

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

- **Sage Grouse Conservation.** On February 1, Sen. James Risch (R) introduced [S. 273](#), the *Greater Sage-Grouse Protection and Recovery Act of 2017*. The measure would affirm the primacy of state resource management plans over inconsistent rulemaking by the federal government and prohibit listing of the greater sage-grouse as an endangered species or threatened species under the Endangered Species Act through 2027. [Read more.](#)
- **Federal Oil & Gas Royalty Calculations.** On February 13, Rep. Scott Tipton (R-CO) introduced [H. J. Res. 71](#) to undo the Department of Interior's Office of Natural Resource Revenue rule for calculating the value of oil and gas extracted on public lands for royalty purposes. The final rule, *Consolidated Federal Oil & Gas and Federal & Indian Coal Valuation Reform* ([81 Fed. Reg. 43337](#)), published last July, was finalized recently enough for Congress to undo it under the Congressional Review Act. "The regulation creates uncertainty for businesses, a disincentive for responsible development of our natural resources on federal land, and ultimately hurts hardworking Americans, their families, and their communities the most," Tipton said in a statement. [Read more.](#)
- **Repeal of Oil & Gas Reporting Rule.** (Update to 2/6/2017 Weekly Report) On February 14, President Trump signed [H. J. Res. 41](#) to repeal an Obama-era rule which required U.S. energy companies to disclose any payments involving domestic or foreign governments to the Securities and Exchange Commission. The rule, *Disclosure of Payments by Resource Extraction Issuers* ([81 Fed. Reg. 49359](#)), would have required publicly traded companies engaged in resource extraction to report payments for the commercial development of oil, natural gas, and minerals. The signing of the measure is the first time in 16 years that the Congressional Review Act has been used to repeal a regulation, and is part of Trump's broader agenda to rollback burdensome, costly, or unnecessary regulations. [Read more.](#)

FEDERAL – Regulatory

- **BLM Leasing – Utah.** The BLM decided to pull two parcels near Zion National Park from a planned June oil and gas lease sale, in part to allow the National Park Service (NPS) to conduct more analysis on leasing impacts. BLM pulled the parcels at the request of the NPS, which voiced concerns about the possible effects of drilling near the park. According to Ryan Sutherland, a BLM spokesman in Salt Lake City, the BLM

is also still evaluating whether to offer the parcels, which cover a total of 2,800 acres about one mile north and east of Zion in southwest Utah, at a planned September 14 lease sale. The BLM decision follows last month's release of their draft [environmental assessment](#) (EA) analyzing the parcels. The BLM has extended the [public comment](#) period for the EA until March 9. [Read more.](#)

- **Puzder out as next Labor Secretary, Acosta in.** In a surprise move, Andrew Puzder, CEO of the fast-food conglomerate that owns Hardee's and Carl's Jr., pulled his name from consideration to be the next Secretary of the U.S. Department of Labor amid controversy over his personal life and private sector background. For landmen beset by independent contractor enforcement issues, the appointment of a new Labor Secretary is on many minds, since that agency regulates employee misclassification at the federal level. On February 16, President Trump announced that Alexander Acosta, a former U.S. Justice Department attorney and National Labor Relations Board member under President George W. Bush, will replace Puzder. [Read more.](#)

FEDERAL – Judicial

- **Permitting; Leasing – Oklahoma Federal Court.** On February 9, in *Lenker v. Haugrud* (Case No. 16-CV-0532-CVE-PJC), a federal district court in Oklahoma held that a surface owner failed to exhaust administrative remedies before challenging oil and gas leases and drilling permits approved by the Superintendent of the Osage Agency, reasoning that the plaintiff had the obligation to appeal the permits issued by the Superintendent to the U.S. Bureau of Indian Affairs (BIA) and couldn't sue before doing so even if the BIA didn't conduct a proper environmental review before issuing the permits or notify the surface owner's predecessor about those permits. [Read more.](#)

STATE – Legislative

- **Production Units; Pooling – Alabama.** On February 9, Rep. Victor Gaston (R) introduced HB 169. The bill states that regarding owners in a proposed or existing drilling or production unit, that although a risk compensation fee cannot be charged against the interest of an owner who does not receive actual notice of the hearing on the petition requesting imposition of the fee, the fee is chargeable against the interests of other non-consenting owners in the unit who were given actual notice of the hearing in compliance with applicable laws. [Read more.](#)
- **Reporting – Idaho.** On February 13, Sen. Steve Bair (R) introduced SB 1098. The bill would add provisions to existing law to require producers to file monthly statements with the Idaho State Tax Commission, to provide for contents of the statements and to provide that statements or reports shall be signed and sworn to by the producer or a designee. [Read more.](#)

