

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

- **BLM Information Collection.** On January 31, the Bureau of Land Management (BLM) published its notice of information collection and request for comment, *Agency Information Collection Activities; Submission to the Office of Management and Budget for Review and Approval; Oil Shale Management* ([83 Fed. Reg. 4512](#)), which seeks public comment as it “applies to the exploration, development, and utilization of oil shale resources on the BLM-managed public lands” which addresses “the following issues: (1) Is the collection necessary to the proper functions of the BLM; (2) will this information be processed and used in a timely manner; (3) is the estimate of burden accurate; (4) how might the BLM enhance the quality, utility, and clarity of the information to be collected; and (5) how might the BLM minimize the burden of this collection on the respondents, including through the use of information technology.” [Read more.](#)
- **BLM Land Use Planning and Lease Parcel Reviews.** On January 31, the BLM published its Instruction Memorandum ([IM 2018-034](#)), *Updating Oil and Gas Leasing Reform – Land Use Planning and Lease Parcel Reviews*, which sets out the policy of the BLM to “simplify and streamline the leasing process to alleviate unnecessary impediments and burdens, to expedite the offering of lands for lease, and to ensure quarterly oil and gas lease sales are consistently held in accordance with the Mineral Leasing Act”, among other directives related to resource development on federal lands. Hailed by the oil and gas industry, the move also eliminates the Obama-era policy of requiring Master Lease Plans that called for more onerous and oftentimes limiting environmental reviews. [Read more.](#)
- **BLM Onshore Civil Penalties Adjustment.** On January 29, the BLM published its final rule, *Onshore Oil and Gas Operations-Annual Civil Penalties Inflation Adjustments* ([83 Fed. Reg. 3992](#)), which adjusts the civil monetary penalties governing federal onshore oil and gas operations to reflect inflation adjustments. The penalties cover such areas as failure to comply with applicable federal mineral leasing laws and regulations, failure to take corrective action regarding violations, and filing false or inaccurate documents related to leasing and permitting. This rule does not add new penalties, but only adjusts them upwards to reflect inflation. [Read more.](#)
- **BLM Oil & Gas Lease Sales.** On January 31, the BLM reported its annual results for its 2017 federal oil and gas lease sales which “generated nearly \$360 million from oil and gas lease sales, an 86 percent increase over the previous year’s results of \$192.5 million.

Among these sales, which together were the highest in nearly a decade, rights to a total of 949 parcels, covering 792,823 acres, were sold.” [Read more.](#)

STATE – Legislative

- **Local Government – Colorado.** On January 31, Rep. Perry Buck (R) introduced HB 1150. The bill specifies that a local government that bans hydraulic fracturing of an oil and gas well is liable to the mineral interest owner for the value of the mineral interest and that a local government that enacts a moratorium on oil and gas activities shall compensate oil and gas operators, mineral lessees, and royalty owners for all costs, damages, and losses of fair market value associated with the moratorium. [Read more.](#)
- **Surface Use – Utah.** On January 30, Rep. Scott Chew (R) introduced HB 267. The bill modifies the duties of an oil and gas owner or operator in regard to a surface land owner, which includes strengthening the compensation standard for certain loss of value and damage to surface land and adds a reasonability standard to mediation, well location, spacing, and certain drilling techniques. [Read more.](#)
- **Hydraulic Fracturing – Virginia.** On January 19, Sen. Scott Surovell (D) introduced SB 951. The bill would prohibit hydraulic fracturing in the Eastern Virginia Groundwater Management Area. [Read more.](#)
- **Royalties; Valuation – West Virginia.** On January 30, Del. Joe Canestraro (D) introduced HB 4356. The bill would require an oil and gas royalty be based at the point of sale between the lessor and an unaffiliated bona fide purchaser in an arms-length transaction, or, in the alternative the amount that would have been received in an arms-length transaction. The bill also requires the sales price to be the highest value without costs and requires the lessee to bear post-production costs incurred by the lessee. The bill also bars the use by a lessee of the netback method of calculating the amount to be paid to the owner of the working interest. [Read more.](#)
- **Cotenancy – West Virginia.** On January 24, [HB 4268](#), the *Cotenancy Modernization and Majority Protection Act* and *Unknown and Unlocatable Interest Owners Act*, was introduced by primary sponsor, Del. Bill Anderson (R). After passing the House Energy Committee on January 31, the bill is now under consideration in the House Judiciary Committee. The bill would allow horizontal drilling into a natural gas reserve if 75 percent of the rights holders agree. Under current law, 100 percent of the rights holders have to agree. According to the sponsoring statement, “The purpose of this bill is to provide an exception to waste and trespass for certain oil and natural gas use and development to encourage the efficient economic development of oil and natural gas resources. The bill provides that use and development of oil and gas mineral property that has been consented to by three fourths of the oil and gas owners is permissible, is not waste, and is not a trespass. The bill provides that covenants and

