

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

- **S. 1460 – Energy and Natural Resources Act of 2017.** On June 28, U.S. Senators Lisa Murkowski (R-AK), Chairman of the Energy and Natural Resources Committee, and Maria Cantwell (D-WA) introduced broad, bipartisan energy legislation, [S. 1460](#), also known as the *Energy and Natural Resources Act of 2017*. The bill is substantially similar to energy legislation from last year that was approved by the Senate in April 2016, but died during conference with the House. Within the comprehensive 891-page bill, provisions relevant to the landman industry include a directive for the Department of the Interior to establish a pilot program with at least 2,000 oil and gas drilling spacing units to identify and implement ways to streamline the review and approval of Applications for Permits to Drill (Section 3104); the establishment of a Quadrennial Energy Review Task Force to “provide an integrated view of important national energy objectives and Federal energy policy” (Section 4208); and a requirement that the Bureau of Land Management coordinate with states, at their request, to consider the costs and benefits of rulemaking and processes for the measurement of oil and gas production activities and other operational activities (Section 4301). [Read more.](#)

FEDERAL – Regulatory

- **BLM Lease Sale – Utah.** The Bureau of Land Management (BLM) in Utah has completed its [environmental analysis](#) on a plan to offer 98,639 acres for potential oil and gas development on 79 parcels in western and central Utah, some near Dinosaur National Monument, in their December 2017 lease sale. Environmental groups are most concerned about those areas on the western boundary of the Monument and the Green River District Entrance Road in Jensen, as well as those located near the Canyon Visitor Center in Dinosaur, Colorado, just across the Utah state border. Kathleen Sgamma, president of the Western Energy Alliance, which represents independent oil and gas producers, said she believes the BLM's environmental analysis of the proposal addresses the concerns and said “environmental groups always raise objections to potential oil and gas development on public lands.” The BLM is accepting [public comments](#) on the proposed leasing until July 24. [Read more.](#)
- **BLM Lease Sale Results.** The BLM's Wyoming, Eastern States, Montana/Dakotas, Utah, Nevada, New Mexico and Colorado state offices sold a combined 175 parcels at their most recent quarterly oil and gas lease sales, totaling approximately 128,483 acres and netting \$8,157,900 in total bonus bids. Notably, the BLM's New Mexico office had

the largest single total with nearly \$3.5 million for parcels in Texas and Oklahoma. [Read more.](#)

- **BLM Proposed Drilling – Colorado.** The BLM is seeking public comment on an amended [environmental assessment](#) and proposal to drill 108 wells south of Palisade and west of grand Mesa in Colorado. The BLM had issued an environmental assessment for the project in 2014, but then received a request for a state director review from the Western Colorado Congress, Citizens for Clean Air, and the Western Environmental Law Center acting on behalf of Citizens for a Healthy Community. The BLM then determined the project can't occur without the wells being subject to some sort of hydraulic fracturing or acid wash completion process, and that required more analysis of potential impacts on air and water quality, traffic, and water use. The public comment period is open until July 28. [Read more.](#)

FEDERAL – Judicial

- **Royalties – Delaware Federal Bankruptcy Court.** On June 15, in *In re Samson Resources Corp.* (Case No. 15-11934), the U.S. Bankruptcy Court in the District of Delaware denied claims by heirs of royalty owners for an accounting of \$100 million in royalties on production from property within a production unit. In applying relevant Texas law, the Court concluded that a royalty owner could only be entitled to royalties based on a specific lease pooled into the production units and that the royalty owners executed division orders for specific royalty payments and therefore the royalty owners were bound by the division order until revoked – which never occurred. [Read more.](#)
- **Royalties; Leasing – Pennsylvania Federal Court.** On June 12, in [Canfield v. Statoil USA Onshore Properties Inc.](#) (Case No. CV 3:16-0085), the U.S. District Court for the Middle District of Pennsylvania issued an [Order](#) denying a request from the plaintiff class of royalty owners asking the court to reconsider an order denying their challenge to the sale of gas “at the well” as a “sham” transaction. The Court noted that although the royalty owners can pursue a claim for breach of the implied marketing covenant, they could not state any viable claims that the affiliated entities engaged in any wrongdoing by using indices to establish wellhead sales prices on which royalties would be calculated. [Read more.](#)