- **Permitting and Administrative Processes – Idaho.** On February 14, HB 64 was received in the Senate after approval in the House. The bill would make certain revisions to provisions regarding applications for and permits to drill, revise certain fee provisions, as well as revising administrative processes, among other provisions. [Read more.](#)
- **Royalties; Spacing Units; Disclosures; Administrative Processes – Idaho.** On February 14, the Senate Resources and Environment Committee introduced SB 1100. The bill would require that when payment is made to any owner of a royalty interest, certain information shall be included on the payor’s check stub or on an attachment to the form of payment; provides that royalties shall not be reduced by costs; revises confidentiality provisions; provides for disclosure of certain records; provides for metering of production; and makes certain changes to the spacing units process, among other provisions. [Read more.](#)
- **Public Lands – Illinois.** On February 7, Sen. Julie Morrison (D) introduced SB 974. The bill would prohibit the issuing of new permits for oil and gas extraction activities on lands owned by the Department of Natural Resources or the federal government. [Read more.](#)
- **Ban on Hydraulic Fracturing – Maryland.** On February 10, Del. David Fraser-Hidalgo (D) introduced HB 1325. The bill would prohibit a person from engaging in the hydraulic fracturing of a well for the exploration or production of oil or natural gas in the State. [Read more.](#)
- **Ban on Hydraulic Fracturing – Maryland.** On February 10, Del. Ben Kramer (D) introduced HB 1387. The bill would ban the use of hydraulic fracturing in the state and impose criminal penalties for the practice. [Read more.](#)
- **Setbacks; Notice – Michigan.** On February 14, Rep. Jeremy Moss (D) introduced HB 4199. The bill provides requirements for setbacks, public notice, and compliance with local ordinances. [Read more.](#)
- **Oil and Gas Commission – Michigan.** On February 14, Rep. Jeremy Moss (D) introduced HB 4202. The bill creates the Oil and Gas Commission within the Department of Environmental Quality and sets forth its authority and procedures. [Read more.](#)
- **Royalty Rates – New Mexico.** On February 10, Sen. Howie Morales (D) introduced SB 375. The bill would empower the Commissioner of Public Lands to raise royalty rates on state trust land and also require reports on vented or flared gas. [Read more.](#)
- **Hydraulic Fracturing – Nevada.** On February 13, Assemblyman Justin Watkins (D) introduced AB 159. The bill would ban hydraulic fracturing in the state. A hearing on the bill is scheduled for February 21: Joint Assembly Committee On Natural Resources, Agriculture, and Mining at 1:30 PM; Location: Room 3138 of the Legislative Building, 401 S. Carson St., Carson City, NV. [Read more.](#)

- **Notaries Public – Nevada.** On February 13, Assemblyman Edgar Flores (D) introduced AB 148. The bill increases penalties for notaries public and document preparation services that fraudulently provide legal services or advice. [Read more.](#)
- **Mineral Lease Districts – New Mexico.** On February 13, Rep. Greg Nibert (R) introduced HB 382. The bill would establish mineral lease districts and sets forth provisions for their administration. [Read more.](#)
- **Oil & Gas Development – New Mexico.** On February 14, Sen. Mimi Stewart (D) introduced Senate Memorial 78. The Memorial would request that the Albuquerque city council and the board of county commissioners of Bernalillo County jointly convene a multidisciplinary task force to investigate the potential social, economic and environmental effects of oil and gas development in Bernalillo County, and that the Albuquerque city council and the board of county commissioners of Bernalillo County be requested to develop and implement appropriate regulations to minimize adverse social, economic and environmental effects of future oil and gas development in the county. [Read more.](#)
- **Lake Erie – Ohio.** On February 14, Sen. Michael Skindell (D) introduced SB 53. The bill would ban the taking or removal of oil or natural gas from and under the bed of Lake Erie. [Read more.](#)
- **Railroad Commission – Texas.** On February 13, Rep. Larry Gonzales (R) introduced HB 1818. The bill authorizes the continuation of the Texas Railroad Commission for the next 12 years. Additionally, the bill sets requirements for strategic planning, development of a policy to encourage the use of alternative dispute resolution, and sets requirements for reporting of oil and gas monitoring and enforcement activities, among other provisions. [Read more.](#)
- **Tax Assessment – West Virginia.** On February 15, Del. Erikka Storch (R) introduced HB 2473. The bill would provide that the assessment of an oil and gas mineral interest be based on the amount of oil or gas actually produced, during the first year and after the third year of production. [Read more.](#)
- **Royalties – West Virginia.** On February 15, Del. Erikka Storch (R) introduced HB 2474. The bill would provide that the rents and royalties from future mineral leases relating to or derived from the state’s rivers and streams shall be dedicated to road maintenance and paving. [Read more.](#)

STATE – Regulatory

- **Boulder County Moratorium – Colorado.** (Update to 2/13/2017 Weekly Report) On February 14, Colorado Attorney General Cynthia Coffman made good on her January

