

WEEKLY HIGHLIGHTS AT-A-GLANCE

FEDERAL – Regulatory

- **BLM Infill Well Approval – Utah.** Last week, the BLM announced that oil and gas development in parts of Duchesne and Uintah counties can move forward. The decision approves the preferred alternative in the “Monument Butte Areas Oil and Gas Final Environmental Impact Statement.” That alternative was the result of close collaboration among the BLM, Newfield Exploration Company, the Environmental Protection Agency, State of Utah, and the U.S. Fish and Wildlife Service. The infill development plan includes 119,743 acres of an existing oil-and-gas producing area that currently has more than 3,000 wells on federal, state and private land south of Myton. [Read more.](#)

FEDERAL – Judicial

- **BLM Uintah Basin – Utah Federal Court.** Last week, a federal judge ruled in [Southern Utah Wilderness Alliance v. U.S. Dept. of the Interior](#) (Case No. 2:13-cv-01060-EJF), invalidated the BLM's approval of a drilling program in the Uinta Basin, saying its underlying environmental analysis was insufficient, given the thousands of wells expected to be drilled in the region that can be expected to contribute to the rural region's worsening air quality. The BLM failed to consider this when it approved the 16-well gas project along the Upper Desolation Canyon on the Green River in eastern Utah proposed by Gasco Energy, ruled U.S. Magistrate Evelyn Furse. In her 30-page ruling, Furse said the National Environmental Policy Act requires federal land managers to “accurately account for the environmental impact of all reasonably foreseeable actions, not merely the incremental impact” of the project under analysis. Last Monday's ruling orders the agency to reconsider its decision after updating the air-quality analysis and considering noise impacts to Green River recreation. [Read more.](#)
- **Federal Regulatory Restrictions – Wyoming Federal Court.** In a September 23 brief to the 10th U.S. Circuit Court of Appeals, Pacific Legal Foundation (PLF) urged that the BLM be blocked from usurping the authority of the states with unlawful federal regulatory restrictions over drilling operations. The PLF [amicus brief](#), in [Wyoming v. Department of Interior](#) (Case Nos. 16-8068, 16-8069a), challenges the BLM's claimed authority in a case in which Wyoming, Colorado, North Dakota, Utah, and the Ute Indian Tribes are challenging restrictions imposed on vast areas throughout the Plains states and the West. At issue are BLM rules seeking to regulate hydraulic fracturing on lands in which the federal government owns an interest, in order to protect

underground sources of drinking water. The BLM appealed the case after a district court ruled against the agency in June. [Read more.](#)

STATE – Regulatory

- **Environmental Regulations – Texas.** On September 28, the Senate Committee on Natural Resources & Economic Development held a hearing to study the impact and identify challenges Texas faces implementing proposed federal Environmental Protection Agency regulations, including, but not limited to the reduction of methane from oil and gas facilities. Witness testimony was heard from numerous environmental groups as well as representatives from the Texas Independent Producers and Royalty Owners Association, Texas Oil and Gas Association, and Texas Alliance of Energy Producers. Access the full witness list and video archive of the hearing [here](#).

STATE – Judicial

- **Clerk Records – Oklahoma.** A former Carter County Clerk employee has been criminally charged with embezzlement for allegedly stealing county records to benefit her privately owned landman business. Court documents say 42,000 abstracts, deeds and other records were scanned into Becky Wright’s work computer and then deleted. Normally that would have cost her a dollar per page, but she never for the copies. An investigator says he found an email from her to an Oklahoma City landman company looking for work, telling them that she currently has “almost the entire courthouse imaged and indexed.” Ms. Wright is not an AAPL member. [Read more.](#)
- **Oil and Gas Act – Pennsylvania.** On September 28, the Pennsylvania Supreme Court, in [Robinson Township v. Commonwealth of Penn.](#) (Case No. 104 MAP 2014), ruled that parts of Act 13 (otherwise known as the Oil and Gas Act) violate state constitutional rights regarding clean air and water. The Court’s ruling, heralded by environmentalists, interprets provisions related to environmental notifications, local ordinances, public health trade secret disclosures, eminent domain, and the severability of some of the Act’s sections that will no longer apply given the Court’s decision. In its 88-page opinion, the Court said Act 13 gave the oil and gas industry “special laws.” [Read more.](#)
- **New Regulations – Pennsylvania.** The Pennsylvania Independent Oil and Gas Association (PIOGA) is seeking to block new Marcellus Shale drilling regulations scheduled to take effect this month. The rules have been in development since 2011 and have been the subject of significant controversy. PIOGA objects to regulatory language giving the state Department of Environmental Protection a greater role in scrutinizing well permit applications near public resources, such as parks. After getting an unfavorable ruling in [Pennsylvania Independent Oil & Gas Assoc. v. Commonwealth of Penn.](#) (Case No. 321 MD 2015) last month in Commonwealth Court, PIOGA has appealed the case to the state Supreme Court. [Read more.](#)