STATE – Legislative

- **Severance Taxes – Louisiana.** (Update to 4/17/17 Weekly Report) On June 26, Gov. John Bel Edwards (D) signed [HB 461](#) into law. The Act provides for severance tax exemptions for certain inactive and orphan wells. [Read more.](#)
- **Royalties – Pennsylvania.** On June 26, HB 1624 was introduced by Rep. Madeleine Dean (D). The bill would mandate minimum royalties be paid on unconventional oil or gas

well proceeds and allows for certain tax credits related to the unconventional gas well fee on stripper wells. [Read more.](#)

- **Severance Tax – Pennsylvania.** On June 28, [HB 1625](#) was introduced by Rep. James Santora (R). According to the sponsor’s memorandum, the bill creates a variable rate severance tax between 3% and 5% depending upon the average Pennsylvania hub price for the prior calendar year. This legislation “maintains our important impact fee so that we can continue to provide the important local shares from this industry. However, my initiative allows producers a dollar for dollar credit for impact fee payments against their tax liabilities so that we are careful not to over burden our important job creators.” On the same date, Rep. Nick Miccarelli (R) introduced HB 1626. That bill also introduces a severance tax and would provide for a tax rate between 3.5% and 7% of the value of the gas, adjusted annually. The annually adjusted rate shall be determined by dividing the average Pennsylvania hub price by the average among the NYMEX and Henry Hub prices. The “legislation also allows producers to subtract their Unconventional Well Impact Fee payments from their severance tax liability so that we can continue to provide for the many important impact fee programs. Finally, all proceeds from this new severance tax will benefit the Commonwealth’s General Fund.” Gov. Tom Wolf (D), who failed to impose his proposed 6.5% severance tax during last year’s budget, is once again calling for the tax in light of a multi-billion-dollar budget shortfall. [Read more.](#) The Marcellus Shale Coalition, among others, has come out strongly against a severance tax to close any budget shortfalls. “Pennsylvania’s unique tax on natural gas – called the impact fee – continues to be a policy solution that’s working as designed, directly benefitting communities in all 67 counties throughout the Commonwealth,” said David Spigelmyer, president of the industry group. “We understand the budget challenges that Pennsylvania faces, but proposals to enact even higher energy taxes – along with even more costly and unnecessary regulations – hurt the Commonwealth’s competitiveness and our state’s ability to attract job-creating investment.” [Read more.](#)

STATE – Judicial

- **Leasing – Ohio.** On June 1, in *Bohlen v. Anadarko E&P Onshore, L.L.C.* (Case No. 2015-0187), the Ohio Supreme Court affirmed an appellate court ruling in favor of the lessee in a case where a lessor challenged the validity of a lease, seeking termination, when the lessee failed to make minimum annual rental or royalty payments. The Court held that the provision in the lease requiring the lessee to pay \$5,500 annually did not invoke the termination provision in the unrelated delay-rental clause and the lease did not qualify as a no-term, perpetual lease, and therefore, the lease was not void as against public policy as claimed by the lessor. [Read more.](#)
- **Permitting – Pennsylvania.** On June 12, in *United Refining Co. v. Pennsylvania Department of Environmental Protection* (Case No. 1321 CD 2016), the Pennsylvania

Commonwealth Court affirmed a decision by the state Environmental Hearing Board that upheld a permit issued by the Pennsylvania Department of Environmental Protection (PADEP) for an oil and gas well with drilling underlying an oil refinery. The Court held that the refinery did not meet its burden of proof and cited a lack of evidence on the refinery's part to support its claims that PADEP acted arbitrarily or abused its discretion in approving the permit. [Read more.](#)