26 [letter](#) to Boulder County's three commissioners, by filing a lawsuit to rescind the county's "illegal" moratoriums banning oil and gas development. Coffman's office says some of the moratorium extensions made within the past five years were passed after the Colorado Supreme Court ruled last May that local governments cannot prohibit oil and gas development in conflict with the Colorado Oil and Gas Conservation Act, which regulates drilling statewide. [Read more.](#)

STATE – Judicial

- **Production Proceeds – Colorado.** (from Wellborn Sullivan Meck & Tooley, P.C. blog, 2/16/2017) On December 6, 2016, the Colorado Court of Appeals in [Grant Brothers Ranch, LLC v. Antero Resources Piceance Corporation](#) (Case No. 15CA2063), a case involving the state's pooling statute and the statute regarding payment of proceeds of production, held that a trial court dismissal was appropriate because a non-consenting owner was first required to exhaust its administrative remedies by bringing its claim before the Colorado Oil and Gas Conservation Commission, and not at the trial court. [Read more.](#)
- **Permitting – Texas.** On February 7, in *City of Dallas v. Trinity East Energy, LLC* (Case No. 05-16-00349-CV), a Texas appeals court held that the City of Dallas couldn't invoke immunity from claims arising under its mineral lease after the lessee challenged the city's refusal to issue permits, holding instead that the city's act of leasing mineral interests is a proprietary, not governmental, activity that doesn't get the benefits of immunity, and in any event, the lessee stated a claim for inverse condemnation even if the city's refusal to issue permits constituted a government function. [Read more.](#)
- **Co-Tenancy; Leasing – Texas.** On February 8, in *Radcliffe v. Tidal Petroleum, Inc.* (Case No. 04-15-00644-CV), a Texas appeals court held that a lessee's status as a co-tenant with the plaintiff (by virtue of the lease with the plaintiff's co-tenant) precluded a bad-faith trespass claim, reiterating settled Texas law that a co-tenant may lease his or her interests without the consent and over the objection of other co-tenants. [Read more.](#)

INDUSTRY NEWS FLASH:

◆ **U.S. shale production to jump in March.** (CNBC, 2/14/17) According to the U.S. Energy Information Administration (EIA), the pace of the recovery in U.S. shale oil output is set to pick up steam next month as more crude-producing regions return to growth. The EIA forecasts U.S. shale oil production in seven major regions will rise by a total of 80,000 barrels a day to 4.87 million barrels a day in March. This is the third month in a row the agency has projected output to rise. The increase is nearly double the 41,000-barrels-a-day climb the agency expected for February in its last report. [Read more.](#)

State-by-State Legislative Session Overview

Alaska, Alabama, Arizona, Arkansas, California, Colorado, Connecticut, Delaware, Georgia, Hawaii, Idaho, Illinois, Indiana, Iowa, Kansas, Kentucky, Maine, Maryland, Massachusetts, Michigan, Minnesota, Mississippi, Missouri, Montana, Nebraska, Nevada, New Hampshire, New Jersey, New Mexico, New York, North Carolina, North Dakota, Ohio, Oklahoma, Oregon, Pennsylvania, Rhode Island, South Carolina, South Dakota, Tennessee, Texas, Utah, Vermont, Virginia, Washington, West Virginia, Wisconsin and Wyoming are in regular session. The District of Columbia Council, Puerto Rico and the United States Congress are also in regular session.

Louisiana convened a special session to address fiscal issues on February 13. The session is expected to adjourn no later than February 22. Wisconsin convened a special session on January 5 that will run concurrently with the regular legislative session.

Florida is scheduled to convene its 2017 legislative session on March 7 and Louisiana is scheduled to convene on April 10.

Virginia is scheduled to adjourn its 2017 legislative session on February 25.

Illinois Republican Gov. Bruce Rauner has 60 days from presentment to act on legislation or it becomes law without signature.

The following states are currently posting bill draft requests/prefiles for the 2017 session: [Florida](#) and [Louisiana](#).

Franchise Tax

Action on Tennessee [SB 8](#) in the Senate Finance, Ways and Means Committee's Revenue Subcommittee was deferred from February 14 to February 28. This bill would change the apportionment formula used to calculate franchise tax from a three-factor formula to a single-sales-factor formula. This bill is sponsored by Sen. Mark Green, R-Clarksville, and would become law immediately if enacted.

Texas [HB 86](#) was referred to the House Ways and Means Committee on February 13. This bill would offer a franchise tax credit for businesses that hire and employ former offenders. This bill is sponsored by Rep. Ryan Guillen, D-Rio Grande City, and would become effective January 1, 2018, if enacted.

Texas [HB 102](#) was referred to the House Ways and Means Committee on February 13. This bill relates to the timing and qualifications of exemptions from franchise taxes for certain businesses during an initial period of operation in the state. If this bill is enacted, it will become effective on January 1, 2018. Rep. Ryan Guillen, D-Rio Grande City, sponsors this bill.