- **Royalties – Texas.** Last Thursday, the Texas Fourteenth Court of Appeals, in [HighMount Exploration & Production LLC v. Harrison Interests, Ltd.](#) (Case No. 14-15-0058-CV), upheld an earlier trial court win for Harrison in its contract dispute alleging HighMount shirked royalty payments for oil and gas produced and used on property Harrison sold in 1990, in violation of an agreement governing the deal. The Court stated that the “plain language of the Agreement entitles the Harrison Parties to royalties on the gross proceeds from gas used for fuel on the Subject Interests.” [Read more.](#)

INDUSTRY NEWS FLASH:

◆ **Moody’s reports upstream oil and gas industry improvements.** According to a Moody’s Investors Service report, the global integrated oil and gas business is stabilizing and will likely improve modestly from recent historical lows over the next 12-18 months. The report, “Integrated Oil & Gas: Global Oil Price Uptick, Accelerated Cost Cuts Put Upstream Activities on Road to Recovery”, says higher oil prices and lower operating costs are driving a steady improvement in companies’ earnings. “[M]ost companies’ upstream operations returned to positive net income generation in the second quarter of 2016, while also benefiting from an uptick in the price of crude,” said Elena Nadtotchi, a Moody’s vice president, and author of the report. [Read more.](#)

ELECTION ALERT:

🗳️ **Donald Trump huddles with oil and gas executives.** In Denver, Colorado last Tuesday, Republican presidential nominee, Donald Trump, met with oil and gas executives to expand his outreach to the industry after earlier missteps, including a statement he made this past June apparently endorsing proposed ballot measures that would effectively let cities and townships ban certain development operations. At Tuesday’s meeting, Trump told the executives – including those from HRM Resources, Noble Energy, and NexGen Resources – that while safety and environmental regulations are called for, regulations have generally “gotten out of control” and the presidential hopeful pledged to make the U.S. the “world’s dominant leader in energy production”. [Read more.](#)

State-by-State Legislative Session Overview

Massachusetts, New Jersey and Ohio are in regular session. The **District of Columbia** Council is also in regular session.

Pennsylvania is in recess until October 17. **Michigan** is in recess until October 19. The **United States** Congress is in recess until November 15. **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.

Nevada is expected to convene a special session on October 10 to consider a financing proposal to fund construction of a 65,000 seat stadium, the [Nevada Appeal](#) reports.

New Mexico adjourned a special session on October 6, [KOAT](#) reports. Legislators adjourned the session after passing a budget, but did not consider a measure to reinstate the death penalty or other criminal justice initiatives backed by Republican Gov. Susana Martinez.

Connecticut held a one-day special session on September 28 to approve [SB 601/Public Act 16-1](#), a deal to keep Sikorsky Aircraft in the state, [The CT Mirror](#) reports. The act was signed by Democratic Gov. Dannel Malloy on September 29.

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.

California Democratic Gov. Jerry Brown had a signing deadline on September 30, and **Rhode Island** Democratic Gov. Gina Raimondo had acted on all legislation as of the same day.

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](#), [Oklahoma House](#) and [Senate](#), [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](#), [New Hampshire](#), [North Dakota](#), [Oklahoma House](#) and [Senate](#), [Utah](#), [Virginia](#) and [Wyoming](#) (draft requests appear on individual committee pages).

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Employee Classification

Although not a predominant oil and gas producing state, a new bill in **New Hampshire** provides a roadmap on how state legislatures are addressing the independent contractor and employee misclassification issues. [HB 1512](#) is scheduled for interim work in the House Labor, Industrial and Rehabilitative Services Committee on October 12 at 9:30 a.m. and for an executive session on October 20 at 10:00 a.m. For the purpose of determining workers' and unemployment

compensation, this bill clarifies the definition of employee in comparison to an independent contractor. An employee means every individual who may be required or directed by a single employer for compensation to provide services, unless the individual is an independent contractor who meets the following criteria:

- The individual has the essential right to control the detailed means and manner of the work, except the final results.
- The individual has the opportunity for profit and loss as a result of the service being performed.
- The individual performs a service that is customarily engaged in as an independently established trade, occupation and profession or business. This may be met even if the independent contractor only carries out these duties for one client.
- The individual hires and pays others as needed to carry out the work.
- Payment to the individual is based on factors that are directly tied to specifics laid out in the agreed on scope of work.

At least three of the following criteria must be met as well to classify as an independent contractor:

- The individual has a substantive investment in the facilities, tools, instruments, materials and knowledge used to complete the work.
- The individual is responsible for the work being done in a satisfactory manner as agreed upon, and that they would be the one responsible if it is unsatisfactory.
- The parties have a written contract defining the relationship and give each group contractual rights in the event the contract is terminated before the completion of the project.
- The work is outside the usual course of work for the group that hired the contractor.
- The work is performed outside all of the places of business of the hiring party.
- The Internal Revenue Service has classified the individual as an independent contractor.

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