

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

- **BLM Lease Sale – Wayne National Forest (Ohio).** The [BLM has announced](#) that it will hold an oil and gas lease sale on two parcels covering approximately 345 acres in the Marietta Unit of the Wayne National Forest on March 22. Drilling in Ohio's only national forest has had its share of controversy in recent years as environmental groups have vocally opposed any leasing in the area, but despite the opposition the BLM is moving ahead as planned with the lease sale. Public comments will be open until February 20. [Read more.](#)

FEDERAL – Judicial

- **Hydraulic Fracturing Rule Repeal – California Federal Court.** On January 24, California Attorney General Xavier Becerra (D) sued the Trump administration in the U.S. District Court for the Northern District of California challenging a repeal of the Obama-era rule which set standards for hydraulic fracturing on federal lands. That rule focused mainly on three areas: mandating that companies disclose the chemicals they use in hydraulic fracturing, requiring them to cover surface ponds that house fracking fluids and setting standards for the construction of the wells. In its [20-page complaint](#), in *California v. U.S. Bureau of Land Management* (Case No. 3:18-cv-00521), Becerra has accused the BLM of violating both the Administrative Procedure Act and the National Environmental Policy Act in repealing the rule by failing to consider the environmental impacts of their decision and that the BLM lacks legal justification for the repeal. (See the BLM repealing rule, *Oil and Gas; Hydraulic Fracturing on Federal and Indian Lands; Rescission of a 2015 Rule* at [82 Fed. Reg. 61924](#).) "This final rule is needed to prevent the unnecessarily burdensome and unjustified administrative requirements and compliance costs of the 2015 rule from encumbering oil and gas development on federal and Indian lands," said the BLM in its December 2017 notice of the repeal. [Read more.](#)
- **Hydraulic Fracturing Rule Repeal – California Federal Court.** Related to the above, on January 24, a number of environmental groups also filed suit in the U.S. District Court for the Northern District of California against the Trump administration regarding the repeal of the Obama-era hydraulic fracturing rule. In [Sierra Club, et al. v. Zinke](#) (Case No. 3:18-cv-00524) litigants claim that "[b]y repealing the rule, BLM is abandoning its duties to the American public as well as to native American communities facing the threat of fracking." The Western Energy Alliance and Independent Petroleum Association of America had originally filed a lawsuit challenging Obama's rule, calling it redundant and saying it

discouraged investments in states in the region with shale reserves and was “the product of a procedurally deficient rulemaking process.” [Read more.](#)

STATE – Legislative

- **Mineral Rights in State Lands – Idaho.** On January 18, the House Resources and Conservation Committee introduced HB 373. The bill would discontinue transfers of annual rent allowed as a royalty to the Permanent Fund, thereby allowing the state to retain all annual rental payments for mineral leases in the Earnings Reserve Fund to help offset administrative costs for the Mineral Leasing Program. This legislation will reduce administrative costs for state accounting processes. New mineral lease holders will be required to pay the full annual rental rate due as well as any production royalties. Existing mineral leases under contract will not be affected. [Read more.](#)
- **Powers of Attorney; Trusts; Wills – Indiana.** On January 22, HB 1303 passed the House Judiciary Committee following its initial introduction by Rep. Greg Steuerwald (R) on January 11. The bill allows a testator to execute an electronic will and specifies the requirements pertaining to its creation, attestation and execution, and allows video recordings of an electronic will’s execution for authentication purposes. The bill also provides for the creation and execution of electronic trust instruments and powers of attorney and specifies their related procedures. [Read more.](#)
- **Employee Misclassification – Indiana.** On January 23, S. 166 passed the Senate following its January 3 introduction by Sen. David Niezgodski (D). The bill requires the Department of State Revenue, the State Department of Labor, the Worker’s Compensation Board of Indiana, and the Department of Workforce Development to report each year for a three year period to the Interim Study Committee on Employment and Labor certain information regarding misclassified workers and independent contractors. [Read more.](#)
- **Idle and Orphaned Wells – Ohio.** *(Update to 5/22/17 Weekly Report)* On January 17, HB 225 passed the House and was sent to the Senate for consideration. The bill, initially introduced in May 2017 by Rep. Andy Thompson (R), would allow a landowner to report an idle and orphaned well and would require the Chief of the Division of Oil and Gas Resources Management to begin plugging the well after inspection and classification. The bill also provides for determinations regarding the priority of plugging wells or restoring land surfaces at idle and orphaned well sites. The bill also makes changes to revenue used from the Oil and Gas Well Fund for idle and orphaned wells. [Read more.](#)
- **Powers of Attorney – Ohio.** On January 16, bipartisan bill HB 446 was referred to the Civil Justice Committee following its initial introduction in December 2017. The bill would make changes to the state power of attorney law, directing that an acknowledged power of attorney shall not be refused unless a person has actual knowledge of the termination of the agent’s authority or of the power of attorney