Texas [HB 388](#), was read for the first time and referred to the House Ways and Means Committee on February 16. This bill would begin phasing out the franchise tax in 2018 by decreasing it every year until it is repealed in 2021. This bill is sponsored by Rep. Jim Murphy, R-Houston.

Texas [HB 509](#) was referred to the House Ways and Means Committee on February 16. This bill would allow a deduction on a company's franchise tax for certain contracts they hold with the federal government. If this bill becomes law, it will take effect on January 1, 2018. This bill is sponsored by Rep. Angie Chen Button, R-Richardson.

Lands

Leasing

Montana [HB 384](#) was heard in House Energy, Technology and Federal Relations Committee on February 13, but the committee did not vote on the bill. This bill would require a lessee to pay all costs of production from a working interest unless the Board of Land Commissioners finds that sharing the expense of transporting the oil to the nearest market better serves the interest of the state or a lessor and a lessee agree to other terms. This bill would take effect immediately if enacted.

Nebraska [LB 535](#) is scheduled to be heard in the Senate Revenue Committee on February 22. This bill would exempt oil, gas or mineral lease conveyance from the requirement of filing a statement with the register of deeds. This bill would become effective three months after adjournment if enacted. This bill is sponsored by Sen. Dan Hughes, R-Venango.

Permits

Pennsylvania [SB 303](#) was introduced by Sen. Judith Schwank, D-Reading, and was referred to the Senate State Government Committee. This bill would release the Project 70 restrictions on certain pieces of land owned by the borough of Topon, Berks County, in exchange for imposing the same restrictions on other sections of land in the town.

Pooling

Alabama [HB 169](#) passed the House Ways and Means Committee on February 16 and is now awaiting third reading on the House floor. Under current law, risk compensation fees cannot be imposed unless all affected parties have been given notice and a public hearing is held by the State Oil and Gas Board and the board determines all necessary requirements for imposing the fee have been met. This bill, which is sponsored by Rep. Victor Gaston, R-Mobile, would clarify that although risk compensation fees cannot be charged against the interest of an owner in a production pool who did not receive a notice of the hearing on the petition requesting the imposition of the fee, the fee is chargeable against the interests of the other nonconsenting owners in the unit who were given the notice. Under current law, if a productive well is drilled on a pool, those owners who did not pay their share of the drilling costs may have what they owed deducted from production proceeds. They would have to also pay a risk compensation fee of equal to 150 percent of that owner's share of the costs but that in all events a 3/16th share of

production from the well must be treated as royalty and is free from any drilling costs or risk compensation fees.

North Dakota [HB 1257](#) was amended in the House Energy and Natural Resources Committee and the committee advanced the bill on February 10. The amendment was adopted on February 13 and the bill was placed on the House calendar. When filing for a petition for a proposed plan of unitization, in order for the plan to be approved, it will have to be signed by the person who will be required to pay more than 55 percent of the cost of the unit operation, and by the owners of more than 55 percent of the royalty interests, a proposed decrease from 60 percent in both cases.

Oil and Gas

Mineral Rights

New Mexico [HB 382](#), sponsored by Rep. Candy Ezzell, R-Roswell, is scheduled to be heard in the House Energy, Environment and Natural Resources Committee on February 21. This bill would allow countries to establish mineral lease districts and to create the form and function of the board of directors for these districts. The main purpose of these districts would be to receive and distribute funds received from federal mineral leases.

Oil and Gas General

California [SB 44](#) is scheduled to be heard in the Senate Natural Resources Committee on March 14 at 9:30 p.m. This bill would require the State Lands Commission in the Natural Resources Agency to administer a legacy oil and gas well removal 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.

Montana [SB 93](#) was heard in the House Energy, Technology and Federal Relations Committee on February 15, but the committee did not vote on the bill. This bill would require oil and gas developers and operators to give notice upon completion of their operation to the owner of an occupied dwelling within 990 feet of a borehole, amended from 660 feet of a borehole.

This bill is sponsored by Sen. Tom Richmond, R-Billings.

Royalty Payments

Idaho [SB 1100](#) was introduced on February 13 and referred to Senate Resources and Environment Committee on February 14. When payments are made to any owner of a royalty interest, this bill would require that certain information must be included on the payor's check stub and on the attachment and to define the royalty payment. The bill also makes some changes to metering requirements and would prohibit co-mingling of production without prior metering.

Texas [HB 129](#) was referred to the House Energy Resources Committee on February 13. When submitting payment, this bill would allow a payer of royalty interest to provide required information in another form other than on the check stub, if the interest owner gives written permission. If this bill becomes law it will take effect on September 1, 2017.

This bill is sponsored by Rep. Tom Craddick, R-Midland.

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