

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

- **H.R. 6106 – Common Sense Permitting Act.** On June 20, [H.R. 6106](#), known as the “Common Sense Permitting Act”, and introduced by Rep. Steve Pearce (R-NM), passed the House Committee on Natural Resources. The bill 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.](#)
- **H.R. 6107 – Ending Duplicative Permitting Act.** On June 14, [H.R. 6107](#), known as the “Ending Duplicative Permitting Act”, was introduced by Rep. Steve Pearce (R-NM) and referred to the House Committee on Natural Resources. The bill would clarify that the Bureau of Land Management (BLM) shall not require permits for oil and gas activities conducted on non-Federal surface estates to access a subsurface mineral estate that is less than 50 percent Federally-owned. [Read more.](#)
- **H.R. 6087 – Removing Barriers to Energy Independence Act.** On June 13, [H.R. 6087](#), known as the “Removing Barriers to Energy Independence Act”, was introduced by Rep. Liz Cheney (R-WY) and referred to the House Committee on Natural Resources. The bill would impose fees on those protesting federal oil and gas lease programs, and would include “administrative protests of lease sales, drilling permit applications, and pipeline right-of-way applications.” According to Rep. Cheney, “Currently no fee is required and some groups have taken advantage of the ability to file protests for free by flooding the permitting agencies with frivolous protests that have severely delayed the federal permitting process and hurt our economy in Wyoming.” [Read more.](#)
- **H.R. 6088 – Streamlining Permitting Efficiencies in Energy Development Act.** On June 13, [H.R. 6088](#), known as the “Streamlining Permitting Efficiencies in Energy Development Act” or “SPEED Act”, was introduced by Rep. John Curtis (R-UT) and referred to the House Committee on Natural Resources. On June 20, the Committee began bill mark-ups and consideration. The bill would “amend the Mineral Leasing Act and allow lessees to file drilling notifications instead of drilling permit applications for activities that would not have a weighty environmental impact.” According to Rep. Curtis, the “bill will help streamline a burdensome federal process, create new economic development opportunities in rural communities across the district, and keep our country on the path of energy independence.” In short, the legislation will streamline the oil and gas permitting process by allowing the BLM to expedite the approval of drilling activities that pose little or no environmental harm. [Read more.](#)

FEDERAL – Regulatory

- **ANWR Leasing Draft.** The U.S. Department of the Interior has announced that it expects to publish its initial Environmental Impact Statement on oil and gas leasing in the Arctic National Wildlife Refuge (ANWR) coastal plain area as scheduled during the fourth quarter of 2018. “Oil and gas leasing on ANWR’s coastal plain was authorized and two sales scheduled as a provision in the federal tax reform bill that Congress passed, and President Donald Trump signed in late 2017. The process formally began when BLM announced in April that it would begin taking comments about ANWR Coastal Plain leasing.” The public comment period for those opposing the plan closed on June 19. “I won’t be surprised if we get a half-million comments,” said Assistant Secretary for Land and Mineral Management, Joe Balash. “Congress has given us a job to do, and specific deadlines. By mid-July, we’ll know whether we’ll be able to fit what we’ve learned into that schedule.” [Read more.](#)
- **BLM Permitting Process.** As reported by the law firm Holland & Hart, in the first two weeks of June the Bureau of Land Management (BLM) “issued two directives streamlining and clarifying the environmental review process undertaken by the BLM to approve an application for permit to drill (APD).” The first directive, issued as BLM Information Bulletin [No. 2018-061](#) (*NEPA Efficiencies for Oil and Gas Development*), seeks to expedite the processing of APDs by considering if it can rely on existing National Environmental Policy Act (NEPA) analyses. The second directive, BLM Permanent Instruction Memorandum [No. 2018-014](#) (*Directional Drilling into Federal Mineral Estate from Well Pads on Non-Federal Locations*) “emphasizes that the BLM’s regulatory jurisdiction is limited to Federal lands and Federal actions. To the extent surface facilities are located on non-Federal lands, the BLM’s jurisdiction extends mainly to ensure production accountability for royalties from Federal and Indian oil and gas.” The second memorandum also provides the BLM with general guidance for processing APDs for Fee and Federal lands. [Read more.](#)

FEDERAL – Judicial

- **Climate Change Lawsuit – California Federal Court.** In a substantial victory for the oil and gas industry, on June 25, U.S. District Court for the Northern District of California judge William Alsup dismissed a climate change lawsuit brought by the cities of Oakland and San Francisco, and on behalf of California, against five of the largest oil and gas companies. In [City of Oakland v. BP P.L.C.](#) (Case No. 3:17-cv-06011), the plaintiffs claim that the fossil fuel industry is responsible for global warming and climate change and sought to hold the companies liable for environmental changes. In his dismissal order, Judge Alsup noted that “The problem deserves a solution on a more vast scale than can be supplied by a district judge or jury in a public nuisance case.” The plaintiffs alleged that the “companies created a public nuisance and should pay for sea walls and other infrastructure to protect against the effects of climate change — construction that

could cost billions of dollars.” In rejecting the suit, Judge Alsup first suggested that this is a question more suitable for a legislative remedy and also questioned whether it would be fair to place the blame for global warming on those who supplied the very fossil fuels the world is demanding. [Read more.](#)

