

## WEEKLY HIGHLIGHTS AT-A-GLANCE

### FEDERAL – Legislative

- **H.R. 6106 – Common Sense Permitting Act.** (*Update to 7/2/18 Weekly Report*) On September 20, [H.R. 6106](#), known as the “Common Sense Permitting Act”, passed the House Committee on Natural Resources and has been placed on the House Union Calendar for floor consideration by the full House. The bill, introduced by Rep. Steve Pearce (R-NM) and later joined by five Republican cosponsors, would amend the Energy Policy Act of 2005 to streamline the federal oil and gas permitting process by allowing for certain exclusions from the National Environmental Policy Act. [Read more.](#)

### FEDERAL – Regulatory

- **BLM Information Collection.** On September 25, the Bureau of Land Management (BLM) published a Notice of Information Collection, *Agency Information Collection Activities; Submission to the Office of Management and Budget for Review and Approval; Onshore Oil and Gas Leasing and Drainage Protection* ([83 Fed. Reg. 48453](#)), which opens up the public comment period for an earlier notice in which no BLM comments were received. The Notice pertains to certain information collection regarding federal onshore oil and gas leasing. The proposed information collection request addresses the following issues: “(1) Is the collection necessary to the proper functions of the BLM; (2) will this information be processed and used in a timely manner; (3) is the estimate of burden accurate; (4) how might the BLM enhance the quality, utility, and clarity of the information to be collected; and (5) how might the BLM minimize the burden of this collection on the respondents, including through the use of information technology.” The comment period closes October 30, 2018. [Read more.](#)
- **BLM Lease Sale – Wyoming.** On September 21, the BLM announced results of its September oil and gas lease sale, which brought in \$61 million on 348 offered parcels covering more than 300,000 acres. The sale also accommodated [Secretarial Order 3362](#) “to improve wildlife habitat” in which “the BLM worked closely with the State of Wyoming to develop a sound leasing strategy that protects important wildlife habitat in the Red Desert to Hoback Sublette mule deer migration corridor in southwest Wyoming.” According to Deputy Interior Secretary David Bernhardt, “these impressive third-quarter sale results, which are among our best on record in Wyoming, were obtained while also protecting an important big game migration corridor.” Bernhardt added that the “results demonstrate that Wyoming continues to be one of the top

energy producers on public lands, generating mineral revenue for the American taxpayer and approximately \$29 million for state funding, which will be used to fund K-12 education and improve roads.” [Read more.](#)

- **Bureau of Ocean Energy Management Leasing.** On September 25, the Interior Department’s Bureau of Ocean Energy Management (BOEM) announced it proposes to offer 78 million acres for a region-wide lease sale scheduled for March 2019. The sale would include all available unleased areas in federal waters in the Gulf of Mexico. [Lease Sale 252](#), scheduled to be livestreamed from New Orleans, will be the fourth offshore sale under the [2017-2022 Outer Continental Shelf Oil and Gas Leasing Program](#). Under this program, ten region-wide lease sales are scheduled for the Gulf, where resource potential and industry interest are high, and oil and gas infrastructure is well established. Two Gulf lease sales will be held each year and include all available blocks in the combined Western, Central, and Eastern Gulf of Mexico Planning Areas. [Read more.](#)
- **Interior Department Royalty Policy Committee.** In September, the Interior Department’s [Royalty Policy Committee](#) – a group of state, federal, tribal and industry representatives convened by the Trump administration last year — met to discuss a proposal that would allow companies to start drilling some wells without applying for a permit. The proposal is a response to a history of federal permitting delays and would streamline the process. “Under the proposal, an oil and gas firm would be required to notify the Bureau of Land Management that it is planning to drill a well in an area that has already been analyzed for environmental and cultural concerns and that would be similar in characteristics to other wells in the area. Federal officials would have about two weeks to determine if that notice is complete and up to 45 days to reject it. If the agency either approves the notice, or fails to take action within that timeframe, the company can move forward with drilling.” The Committee meeting is the first step in the rulemaking process and we will continue to monitor the proposal progress. [Read more.](#)

## **FEDERAL – Judicial**

- **Greater Sage-Grouse; BLM Leasing – Idaho Federal Court.** On September 22, a federal judge halted the Trump administration’s updated policy on public participation in the BLM process by which the agency decides whether to grant oil and gas leases in habitat of the Greater Sage-Grouse. In [Western Watersheds Project v. Zinke](#) (Case No. 1:18-cv-00187-REB), the U.S. District Court for the District of Idaho issued a preliminary injunction order which prohibits the BLM from enforcing its policy changes pending a final ruling by the court. Future lease sales in Greater Sage-Grouse habitat must now include 30-day public comment and administrative protest periods. At issue is Interior Department Instruction Memorandum [IM 2018-034](#), issued on January 31, 2018, which updated land use planning and lease parcel review processes. “The record contains significant evidence indicating that BLM made an intentional decision to

limit the opportunity for (and even in some circumstances to preclude entirely) any contemporaneous public involvement in decisions concerning whether to grant oil and gas leases on federal lands,” wrote Judge Bush in his 57-page order. [Read more.](#)

