



Please Note: Due to the Thanksgiving holiday, there is no Weekly Report next week. The next report will be distributed on December 4. Wishing you all a safe, happy & healthy holiday.

WEEKLY HIGHLIGHTS AT-A-GLANCE

FEDERAL – Legislative

- **H.R. 2907 – Planning for American Energy Act of 2017.** (Update to 6/26/17 Weekly Report) On November 8, [H.R. 2907](#), known as the “Planning for American Energy Act of 2017”, and introduced by Rep. Scott Tipton (R-CO) in June, passed the House Natural Resources Committee and will move to the House calendar for floor consideration. The bill would require the Energy Information Administration to project U.S. energy needs over the next 30 years and the Departments of the Interior and Agriculture to develop four-year energy production plans that include wind, solar, hydropower, geothermal, oil, natural gas, coal, oil shale and minerals. The legislation would also preserve current environmental reviews and safeguards to support responsible development of all energy sources. [Read more.](#)
- **Arctic National Wildlife Refuge – Alaska.** On November 15, the Senate Energy and Natural Resources Committee approved a legislative measure as part of the Budget Resolution, [H.R. Con. Res. 71](#), which will open a part of the Arctic National Wildlife Refuge in Alaska, known as the “1002 Area” or Coastal Plain, to oil and gas drilling. The measure, sponsored by Sen. Lisa Murkowski (R-AK), “calls for at least two major lease sales over the next decade in at least 400,000 acres each in the refuge’s coastal plain. Surface development would be limited to 2,000 acres. The bill requires at least a 16.67 percent royalty rate evenly split between the federal government and Alaska.” According to Murkowski and Congressional Budget Office estimates, “the legislation will raise \$1.092 billion over the 10-year budget window.” [Read more.](#)
- **H.R. 4246.** On November 3, Rep. Nanette Barragan (D-CA) introduced [H.R. 4246](#), known as the “No Drilling in Our Backyards Act”. The bill would amend the Mineral Leasing Act to “create a buffer in between oil and gas drilling operations and other structures. Specifically, the bill directs that “The Secretary of the Interior may not issue a permit for any oil and gas drilling operation that is located within 1,500 feet from a home, business, school, or other building that requires special protection”. Although the Democrat-sponsored bill has been referred to the House Natural Resources committee, its prospects for floor consideration are dim considering the Republican majority. [Read more.](#)

FEDERAL – Regulatory

- **BLM Leasing Protest – Nevada.** On November 13, three environmental groups filed an [administrative protest](#) against the Bureau of Land Management (BLM) in an effort to shut down a December 12 oil and gas lease sale covering 208 parcels on nearly 389,000 acres in the Ely District Office. The protest alleges that the BLM violated the National Environmental Policy Act and the Endangered Species Act by failing to “take a hard look at foreseeable indirect and cumulative impacts” of drilling and hydraulic fracturing on the federal lands and water sources in the proposed sale area. Under federal law, the BLM is required to acknowledge the protest within ten working days to explain what actions they will take in response, if any. [Read more.](#)
- **BLM Information Collection.** On November 13, the BLM published a notice, *Agency Information Collection Activities; Oil Shale Management* ([82 Fed. Reg. 52317](#)) to solicit public comment on its proposal to renew an information collection. The information collection applies to “[a]pplicants for oil shale leases, oil shale lessees and oil shale operators”. The information collection 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 the collection on the respondents, including through the use of information technology.” [Read more.](#)

FEDERAL – Judicial

- **Royalties; Administrative Remedies – Colorado Federal Court.** On October 26, in *Crichton et al. v. Augustus Energy Resources, LLC* (Case No. 15-CV-00835-KLM), a magistrate judge in the U.S. District Court for the District of Colorado held that royalty owners seeking to recover post-production costs deducted from royalty payments did not have to exhaust administrative remedies before the Colorado Oil and Gas Conservation Commission (COGCC) prior to pursuing their complaint in court because “this dispute is rooted in contract and is beyond the jurisdiction of the COGCC.” [Read more.](#)

STATE – Legislative

- **Gross Production Tax – Oklahoma.** (*Update to 11/6/17 Weekly Report*) On November 8, HB 1054 passed the Oklahoma House and the measure was referred to the Senate on November 13 for consideration. Despite a push by both Republican and Democrat legislators for higher rates, the Senate version of the bill would only allow for an increase in the Gross Production Tax on new wells from two percent to four percent. The tax rate for existing wells, in circumstances such as those wells spudded after July 1, 2015, will remain at two percent. The other Gross Production Tax bill, [HB 1085](#), was also referred to the Senate and placed on their calendar calls for a tax of seven percent on certain oil and

gas production, but the Senate had already expressed that a rate above four percent would be a non-starter. [Read more.](#)