STATE – Legislative

- **Gross Receipts Tax – New Mexico.** At the behest of the New Mexico Legislative Council Service and the Legislature’s interim tax committee, on June 25, Ernst & Young, LLP released a report, *New Mexico’s Gross Receipts Tax, Compensating Tax, and Personal Income Tax: Considerations and Model Documentation*, compiled for legislators to analyze New Mexico’s current taxation system and develop a model which estimates state revenue impacts of potential changes in the tax base or rate contained in legislative tax reform proposals. The new model can estimate the revenue impacts of various reforms, and will be used in any proposed tax reform policy changes in the upcoming 2019 legislative session. [Read more.](#)
- **Notaries Public – Ohio.** (*Update to 3/12/18 Weekly Report*) On June 20, SB 263 was referred to the House Government Accountability and Oversight Committee for consideration after passing the Senate in early June. The bill, sponsored by Sen. Matt Huffman (R) and Sen. Steve Wilson (R), would make changes to existing notarial law including those regarding criminal records checks, regarding how an attorney may be appointed as a notary public, and certain educational requirements, among other provisions regarding notarial acts. [Read more.](#)

STATE – JUDICIAL

- **Leasing; Liability – Louisiana.** In a beneficial turnaround and huge win for the oil and gas industry, on June 27, the Louisiana Supreme Court overturned [two lower court rulings](#) in [Gloria’s Ranch, L.L.C. v. Tauren Exploration, Inc. et al.](#) (Consolidated Case Nos. 2017-C-1518; 2017-C-1519; 2017-C-1522). In that case, according to the Supreme Court, a “landowner brought suit against several mineral lessees for breach of the obligations of its mineral lease. The mortgagee of one of the lessees was also named as a defendant. The lower courts held all lessees and the mortgagee solidarily liable for damages resulting from the failure to furnish a recordable act evidencing the expiration of the lease, i.e., failure to release the lease.” In reversing the lower courts, the Supreme Court held that “(1) the mortgagee was not an “owner” for purposes of La. Mineral Code art. 207 and is, therefore, not liable for failure to release the lease. For the same reasons, we find the mortgagee was not a “lessee” for purposes of La. Mineral Code art. 140 and, is, therefore, not liable for failure to pay royalties that were due. (2) We find Tauren is solidarily liable for the damages because the failure to release the lease is an indivisible obligation. (3) We hold La. Mineral Code art. 140 authorizes as damages a maximum of double the amount of unpaid royalties.” With this ruling, the Supreme Court holds that

a mortgagee with a security interest in a mineral lease can't be held liable for breaches of the lease. [Read more.](#)

- **Keystone XL Pipeline– South Dakota.** In a victory for supporters of the Keystone XL Pipeline, on June 13, the South Dakota Supreme Court dismissed an appeal from opponents of the pipeline who challenged the South Dakota Public Utilities Commission's 2017 approval for the pipeline to cross the state. In dismissing the appeal in [Matter of PUC Docket HP 14-0001, Order Accepting Certification of Permit Issued in Docket HP 09-001 to Construct the Keystone XL Pipeline](#) (Case No. 2018 S.D. 44), the Supreme Court held that the lower court lacked the jurisdiction to even hear the challengers' cases because the statute only allows for appeal from those who are a party to certification proceedings. Here, the plaintiffs, unlike TransCanada, were not parties to any permit issuance proceedings since they themselves never sought a permit. Thus, the state statute did not provide them with the mechanism to appeal. [Read more.](#)
- **Deeds; Granting Clauses; Rights-of-Way; Quiet Title– Wyoming.** On June 18, in *BNSF Railway Company v. Box Creek Mineral Limited Partnership* (Case No. 2018 WY 67), the Wyoming Supreme Court weighed in on a dispute regarding mineral rights conveyed by two deeds in 1913. "The parties disputed whether the two deeds passed a fee simple estate from Box Creek to BNSF, thereby conveying the underlying mineral estate, or if the deeds merely conveyed an easement in fee simple, whereby the minerals would not pass to BNSF." The lower court found the deeds ambiguous and that the parties intended an easement-like conveyance rather than a fee simple interest and quieted title to the mineral estate in Box Creek. Here, the Supreme Court affirmed the lower court's decision in favor of Box Creek. (Hat tip: This case features our very own AAPL Past President, Marc Strahn, on the admissibility of his expert testimony for Box Creek which the district court found "persuasive" and noted that "Mr. Strahn's report is sufficiently reliable and he is properly qualified as an expert.") [Read more.](#)

