

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

- **BLM Methane Waste Prevention Rule.** (*Update to 2/19/18 Weekly Report*) The Bureau of Land Management (BLM) has officially published its proposed rule, *Waste Prevention, Production Subject to Royalties, and Resource Conservation; Rescission or Revision of Certain Requirements*, available at [83 Fed. Reg. 7924](#), to overturn the much-criticized Obama-era venting and flaring rule, *Waste Prevention, Production Subject to Royalties, and Resource Conservation* ([81 Fed. Reg. 83008](#)). Among concerns that led to this proposed rule was that the economic impact on operators was underestimated in the 2016 Obama rule. In addition, a review of existing state and federal regulations found considerable and burdensome overlaps. As a result, the [BLM is proposing to replace the venting and flaring rule](#) with requirements similar to those that were in force prior to the 2016 final rule. Public comments to the BLM are open until April 23, 2018, and the Office of Management and Budget will also accept comments regarding information collection activities, due by March 26, 2018. [Read more.](#)

FEDERAL – Judicial

- **BLM Venting and Flaring Rule – California Federal Court.** On February 22, in the consolidated cases, *California v. Bureau of Land Management* and *Sierra Club v. Zinke* ([Case Nos. 17-cv-07186-WHO; 17-cv-07187-WHO](#)), the U.S. District Court for the Northern District of California issued a preliminary injunction rejecting the BLM's suspension until January 17, 2019 of compliance deadlines under the 2016 venting and flaring rule while it considered revising the regulation. The judge also rejected a petition by the Department of the Interior and others "to move the legal challenge's venue to U.S. District Court in Wyoming, where previous venting and flaring rule challenges have been litigated. He said the compliance implementation lawsuit was a distinct challenge and did not need to be combined with earlier venting and flaring rule actions." The BLM and Department of Interior are expected to challenge this temporary order. [Read more.](#)
- **Mineral Rights; Bankruptcy – Wisconsin Federal Court.** On January 24, in *In re: Michael J. Poivey & Denise P. Poivey, Debtors* (Case No. 17-26408-bhl), the U.S. Bankruptcy Court for the Eastern District of Wisconsin was tasked with determining if mineral rights inherited by a debtor and located in Texas were excluded from the bankruptcy estate that excepts from the estate certain interests in "liquid or gaseous hydrocarbons" under specific circumstances, including transfer under a farmout agreement or any written agreement directly related to a farmout agreement. Although the debtors

claimed their oil and gas lease falls into the broad definition of a farmout agreement, or in the alternative a production payment agreement allowing for exclusion, the Court disagreed and found the mineral rights to be the property of the debtor estate and could be reached by creditors. [Read more.](#)

STATE – Legislative

- **Disclosure Rules – Alaska.** On February 5, the House Rules Committee, at the request of Governor Bill Walker (I), introduced HB 330. The bill would authorize the Commissioner of the Department of Natural Resources to disclose confidential information in an investigation or proceeding, including a lease royalty audit, appeal, or request for reconsideration and would also allow for the issuance of a protective order limiting the persons who have access to the confidential information. [Read more.](#)
- **Natural Resource Development; Federal Agencies – South Dakota.** On February 2, Senate Concurrent Resolution 8 (SCR 8) passed the Senate and was introduced in the House. SCR 8 would request that federal natural resource agencies refrain from designating wilderness areas in South Dakota without approval of the state Legislature because “designation of wilderness areas in many cases is to hinder or preclude the ability of South Dakota citizens to develop and use the natural resources of this state”. [Read more.](#)
- **Mineral Estates; Unknown Owners – West Virginia.** On February 13, HB 4551 was introduced by Del. Frank Deem (R). The bill would require the mineral estate of an unknown owner be sold to the legal surface owner at the fair market value of the mineral interest. The bill provides that if the surface owner declines to purchase the estate, the estate shall be sold at auction to the highest bidder and provides that all unclaimed royalties be transferred to the new owner. [Read more.](#)
- **Severance Tax Fund – West Virginia.** On February 13, HB 4530 was introduced by Del. Jeff Eldridge (D). The bill would “create a special fund to receive revenue from severance taxes and other sources related to minerals and then use the income from the fund to be distributed to the individual citizens of West Virginia.” [Read more.](#)
- **Royalties; Post-Production Expenses; Leasing – West Virginia.** According to the law firm, Spilman, Thomas & Battle, “In 2017, the Supreme Court of Appeals of West Virginia implored the legislature to resolve the tension created in its decisions in [Leggett v. EQT](#) (2017), [Tawney v. Columbia Natural Resources, LLC](#) (2006) and [Wellman v. Energy Resources, Inc.](#) (2001). In short, the *Leggett* Court allowed the deduction of reasonable post-production expenses from flat rate royalty payments while the *Tawney* and *Wellman* Courts prohibited the deductions from non-flat rate royalty payments. The West Virginia legislature is now attempting to resolve the tension through bills that effectively would reverse the *Leggett* decision and prohibit deductions from flat rate royalties.” On January

