

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

- **H.R. 6059 – Washington, DC.** On September 15, Rep. Alan Lowenthal (D-CA) introduced H.R. 6059, the [Transparency in Energy Production Act of 2016](#), which has been referred to the House Natural Resources Committee. The bill's stated purpose is to "to publicly disclose the amounts and sources of greenhouse gas pollution from fossil fuel development on public lands in order to promote greater transparency in the Federal energy leasing programs." Although touted as "bipartisan", the few Republican bill co-sponsors hail from either non-producing states or those opposed to oil and gas resource development. [Read more.](#)
- **EPA Methane Emissions Rule Hearing – Washington, DC.** Last week, the U.S. House Committee on Science, Space, and Technology's Subcommittee on Environment held a hearing, entitled [A Solution In Search of a Problem: EPA's Methane Regulations](#), to question whether new EPA methane emissions rules are necessary. According to written testimony by Bernard Weinstein, Associate Director of Maguire Energy Institute at Southern Methodist University, "oil and gas industry methane releases represent only about 3.4% of all US GHG emissions, which reached a 25-year low last year." Weinstein was joined by the American Petroleum Institute (API) in cautioning against new regulations. "Despite the success of the industry in reducing methane emissions, [it] is under threat of various regulations that will impose significant costs without commensurate benefits," said API Upstream Director Erik Milito. [Read more.](#)

FEDERAL – Regulatory

- **BLM Upper Colorado Basin – Colorado.** On September 12, environmental groups filed a [60-day notice of intent to sue](#) the BLM and the U.S. Fish and Wildlife Service (FWS) in an effort to halt oil and gas leasing and development in the Upper Colorado River Basin on claims that endangered fish are being put at risk in violation of the law. The groups say the BLM and Fish and Wildlife Service relied on an invalid and outdated study authorizing water depletions for oil and gas development in the Basin as the BLM approved land-use plans in the region, most notably plans involving the Grand Junction and White River field offices that combined allow for nearly 19,000 oil and gas wells. [Read more.](#)
- **BLM Master Leasing Plan – Utah.** On September 14, the BLM announced in the Federal Register ([81 FR 63203](#)) that the Utah Resource Advisory Council will conduct a field tour

of the San Rafael Desert Master Leasing Plan (MLP) oil and gas development project area on October 17, followed the next day by a meeting. The tour and meeting are open to the public. This announcement follows the BLM's notice in May 2016 of the MLP process for development of oil and gas resources on nearly 525,000 acres in Emery and Wayne counties. [Read more.](#)

- **Lesser Prairie Chicken.** On September 8, a coalition of environmental groups filed a [petition](#) with the U.S. Fish and Wildlife Service (FWS) claiming there's new evidence that warrants listing the bird as endangered even though the bird was removed from the threatened and endangered species list earlier this year following a Texas court ruling that vacated federal protections, and a subsequent decision by government lawyers not to pursue an appeal. Oil and gas groups have opposed the listing, saying it would impede operations and cost companies hundreds of millions of dollars in one of the country's most prolific basins — the Permian Basin, in an area stretching from West Texas into eastern New Mexico. [Read more.](#)
- **Employee Misclassification.** In late August, the National Labor Relations Board (NLRB) finally released to the public a [General Counsel Advice Memorandum](#) that was actually dated December 18, 2015. The Memorandum stated that employers who misclassify employees as independent contractors violate Section 8(a)(1) of the National Labor Relations Act by restraining the employees' rights to engage in concerted, protected activity (such as attempting to form a union). While the Memorandum was issued solely in relation to a transport shipping employer matter, the legal theories could possibly be expanded into other industries. For now, "employers must now add 'NLRB scrutiny' to the list of risks of employee misclassification (which already include tax liabilities, IRS audits, wage and hour claims and potential class actions) and continues the NLRB's trend of focusing on broader issues of employment law – specifically including worker misclassification issues." [Read more.](#)

FEDERAL – Judicial

- **Public Lands; Leasing – Montana.** (Update to 4/25/16 Weekly Report) Last Monday, Louisiana energy company, Solonex, LLC, asked a federal judge to reverse the cancellation of a 33-year-old oil and gas lease on land considered sacred to the Blackfoot tribes. The U.S. Interior Department cancelled the lease in March 2016. Solonex had challenged the [cancellation of an oil and gas lease](#) in northwest Montana after federal officials said drilling would disturb an area sacred to the Blackfoot tribes of the U.S. and Canada. Now, Solonex says the cancellation was improperly issued in part because environmental studies did not consider the effects of drilling on the tribes. The 6,200-acre lease is in the Badger-Two Medicine area of the Lewis and Clark National Forest. It's just outside Glacier National Park and the Blackfeet Indian Reservation. [Read more.](#) Access the court filing [here.](#)

