

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

- **Congressional Recess Ends.** This week, U.S. senators and congressmen return to Washington, DC following their August recess. All eyes will be on pending spending measures, which include disaster relief provisions. A pre-storm Republican proposal to cut \$876 million from the Federal Emergency Management Agency's disaster relief account is part of a massive spending bill that the House is scheduled to consider this week, but they may reverse course in the wake of Hurricane Harvey and the massive recovery efforts. [Read more.](#)

FEDERAL – Regulatory

- **BLM Leasing Plan – National Petroleum Reserve-Alaska.** The Bureau of Land Management (BLM) has published a notice ([82 Fed. Reg. 36827](#)) calling for nominations and comments on all available tracts in the 22.8 million-acre National Petroleum Reserve in Alaska (NPR-A). The [BLM announcement](#) is soliciting interest in the nearly 11 million NPR-A acreage former President Obama's administration made off-limits to oil and gas leasing in 2013, and which encompasses 900 tracts that will be available for nomination and comment under a lease sale to be announced later this year. "Offering all tracts for nomination is in response to (Interior Secretary Ryan Zinke's) order and will jump-start Alaskan energy production in the National Petroleum Reserve in Alaska," said acting Assistant Interior Secretary for Lands and Mineral Management Katharine MacGregor. The public comment period is open through September 6, unless extended. [Read more.](#)
- **BLM Lease Sale – Colorado.** A number of conservation groups are opposing a BLM plan to lease certain areas covering a portion of more than 27,000 acres involving 28 parcels that the BLM has proposed offering in a December 2017 lease sale, including about 22,300 acres in Mesa County and about 5,000 acres in Garfield County. The groups say oil and gas leasing in six of the parcels largely overlap a "solar emphasis area" the BLM identified west of Highway 139 in the resource management plan it approved in 2015 for its Grand Junction Field Office. The groups say due to the drilling activity the "BLM would be essentially unable to encourage or authorize solar energy development in this Solar Emphasis Area at all, completely contravening the management direction that BLM adopted for this area as recently as 2015." Katie Stevens, manager of the BLM's Grand Junction Field Office, believes solar facilities can coexist with oil and gas development on the same acreage. "We think they can be compatible with oil and gas. It's not like (oil and gas development) takes up the whole landscape," she said. The BLM plans to issue its sale notice for the December auction on September 8. [Read more.](#)

- **BLM Lease Sale – Nevada.** On September 12, the BLM will hold its quarterly online oil and gas lease sale for three parcels in Nye County totaling approximately 3,680 acres in the Battle Mountain District. [Read more.](#)

FEDERAL – Judicial

- **Local Regulations – 4th Circuit Court of Appeals (West Virginia).** On August 30, in *EQT Production Company v. Wender et al.* (Case No. 16-00290), the 4th U.S. Circuit Court of Appeals ruled in favor of EQT Production Company by upholding a lower court decision that dismissed an effort by Fayette County officials to ban the disposal of natural gas production wastes in the county, agreeing with EQT that the county’s rules were pre-empted by West Virginia law. “In a 2-1 decision, the 4th Circuit ruled that the Fayette County ordinance conflicted with provisions of West Virginia’s Oil and Gas Act and the state Department of Environmental Protection’s underground injection control, or UIC, program that issues permits for disposal of natural gas industry and other wastes under the state’s water pollution law.” [Read more.](#) For further reference, you may also access the lower court [decision here](#) until the 4th Circuit opinion is made publicly available.
- **Royalties; Leasing – West Virginia Federal Court.** On August 24, in *Kinney v. CNX Gas Company, LLC et al.* (Case No. 5:15-CV-160), the U.S. District Court for the Northern District of West Virginia held that express lease provisions for flat-rate royalty deductions in which an oil and gas lease provided for a flat-rate deduction are consistent with West Virginia law and will be enforced. The plaintiffs had alleged that defendants improperly subtracted flat-rate deductions from royalty payments that were neither actual nor reasonable, and even alleged that such a flat-rate post-production lease provision is illegal and should not be enforced under West Virginia law. The Court disagreed, refusing to dismiss lease provisions expressly provided for in a “plain and unambiguous manner”, and noting “this Court finds the unambiguous agreements in this matter satisfy all that the laws of the State of West Virginia require regarding such leases.” [Read more.](#)