or the person believes in good faith that the power of attorney is not valid. Failure to comply with the new measures would result in court mandate to accept the power of attorney and the imposition of liability for related attorneys' fees. [Read more.](#)

- **Royalties; Marketable Title – Oklahoma.** On January 17, HB 2775 was introduced by Rep. Mike Osburn (R). The bill amends current law to make changes on how proceeds from the sale of oil or gas production are to be paid or withheld. The bill also provides that if title remains unmarketable for two years after an operator provides written notice of the unmarketable title accrued proceeds may be deemed abandoned. [Read more.](#)
- **Vertical Wells – Oklahoma.** On January 17, HB 2890 was introduced by Rep. Zack Taylor (R). The bill provides a specific procedure for vertical well operators to be compensated when their wells are damaged by the drilling, completion, operation and maintenance of horizontal wells. [Read more.](#)
- **Oil and Gas Fees – Oklahoma.** On January 17, HB 2989 was introduced by Rep. Marcus McEntire (R). The bill would impose certain fees on oil and natural gas produced in the state to “provide adequate funding to the Oil and Gas Conservation Division of the Corporation Commission for the regulation of the oil and gas industry in the State of Oklahoma.” [Read more.](#)
- **Leasing; Termination – Pennsylvania.** Last October’s signing of the state fiscal budget for 2017-2018 by Gov. Tom Wolf (D), and which amends Pennsylvania’s Fiscal Code, now includes a new enacted section, [Section 1610-E](#), entitled, “Temporary cessation of oil and gas wells.” This law now allows oil and gas companies to revive oil and gas leases that were thought to have expired or been terminated and provides operators with specific mechanisms to shield themselves from claims that an oil and gas lease has terminated due to a cessation of production. In particular, the new law provides that an oil and gas lessor waives his or her right to challenge a lease due to a temporary cessation of production if, before the lessor asserts a claim that the lease has terminated, certain conditions occur. However, “the statute does not apply to leases that expressly provide for termination following a fixed period of nonproduction. Nor can it be used to circumvent an operator’s obligation to commence operations within a lease’s primary term.” [Read more.](#)
- **Oil and Gas Rights – West Virginia.** On January 10, HB 2131 was introduced by Del. Mike Folk (R). The bill would prohibit the state from requiring persons with oil or gas rights connected to deep oil or gas wells to involuntarily integrate their interests. [Read more.](#)
- **Drilling Units – West Virginia.** On January 10, HB 2158 was introduced by Del. Isaac Sponaugle (D). The bill would prohibit drilling units from being established without consent of all owners. [Read more.](#)

- **Horizontal Well Standards – West Virginia.** On January 10, HB 2170 was introduced by Del. Barbara Fleischauer (D). The bill “relating generally to horizontal well control standards” would require notice in certain instances be sent to the occupants of residential property; prohibit the limit of disturbance of a well site to be closer than fifteen hundred feet of an occupied dwelling; establish standards relating to air, noise, light and dust; permit landowners to be compensated for any decrease in the values of the land for its highest and best use; and would establish a statute of limitations for claims being filed. [Read more.](#)
- **Abandoned Mineral Interests – West Virginia.** On January 10, HB 2512 was introduced by Del. Pat McGeehan (R). The bill amends current law to add procedures for claiming abandoned mineral interests, including creating a procedure to quiet title to abandoned mineral interests by serving notice on a mineral rights owner and requiring the filing of an affidavit with the county clerk within sixty days thereafter. [Read more.](#)