- **Royalties; Leasing – Texas.** (KRCL *Energy Law Today*, 6/28/17) On June 23, in [Samson Exploration LLC v. T.S. Reed Properties Inc.](#) (Case No. 15-0886), the Texas Supreme Court addressed the circumstance in which a well is situated within not just one pooled unit, but instead within two overlapping units. The operator, Samson Exploration, paid royalties from the well to interest owners from one of the units, to the exclusion of the other. The royalty owners from the second unit, who had gone unpaid, argued that although Samson may have struck a poor bargain by including a single well in multiple units that this was the deal they made. In its unanimous opinion, the Supreme Court, in affirming a decision from the Ninth Court of Appeals in Beaumont, sided with the royalty owners. [Read more.](#)
- **NPRIs; Mineral Deeds – Texas.** (KRCL *Energy Law Today*, 6/26/17) On June 23, in [Wenske v. Ealy](#) (Case No. 16-0353), the Texas Supreme Court decided the issue of whether the language of a mineral deed passed the entire burden of an outstanding non-participating royalty interest (NPRI) to the grantees or whether the NPRI proportionately burdened the grantor's reserved interest. The trial court concluded that the deed burdened both parties with an outstanding NPRI. And it ruled that the parties must share the burden of the NPRI in proportion to their respective fractional mineral interests. The Court of Appeals affirmed the trial court decision. Here, the Supreme Court upheld the lower court holdings but clarified that the parties' intent decides the case, which, according to *Energy Law Today*, has the "potential to open the floodgates to a large volume of new litigation challenging the allocations of royalty burdens among mineral lessors." However, the Supreme Court somewhat disagrees with such a dire warning, and noted that "we do not hold that all conveyances of a fractional mineral interest subject to an outstanding NPRI will, by default, result in the various fractional-interest owners being proportionately responsible for satisfying the NPRI. Analytically, our holding is just the opposite. In construing an unambiguous deed, the parties' intent—determined by a careful and detailed examination of the document in its entirety—is paramount. Rigid, mechanical, arbitrary, and arcane rules, which at one time offered certainty at the expense of effectuating intent, are relics of a bygone era. We disfavor their use." [Read more.](#)
- **Units; Statute of Frauds – Texas.** On June 12, in *Cabot Oil & Gas Corp. v. Newfield Exploration Mid-Continent Inc.* (Case No. 07-16-00125-CV), the Texas Court of Appeals for the Seventh District held that a well operator that retained an interest in a 160 acre

proration unit surrounding a specific well did not satisfy the statute of frauds because none of the operative agreements described the unit with sufficient specificity. [Read more.](#)

- **Leasing – West Virginia.** On June 9, in *Webb v. North Hills Group* (Case No. 16-0640), the West Virginia Supreme Court concluded that a so-called dual purpose lease for exploration and production and for operating injection wells expired for lack of oil and gas production activities. The Court held that the lessee had the obligation to engage in oil and gas activities, or operate injection wells for salt water or brine disposal, and could not hold the lease for operating an old well on the property for purposes of injecting flowback or produced water from the leased premises. [Read more.](#)

INDUSTRY NEWS FLASH:

◆ **Trump Touts American “Energy Revolution” During Energy Week.** (ABC News, 6/27/17) Last Tuesday, President Donald Trump hailed an energy revolution marked by surging U.S. exports of oil and natural gas. In honor of the administration’s proclaimed “Energy Week”, Trump cited a series of steps the administration has taken to boost energy production and remove government regulations that he argues prevent the United States from achieving “energy dominance” in the global market. “Together, we are going to start a new energy revolution — one that celebrates American production on American soil,” Trump said in a statement, adding that the U.S. is on the brink of becoming a net exporter of oil, gas and other energy resources. [Read more.](#)

State-by-State Legislative Session Overview

Legislators considered substantial proposals from Cuomo during the regular session, including a plan to make state college tuition free for middle-class students and to modernize the state’s voting system, reports [U.S. News and World Report](#). Legislation addressing voting reforms did not materialize, but Cuomo’s Excelsior Scholarship Program was enacted with the budget and will cover tuition, though not room and board, for in-state students from families earning \$125,000 or less, subject to certain requirements. Legislative highlights from the regular session also included a juvenile justice reform that will end the prosecution of 16- and 17-year old offenders as adults, an increase in school funding of \$1.1 billion and an expansion of the area in which ride-hailing services like Uber and Lyft are permitted to operate.

According to [NASBO](#), as of June 30, 33 states have enacted budgets for fiscal year 2018. In **Alabama, Alaska, Michigan, Missouri, New Hampshire** and **Ohio** the budget bill is pending action by the governor. In **Connecticut, Delaware, Illinois, Maine, Massachusetts, New Jersey, Oregon, Pennsylvania, Rhode Island, Washington** and **Wisconsin**, a budget has not yet been finalized.

California, Delaware, Illinois, Maine, Massachusetts, Michigan, New Hampshire, New Jersey, North Carolina, Ohio, Oregon, Pennsylvania, Rhode Island and Wisconsin are in regular session. The **District of Columbia Council, United States Congress and Puerto Rico** are also in regular session.