STATE – Regulatory

- **State Land Leases – Pennsylvania.** Last Tuesday, Pennsylvania’s government ethics agency announced that a retired state Game Commission official, William Capouillez, who had once been considered for the agency’s top job, agreed to pay a \$75,000 ethics fine over his side business helping land owners negotiate natural gas drilling leases. Capouillez’s job as director of the state’s Bureau of Wildlife Habitat Management involved oversight of gas leases on state game lands, while he moonlighted by running a business that helped landowners make deals with some of the same drilling companies. The ethics commission said that by these actions Capouillez improperly received a valuable benefit by virtue of his state job. [Read more.](#)

STATE – Judicial

- **Dormant Minerals Act – Ohio.** On September 15, the Ohio Supreme Court issued a series of opinions involving the Ohio Dormant Mineral Act. In [Corban v. Chesapeake Exploration L.L.C.](#) (Case No. 2016-Ohio-5796), the Ohio Supreme Court confirmed that the 1989 version of the Ohio Dormant Mineral Act (DMA) “was not self-executing and did not automatically transfer ownership of dormant mineral rights by operation of law.” Instead, surface owners were “required to bring a quiet title action” prior to 2006 in order to establish abandonment. After June 30, 2006 (the effective date of the 2006 version of the DMA), a surface owner is “required to follow the statutory notice and recording procedures enacted in 2006.”

In [Walker v. Shondrick-Nau](#) (Case No. 2016-Ohio-5793), the Court, in applying the 2006 version of the DMA, and citing *Corban* above, held that the owner of the severed mineral estate preserved his rights by timely filing a claim to preserve, which was sufficient to preclude the mineral estate from being deemed abandoned and which thus vested in the owner of the surface estate.

In [Albanese v. Batman](#) (Case No. 2016-Ohio-5814), the Court also relied on *Corban*, holding that the severed estate was preserved because the surface owner, pursuant to the 2006 DMA, failed to serve the mineral owner with the requisite notice of intent to declare the mineral estate abandoned. For more background on these cases: [Read more.](#) Further case review on the Ohio DMA is [available here.](#)

- **Deeds – Texas.** In a recent instrument interpretation case, [Richardson v. Mills](#) (Case No. 12-15-00170-CV), the Texas Court of Appeals concluded that an instrument at issue that used the word “forever” in the habendum and warranty clauses was not a mineral lease, but was an unambiguous mineral deed. Although the instrument included consideration for future services, it lacked any implied covenant for development. [Read more.](#)

INDUSTRY NEWS FLASH:

◆ **Energy sector makes biggest payouts to employees for wage and hour actions.** When it comes to recovery of back pay as the result of wage and hour actions brought by the U.S. Department of Labor, no industry can match the oil and gas exploration and production industry, according to TSheets, a company that sells time tracking software to companies. Tracking data over a 30-year period, TSheets found that claims resulting from actions, such as lawsuits claiming entitlement to overtime pay despite an agreement for compensation based on a day-rate, were the highest of any industry. [Read more.](#)

State-by-State Legislative Session Overview

Tennessee adjourned a three-day special session after lawmakers approved changes to a DUI law that would have jeopardized \$60 million in federal highway funding, [The Tennessean](#) reports. The session was called because the state's DUI law was not in compliance with a federal zero tolerance law, which requires states to set 0.02 as the permissible blood-alcohol level for drivers under 21. Federal officials said the state stood to lose eight percent, or \$60 million, of its federal highway funding unless the issue was resolved by October 1. On September 14, legislators overwhelmingly passed [HB 9001xx](#), which revised the statute in question. The measure was transmitted immediately to Republican Gov. Bill Haslam, who has until September 26 to act on the bill or it becomes law without signature. The session also included the expulsion of Rep. Jeremy Durham, R-Franklin, by a 70-2 vote on September 13. Durham had been accused of sexual misconduct and was the target of an FBI inquiry and attorney general's investigation.