STATE – Regulatory

- **Oil & Gas Conservation Rules – Oklahoma.** On January 23, the Oklahoma Corporation Commission released its proposed rulemaking to address issues regarding the state’s Oil & Gas Conservation rules. The rules would amend regulations under OAC 165:10 to revise requirements for well drilling permits, hydraulic fracturing operations, well logs, and well site and surface facilities. The rule also would revise testing, monitoring, and reporting requirements for enhanced recovery injection wells and disposal wells and address provisions concerning informal complaints, noncommercial pits, surface discharge of fluids, and requirements for county commissioners. In addition, the rule would revise requirements for applications of waste oil, waste oil residue or crude oil contaminated soil, pipeline service and tank farm roads, well locations, and production sites. Finally, the rule would update requirements for commercial disposal well surface facilities and commercial recycling facilities and specify plugging and plugging back procedures for wells. Public comments are due by February 28, 2018. Contact: Susan Conrad; Corporation Commission; 405-521-3939; s.conrad@occm.com for more information. Hearings will be scheduled for March 13, 2018 in Oklahoma City. [Read more.](#)

INDUSTRY NEWS FLASH:

- **Crude oil pops above \$66 for the first time in more than three years.** On January 24, West Texas Intermediate crude oil topped \$66 for the first time in years. “Oil hit the highest levels since 2014 in New York amid optimism over shrinking supplies in the U.S. and as a group of producing nations led by the Organization of Petroleum Exporting Countries and Russia showed unity on supply reductions through at least the end of this year.” [Read more.](#)

State-by-State Legislative Session Overview

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

Oklahoma convened its second special session to address budget issues on December 18, reports [U.S. News and World Report](#). North Carolina convened a special session to address a broad range of matters on January 10, [WUNC](#) reports. Wisconsin convened a special session on January 18 to address a number of bills related to public assistance reform, the [Wisconsin State Journal](#) reports. An executive order that convenes and describes the scope of the special session from Republican Gov. Scott Walker can be found [here](#). The special session will run concurrently with the regular session. Arizona convened a special session related to opioid addiction on January 24, [The Arizona Republic](#) reports. The session will run concurrently with the regular session.

The following states are expected to convene for the 2018 legislative session on the dates provided: Oklahoma and Oregon (February 5); Connecticut (February 7); Arkansas and Wyoming (February 12) and Minnesota (February 20).

New York Democratic Gov. Andrew Cuomo has until January 30 to act on legislation from 2017 or it is pocket vetoed. Illinois Republican Gov. Bruce Rauner has 60 days from presentment to act on all legislation passed during the veto session or it becomes law.

The following states are currently holding interim committee hearings: [Arkansas](#), [Connecticut](#), [Louisiana](#), [Minnesota](#), [Montana](#) (2019 interim hearings), [Nevada](#) (2019 interim hearings), [North Carolina](#), [North Dakota](#) (2019 interim hearings), [Oklahoma House](#) and [Senate](#), [Oregon](#), [Texas House](#) and [Senate](#) (2019 interim hearings) and [Wyoming](#).

The following states are currently posting bill drafts, prefiles and interim studies: [Arkansas](#), [Louisiana](#), [Montana](#) (2019 interim studies), [North Dakota](#) (2019 interim committee bills), [Oklahoma prefiles](#) and [House](#) and [Senate](#) interim studies, [Oregon](#) and [Wyoming interim studies](#) and [prefiles](#).

Hydraulic Fracturing

Arizona [SB 1371](#), sponsored by Sen. Juan Mendez, D-Tempe, was referred to the Senate Natural Resources, Environment and Water Committee on January 24. The bill would prohibit any person from engaging in hydraulic fracturing within the state or collecting, storing or treating water in the state if the water was generated by hydraulic fracturing. The bill would take effect 90 days after adjournment, which is scheduled for April 17.

Virginia [SB 951](#), sponsored by Del. Scott Surovell, D-Mt. Vernon, was referred to the Senate Agriculture, Conservation and Natural Resources Committee on January 19. The bill would prohibit hydraulic fracturing in the Eastern Virginia Groundwater Management Area. The bill would take effect the July 1 following adjournment.