STATE – Legislative

- **Local Regulations – Colorado.** On August 25, a new Town of Erie ordinance ([No. 17-250](#)) went into effect which amends the town’s public health and safety code to allow Erie residents to file official complaints against hydraulic fracturing companies. Specifically, the ordinance expands the Abatement of Nuisance chapter to include odor emissions, which cause “annoyance or otherwise detrimentally affects the general health, safety, welfare or use and enjoyment of one’s property.” The complaints would be filed with the local police department and heard in a municipal court. If a court finds that the company has violated the ordinance, the court could order it to “pay restitution to the Town for the actual costs or loss caused to the Town by the violation.” Dan Haley, president and chief executive officer of the Colorado Oil and Gas Association, criticized the ordinance saying it “is extremely vague, highly subjective, and impossible to enforce

on a consistent basis” and noting that it “does not adequately explain to Erie citizens what behavior or conduct may or may not be lawful, which further prevents any clear standard of enforcement. Erie’s draft ordinance stands on shaky legal ground, as it is a radical departure from how Colorado common law and indeed from how other municipalities define and approach odor nuisances.” [Read more.](#)

- **Independent Landman Registration – Pennsylvania.** On August 29, a group of bipartisan senators sponsored and introduced [SB 835](#). The bill would require independent landmen to register with the state in order to conduct landwork but does not apply to company landmen since “officers or employees of a partnership or corporation” are excluded from the registration requirements. The bill grew out of “numerous constituent calls” Senator Andrew E. Dinniman (D) received regarding pipeline land agents and the bill has broadened from a prior version of a bill that never passed to include a broader definition of a “land agent” (see [Senator’s Memo](#)). The state Real Estate Commission would oversee the registrations, but this is not a licensing bill. The measure would require background checks for independent “land agents” and would also give the commission the authority to revoke or suspend registration certificates for issues such as false representation or fraudulent act or conduct. AAPL will be strategizing on next steps regarding this bill since it will be opposed by many landmen members. The upside is that the prospects for passage are doubtful since legislators were unable to get an even narrower version of the bill passed in the last session. We will continue to keep you informed of our efforts and any developments. [Read more.](#)

STATE – Regulatory

- **Indian Lands Taxes – North Dakota.** The Three Affiliated Tribes – whose Indian lands account for nearly one-fifth of North Dakota’s oil production – has raised the tax for companies drilling on its land. Tribal Chairman Mark Fox says the tribe needs a higher tax rate to pay for the consequences of oil development on the Fort Berthold Reservation, but the state Tax Commissioner Ryan Rauschenberger says the change violates an agreement that lowered the state’s combined extraction and production taxes from a top rate of 11.5 percent to 10 percent. Governor Doug Burgum also called the move “inconsistent” with a tax accord between the state and the tribes. He said the dispute creates regulatory uncertainty that has the potential to “quell or squash investment” in the state. Fox said it never agreed to the change and the tribe still wants its share, which is half of the 1.5 percent rate that was forgiven by lawmakers. He estimated the sum to be about \$17 million. [Read more.](#)

STATE – Judicial

- **Acres Release Clauses; Leasing – Texas.** (Kane Russell Coleman Logan PC, *Energy Law Today*, 8/26/17) On July 25, in [Hardin-Simmons University v. Hunt Cimarron LP](#) (Case No. 07-15-00303-CV), the Texas Court of Appeals for the Seventh District

(Amarillo), was asked to construe certain lease provisions in order to determine whether, and to what extent, a lease remained in effect after expiration of its primary term due to a lack of production in paying quantities. The Court, in rejecting a jury verdict in favor of Hunt Cimarron, determined that the lease had come to an end by operation of its own terms. Hunt Cimarron had argued that the full leasehold had been perpetuated beyond the expiration of its primary term by way of the lease's "reworking" provisions and that it held the entire mineral leasehold by reworking several wells on the leased acreage. The Court disagreed, ruling that the reworking clause holds the lease only so long as reworking operations are being prosecuted—and that, thereafter, the operator would hold just the limited acreage surrounding each actively producing well. [Read more.](#)

INDUSTRY NEWS FLASH:

◆ **Energy companies make big contributions to Hurricane Harvey disaster relief.** Many AAPL member companies have already stepped up with generous support to those affected by Hurricane Harvey and the ongoing relief effort. At publication, the Red Cross has begun receiving donations and commitments from Chevron (\$1 million), ExxonMobil (\$500,000), and Range Resources (\$100,000) with other companies planning donations to the relief effort. Our own NAPE Charities Fund is donating \$50,000 to the American Red Cross, and as noted by AAPL President David Miller last week, please watch your email and our website over the next few weeks for ways AAPL members may respond to those in need and how you can help be a part of the recovery process. [Read more.](#)

◆ **Democratic Senator urges Trump to tap the Strategic Petroleum Reserve.** On August 30, U.S. Senator Ed Markey (D-Mass) urged President Trump to tap the country's emergency gasoline or crude oil reserves from the Strategic Petroleum Reserve (SPR) to alleviate fuel spikes resulting from Hurricane Harvey. The storm has already shut down 24 percent of U.S. fuel output after refineries in Texas and Louisiana were flooded. Since then, the U.S. Energy Department has released one million barrels of oil from the SPR and a White House adviser said the administration may release even more. "I think we would be very comfortable tapping into that and providing that alleviated resource," said homeland security adviser Tom Bossert. [Read more.](#)

