

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

- **BLM Oil and Gas Lease Sale – Montana.** Last Monday, the Bureau of Land Management (BLM) abruptly removed about 17,300 acres of land in central Montana from an upcoming oil and natural gas lease sale, just a week before the scheduled auction date. The BLM was set to auction 109 parcels but Interior Secretary Ryan Zinke decided to withdraw 26 parcels from consideration, along with portions of two others, after a number of local and national environmental groups filed formal protests against the sale, contending that drilling would adversely impact the Yellowstone River and other areas. Making the announcement in a tweet, Secretary Zinke said, “After talking with residents and local, state and federal officials, we have decided to defer the oil and gas sale around Livingston.” However, the BLM will proceed with the March 13 sale of the remaining 83 parcels, which encompass nearly 46,200 acres. [Read more.](#)
- **Interior Department – Houston.** Speaking at last week’s CERAWEEK energy conference in Houston, in a speech before oil and gas industry executives, Interior Secretary Ryan Zinke said his agency should be a partner with oil and gas companies that seek to drill on public land and that long regulatory reviews with an uncertain outcome are “un-American.” According to Zinke, “Interior should not be in the business of being an adversary. We should be in the business of being a partner.” [Read more.](#)

STATE – Legislative

- **Local Regulations – Colorado.** On March 5, SB18-192 was introduced by Sen. Vicki Marble (R). 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.](#)
- **Control and Regulation of Operations – Colorado.** *(Update to 2/19/18 Weekly Report)* On March 7, [HB18-1071](#) was postponed indefinitely by the Senate after passing the House last month. Originally introduced by Rep. Joseph Salazar (D) in January, the bill seeks to clarify that the Colorado Oil and Gas Conservation Commission (COGCC) “is required to regulate oil and gas operations in a manner consistent with the protection of public health, safety, and welfare, including the protection of the environment and wildlife resources. The commission must regulate oil and gas operations so as to

prevent and mitigate adverse environmental or public health impacts.” The bill sought to codify the decision from the Colorado Court of Appeals in [Martinez v. Colo. Oil & Gas Conservation Cmm'n](#) (Case No. 2017 COA 37), which is currently unresolved because it is now on appeal before the Colorado Supreme Court. It was long-predicted that the bill would be killed in the Republican-controlled Senate. This is a victory for the oil and gas industry which has regarded the bill as an attempt to curtail or greatly control resource development in the state. According to Tracee Bentley, executive director of the Colorado Petroleum Council, “the petitioners in this case hope to persuade the COGCC to ban oil and natural gas development in Colorado, in conflict with state law and policy.” Bentley added that “Democrats and Republicans in the state Senate were right to reject this destructive bill as it would circumvent our judicial system and erode the checks and balances that underpin our state's democracy.” [Read more.](#)

- **Powers of Attorney; Trusts; Wills – Indiana.** On February 27, HB 1303 passed the Senate after passing the House in late January. The bill has now been sent back to the House to reconcile amendments. The bill allows a testator to execute an electronic will, a settlor to create and execute an electronic trust instrument, and a person to create and execute an electronic power of attorney. [Read more.](#)
- **Notarial Acts – Kentucky.** On February 8, HB 333 was introduced by Rep. Jody Richards (D). The bill would outline requirements for certain notarial acts, including who may perform a notarial act in the state, the recognition of notarial acts from other states, and allowing a notary public to perform a notarial act by means of communication technology, such as through an online process. [Read more.](#)
- **Taxation – Louisiana.** On February 25, [HB 22](#), introduced in the special session by Rep. Rob Shadoin (R), was scheduled for floor debate on March 5. The bill repeals the sunset provisions for various reductions in corporate income tax exclusions and deductions thereby making the reductions permanent. For example, present law provides that the allowance for depletion for oil and gas wells is 15.8 percent of the gross income from the property during the taxable year. The proposed law increases that allowance to 16 percent. The bill also makes changes to the percentage of rents or royalties paid by the taxpayer which are excluded from income in calculating the depletion. [Read more.](#)
- **Notaries – Michigan.** On February 22, SB 263 was introduced by Sen. Matt Huffman (R). The bill would make certain changes to notarial acts regarding how an attorney may be appointed a notary public and also specifies certain educational requirements, among other provisions regarding notarial acts. [Read more.](#)
- **Severance Tax– Mississippi.** On March 6, HB 1350 passed the Senate and has been sent to the House for concurrence with their passed version. The bill extends 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, 2023. The provisions were originally set to expire on July 1, 2018. The bill would take effect immediately. [Read more.](#)

