

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

- **H.R. 6082 – Washington, DC.** On September 20, Rep. Jared Huffman (D-CA) introduced H.R. 6082, known as the [Know Your Oil Act of 2016](#). The partisan bill was referred to the House Committee on Energy and Commerce, although its prospects for passage are low given the Republican House majority. The legislation directs the Secretary of Energy to issue regulations requiring companies that extract or refine oil to disclose field-level oil data, including emissions data, in an effort to “give consumers, investors, and policymakers consistent and unbiased information about the greenhouse gas emissions generated by the increasingly complex global oil supply chain,” according to Huffman. [Read more.](#)
- **S. 3334 – Washington, DC.** On September 15, Sen. Jeff Flake (R-AZ) introduced S. 3334, the *Historic Routes Preservation Act*, which was referred to the Committee on Energy and Natural Resources. The stated purpose of the Act is to achieve judicial and administrative efficiency for, and to reduce the costs typically associated with, resolving right-of-way claims under [R.S. 2477](#) (the federal law established in 1866 that authorized the construction of roads across federal public lands). This includes establishing deadlines for filing R.S. 2477 right-of-way claims, establishing notice requirements, and setting parameters for claims of right-of-way abandonment. [Read more.](#)
- **Sage Grouse – Washington, DC.** A dispute over the sage grouse has halted negotiations of the fiscal 2017 National Defense Authorization Act until after the November election. “There’s a bird in the way, and it’s a problem,” said Mac Thornberry (R-TX), Chairman of the House Armed Services Committee. The hurdle that remains is a provision in the House version of the bill that would prohibit the U.S. Fish and Wildlife Service from listing the sage grouse as endangered. The Senate version of the bill does not contain this provision. [Read more.](#)

FEDERAL – Regulatory

- **BLM Minerals Management Fees.** On September 23, the Department of the Interior published its final rule, *Minerals Management: Adjustment of Cost Recovery Fees*, in the Federal Register (81 FR 65558). This rule updates the fees set forth in the BLM mineral resources regulations for the processing of certain minerals program-related actions. It also adjusts certain filing fees for minerals-related documents. These updated fees

include those for actions such as lease renewals and mineral patent adjudications. While the rule states that it may affect a large number of small entities because 18 fees for activities on public lands will be increased, most of the fee increases will be less than 2 percent. [Read more.](#)

STATE – Legislative

- **Employee Misclassification – Michigan.** On September 20, the Michigan Senate Fiscal Agency released its bill analysis of SB 645, introduced December 8, 2015 and referred to the Commerce Committee, with no action since then. The bill was scheduled for a committee hearing on September 21. The legislation, sponsored by Senate Majority Floor Leader, Mike Kowall (R), would create the “Employee Classification Act” to (1) Prohibit an employer from misclassifying an employee in a report required under State law and (2) Define “misclassify”. [Read more.](#)

STATE – Regulatory

- **Land Trust Summit – New Mexico.** On September 21, New Mexico State Land Commissioner Aubrey Dunn announced that a Gas Capture and Midstream Summit will be held at the New Mexico State Land Office in the coming months. The summit’s purpose is to address issues negatively affecting revenue streams to the State Land Trust beneficiaries. For example, the Land Office was recently informed that natural gas producers operating on State Trust Lands have been forced by certain midstream companies to accept contractual terms for gas transportation and processing. [Read more.](#)
- **Mineral Rights; Trust Lands – North Dakota.** The North Dakota Petroleum Council (NDPC) has reported in a September 14 memorandum that the North Dakota Department of Trusts Lands is currently seeking to claim ownership to all minerals underlying Lake Sakakawea from Williston to the Fort Berthold Indian Reservation. Currently, the issue is in pending litigation before the North Dakota Supreme Court, in [Wilkinson v. Board of University and School Lands](#) (Case No. 53-2012-CV- 00038). The NDPC believes that the State of North Dakota is attempting to use the *Wilkinson* case about river title to usher in a sweeping precedent suggesting that it owns the entire lakebed of Lake Sakakawea and to later use that precedent in another pending case, *Weyrauch v. Board of University and School Lands* (Case link unavailable; Case No. 53-2015-CV-00986), to claim title to all of Lake Sakakawea. While the NDPC is not advising any action at this time, an interested party can certainly contact the Department of Trust Lands and the Board of University of School Lands with questions or comments. The Board consists of the Attorney General, the State Treasurer, Secretary of State, the Governor, and the Superintendent of Public Schools. <https://land.nd.gov/LandBoard/>. Access the memorandum and more information on the above cases [here](#).