24, [SB 360](#) was introduced by lead sponsor Sen. Charles Clements (R). The bill includes language to prevent the 1/8th royalties from being subject to post-production expenses. The companion bill, [HB 4490](#), was introduced by Del. Jason Harshbarger (R) on February 12. [Read more.](#)

- **Pooling; Joint Operating Agreements – Utah.** On February 20, Rep. Stephen Handy (R) introduced HB 419. The bill authorizes the Board of Oil, Gas, and Mining to make a pooling order retroactive under certain circumstances and allows existing pooling orders to apply to additional wells drilled in the same drilling unit under certain circumstances. [Read more.](#)
- **Land Use Authority – Utah.** On February 14, Sen. Kevin Van Tassell (R) introduced SB 191. The bill provides that any ordinance, resolution, or rule enacted by a local municipality must comply with the state’s exclusive jurisdiction to regulate oil and gas activity within the state. A municipality may, however, regulate surface activity incidental to oil and gas activity if certain requirements are met. [Read more.](#)
- **State Land Royalties – Wyoming.** On February 16, [H.J. 4](#) failed in the House. This House Joint Resolution proposed to amend the Wyoming Constitution to provide that all state mineral royalties earned from the lease of state school lands may be appropriated by the legislature for the support of the public schools for fiscal years 2020 through 2025. Under existing law, one-third of the mineral royalties are available for appropriation by the legislature for the support of public schools and the remaining two-thirds of mineral royalties are permanent funds of the state. [Read more.](#)

STATE – Regulatory

- **Colorado Oil and Gas Conservation Commission – Colorado.** On February 20, Matt Lepore announced his resignation as Director of the Colorado Oil & Gas Conservation Commission after more than five years in leadership at the state’s oil and gas rulemaking and enforcement agency. Lepore will join Adamantine Energy, an energy policy consultancy led by Tisha Schuller, the former President and Chief Executive Officer of the Colorado Oil & Gas Association. Julie Murphy, currently the Assistant Director for Energy and Minerals at the Colorado Department of Natural Resources, will take over as the new director on March 2. [Read more.](#)

STATE – Judicial

- **Leasing; Production – Kansas.** On January 26, in *Adamson v. Drill Baby Drill, LLC* (Case No. 115,762), the Court of Appeals of Kansas addressed a claim by landowners that two oil and gas leases held by owners and companies involved in exploration and drilling operations on the landowners’ property terminated because of the cessation of production of oil and gas in paying quantities. The Court ruled against the landowners

holding they did not meet their burden of proving nonproduction in the secondary term of an oil and gas lease, and noted that the lessee's burden of proving a temporary cessation does not arise until after the landowners meet their burden. Further, the Court noted that a co-tenant's ratification of the lease was sufficient to ratify the whole even over the objection of other co-tenants. [Read more.](#)

- **Joint Operating Agreements; Drilling Operations – New Mexico.** On February 15, in [Enduro Operating LLC v. Echo Production, Inc.](#) (Case No. S-1-SC-3622), the New Mexico Supreme Court was tasked with determining which signatories to a joint operating agreement (JOA) would be entitled to profits from a successful well, and whether the operator, Echo Production, had actually commenced operations before the expiration of a certain 120-day period. In overturning the Court of Appeals grant of summary judgment in favor of Enduro, as issues of material fact remain and must be addressed by the district court, the Supreme Court concluded in part that “a drilling permit is not essential for an operator to prove that it actually commenced drilling operations.” Further, the Supreme Court noted that “no provision appears in the plain language of the JOA indicating that only on-site physical activities should be considered when determining whether a party has commenced operations. If anything, the JOA can be read as indicating the importance of off-site activities in demonstrating commencement.” [Read more.](#)
- **Quiet Title; Severed Estates – Pennsylvania.** On February 2, in *Woodhouse Hunting Club v. Hoyt Royalty LLC* (Case No. 327 MDA 2017), the Pennsylvania Superior Court held that regarding a tax sale of property at issue in the case such sale effectuated a title wash and reunited the severed surface and subsurface rights to the detriment of the party who attempted to claim the gas rights. [Read more.](#)
- **Dunham Rule; Mineral Reservations – Pennsylvania.** On January 30, in *Carter v. Fanning* (Case No. 584 WDA 2017), the Pennsylvania Superior Court held that a deed which reserved coal rights did not reserve oil and gas rights without a specific reference to oil and gas in the reservation. The holding was based upon Pennsylvania's longstanding Dunham Rule, dating back to 1836, which holds that “the party advocating for the inclusion of natural gas within a deed reservation bears the burden of pleading and proving by clear and convincing evidence that the intent of the parties who executed the reservation was to include natural gas” and such intent must be explicitly included in grants and reservations. [Read more.](#)

INDUSTRY NEWS FLASH:

◆ **Oil and gas to account for over half the world's energy by 2040.** According to BP's latest energy outlook, the demand for oil is expected to grow through 2040, with much of the growth from U.S. supply. Natural gas demand is also anticipated to grow strongly over the period, overtaking coal as the second largest source of energy. [Read more.](#)

State-by-State Legislative Session Overview

Alabama, Arkansas, Alaska, Arizona, California, Colorado, Connecticut, Delaware, Florida, Georgia, Hawaii, Idaho, Illinois, Indiana, Iowa, Kansas, Kentucky, Maine, Maryland, Massachusetts, Michigan, Minnesota, Mississippi, Missouri, Nebraska, New Hampshire, New Jersey, New York, Ohio, Oklahoma, Oregon, Pennsylvania, Rhode Island, South Carolina, South Dakota, Tennessee, 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 is expected to convene on March 12.

