introduced [H.R. 3354](#), the *Department of the Interior, Environment, and Related Agencies Appropriations Act, 2018*. The bill would make appropriations for the Bureau of Land Management (BLM), U.S. Forest Service, and Environmental Protection Agency (EPA), and related agencies for the upcoming fiscal year. The measure includes \$8.3 million for support of “Landsat 9”, a satellite program that provides land measurements that are “important to local communities for agriculture, forestry, energy and water resource decisions.” The bill also provides \$7.5 and \$1.2 billion to the EPA and BLM, respectively, reflecting cuts to both agencies from fiscal year 2017. [Read more.](#)

FEDERAL – Regulatory

- **BLM Hydraulic Fracturing Rule Rescission.** On July 24, the Bureau of Land Management (BLM) published its Proposed Rule, *Oil and Gas; Hydraulic Fracturing on Federal and Indian Lands; Rescission of a 2015 Rule* ([82 Fed. Reg. 34464](#)), which seeks to “rescind, in its entirety” an Obama-era regulation, *Oil and Gas; Hydraulic Fracturing on Federal and Indian Lands* ([80 Fed. Reg. 16128](#)), which governed hydraulic fracturing on federal land. Trump officials say the Obama regulation is largely duplicative of state and tribal standards, and would cost the oil and gas industry up to \$45 million a year to comply. The 2015 regulation set standards in areas such as disclosure of hydraulic fracturing chemicals and integrity of well casing. The rule’s enforcement has been on hold since last July when a Wyoming federal judge overturned it, ruling that the BLM does not have the authority to regulate hydraulic fracturing at all. The Obama administration appealed that decision, but the case is now on hold due to the Trump administration’s reconsideration of the rule. Public comments will be accepted until September 25, 2017. [Read more.](#)
- **Interior Department Deputy Secretary Confirmed.** On July 24, the U.S. Senate approved David Bernhardt as deputy secretary of the Interior Department, despite opposition from Democrats and environmental groups. Bernhardt’s supporters called him an experienced and knowledgeable nominee for the position, noting his work on an array of issues within Interior’s portfolio, including energy development, conservation and tribal affairs. Bernhardt formerly served the agency as solicitor, the third-ranking position at the department, and as a legal officer, under President George W. Bush.

After leaving the Bush administration, Bernhardt worked as chairman of the natural resources law practice at Brownstein Hyatt Farber Schreck. A spokeswoman for Interior Department head Ryan Zinke said the secretary was “excited to have David Bernhardt, a highly-qualified, veteran official, return to the department to help advance ‘America First’ policy priorities” set by President Trump. [Read more.](#)

FEDERAL – Judicial

- **BLM Hydraulic Fracturing Rule – 10th Circuit Court of Appeals.** On July 27, in *Wyoming v. Zinke* (formerly *Jewell*) (see case background here: [Case No. 16-8068](#)) the Trump administration asked three federal appeals court judges to hold off on a decision regarding a major federal hydraulic fracturing rule implemented by the Obama administration. The BLM rule, which would have required drilling companies to disclose what chemicals they use in the drilling process, was put on hold last year after Wyoming District Court judge Scott Skavdahl, an Obama-appointee, held that the BLM had no authority to set such a rule, thus putting a hold on its implementation pending the now-ongoing appeal. In a 10th Circuit Court of Appeals hearing last Thursday, government lawyers asked the court to leave the district court’s current ruling in effect until a new rule is implemented, or rescinded, as the Trump administration is not in favor, and does not seek implementation, of the Obama-era rule. [Read more.](#) (See also, the “Federal Regulatory” section above for more on the existing rule and rulemaking proposal to rescind the rule.)
- **Farmout Agreements – Kentucky Federal Court.** On July 19, in *EQT Production Co. v. Magnum Hunter Production Co.* (Case No. 5:16-cv-150-JMH), the U.S. District Court for the Eastern district of Kentucky held that that royalties payable on “oil and/or gas” in various farmout agreements did not include natural gas liquids (NGLs) and therefore the farmee did not owe royalties on the sale of NGLs. Specifically, the farmout agreements allowed Magnum Hunter to drill wells on lands owned or leased by EQT and sell oil and/or gas produced from those wells. In exchange, EQT would receive a royalty, amounting to a percentage of “8/8 of the gross proceeds received from the sale of oil and/or gas produced from wells drilled hereunder without deductions of any kind.” EQT had asked the court to find that NGLs qualified as “oil and/or gas” within the meaning of the farmout agreements. However, the Court held that because the farmout agreement definition of “gas well” does not contemplate the production of NGLs from the subject wells, the royalty provisions requiring Magnum Hunter to pay a percentage of the proceeds from the sale of “oil and/or gas” did not apply to the NGLs. [Read more.](#)
- **Local Ordinances – Third Circuit Court of Appeals (Pennsylvania).** On July 17, in [Seneca v. Highland Township](#) (Case No. 16-3592), the U.S. Court of Appeals for the Third Circuit, on appeal from the U.S. District Court for the Western District of Pennsylvania, held that environmental groups could not intervene to defend a so-called “Community Bill of Rights” ordinance that banned wastewater injection wells after the municipality withdrew the

ordinance. The Court concluded that the township's withdrawal of the measure rendered any defense of it moot and therefore rendered intervention unnecessary. [Read more.](#)