Missouri convened a special session set to focus on abortion related issues on June 12, [The News & Observer](#) reports. **Alaska** convened its second special session on June 16, immediately following the adjournment of its first special session. A press release from the office of Independent Gov. Bill Walker about the special session can be found [here](#). Governor Walker's proclamation authorizing the special session can be found [here](#) and a supplemental proclamation expanding the list of bills to be considered can be found [here](#). **Illinois** convened a special session related to budget issues on June 21, the [Chicago Tribune](#) reports and **Washington** convened its third special session the same day immediately following the adjournment of its second special session.

New York adjourned its session on June 21 and convened a special session on June 28. **Kansas** adjourned on June 26.

West Virginia adjourned a special session on June 26.

Delaware is expected to convene a special session July 1, immediately following the constitutionally required adjournment of the legislature at midnight on June 30. **Texas** is expected to convene a special session on July 18.

The following states are expected to adjourn their legislative sessions on the dates provided: **Delaware, New Hampshire and Rhode Island** (June 30) and **Oregon** (July 10). **Maine** was expected to adjourn on June 21, but voted to extend its session to deal with budget issues.

Hawaii Democratic Gov. David Ige has until July 3 to act on legislation presented after April 25 or it becomes law. **Alaska** Independent Gov. Bill Walker has 15 days, Sundays excepted, to act on legislation from the regular session or it becomes law. **Connecticut** Democratic Gov. Dannel Malloy has 15 days from presentment to act on legislation or it becomes law. **Florida** Republican Gov. Rick Scott has 15 days from presentment to act on regular session legislation presented after May 1 and special session legislation or it becomes law. **Louisiana** Democratic Gov. John Bel Edwards has 20 days from presentment to act on regular session legislation presented after May 29 and special session legislation or it becomes law. **Minnesota** Democratic Gov. Mark Dayton has three days from presentment, Sundays excepted, to act on legislation or it becomes law. **Mississippi** Republican Gov. Phil Bryant has 15 days from presentment, Sundays excepted, to act on legislation from the regular and special sessions or it becomes law. **Missouri** Republican Gov. Eric Greitins has 45 days from presentment to act on legislation from the regular session or it becomes law. **Montana** Democratic Gov. Steve Bullock has 10 days after delivery to act on legislation or it becomes law. **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. **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. **Tennessee** Republican Gov. Bill Haslam has 10 days, starting the day after presentment, to act on legislation or it becomes law.

West Virginia Democratic Gov. Jim Justice had acted on all legislation from the first special session as of June 26. **Arizona** Republican Gov. Doug Ducey had acted on all legislation as of June 27. **Vermont** Republican Gov. Phil Scott had acted on all legislation as of June 29. **Kansas** Republican Gov. Sam Brownback had acted on all legislation as of June 30.

Landmen

Independent Contactors

(Although a non-producing state, this legislation may be of interest for your reference.) An executive session to discuss **Washington** [SB 5527](#) in the Senate Commerce, Labor and Sports Committee was held on June 29 but no vote was taken. 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.

Oil and Gas

Oil and Gas General

A June 26 hearing for **California** [SB 809](#) in the Assembly Natural Resources Committee was canceled and has not been rescheduled. Existing law requires the State Oil and Gas Supervisor to appoint a chief deputy and at least one district deputy for each district and to prescribe their duties. This bill instead would require the director to fix the number and boundaries of the districts, and would authorize the director and supervisor to redefine the districts as needed to ensure the efficient administration of provisions regulating oil and gas. The bill would require the director and supervisor to solicit public input before revising the districts. The bill would narrow the definitions of “idle well” and “long-term idle well” by excluding active observation wells from those definitions. This bill is sponsored by Sen. Robert Hertzberg, D-Van Nuys.

Royalty Payments

A motion to discharge **Pennsylvania** [HB 557](#) from further consideration in the House Environmental Resources and Energy Committee was presented on June 28. Such a motion, if passed, will allow the bill to move out of the committee for further House consideration. The bill, sponsored by Rep. Garth Everett, R-Muncy, would require that the minimum royalty be paid to a lessor for an unconventional well cannot be lower than one eighth (12.5 percent) of the gross proceeds received by the lessee for the production. The bill would prohibit deductions or allocation of costs, expense or any other adjustments that may result in a royalty being less than one eighth of gross proceeds. The bill would allow lessors who are paid less than the minimum royalty to bring action against the lessee. If this bill becomes law, it will take effect 60 days after being enacted.

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.