- **Royalties; Interest Payments – Oklahoma.** (*Update to 3/5/18 Weekly Report*) On March 6, SB 1143, introduced by Senator Adam Pugh (R), passed the Senate and has been referred to the House. The bill amends the Production Revenue Standards Act, requiring timely payment for a portion of a person’s interest which is marketable, even when another portion is delayed for being unmarketable. The bill also provides interest rate guidance. [Read more.](#)
- **Cotenancy – West Virginia.** (*Update to 2/19/18 Weekly Report*) On March 9, [HB 4268](#) was signed into law by Gov. Jim Justice (R). In a news radio interview last Wednesday the governor expressed his support for the measure. “There is a lot of very positive benefits in co-tenancy because if, in fact, there’s more gas produced and there’s more opportunity within West Virginia, we’ll get a higher severance tax,” said Gov. Justice. The Act will 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 Act also provides that the non-consenting agent is entitled to receive either a pro rata 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 pro rata share of the revenue and cost equal to his or her share of the production attributable to the tracts being developed. A non-consenting lease owner has 45 days from the operator’s written delivery of its best and final lease offer to make their final decision. The Act [will take effect](#) on June 3, 2018. [Read more.](#)
- **Royalties; Post-Production Expenses – West Virginia.** (*Update to 3/5/18 Weekly Report*) On March 9, Gov. Jim Justice (R) signed [SB 360](#), into law. The Act modifies the permit issuance prohibition from one-eighth interest of the total amount paid to or received at the well head for oil and gas extracted to not less than one-eighth of the gross proceeds free from any deduction for post-production expenses. The Act also provides that a permit applicant may file with its application an affidavit which certifies that the affiant is authorized by the owner of the working interest in the well to tender to the owner of the oil or gas a certain royalty of the gross proceeds, free from certain deductions, received at the first point of sale to an unaffiliated third-party purchaser in an arm’s length transaction. [Read more.](#)
- **Severance Tax – West Virginia.** On March 6, HB 4563, introduced by House Minority Leader Del. Timothy Miley (D), was placed on the House Calendar for its second reading. West Virginia requires three readings for a bill to come to a floor vote and the regular

session ended on March 10, in the absence of any concurrent resolutions which may extend the session. The bill would amend current law to remove the severance tax on natural gas produced from low producing wells. [Read more.](#)

- **Severance Tax Exemptions – Wyoming.** On March 5, SF 98, introduced by Sen. Drew Perkins (R), failed in committee and has been “postponed indefinitely”. The bill would have allowed a 50 percent severance tax exemption on the six percent tax imposed for oil and natural gas produced from certain wells through 2025. [Read more.](#)

STATE – Judicial

- **Duhig Rule: Deed Reservations – Ohio.** In December, the Ohio Seventh District Court of Appeals issued the first reported Ohio appellate decision to accept the [Duhig rule](#) as persuasive authority in deciding a case. In [Talbot v. Ward](#) (2017-Ohio-9213), the Court applied the well-known 1940 Texas case, [Duhig v. Peavey-Moore](#), which holds that a reservation must fail if both the grant and reservation in a deed cannot be given effect. The Court in *Talbot* noted how the facts before it required the same result as *Duhig*. Therefore, even if the ordinary rules of deed construction yielded an interpretation that there was a reservation of a 1/2 interest in the oil and gas royalty, bonuses and rentals in the deed in question, said reservation must fail because the warranty of title was breached due to the earlier reservation by a predecessor. [Read more.](#)

State-by-State Legislative Session Overview

Alabama, Alaska, Arizona, Arkansas, 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, Pennsylvania, Rhode Island, South Carolina, South Dakota, Tennessee, Vermont, Virginia, West Virginia 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.

Wisconsin is in recess to the call of the chair. Legislative staff report that the Assembly has no plans to reconvene in 2018, but that the Senate will reconvene between March 13 and 22.

Oregon adjourned on March 3. **Utah** and **Washington** adjourned on March 8.

The following states are expected to adjourn on the dates provided: **Florida** (March 9); **Virginia, West Virginia** and **Wyoming** (March 10); **Arkansas** (March 13); **Indiana** (March 14); **South Dakota** (March 26); **Idaho** (March 27) and **Georgia** (March 29).

Georgia did not adjourn on March 2 and is expected to adjourn on March 29.

Oklahoma convened its second special session to address budget issues on December 18, [Public Radio Tulsa](#) reports. Republican Gov. Mary Fallin signed [HB 1020xx](#), the fiscal year 2018 budget bill, on February 27 and the Senate passed what are expected to be the final three special session bills on March 1. The special session will run concurrently with the regular session.

Louisiana adjourned a special session related to fiscal issues on March 5, [The Advocate](#) reports.