operators are not liable for damages for the development and use of the property if they pay nonconsenting covenants in accordance with either of two defined options and report and reserve interests for unknown or unlocatable tenants. The bill provides a method to determine certain leasehold and contractual terms, including review and determination by the Oil and Gas Conservation Commission in limited circumstances.” “Co-tenancy will be a piece of legislation that will probably pass this year,” said Sen. Glenn Jeffries (D), a member of the Senate Energy, Industry and Mining Committee. “All parties involved have come to an agreement that we can get that piece of legislation passed.” [Read more.](#)

- **Franchise Taxes; Income Taxes – Wisconsin.** On January 30, Rep. Don Vruwink (D) introduced AB 896. The bill creates a nonrefundable individual income tax credit and a corporate income and franchise tax credit for a small business that is equal to the amount the small business paid in a taxable year for personal property taxes assessed to the small business. Under the bill, “small business” means a person engaging in any activity, enterprise, or business in this state employing 50 or fewer individuals on a permanent basis with gross receipts of no greater than one-million dollars in the taxable year for which the credit is claimed. The credit is nonrefundable, meaning that it may be claimed only up to the amount of a taxpayer's income or franchise tax liability. [Read more.](#)

STATE – Regulatory

- **Permitting – Pennsylvania.** On January 26, Gov. Tom Wolf (D) [announced plans](#) to reform the state’s environmental permit process to “reduce application backlogs, modernize processes, and improve oversight and efficiency.” The governor added that he will seek \$2.5 million in the next fiscal budget for the state Department of Environmental Protection (DEP) to further reduce the permit backlog. “The \$2.5 million to hire more DEP employees was an important part of the governor’s announcement,” said Pennsylvania Independent Oil & Gas Association President Dan Weaver. “Our members were very concerned when some permit applications weren’t processed within a year, let alone 45 days.” [Read more.](#)

INDUSTRY NEWS FLASH:

◆ **As part of new \$50 billion energy investment plan, ExxonMobil to spend big in Permian.**

Last week, [ExxonMobil announced its plans](#) to invest \$50 billion over five years in domestic energy production and infrastructure as result of the new tax law. The company “plans to triple total daily production to more than 600,000 oil-equivalent barrels by 2025 from its operations in the Permian Basin in West Texas and New Mexico. Tight oil production from the Delaware and Midland basins will increase five-fold in the same period.” [Read more.](#)

◆ **In survey, oil and gas professionals express optimism for 2018.** Of 813 senior-level industry professionals surveyed for 2018 by market researcher DNV GL, 63 percent said they are

confident about growth in the industry, nearly double the 32 percent from the same survey last year. For example, 36 percent of senior oil and gas professionals expect to increase spending on research and development, and innovation, in 2018. DNV GL's annual report provides a snapshot of industry confidence, priorities, and concerns for the year ahead. [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, [FOX6](#) 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 ended a special session on January 26 after passing legislation intended to crack down on opioid abuse, [Reuters](#) reports. The legislature remains in regular session. **Connecticut** held a one-day special session on January 31 to override Democratic Gov. Dannel Malloy's veto of funding for the Medicare Savings Program, [CTNewsJunkie.com](#) reports.