PRACTICE TIP: Can a terminated federal lease be reinstated? *(from Holland & Hart Oil & Gas Report, 8/28/2017)* The law firm Holland & Hart offers a useful primer on federal lease termination and whether they can be reinstated. "The simple answer to that question is the same as all other legal questions: it depends. It depends on the reason the lease was terminated, how long the lease has been terminated, and what steps the lessee has taken to rectify the termination." [Read more.](#)

State-by-State Legislative Session Overview

California and **Massachusetts** are in regular session. **Puerto Rico** is also in regular session.

The following are in recess and are expected to convene on the dates provided: **United States** Congress (September 5), **Michigan** House and **Ohio** Senate (September 6), **Michigan** Senate (September 7), **Wisconsin** (September 12), **Ohio** House (September 13), the **District of Columbia** Council (September 19) and **North Carolina** (October 4). **New Jersey** and **Pennsylvania** are recessed to the call of the chair.

The **Connecticut** Senate convened a special session related to budget issues on July 31, [The Connecticut Mirror](#) reports. **Wisconsin** convened a special session on August 2 to consider legislation that would create an information technology manufacturing zone. **Hawaii** convened a special session on August 28 to address funding for a rail project, [Hawaii News Now](#) reports.

Illinois adjourned a special session related to education funding on August 29. **North Carolina** adjourned a special session related to legislative redistricting on August 31.

Rhode Island is expected to convene a special session on September 19. An agenda for the special session has not yet been made available. **Alaska** is expected to convene its fourth special session, related to budget issues, on October 23, the [Juneau Empire](#) reports. **Vermont** is scheduled to convene a special session the same day to address any necessary matters related to changes made by federal legislation.

North Carolina Democratic Gov. Roy Cooper has until September 2 to act on legislation from the first special session and has until September 30 to act on legislation from the second special session or it becomes law. **Texas** Republican Gov. Greg Abbott has until September 4 to act on legislation from the special session or it becomes law. **Illinois** Republican Gov. Bruce Rauner has until October 28 to act on special session legislation or it becomes law. **Alaska** Independent Gov. Bill Walker has 15 days, Sundays excepted, to act on legislation from the regular and special sessions or it becomes law. **Delaware** Democratic Gov. John Carney has 10 days, Sundays excepted, to act on legislation 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. **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. **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.

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

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

The following states are currently posting bill drafts, prefiles and interim studies for the 2018 session: [Alabama](#), [Arkansas](#), [Florida House](#) and [Senate](#), [Georgia](#), [Kentucky](#), [Maine](#), [Montana](#), [Nebraska](#), [North Dakota](#), [Oklahoma prefiles](#) and [House](#) and [Senate](#) interim studies, [Utah](#) and [Wyoming](#).

Lands

Public Lands

On August 21, the Assembly decided to reconsider the veto by Democratic Gov. Jerry Brown of **California** [AB 1472](#), but they have not taken a vote yet. The bill was vetoed on July 24. Existing law gives the State Lands Commission control over certain public lands. With respect to oil, gas, and mineral leases, the assignment, transfer or sublet of public lands to another person is subjected to approval by the commission and certain provisions apply. In considering the approval of a transfer of assignment on public lands, this bill would have authorized the commission to consider whether the proposed assignee is likely to comply with all provisions of the lease for the duration of the lease term.

Oil and Gas

Oil and Gas General

During an August 23 hearing, **California** [SB 44](#) was automatically referred to the Assembly Appropriations Committee's suspense file because it carries a fiscal impact exceeding \$150,000. This bill would require the State Lands Commission in the Natural Resources Agency to administer a legacy oil and gas well removal, plugging and remediation program. Carrying out this program is contingent on appropriation of funds by the legislature. This bill is sponsored by Sen. Hannah-Beth Jackson, D-Santa Barbara, chair of the Senate Judiciary Committee.

California [SB 465](#) was heard in the Senate Appropriations Committee on August 23 and was referred to the suspense file. This bill would further detail the role of the oil and gas supervisor in the state and their responsibility regulating oil and gas production and encouraging safe development of oil and gas resources. The bill would require the supervisor to oversee the drilling, operation, maintenance and abandonment of wells, tanks and facilities in oil and gas production. It would require all operators to file a written notice of intent to start drilling with the supervisor. The bill would clarify definitions for idle well as a well that has not been in production for over 24 months, and a long term idle well is one that has not been in operation for eight years or more.

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