- **Worker Misclassification – Oklahoma.** Oklahoma is the latest state to join the U.S. Department of Labor’s (DOL) Misclassification Initiative. Specifically, the Oklahoma Employment Security Commission entered into a three-year [Common Interest Agreement](#) with the U.S. DOL’s Wage and Hour Division, under which the agencies agree to share data, exchange information, and coordinate investigations and other enforcement actions within Oklahoma. [Read more.](#)

STATE – Judicial

- **Ballot Measures – Ohio.** In a win for the oil and gas industry, Ohio residents will not vote in the November election on whether to ban hydraulic fracturing at the local level because on September 13, in [Coover v. Husted](#) (Case No. 2016-1247), the Ohio Supreme Court, ruled that local election boards and Ohio Secretary of State Jon Husted acted legally when they rejected proposed ballot measures in three counties. The measures, in Athens, Meigs and Portage counties, aimed to turn local governments into charter systems with more control over oil and gas development within their boundaries. Local election boards and Husted tossed the measures from the ballot, finding that they didn’t meet criteria for ballot initiatives attempting to change a form of government. According to the boards, the measures didn’t give enough information about how the new charter systems would operate. [Read more.](#)
- **Shut-In Clause; Production – Texas.** On September 2, the Texas Supreme Court granted review in [BP America Production Company v. Red Deer Resources, LLC](#) (Case No. 07-14-00032-CV) that may clarify when a shut-in well’s capacity for production in paying quantities is determined. In this case, the court will be reviewing an appellate court ruling that upheld a judgment terminating a lease on the grounds that it was incapable of production when the last well on the premises was shut-in. [Read more.](#)

INDUSTRY NEWS FLASH:

- ◆ **New survey of oil and gas executives shows raised optimism.** A recovery in the oil and gas industry may have already begun or will begin next year, according to more than half (59 percent) of the oil and gas professionals surveyed recently by Deloitte. This would mean that the industry downturn—now 2 years old—may be drawing to a close, the survey suggests. The survey, entitled “2016 Oil & Gas Industry Survey: Optimism Emerges in the Aftermath of a Long Downturn”, illustrates renewed confidence driven by expectations of rising commodity prices and increased capital expenditures, with most respondents expecting an increase in spending in 2017. Deloitte’s survey also reflects that the upstream side of the business is the most optimistic about a recovery. [Read more.](#)

ELECTION ALERT:

🗳️ Addressing last week's Shale Insight Conference in Pittsburgh, Pennsylvania, keynote speaker, Donald Trump, called for an "America First energy plan" that would scrap President Obama's climate plans, ease regulations, lift limits on mining and drilling of federal lands and promote the construction of energy-related infrastructure. Trump said that the shale energy revolution would "unleash massive wealth" for the United States, and that "every energy dollar not harvested here is harvested in a foreign country, and often a foreign country not very friendly to us." [Read more.](#)

PRACTICE TIP: Landman Misclassification. The law firm Looper Reed & McGraw, P.C. has published an instructive article on misclassifying landmen, the questions to ask to determine if a landman is an independent contractor or an employee, and the violation settlement process. Although originally published in 2012, the article still serves as a useful guide to navigating through the often confusing misclassification landscape. [Read more.](#)

State-by-State Legislative Session Overview

West Virginia adjourned a brief special session on September 20, the [Daily Journal](#) reports. The scope of the session was limited to the appropriation of funds to cover the state's share of repair costs related to flooding in June that caused more than \$300 million in damage and claimed 23 lives. A proclamation from Democratic Gov. Earl Ray Tomblin's office authorizing the session can be found [here](#). **HB 201**, which appropriates a total of \$85 million to cover the maximum possible state share of repair costs, was approved by Governor Tomblin on September 19.

Massachusetts, Michigan, New Jersey and the **Pennsylvania** House are in regular session. The **District of Columbia** Council and the **U.S. Congress** are also in regular session.

The **Pennsylvania** Senate is in recess until September 26. **Ohio** is in recess until September 27. **Illinois** is in recess until November 15 and is expected to convene a veto session on that day. **California** is in final recess until November 30 and is scheduled to adjourn sine die on that day; the legislature will convene its 2017 legislative session on December 5.

Missouri adjourned a veto session on September 14. **West Virginia** adjourned a special session related to flood repair costs on September 19.