INDUSTRY NEWS FLASH:

◆ **Eagle Ford holds 8.5 billion barrels of undiscovered oil and gas.** The U.S. Geological Survey (USGS) has deemed the Eagle Ford abundant in both oil and gas, estimating undiscovered, technically recoverable resources in the region at about 8.5 billion barrels of oil and 66 trillion cubic feet of gas. In a USGS report released June 22, scientists said the Eagle Ford contains one of the most prolific continuous accumulations of oil and gas in the country. "The Eagle Ford's ample resources may come as a positive for oil and gas producers looking to add reserves and grow production closer to the Gulf Coast refinery scene in Texas." [Read more.](#)

State-by-State Legislative Session Overview

California, Delaware, Massachusetts, New Jersey, North Carolina, Ohio and Pennsylvania are in regular session. The **District of Columbia** Council, **Puerto Rico** and the **United States** Congress are also in regular session.

Michigan is in recess until July 25. **Illinois, New Hampshire, New York, Rhode Island and Wisconsin** are in recess to the call of the chair.

The following states are expected to adjourn on the dates provided: **Delaware** (June 30) and **North Carolina** (July 6).

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, reports [WVNSTV](#).

Maine's special session is in recess until July 9. **Virginia's** special session is in recess to the call of the chair.

Louisiana adjourned their third special session on June 24, according to [The Livingston Parish News](#). **Vermont** adjourned their second special session on June 25 with a budget compromise, avoiding a state shut down, reports the [Burlington Free Press](#). Republican Gov. Phil Scott will allow the state appropriations bill to become law without his signature on June 30. The **South Carolina** legislature adjourned their two-day special session on June 28, reports the [Greenville News](#).

Hawaii Democratic Gov. David Ige has until July 10 to act on legislation presented after April 19 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. **Connecticut** Democratic Gov. Dannel Malloy has 15 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 all legislation passed during the veto session or it becomes law. **Kansas** Republican Gov. Jeff Coyler has 10 days, not including the day of presentment, to act on legislation or it becomes law without signature. **Louisiana** Democratic Gov. John Bel Edwards has 20 days from presentment to act on legislation presented after May 8 or it becomes law. **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. **Missouri** Republican Gov. Mike Parson has 45 days from presentment to act on legislation or it becomes law without signature. **New Hampshire** Republican Gov. Chris Sununu has five days from presentment, Sundays excepted, to sign or veto 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. **Rhode Island** Democratic Gov. Gina Raimondo has six days from presentment, Sundays excepted, to act on legislation or it becomes law without signature. **Vermont** Republican Gov. Phil Scott has five days, Sundays excepted, to act on legislation presented after May 16. The disposition of legislation not acted on after that period will be determined on a case-by-case basis. **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. **Wisconsin** Republican Gov. Scott Walker has six days from presentment, Sundays excepted, to act on special session legislation or it becomes law.

The following states are currently holding 2019 interim committee hearings: [Alabama](#), [Alaska](#), [Arizona](#), [Arkansas](#), [Colorado](#), [Connecticut](#), [Hawaii](#), [Idaho](#), [Indiana](#), [Iowa](#), [Kansas](#), [Kentucky](#), [Maine](#), [Maryland](#), [Minnesota](#), [Mississippi Senate](#), [Montana](#), [Nevada](#), [New Mexico](#), [North Dakota](#), [Oklahoma House](#), [Oregon](#), [South Carolina](#), [South Dakota](#), [Tennessee](#), [Texas House](#) and [Senate](#), [Utah](#), [Virginia](#), [Washington](#), [West Virginia](#) and [Wyoming](#).

The following states are currently posting 2019 bill drafts, profiles and interim studies: [Kentucky](#), [Montana](#), [North Dakota](#) and [Utah](#).

Hydraulic Fracturing

California [SB 1370](#) passed the Assembly Natural Resources Committee on June 25 and is now pending in the Assembly Appropriations Committee. The bill would remove a provision of existing law that exempted well stimulation treatments that are used for routine maintenance of wells from permitting requirements. The bill would take effect the January 1 following a 90-day period from the date of enactment.

Illinois [HB 4724](#) was delivered to Republican Gov. Bruce Rauner on June 29. Governor Rauner has until August 28 to sign or veto the bill or it becomes law. As enrolled, the bill would provide that first purchasers are not required to obtain exemption certificates from the operator until the first high volume horizontal hydraulic fracturing permit has been approved by the Department of Natural Resources. The bill would take effect January 1, 2019.

Public Lands

Pennsylvania [HB 2489](#) unanimously passed the House on June 22 and is now pending in the Senate State Government Committee. 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.

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.