- **BLM Leases – Washington, DC Federal Court.** In a setback for environmental activists and a win for leaseholders, on September 24, a federal judge reinstated oil and gas leases in the Badger-Two Medicine area, a 130,000-acre area of the Helena-Lewis and Clark National Forests and the Blackfeet Indian Reservation in Montana, that were cancelled by the Interior Department under the Obama administration. In [Solonex LLC v. Jewell et al.](#) (Case No. 1:13-cv-00993-RJL) and [W.A. Moncrief, Jr. v. U.S. Department of Interior et al.](#) (Case No. 17-609), the U.S. District Court for the District of Columbia called the lease cancellations “arbitrary and capricious” and ordered the Interior Department to reinstate them. The battle over leasing in this Native American cultural and spiritual area dates back to the 1980’s and has been the subject of multiple lawsuits since then. In last week’s ruling, U.S. District Judge Richard Leon reiterated what he said in a previous orders in which he criticized the government for first delaying implementation of the leases for decades before cancelling them. [Read more.](#)

## **STATE – Legislative**

- **Employee Classification – Pennsylvania.** (*Update to 9/24/18 Weekly Report*) On September 24, the House Labor and Industry Committee passed [HB 1781](#) with all Republican committee members voting in favor. This bill, introduced by Rep. Fred Keller (R), would allow independent contractors and businesses to voluntarily register independent contractor status with the Department of Labor and Industry if a person is considered an independent contractor in federal tax filings. The individual would sign an affidavit certifying that they know they will not be considered an employee with regards to workers’ compensation. The independent contractor would be able to withdraw their affidavit at any time. The bill would only apply to those who use the registration process and would not change anything for businesses and independent contractors who choose not use the process. [Read more.](#)
- **Eminent Domain; General Land Office – Texas.** On October 2, the Texas House of Representatives Land & Resource Management Committee will hold a public hearing in Dallas to “examine Texas’ eminent domain statutes to ensure a balance between necessary infrastructure growth and fair compensation for landowners” to “review available public information and data relating to the compensation provided to private property owners” and to “make recommendations to improve the accountability, as well as successful development, of the entities granted eminent domain authority.” The hearing will also study the General Land Office State Power Program. The hearing will be held at Dallas City Hall, Council Chambers, 1500 Marilla Street, Dallas, TX. For more information, contact Stacey Nicchio at 512-463-0850. [Read more.](#)

## **STATE – Judicial**

- **Leasing; Easements – Colorado.** On September 25, Boulder County filed lawsuits against oil and gas companies in an effort to stop production on property that is either county-owned open space or privately-held land protected by county-owned conservation easements. In the cases, [\*Board of County Commissioners of Boulder County v. Crestone Peak Resources Operating, LLC\*](#) (Case No. not yet docketed) and [\*Board of County Commissioners of Boulder County v. 8 North, LLC et al.\*](#) (Case No. not yet docketed), the county claims the drilling plans violate lease terms and conservation easements. Notably, the Colorado Oil and Gas Conservation Commission approved the drilling plans the county is now challenging. [Read more.](#)
- **Landman Licensing – Ohio.** (*Update from 5/24/18 Weekly Report*) As you have probably already seen on *Landnews* and on the AAPL homepage, last week, the Ohio Supreme Court issued its opinion in [\*Dundics v. Eric Petroleum Corp.\*](#) (Case No. 2017-0448; access [full docket here](#)), affirming decisions in both the appellate and trial courts against a landman (not an AAPL member) and holding that under state law, negotiation of oil and gas leases requires a real estate broker’s license. The Court held that Ohio statute, [R.C. 4735](#), is unambiguous regarding whether “real estate” includes oil and gas leases. Further, the Court noted that Ohio legislators have clearly chosen not to exempt oil and gas land professionals as they have affirmatively done with other professions, noting “the plain language of R.C. 4735.01 includes nothing to indicate the General Assembly intended to exempt oil-and-gas land professionals from the broker’s-license requirement.” Finally, the Court dismissed the argument that since the real estate law has never been applied to, or enforced against, land professionals negotiating and/or brokering oil and gas leases that it is inapplicable. “The assertion that this requirement has historically not been enforced in the oil-and-gas industry does not give this court permission to write an exception into the statute.” Throughout the case, AAPL filed numerous amicus briefs on our members’ behalf arguing against the Court’s position. Please note that AAPL had been monitoring the case and consulted with an Ohio lobbyist in the event of such an adverse decision. We are now in the early stages of crafting a strategy since the case is settled law. We will keep members informed as those efforts move forward in the coming weeks. [Read more.](#) See also the case review by law firm Vorys Sater Seymour and Pease LLP [here](#).

## **State-by-State Legislative Session Overview**

**Michigan, New Jersey and Pennsylvania** are in regular session. **Ohio** is in skeleton session. The **United States Congress, District of Columbia and Puerto Rico** are in regular session.