Negotiations over a proposed continuing resolution to fund the **United States** federal government until December 9 have stalled, [The Hill](#) reports. Discussions over the stopgap funding measure are mired in disagreement over controversial riders related to Zika funding and the Export-Import Bank. Senate Minority Leader Harry Reid, D-Nevada, who has said that the funding measure is the only must-pass legislation before Congress can recess for the November elections, voiced frustration that a draft of the continuing resolution has not been produced. Congress must pass a funding measure before September 30 to avert a shutdown of the federal government.

Massachusetts, Michigan, New Jersey and the **U.S.** Congress are in regular session.

Pennsylvania is in recess until September 19. The **District of Columbia** Council is in recess until September 20. **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.

West Virginia Democratic Gov. Earl Ray Tomblin is expected to call a special session to convene September 19, the [Charleston Gazette-Mail](#) reports. The focus of the session will be to

appropriate 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.

Alabama adjourned a special session on September 7 without passing the lottery bill proposed by Republican Gov. Robert Bentley. According to [AL.com](#), Governor Bentley instead signed a proposal that provides Medicaid \$120 million over the next two years with funding coming from a bond issue backed by settlement funds from the BP oil spill.

Tennessee adjourned a special session to address changes to DUI laws on September 14.

California Democratic Gov. Jerry Brown has 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, **New York** Democratic Gov. Andrew Cuomo and **Rhode Island** Democratic Gov. Gina Raimondo have 10 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](#) was delivered to Democratic Gov. Jerry Brown on September 9. Governor Brown has until September 30 to act on the bill or it becomes law. This bill would authorize the Department of Fish and Wildlife to propose a regional conservation investment strategy targeted at informing science based conservation and habitat enhancement actions. As amended, the bill would 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 would be to advance the conservation of keys species and to provide nonbinding guidance for various conservation activities. AB 2087 is not intended to regulate the use of land, but rather to promote the importance of voluntary, non-regulatory approach to regional conservation.

Oil and Gas

General Oil and Gas

Democratic Gov. Jerry Brown signed **California** [AB 2756/Chapter 274](#) on September 9. Effective on January 1, this law will require the Oil and Gas Supervisor to consider additional circumstances when establishing a civil penalty for violating oil and gas regulations. It will also give the supervisor the authorization to treat each day a violation is not cured as a separate violation, and will set the penalty at no less than \$10,000 and no greater than \$25,000 per violation. The law will also authorize the supervisor to allow for a supplemental environmental project in lieu of a portion of the penalty, but not to exceed 50 percent of the amount of the fee. It will change the penalty limit to allow for an appeal from \$10,000 to \$25,000. The law will also give the division the ability to manage the Oil and Gas Environment Remediation Account in which money can be used to remediate wells, and other areas that may pose a danger to health, water quality, wildlife or natural resources.

Bundling & Pooling

UPDATE: AAPL's bill tracking service inaccurately reported the bill summary for Michigan SB 903 in last week's report. Fortunately, one of our members brought the error to our attention. The following is an updated summary for **Michigan** [SB 903](#). SB 903 was scheduled to be heard in the House Energy Policy Committee on September 14, but the meeting was canceled. 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.

Mineral Rights

Democratic Gov. Jerry Brown signed **California** [AB 2729/Chapter 272](#) on September 9. Effective January 1, this law will make changes to the definitions of active observation well, idle well and long-term idle well. An idle well will be defined as a well that had 24 consecutive months of not producing or being used for injection. An idle well will continue to be an idle well until the well has been properly abandoned in accordance with existing law. For active observation wells, the law will require the user to report their data annually. The law will define a long-term idle well as a well that has been idle for eight or more years.

The law will provide that the abandoned underground personal property, including a well, of an operator becomes the property of the mineral interested owner when the operator loses the right to remove it under common law or lease or any other agreement that initially gave the operator the right to conduct activity on the well.

Current law requires operators to file a specified annual fee or plan for elimination of all long-term idle wells by January 1, 1999. The law will remove the current requirement that plans must be filed by January 1, 1999 until January 1, 2018 and require the plan cover a period of no more than one year, revise the requirements and remove the exemption from increased well bond or fee requirements for operators who comply with the plan.

This law will require the supervisor to prepare and submit a comprehensive report to the legislature on the status of idle and long-term idle wells for the preceding calendar year.

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