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).

Illinois Republican Gov. Bruce Rauner has 60 days from presentment to act on all legislation passed during the veto session or it becomes law.

New York Democratic Gov. Andrew Cuomo had a signing deadline for 2017 legislation on January 31.

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

Virginia [SB 951](#) was reported favorably from the Senate Agriculture, Conservation and Natural Resources Committee with an [amendment](#) on February 1. 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](#) passed the Senate Agriculture, Water and Resources Committee with a [substitute](#) on February 1. The bill is now pending in the Senate Rules Committee. 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 substitute struck provisions that would have required 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.

Landmen

Independent Contractors

New Jersey [SB 1293](#), sponsored by Sen. Anthony Bucco, R-Denville, was referred to the Senate Labor Committee on February 1. This bill would revise tests for employment or independent contractor status under certain existing state labor laws. The “ABC” test is currently used under labor law to determine whether a person is an employee or an independent contractor. The person is an employee unless the employer can show that:

- (A) The person has been and will continue to be free from control or direction over the performance of such service.
- (B) The service is either outside the usual course of the business for which the service is performed or that the service is performed outside of all the places of business of the enterprise.
- (C) The individual is customarily engaged in an independently established trade, occupation, profession or business.

This bill would eliminate B and C in the test and just rely on A to determine if someone is an employee or independent contractor.

The bill would take effect immediately. A companion bill, AB 3022, sponsored by Assembly Whip Anthony Bucco, R-Boonton, was introduced on that same day. The bill does not currently have text associated with it. A previous version of the bill, [SB 3321](#), died in that same committee last session.

Lands

Public Lands

Washington [SB 6103](#) was heard in the Senate Ways and Means Committee on January 29; the committee received an overview of the bill from committee staff but did not vote on the bill. 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 4268](#) passed the House Energy Committee with an [amendment](#) on January 31. The bill is now pending in the House Judiciary Committee. As amended the bill would permit the use or development of an oil or natural gas property if an operator or owner makes reasonable efforts to negotiate with all royalty owners in an oil or natural gas mineral property and if royalty owners vested with at least three-fourths of the right to develop agree to do so. The bill would provide that the nonconsenting agent is entitled to receive either a prorata share of production royalty payments paid on the gross proceeds received at the first point of sale to an unaffiliated third party seller and free post production expenses equal to the highest royalty percentage paid to the other co-tenants; or to participate in the development and receive a prorata share of the revenue and cost equal to his or her share of the production attributable to the tracts being developed.

The bill would give a nonconsenting lease owner 45 days from the operator's written delivery of its best and final lease offer to make their final decision. The bill would also require that the owner report to the state treasurer each quarter concerning each unknown or unlocatable interest owner and remit the amount reserved. The bill would take effect July 1.

Franchise Tax

New York [SB 138](#) passed the Senate Investigations and Government Operations Committee on January 30 and was referred to the Senate Finance Committee. As previously amended, this bill would offer taxpayers a personal income or business franchise tax credit of 25 percent of their property taxes if their land is committed to forestry stewardship or habitat conservation, or both.

The Assembly companion, [AB 1874](#), was amended and re-referred to the Assembly Ways and Means Committee.

Wisconsin [AB 896](#), sponsored by Rep. Don Vruwink, D-Milton, was referred to the Assembly Ways and Means Committee on January 30. The bill would create a non-refundable corporate income and franchise tax credit for a small business that is equal to the amount the small business paid in personal property taxes assessed to the small business. The bill would define a small business as a person engaging in any activity, enterprise or business in the state employing 50 or fewer individuals on a permanent basis with gross receipts of no greater than \$1 million a taxable year. The bill would take effect one day after publication by the legislative reference bureau.

Royalty Payments

West Virginia [HB 4270](#) passed the House Energy Committee with an [amendment](#) on January 26. 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. The bill would take effect 90 days after passage.

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