**Illinois, Massachusetts, New York, Rhode Island and Wisconsin** are in recess to the call of the chair.

**Virginia's** House Privileges and Elections Committee met on September 27 to discuss redistricting plans, reports the [Richmond Times Dispatch](#).

**West Virginia** Republican Gov. Jim Justice issued a [proclamation](#) calling for a special session to begin June 26 to address possible removal of one or more Justices of the Supreme Court of Appeals. The House Judiciary Committee passed 14 of the 16 articles of impeachment on August 7 and the House adopted articles of impeachment against the four sitting justices on August 13. The House met on August 29 to elect an interim speaker, and the Senate returned on September 11 to commence impeachment for the remaining justices and is now in recess until October 1.

**South Carolina** lawmakers will return on October 3 for a two-day special session. They will address state tax deduction for dependents, reports [Greenville News](#).

**North Carolina** Democratic Gov. Roy Cooper issued a [press release](#) requesting the legislature return on October 9 for a special session to address funding needs for Hurricane Florence recovery. Republican leaders issued a letter calling on the governor to allow the special session to start on October 2, permitting the state to clear any potential legal and fiscal hurdles for federal relief. According to [WWAY](#), Governor Cooper agreed to an earlier start to the special session.

**California** Democratic Gov. Jerry Brown has until September 30 to act on legislation that was in his possession on or after September 1 or it becomes law without signature. **Alaska** Independent Gov. Bill Walker has 20 days from presentment, Sundays excepted, to act on legislation or it becomes law without signature. **Illinois** Republican Gov. Bruce Rauner has 60 days from presentment to act on all legislation passed during the veto session or it becomes law. **Maine** Republican Gov. Paul LePage has three days after the next meeting of the legislature to act on special session legislation or it becomes law without signature. **Minnesota** Democratic Gov. Mark Dayton has 14 days from presentment to act on legislation presented on or after May 17 or it is pocket vetoed. **Mississippi** Republican Gov. Phil Bryant has 15 days from presentment to act on special session legislation or it becomes law. **Missouri** Republican Gov. Mike Parson has 45 days from presentment to act on legislation or it becomes law without signature. **New York** Democratic Gov. Andrew Cuomo has 10 days from presentment, Sundays excepted, to sign or veto legislation or it becomes law without signature. **North Carolina** Democratic Gov. Roy Cooper has 10 days from presentment to act on special session legislation or it becomes law without signature. **Rhode Island** Democratic Gov. Gina Raimondo has six days from presentment, Sundays excepted, to act on legislation or it becomes law without signature. **West Virginia** Republican Gov. Jim Justice has 15 days from adjournment of the special session, Sundays excepted, to act on legislation or it becomes law without signature.

The following states are currently holding 2019 interim committee hearings: [Alabama](#), [Alaska](#), [Arizona](#), [Arkansas](#), [California Assembly](#) and [Senate](#), [Colorado](#), [Connecticut](#), [Florida House](#), [Hawaii](#), [Idaho](#), [Illinois Senate](#), [Indiana](#), [Iowa](#), [Kansas](#), [Kentucky](#), [Maine](#), [Maryland](#), [Minnesota](#), [Mississippi Senate](#), [Missouri House](#) and [Senate](#), [Montana](#), [Nevada](#), [New Hampshire House](#) and [Senate](#), [New Mexico](#), [New York Assembly](#) and [Senate](#), [North Carolina](#), [North Dakota](#), [Oklahoma House](#), [Oregon](#), [Rhode Island](#), [South Carolina](#), [South Dakota](#),

[Tennessee](#), [Texas House](#) and [Senate](#), [Utah](#), [Vermont](#), [Virginia](#), [Washington](#), [West Virginia](#) and [Wyoming](#).

The following states are currently posting 2019 bill drafts, profiles and interim studies: [Florida Senate](#), [Iowa](#), [Kentucky](#), [Montana](#), [Nevada](#), [New Hampshire](#), [North Dakota](#), [Oklahoma House](#) and [Senate](#), [Utah](#) and [Virginia](#).

## General Oil and Gas

**Pennsylvania** [HB 2154](#) passed the Senate Environmental Resources and Energy Committee on September 25. This omnibus bill would roll back existing environmental standards for conventional oil and gas operators allowing operators to spill up to 210 gallons of oil or 630 gallons of production brine at a well site, rather than the current five-gallon requirement, without needing to notify the department. The bill also contains language that would preempt local regulation of oil and gas activity. The bill would also narrow the state Department of Environmental Protection's oversight of wastewater disposal wells to just surface features and provide that conventional drilling permits would be good for three years instead of one. The bill would also create a process by which a person who voluntarily plugs an orphan well could apply for a \$5,000 payment or receive a credit to offset future well permit fees. Both Democratic Gov. Tom Wolf and the state Department of Environmental Conservation are opposed to the bill.

## Public Lands

**Pennsylvania** [HB 2489](#) passed the Senate State Government Committee with an amendment on September 24. As amended, the bill would authorize the release of Project 70 restrictions on lands owned by the Borough of Topton in exchange for the imposition of Project 70 on other lands owned by the borough. The bill would take effect immediately.

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