STATE – Regulatory

- **Keystone XL Pipeline – Nebraska.** *Breaking News:* Today, Nebraska regulators approved the Keystone XL Pipeline, “removing the last big regulatory hurdle for the oil project”. The Nebraska Public Service Commission voted 3-2 to approve the route through the state that will transport up to 830,000 barrels per day of crude from Canada and North Dakota to oil refineries on the Gulf Coast. The decision comes on the heels of last week’s pipeline oil leak, but Nebraska law barred regulators from considering spills or pipeline safety as part of the approval process so it was not part of the consideration process. [Read more.](#)

STATE – Judicial

- **Leasing – North Dakota.** On October 17, in *Hallin v. Inland Oil & Gas Corp.* (Case No. 2017 ND 254), the North Dakota Supreme Court held that leases which granted oil and gas rights in “all that certain tract of land situated in Mountrail County” were unambiguous and transferred all of the plaintiffs’ mineral interests to Inland, despite plaintiffs’ claims that they only intended to lease a portion of the 160-parcel at issue. The Court dismissed the argument, noting that “[t]he term ‘all’ is not ambiguous and it is unnecessary to go beyond the leases to discern the parties’ intent” and although the plaintiffs “provided extrinsic evidence in the form of payment drafts purporting to show the parties’ intent relating to the number of acres leased” the Court found the evidence inadmissible “because the leases are clear and unambiguous”. [Read more.](#)
- **Severance Tax – Tennessee.** On October 5, in *The Coal Creek Company v. Anderson County* (Case No. E2017-00661-COA-R3-CV), the Court of Appeals of Tennessee ruled on whether a tax on certain property containing oil and gas deposits constitutes an unlawful additional severance tax. The Court, in affirming the trial court’s decision, held that the taxes assessed upon Coal Creek’s property relative to oil and gas remaining in the ground are property taxes, not a severance tax. [Read more.](#)
- **Deeds; Taxes – West Virginia.** On October 19, in *Gastar Exploration Inc. v. Rine* (Case No. 16-0962), the West Virginia Supreme Court of Appeals held that a deed in which a grantor attempted to reserve a one-half interest in oil and gas was “ambiguous and of such doubtful meaning that reasonable minds disagree as to the deed's intent.” The Supreme Court, in reversing the lower court, noted that the grantors did convey the one-half interest in oil and gas to the grantee. “Because the deed was ambiguous, the circuit court should have considered the parties’ conduct after delivery of the deed — namely that the grantors to the deed stopped paying taxes on the oil and gas interest while the grantee started paying taxes.” [Read more.](#)

- **Overriding Royalties; Estates; Residuary Clauses – Wyoming.** On October 10, in *Lon V. Smith Foundation v. Devon Energy Corporation* (Case Nos. S-17-0021, S-17-0022, and S-17-0023), the Wyoming Supreme Court held that an overriding royalty interest (ORRI) passed through a residuary clause in fee to the wife of a testator and then to a trust for the testator’s beneficiaries even though the will said the ORRI would pass to the testator’s wife for life and then to a separate foundation. The Court affirmed the lower court’s ruling that the related probate orders governed the terms of the will finding that the ORRI passed to the testator’s wife in fee through the residuary clause, rather than as a life estate, and thus superseded the testator’s intent as express in his will. [Read more.](#)

INDUSTRY NEWS FLASH:

◆ **U.S. set to become the undisputed leader in crude and natural gas production.** Oil will continue growing as a source of energy for over two decades, with the U.S. set to become the undisputed leader in both crude and natural gas production, according to the International Energy Agency (IEA). According to the agency’s forecast, oil demand is forecast to keep rising until 2040, and natural gas will grow by a sharp 40 percent in the same period. “It is far too early to write the obituary of oil, as growth for trucks, aviation, petrochemicals, shipping and aviation keep pushing demand higher,” said IEA Executive Director Faith Birol. [Read more.](#)

State-by-State Legislative Session Overview

Pennsylvania is in regular session. The **District of Columbia** Council and **Puerto Rico** are also in regular session.

Michigan, Ohio and the **United States** Congress are in recess until November 28. **New Jersey** and **Rhode Island** are in recess to the call of the chair.

Wisconsin adjourned on November 9. November 15 was the last day for formal sessions until January 2 in **Massachusetts**. Informal sessions will continue to be held in the interim, but no chamber votes will be held.