The following states are expected to adjourn on the dates provided: Georgia (March 2); Utah and Washington (March 8); Florida, Oregon and Wyoming (March 9) and Virginia and West Virginia (March 10).

Oklahoma convened its second special session to address budget issues on December 18, [The Oklahoman](#) reports. The Senate passed a spending bill on February 21, which would end the special session if Republican Gov. Mary Fallin signs the bill as expected. Wisconsin convened a special session on January 18 to address a number of bills related to public assistance reform, [WPR](#) 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. Louisiana convened a special session related to fiscal issues on February 19, [The Advocate](#) reports. The session will run until March 7.

New Mexico Republican Gov. Susana Martinez has until March 7 to act on legislation or it is pocket vetoed. North Carolina Democratic Gov. Roy Cooper has until March 15 to act on special session 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.

The following states are currently holding interim committee hearings: [Louisiana](#), [Montana Nevada](#), [North Carolina](#), [North Dakota](#) and Texas [House](#) and [Senate](#) .

The following states are currently posting bill drafts, prefiles and interim studies: [Louisiana](#), [Montana](#) and [North Dakota](#).

Hydraulic Fracturing

Illinois [HB 5716](#), sponsored by Rep. Will Guzzardi, D-Chicago, was referred to the House Rules Committee on February 16. The bill would require a permit application for drilling or hydraulic fracturing operations to include the written consent of each owner of a mineral interest. The bill would also prohibit a person from drilling or removing minerals without the written consent of all owners. The bill would provide that violations would result in a permanent cessation of operations and treble damages paid to the owner of the mineral interest. The bill would take

effect January 1 of the following year if passed prior to May 31 or June 1 of the following year for bills passed after that date.

Illinois [HB 5743](#), sponsored by Rep. Scott Drury, D-Highwood, was referred to the House Rules Committee on February 16. The bill would prohibit a person from engaging in hydraulic fracturing and the state from issuing a permit for hydraulic fracturing after the effective date of the bill. The bill would take effect January 1 of the following year if passed prior to May 31 or June 1 of the following year for bills passed after that date.

General Oil and Gas

General

Mississippi [HB 1350](#) passed the Senate Energy Committee with an amendment on February 21. The text of the amendment was not immediately available. The bill is now pending in the Senate Finance Committee. As passed the House, the bill would extend the repeal of existing law that established a reduced 1.3 percent severance tax rate on the value of oil and gas produced from horizontally drilled wells and horizontally drilled recompletion wells until July 1, 2022. The provisions were originally set to expire on July 1, 2018. The bill would take effect immediately.

Utah [SB 191](#) passed the Senate Natural Resources, Agriculture and Environment Committee with an [amendment](#) on February 21. The bill would provide that any municipal ordinance, resolution or rule enacted by a municipality must comply with the state's exclusive jurisdiction to regulate oil and gas. The bill would also provide that a municipality may enact an ordinance that regulates surface activity relating to oil and gas activity provided that the ordinance:

- Is necessary pursuant to existing law.
- Does not unduly limit, ban or prohibit oil and gas activity.
- Does not interfere with the state's exclusive jurisdiction to regulate oil and gas.

The bill would define oil and gas activity to include hydraulic fracturing, drilling and remediation activities among other activities.

Royalty Payments

West Virginia [HB 4270](#) passed the House on February 15 and passed the Senate Energy, Industry and Mining Committee with an amendment on February 22. The text of the amendment was not immediately available but according to legislative staff the amendment changes the effective date of the bill to September 1. The bill is now pending in the Senate Judiciary Committee. The bill would require an operator, producer or their agents, contractors or assigns to provide the following information with each payment to all interest owners receiving payments:

- A name, number or combination of name and number and the state issued American Petroleum Institute number that identifies each lease, property unit, pad and well for which the payment is being made.
- Month and year of production.

- Total barrels of oil and volume of natural gas produced from each well sold.
- Price received per unit of oil, natural gas and natural gas liquids from each well produced.
- Gross value of the total proceeds from the sale of oil, natural gas and natural gas liquids from each well less taxes and deductions.
- Itemized amounts for all deductions which affect payment.
- Interest owner's interest in production from each well expressed as a decimal or a fraction.
- Interest owner's ratable share of the proceeds from the sale of oil, natural gas and natural gas liquids less the owner's ratable share of the taxes and other deductions.
- Contact information for the producer of the oil and natural gas well.

An interest owner who does not receive the information required would be able to send a written request for the information and the operator would be required to send the information within 60 days or the interest owner would be able to bring a civil action. The bill would also require payments to be made in a timely manner which could not exceed 120 days from the date that the sale of oil and natural gas is realized.

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.