California Democratic Gov. Jerry Brown and **Rhode Island** Democratic Gov. Gina Raimondo have until September 30 to act on legislation or it becomes law without signature. **Alaska** Independent Gov. Bill Walker has 20 days from presentment, Sundays excluded, to act on legislation or it becomes law without signature. **Delaware** Democratic Gov. Jack Markell and **New York** Democratic Gov. Andrew Cuomo have 10 days from presentment to act on

legislation 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.

The following states are currently holding interim committee hearings: [Alabama](#), [Alaska](#), [Arizona](#), [Arkansas](#), [Colorado](#), [Connecticut](#), [Georgia House](#) and [Senate](#), [Hawaii](#), [Idaho](#), [Indiana](#), [Iowa](#), [Louisiana](#), [Kansas](#), [Kentucky](#), [Maine](#), [Maryland](#), [Minnesota](#), [Mississippi House](#) and [Senate](#), [Missouri House](#) and [Senate](#), [Montana](#), [Nebraska](#), [Nevada](#), [New Hampshire House](#) and [Senate](#) (committee hearings published in calendar), [New York Assembly](#) and [Senate](#), [North Carolina](#), [North Dakota](#), [Oregon](#), [South Carolina](#), [Tennessee](#), the [Texas House](#), [Senate](#) and [Joint](#), [Utah](#), [Vermont](#), [Virginia](#), [Washington](#), [West Virginia](#) and [Wyoming](#).

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

Endangered Species

California [AB 2087/Chapter 455](#) was signed into law on September 22 by Democratic Gov. Jerry Brown. Effective January 1, this law authorizes the Department of Fish and Wildlife to propose a regional conservation investment strategy targeted at informing science based conservation and habitat enhancement actions. The law will give the department the authorization to approve a regional conservation investment strategy only if one or more state agencies request approval of the strategy through a letter sent to the Director of Fish and Wildlife. The goal is to advance the conservation of keys species and to provide nonbinding guidance for various conservation activities. The law is not intended to regulate the use of land, but rather to promote the importance of voluntary, non-regulatory approach to regional conservation.

Lands

Land Permits

Pennsylvania [HB 2361](#) was introduced on September 22 and referred to the House Environmental Resources and Energy Committee. This bill would allow the Pennsylvania Turnpike Commission to grant right-of-way through land owned by the commission to oil and gas companies for pipeline purposes. The different agencies involved that use the land would come together to review permit requests to use it for pipeline purposes. The commission would only grant use when it has been made clear that the applicant has the technical and financial capability to build, operate, maintain and terminate the pipeline project. When a permit request has been filed with the commission, they would be required to hold public hearings to allow all federal, state, local government, and the public an opportunity to comment on the applications. If granted use of the land, the commission would collect a fee from the permit holders and deposit all capital into the general fund. The bill would require that all proposed operations on the commissions land would have to comply with all federal and environmental safety regulations. The duration of the permits would not be able to extend past 50 years.

This bill is sponsored by Rep. Scott Petri, R-Upper Makefield Township, and if enacted, would take effect 60 days after enactment.

Oil and Gas

Bundling & Pooling

Michigan [SB 903](#) passed the Senate on September 22 and was sent to the House for consideration. Any land lessee could file a plan with the oil and gas supervisor requesting approval to combine multiple oil and gas leases for operation as a single unit. In order for a plan to become effective, approval of the plan must be first given to the oil and gas supervisor. This bill aims to lower the required threshold for which affected parties can approve the plan. This bill would make the following changes to who would be able to approve the project so the oil and gas supervisor could make it effective:

- A person who would be required to pay at least 51 percent of the cost of the unit operation, a decrease from 75 percent, and also by a person who would be entitled to at least 51 percent of the production proceeds, a decrease from 75 percent.
- A person who under the plan would be entitled to at least 65 percent of all production or proceeds from the operation, a decrease from 90 percent.

Royalty Payments

Pennsylvania [HB 1391](#) passed the House Rules Committee on September 19 and is now awaiting second consideration. The bill would require the minimum royalty payment to a lessor for unconventional gas well production to not be less than one-eighth of the lessor's percentage ownership in the production from the production, calculated on the total price received by the operator for the production in an arm's-length transaction. No deductions of any costs could result in a royalty payment less than the one-eighth requirement. This requirement would apply to all leases for unconventional gas well production existing on or after the effective date of the bill. The bill would further provide for legal remedies and penalties, up to treble damages, for failure to pay the minimum royalty. If enacted, the bill would take effect 60 days after passage.

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