Oklahoma convened a special session related to budget issues on September 25, the [Tahlequah Daily Press](#) reports.

Alaska adjourned its fourth special session on November 13, [AKPR](#) reports. **Connecticut** adjourned a special session on November 15 after sending legislation containing budget adjustments to Democratic Gov. Dannel Malloy for consideration, [CT News Junkie](#) reports. **Montana** adjourned a special session related to budget issues on November 17, [MTPR](#) reports, and a list of bills considered during the session can be found [here](#).

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 special session legislation or it becomes law. **Delaware** Democratic Gov. John Carney has 10 days, Sundays excepted, to act on legislation or it becomes law. **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 until three days after the next meeting of the legislature to act on legislation or it becomes law. **Montana** Democratic Gov. Steve Bullock has 10 days from delivery to act on legislation 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 special session 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. **Wisconsin** Republican Gov. Scott Walker has six days, Sundays excepted, to act on legislation or it becomes law. Bills must be presented to the governor by December 7. **North Carolina** Democratic Gov. Roy Cooper had a signing deadline on November 16.

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

The following states are currently posting bill drafts, prefiles and interim studies for the 2018 session: [Alabama](#), [Arkansas](#), [Colorado](#) (proposed legislation appears on interim committee pages), [Florida House](#) and [Senate](#), [Georgia Study Committees](#), [House](#) and [Senate](#) prefiles, [Iowa](#), [Kentucky](#), [Maine Short Titles](#), [Preliminary Titles of Agency Requested](#) bills and [Study Items](#), [Montana](#), [Nebraska](#), [New Hampshire Legislative Service Requests](#) and [Withdrawn LSRs](#), [North Dakota](#), [Oklahoma prefiles](#) and [House](#) and [Senate](#) interim studies, [South Carolina](#), [Utah](#) and [Wyoming](#).

Lands

Land Permits

Pennsylvania [HB 1009](#) passed the Senate State Government Committee with [amendments](#) on November 13 and the full Senate on November 15. The bill will now head to the House for concurrence with Senate amendments. This bill would release Project 70 restrictions on a parcel of property and structure located in West Newton Borough in Westmoreland County in return

for the development of park and open space in the West Newton Borough in Westmoreland County. The amendments retain the bill's original provisions but would also release Project 70 restrictions on certain lands owned in Uwchlan Township in Chester County in exchange for the implementation of a multiuse recreational trail. The bill would take effect immediately.

Landmen

Employee Classification

(Update to 11/13/17 Weekly Report) Although from a non-producing state, the following employee classification/independent contractor **Massachusetts** bills were heard in the Joint Labor and Workforce Development Committee on November 13; the committee took testimony from the AFL-CIO, the Associated Industries of Massachusetts and others, but did not vote on any legislation.

[HB 1018](#) would amend [General Law Section 148B](#) of Chapter 149, which governs employee classification, by striking out paragraph (a) and replacing it with the definition that people should be classified as employees unless:

- The individual is free from control and direction in connection with the performance of the service, both under his contract for the performance of service and in fact; and
- The service is performed outside the usual course of the business of the employer; or
- The individual is customarily engaged in an independently established trade, occupation, profession or business of the same nature as that involved in the service performed.

[HB 1036](#) would amend [General Law Section 148B](#) of Chapter 149, which governs employee classification, by striking out paragraph (a) and replacing it with the definition that people should be classified as an employee unless the person is a separate business entity or all of the following criteria are met, in which case they should be classified as an independent contractor:

- The person is free from control and direction in performing the job.
- The service is performed outside the usual course of business of the contractor for which the service is performed.
- The person is customarily engaged in an independently established trade, occupation, profession or business that is similar to the service at issue.

[SB 1043](#) would amend [General Law Section 148B](#) of Chapter 149, which governs employee classification, by adding that the state should adopt rules and regulations to align the state law with [section 3121](#) of the Internal Revenue Code and [section 530 \(d\)](#) of the Revenue Act of 1978.

[SB 1049](#) would amend [General Law Section 148B](#) of Chapter 149, which governs employee classification, by adding that a person is an independent contractor if they have consented to that classification and paid a compensation that is equal to, or exceeds, \$30 per hour, \$1,200 per week or \$5,160 per month. They would also have to provide certain professional services, use

discretion and independent judgment or advanced knowledge in a field, or retain ownership or copyright to their work.

[SB 1050](#), would amend [General Law Section 148B](#) of Chapter 149, which governs employee classification, by adding people who are in franchise agreements should not be considered employees of the parent company that granted them the license or authority to sell the product or service.

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.