Washington [SB 6345](#), sponsored by Senate Deputy Majority Leader Andy Billig, D-Spokane, has been scheduled for a hearing in the Senate Agriculture, Water and Resources Committee on January 29 at 1:30 PM. The bill would impose a moratorium on the use of hydraulic fracturing in the exploration and production of oil and natural gas until December 31, 2028. The bill would also require the Department of Natural Resources to conduct a literature review of existing scientific research examining the use of hydraulic fracturing. The bill would take effect 90 days after adjournment, which is scheduled for March 8.

West Virginia [HB 2990](#), sponsored by Rep. Terri Sypolt, R-Kingwood, was referred to the House Energy Committee. The bill would provide that the limit of disturbance of a well site could not be closer than 1,500 feet to an occupied dwelling or structure unless in the permit application a professional engineer certifies that the well work activity will avoid exceeding the limits for air, noise, dust and particulates. The bill would also require a well operator to set up continuous real-time monitoring of air, noise, light and dust particulates at the residence or other points of impact. The bill would set the parameters at:

- 70 decibels during site construction and 55 decibels at any other time.
- The national ambient air quality standard level for a 24 hour period and no visible dust on crops.
- The minimal risk levels for chronic, 365 days or more, exposure of organic compounds set by the Agency for Toxic Substances and Disease Registry.

The bill would take effect 90 days after passage.

Landmen

Independent Contactors

Washington [HB 2812](#), sponsored by Rep. Monica Stonier, D-Vancouver, was referred to the House Labor and Workplace Standards Committee on January 17. The bill was heard in that committee on January 25; information from the hearing was not immediately available. This omnibus bill would create the Employee Fair Classification Act, which would prohibit employers from:

- Willfully misclassifying an employee as an independent contractor.
- Charging a misclassified employee a fee or making unlawful deductions to compensation.
- Requiring or requesting an employee to agree to or sign a document that results in misclassification.
- Forming, assisting in, or inducing the formation of a business entity or paying or collecting a fee for the use of a business entity.

- Conspiring with, aiding and abetting, assisting or advising an employer (for remuneration) with the intent of violating the fair classification act.

Employers who engage an independent contractor would be required to post a notice stating that a worker has the right to be classified as an employee if the worker does not meet the independent contractor requirements. An independent contractor would be defined as an individual who performs labor or services and:

- The individual will continue to be free from control or direction both under the contract and in fact.
- The labor or service is outside the usual course of business for which the labor or service is performed.
- The individual is customarily engaged in an independently established trade, occupation, business or profession that is of the same nature as that involved in the contract.

The bill would take effect 90 days after adjournment, which is scheduled for March 8.

Lands

Public Lands

Washington [SB 6103](#) passed the Senate Agriculture, Natural Resources and Parks Committee on January 25 and is now pending in the Senate Ways and Means Committee. The bill would state that it is the policy of the state to discourage conveyances of federal public lands that transfer ownership from the federal government. The bill would void conveyances of federal public lands where the state natural resources board was not provided the right of first refusal. The board, in conjunction with other state agencies, would be required to undertake all feasible efforts to protect against future unauthorized land conveyance or any repeal of a federal land designation. The bill would not apply to the conveyance of lands pursuant to a conservation plan, the renewal of a lease in existence as of January 1 or the conveyance of lands to a federally recognized Native American tribe. The bill would take effect 90 days after adjournment, which is tentatively scheduled for March 8.

General Oil and Gas

Pooling

West Virginia [HB 2131](#), sponsored by Rep. Michael Folk, R-Martinsburg, was referred to the House Energy Committee. The bill would prohibit the state from requiring persons with oil and gas rights to involuntarily integrate their interests or permit extraction. The bill would also prohibit surface operations or disturbances without the written consent of the surface owner. The bill would take effect 90 days after passage.

Franchise Tax

Wisconsin [AB 734](#), passed the Assembly Ways and Means Committee with [amendments](#) on January 24. The bill is now pending in the Assembly Rules Committee. The bill would provide an income and franchise tax deduction for tuition expenses paid by an individual to participate in an apprenticeship program that is approved by the Department of Workforce Development. The bill would apply to taxable years beginning after December 31, 2017. The bill's companion, [SB 620](#), is currently pending in the Senate Revenue, Financial Institutions and Rural Issues Committee.

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