North Carolina Democratic Gov. Roy Cooper has until March 15 to act on special session legislation or it becomes law without signature. **Utah** Republican Gov. Gary Herbert has until March 28 to act on legislation or it becomes law without signature. **Washington** Democratic Gov. Jay Inslee has until March 31 to act on legislation or it becomes law without signature. **Oregon** Democratic Gov. Kate Brown has until April 13 to act on legislation or it becomes law. **Illinois** Republican Gov. Bruce Rauner has 60 days from presentment to act on all legislation passed during the veto session or it becomes law. **Louisiana** Democratic Gov. John Bel Edwards has 20 days from presentment to act on special session legislation. **Oklahoma** Republican Gov. Mary Fallin has five days from presentment, Sundays excepted, to act on special session legislation or it becomes law. **Wisconsin** Republican Gov. Scott Walker has six days, Sundays excepted, to act on special session legislation or it becomes law.

New Mexico Republican Gov. Susana Martinez had a signing deadline on March 7.

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](#).

Franchise Tax

Tennessee [HB 1593](#) had been scheduled for a hearing in the House Finance Ways and Means Subcommittee on March 7; however, action was deferred until March 14. This bill would exempt entities that would otherwise have less than \$100 in combined franchise and excise tax liability from franchise and excise taxes for a tax year beginning on or after July 1, 2018, and prior to July 1, 2019. The bill would increase the liability threshold to less than \$250 for the tax year beginning July 1, 2019 and less than \$500 for the tax year beginning July 1, 2020. The bill would also repeal the \$100 minimum franchise tax and would specify that no entity would be relieved from filing a return and paying the franchise tax unless the entity qualifies for an exemption. The bill would take effect July 1. The companion bill, [SB 1744](#), was referred to the Senate Finance Ways and Means Committee with a negative recommendation from the Senate Finance Ways and Means Subcommittee on March 6.

General Oil and Gas

Pooling

Utah [HB 419](#) passed the House and the Senate on March 8. The bill is now pending delivery to Republican Gov. Gary Herbert who will have until March 28 to sign or veto the bill or it becomes law. The bill would authorize the Board of Oil, Gas and Mining to make a pooling order retroactive if the board has received an objection, but the board finds that a party has engaged in inequitable conduct. The bill would also provide that the terms and conditions of the boards initial pooling orders would apply to subsequent wells drilled in the same drilling unit except as modified by:

- An accounting for actual costs incurred for each subsequently drilled well in the drilling unit.
- An account for the consenting or nonconsenting status of an owner of each subsequently drilled well in the drilling unit.
- The board after the filing of and hearing upon a petition filed by an affected owner desiring a modification.

The bill would take effect 60 days after adjournment, which took place on March 8.

General

Alaska [HB 330](#) has been scheduled for hearings in the House Resources Committee on March 9 and March 12 at 1:00 PM. The bill would authorize the commissioner of the Department Natural Resources to disclose confidential information as part of investigations and proceedings including a lease royalty audit appeal or request for reconsideration. The bill would require the commissioner to provide notice to all parties including any third party whose information will be disclosed and would allow the commissioner to limit access to the information. The bill would take effect 90 days after enactment.

Utah [SB 191](#) passed the House on March 7 and is now pending delivery to Republican Gov. Gary Herbert who will have until March 28 to sign or veto the bill or it becomes law. 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. The bill would take effect upon enactment.

Hydraulic Fracturing

California [SB 1370](#), sponsored by Sen. Harry Stern, D-Canoga Park, was referred to the Senate Natural Resources, Water and Environmental Quality Committee on March 8. The bill would remove a provision of existing law that exempted well stimulation treatments that are used for routine maintenance of wells from permitting requirements. The bill would take effect the January 1 following a 90 day period from the date of enactment.

Royalty Payments

Oklahoma [HB 2775](#) passed the House Rules Committee with a substitute on March 5. As substituted, the bill would set the interest rate for proceeds from an oil and gas lease not paid due to unmarketable title at the prime interest rate reported in the Wall Street Journal, beginning on November 1, 2018. The measure would also provide that when the lease holder has not been provided an affidavit of death and heirship, the holder of the proceeds may elect to interplead the proceeds and all accrued interest into court for a determination as to whom is entitled to them. The bill would take effect November 1.

West Virginia [HB 4270](#) passed the Senate Judiciary Committee with an amendment on March 7 and is now pending a third reading in the Senate. The strike and insert amendment retains the bill's provisions but changes the deadline for the Department of Environmental Protection to publish quarterly report data online. 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 adjournment.

Public Lands

New York [SB 7869](#), sponsored by Sen. Pamela Helming, R-Geneva, was referred to the Senate Investigations and Government Operations Committee on March 4. The bill would provide the Commissioner of General Services with the right of first refusal in federal land transfers to private entities within the state. The right of first refusal would not apply to:

- The conveyance of federal public lands pursuant to a conservation plan.
- The renewal of a lease in existence as of January 1, 2017.
- The conveyance of federal public lands to a federally recognized Native American tribe.

The bill would take effect 120 days after becoming law. The Assembly companion, [AB 8797](#), is pending in the Assembly Governmental Operations Committee.

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