STATE – Legislative

- **Lease Assignments – California.** On July 24, AB 1472 was vetoed by Democratic Gov. Jerry Brown. Existing law gives the State Lands Commission control over certain public lands. With respect to oil, gas, and mineral leases, the assignment, transfer or sublet of public lands to another person is subject to approval by the commission and certain provisions apply. In considering the approval of a transfer of assignment on public lands, this bill would have authorized the commission to consider whether the proposed assignee is likely to comply with all provisions of the lease for the duration of the lease term. [Read more.](#) Access the Governor's [veto message here.](#)
- **Severance Tax – Pennsylvania.** On July 26, Republicans, who control the Pennsylvania Senate, agreed to a plan to close a \$2 billion hole in the state budget with a new severance tax on natural gas production, among a mix of new taxes and borrowing. Senate Majority Leader Jake Corman says the severance tax is expected to raise about \$100 million each year. For their part, House Republicans have been trying for weeks to avoid the taxes but were unable to come up with a solution to address the massive budget deficit. The effective tax rate for the 2017-2018 fiscal year would be two cents per thousand cubic feet, although the annual tax rate may range from 1.5 cents to 3.5 cents. That would raise significantly less money than what Democratic Governor Tom Wolf had originally sought. In February, he proposed a 6.5 percent tax on the value of the production. In exchange for approval of the severance tax, Republicans were offered a proposal that places more state environmental oversight in the hands of private entities. “No one’s going to be happy with this proposal, so we said we wanted significant regulatory reforms before we’d consider any type of severance [tax],” said Senate Republican spokeswoman Jennifer Kocher. “We felt there needed to be consistency and predictability for the industry.” The [tax code amendment](#) includes provisions that allow for the automatic approval of certain air quality and natural gas permits that are not denied within the statutory time frame. It also requires the state Department of Environmental Protection (DEP) to review its permit backlog and create a system where third parties could take over responsibility for reviewing various kinds of permits designed to curb pollution. A third provision would set up a committee, comprised mostly of legislative appointees, with the power to reject new permits and revisions proffered by the DEP. However, the severance tax faces an uncertain future in the House, where Republicans have been widely opposed to the tax. “House members will have ‘questions and concerns’ about the Senate plan,” said House Republican spokesman Stephen Miskin. He said “the Senate plan was not shared with or agreed to by House leaders prior to passage, so a review of what’s actually in these bills is necessary.” Miskin said there’s [no timetable for the House](#) to take up the legislation. [Read more.](#)

STATE – Judicial

- **Mineral Owner Liability – North Dakota.** On July 12, in *Mosser v. Denbury Res., Inc.* (Case No. 20160379), the North Dakota Supreme Court held that a surface owner has a right to recover from a mineral owner that uses the pore spaces in the subsurface for saltwater disposal. In this case, the plaintiffs sued Denbury for saltwater disposal into their pore space, alleging claims for nuisance, trespass and damages under the Oil and Gas Production Damage Compensation Act. Denbury argued that it had the right to dispose of saltwater into the pore space without providing compensation. The Court, however, held that the term “land” as used in the Act encompasses the pore space and thus the plaintiffs were entitled to compensation, noting that the “plain language of that statute is not limited to whether the owner of a surface estate is currently using or planning to use the pore space in the near future. Rather, the statutory language requires the mineral developer to pay the surface owner for ‘lost land value, lost use of and access to the surface owner’s land, and lost value of improvements.’” [Read more.](#)
- **State Oil and Gas Proceeds; Environmental Conservation – Pennsylvania.** On June 20, in *Pennsylvania Environmental Defense Foundation v. Commonwealth* (Case No. 10 MAP 2015), the Pennsylvania Supreme Court ruled that proceeds from oil and gas drilling on state land must be spent on environmental conservation, and the funds collected for the state’s Oil and Gas Lease Fund could not be used for purposes other than protections for the state’s public natural resources. This landmark decision overrules a 40-year-old balancing test interpreting the [Environmental Rights Amendment](#) (Article 1, Section 27) to the state constitution, which employed a less robust interpretation of that amendment and allowed oil and gas funds, at times, to be allocated for other state purposes. “You have a majority of the Pennsylvania Supreme Court that is now saying that the text of Article 1 Section 27, and the public trust responsibilities imposed by that text, binds the state of Pennsylvania and limits the way in which the state of Pennsylvania manages its public natural resources,” said John Dernbach, an environmental law professor at Widener University. “That has never been said before by a majority of the Pennsylvania Supreme Court.” [Read more.](#)

INDUSTRY NEWS FLASH:

◆ **U.S. crude oil production to reach record high in 2018.** (*PennEnergy*, 7/25/2017) The U.S. Energy Information Administration’s (EIA) latest [Short-Term Energy Outlook](#) reports that domestic crude oil production is expected to average 9.3 million barrels per day (b/d) in 2017, up 0.5 million b/d from 2016. In 2018, EIA expects U.S. crude oil production to reach an average of 9.9 million b/d, which would surpass the previous record of 9.6 million b/d set in 1970. The EIA also forecasts “that most of the growth in U.S. crude oil production through the end of 2018 will come from tight rock formations within the Permian region in Texas” and the Gulf of Mexico. [Read more.](#)

State-by-State Legislative Session Overview

According to [NASBO](#), as of July 17, 46 states have enacted budgets for fiscal year 2018. In **Oregon**, most agency spending bills have been approved and Democratic Gov. Kate Brown is reviewing a few appropriation bills. A continuing resolution is covering the remaining agencies. In **Connecticut**, **Rhode Island** and **Wisconsin** a budget has not yet been finalized. Rhode Island and Wisconsin have statutory continued budget authority in place until a new budget is enacted. At least 10 states have met, or are currently meeting, in special sessions to resolve budget differences.

Massachusetts, **New Jersey**, **Ohio** and **Wisconsin** are in regular session. The **District of Columbia** Council, **United States** Congress and **Puerto Rico** are also in regular session.

Maine is in recess until August 2 and is expected to consider remaining gubernatorial vetoes and adjourn that day. **Michigan** is in recess until August 16. **California** is in recess until August 21. **Pennsylvania** is recessed to the call of the chair, [WSKG](#) reports.

Texas convened a special session on July 18. Republican Gov. Greg Abbott has included a broad list of legislative topics in the special session agenda, which can be found [here](#). **Alaska** convened its third special session on July 27 and **Illinois** convened a special session the same day.

Washington adjourned its third special session on July 20, [The Seattle Times](#) reports. **Connecticut** held a one-day veto session on July 24. **Missouri** adjourned its second special session on July 26, [KCUR](#) reports.

North Carolina is expected to convene a special session on September 6 to redraw state legislative and congressional district maps.

North Carolina Democratic Gov. Roy Cooper has until July 30 to act on legislation or it becomes law. **Washington** Democratic Gov. Jay Inslee has until August 9 to act on legislation from the special sessions or it becomes law. **Oregon** Democratic Gov. Kate Brown has until August 18 to act on legislation or it becomes law. **Alaska** Independent Gov. Bill Walker has 15 days, Sundays excepted, to act on legislation from the regular and special sessions or it becomes law. **Connecticut** Democratic Gov. Dannel Malloy has 15 days from presentment to act on legislation or it becomes law. **Delaware** Democratic Gov. John Carney has 10 days, Sundays excepted, to act on legislation or it becomes law. **Missouri** Republican Gov. Eric Greitins has 45 days from presentment to act on legislation from the second special session or it becomes law. **New Hampshire** Republican Gov. Chris Sununu has five days, Sundays excepted, to act on legislation or it is pocket vetoed. **New York** Democratic Gov. Andrew Cuomo has 10 days from presentment, Sundays excepted, to act on legislation from the regular and special sessions or it becomes law. **Rhode Island** Democratic Gov. Gina Raimondo has six days, Sundays excepted, to act on legislation or it becomes law. **South Carolina** Republican Gov. Henry McMaster has until two days after the next meeting of the legislature to act on regular session legislation presented after May 6 and special session legislation or it becomes law.

Missouri Republican Gov. Eric Greitins had acted on all regular session legislation as of July 28.

The following states are currently holding interim committee hearings: [Alabama](#), [Arizona](#), [Arkansas](#), [Colorado](#), [Connecticut](#), [Delaware](#), [Florida](#), [Georgia House](#) and [Senate](#), [Hawaii](#), [Idaho](#), [Illinois House](#) and [Senate](#), [Indiana](#), [Iowa House](#) and [Senate](#), [Kansas](#), [Kentucky](#), [Louisiana](#), [Maryland](#), [Minnesota](#), [Mississippi House](#) and [Senate](#), [Missouri House](#) and [Senate](#), [Montana](#), [Nebraska](#), [New Hampshire House](#) and [Senate](#), [New Mexico](#), [New York House](#) and [Senate](#), [North Dakota](#), [Oklahoma](#), [South Carolina House](#) and [Senate](#), [South Dakota](#), [Tennessee](#), [Texas House](#) and [Senate](#), [Utah](#), [Vermont](#), [Virginia](#), [Washington](#) and [Wyoming](#).

The following states are currently posting bill drafts/prefiles for the 2018 session: [Arkansas](#), [Georgia](#), [Kentucky](#), [Maine](#), [Montana](#), [Nebraska](#), [North Dakota](#), [Oklahoma House](#) and [Senate](#), [Utah](#) and [Wyoming](#).

Lands

Public Lands

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