

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

- **BLM Resource Advisory Councils.** On April 20, the Bureau of Land Management (BLM) published its *National Call for Nominations for Resource and Monument Advisory Councils* in the Federal Register ([83 Fed. Reg. 17563](#)). The purpose of the notice is to request public nominations for the BLM Resource Advisory Councils (RAC) that have members whose terms are scheduled to expire. RACs provide advice and recommendations to the BLM on land use planning and management of the National System of Public Lands within their geographic areas. Council members include “representatives of organizations associated with energy and mineral development” so nominations from industry representatives are invited. The deadline for filing nominations is June 4, 2018. [Read more.](#)
- **ANWR Leasing.** On April 19, The Bureau of Land Management-Alaska announced the opening of a 60-day public scoping period to assist in the preparation of an Environmental Impact Statement (EIS) for the Coastal Plain Oil and Gas Leasing Program within the Arctic National Wildlife Refuge (ANWR). “Developing our resources on the Coastal Plain is an important facet for meeting our nation’s energy demands and achieving energy dominance,” said Assistant Secretary of the Interior for Land and Minerals Management Joe Balash. The first lease sale will be held after completion of an environmental analysis and “will offer not fewer than 400,000 acres area-wide of high-potential lands for bid”. Public comments on the ANWR plan and EIS will be accepted through June 19, 2018. [Read more.](#)
- **Offshore Royalty Rates.** On April 17, Interior Secretary Ryan Zinke announced that he will not lower royalty rates for offshore oil and gas leases despite a recommendation from the Royalty Policy Committee recommending that the rate be lowered. The committee’s late February recommendation was to lower the royalty rate to 12.5 percent, but Zinke said it will hold at 18.75 percent at this time. [Read more.](#)
- **Department of the Interior Report.** On April 16, the U.S. Department of the Interior released its comprehensive 2018 first quarter report. “The Department is doing a tremendous job of breaking down regulatory barriers and cutting red tape to create economic prosperity that will benefit our nation,” said Interior Secretary Ryan Zinke. This includes “opening the 1002 section in Alaska for responsible energy development.” Some of the achievements also include a Draft Proposed Five-Year Program for oil and gas leasing on the National Outer Continental Shelf; generating nearly \$360 million from oil and gas lease sales in 2017, an 86-percent increase from the previous

year and the highest in nearly a decade; and rescinding the Obama-era Hydraulic Fracturing Rule. [Read more.](#)

## **FEDERAL – Judicial**

- **Royalties; Post-Production Expenses – West Virginia Federal Court.** (*Update to 3/12/18 Weekly Report*) On April 12, EQT Production Company filed a Complaint for Declaratory Relief in the U.S. District Court for the Northern District of West Virginia against the state Department of Environmental Protection challenging the constitutionality of the recently enacted flat-rate statute, [SB 360](#), which takes effect on May 31. Although the new statute has been widely supported by Republican legislators and many industry groups, “EQT’s lawyers wrote that the company has about 1,700 leases in West Virginia that were enacted before the state’s flat-rate statute that are now affected.” In [EQT Production Company v. Caperton](#) (Case No. 1-18-cv-00072-IMK), EQT claims that the new law “fundamentally alters and impairs the terms of private flat-rate oil and gas leases that were executed before its enactment.” Lawyers for EQT wrote that the new statute “imposes unconstitutional conditions on EQT’s exercise of its property rights under those contracts.” The bill passed by the Legislature included language to prevent the 1/8th royalties from being subject to post-production expenses. We will continue monitoring this case as it moves forward. [Read more.](#)

## **STATE – Legislative**

- **Permitting; Drilling Operations – Illinois.** On April 13, HB 5716 was re-referred to the Rules Committee following its initial introduction by Rep. Will Guzzardi (D). The bill would amend the Illinois Oil and Gas Act and the Hydraulic Fracturing Regulatory Act to require as part of the permit application for drilling or hydraulic fracturing operations the written consent of each owner of a mineral interest affected by the removal of minerals in the conduct of the proposed operations and each surface owner affected by the removal of minerals in the conduct of the proposed operations, unless he or she is the mineral interest owner as well providing consent as such. The bill also provides notwithstanding any other provision of statutory or common law, a person shall not drill, conduct hydraulic fracturing operations, or remove minerals as a result of any means regulated by the Acts including, but not limited to, horizontal drilling, without the express, written consent of each owner of a mineral interest affected by the operations or removal of minerals in the conduct of the operations. The bill provides for enforcement by the Department of Natural Resources with penalties and cessation of operations for violations, and payment of treble the full market value of the mineral resource extracted in violation of this Act to the owner of the mineral interest. [Read more.](#)
- **Hydraulic Fracturing – Illinois.** On April 13, HB 5743 was re-referred to the Rules Committee following its initial introduction by Rep. Scott Drury (D). The bill seeks to ban hydraulic fracturing by repealing the Hydraulic Fracturing Regulatory Act, stating that a person may not engage in, and the Department of Natural Resources or any other

State agency may not issue a permit for, the hydraulic fracturing of a well for exploration or production in the State. However, even environmentalists do not expect the bill to succeed, and the Republican governor would not sign it. [Read more.](#)

- **Severance and Production Tax – Illinois.** On April 13, HB 5748, a bi-partisan bill, was re-referred to the Rules Committee following its initial introduction. The bill amends the Illinois Hydraulic Fracturing Tax Act, providing that the tax rate for the severance and production of oil or gas shall be 1.5% (rather than 3%) of the value of the oil or gas and provides that for oil the tax shall be: (i) 1.5% of the value of the oil (rather than 3%) where the average daily production from the well in a month is less than 25 barrels; (ii) 2% of the value of the oil (rather than 4%) where the average daily production from the well in a month is between 25 barrels and 50 barrels; (iii) 2.5% of the value of the oil (rather than 5%) where the average daily production from the well in a month is between 50 barrels and 100 barrels; and (iv) 3% of the value of the oil (rather than 6%) where the average daily production from the well in a month is 100 barrels or more; and provides that for gas the tax shall be 3% (rather than 6%) of the value of the gas. The bill also removes language stating that every applicant for a high volume horizontal hydraulic fracturing permit shall include a traffic management plan on his or her application. [Read more.](#)
- **Horizontal Wells – Ohio.** On April 10, HB 562, introduced by Rep. David Leland (D), was referred to the House Energy and Natural Resources Committee. The bill amends current law to prohibit the drilling of a horizontal well in certain state and local parks. [Read more.](#)
- **Injection Well Setbacks – Ohio.** (*Update to 4/9/18 Weekly Report*) On April 10, HB 578, introduced by Rep. Glenn Holmes (D), was referred to the House Energy and Natural Resources Committee. The bill would amend current law to establish new setback requirements applicable to new Class II injection wells and to require thirty-seven and one-half percent of the out-of-district injection well fee to be paid directly to the municipal corporation or township in which the injection well is located. [Read more.](#)

## **STATE – Regulatory**

- **Flaring Regulations – North Dakota.** On April 17, the North Dakota Industrial Commission (NDIC) approved industry-supported changes to its Natural Gas Capture Policies ([NDIC Order 24665 Policy/Guidance Version 041718](#)) upon recommendations from Lynn Helms, Director of the North Dakota Department of Mineral Resources. Among other provisions, the amended rules extend credits from three months to six months for companies that meet or exceed flaring goals. It also gives companies credit if the natural gas is used in the state to power equipment or facilities, and allows companies that are meeting targets to forgo a capturing plan with their drilling permits. [Read more.](#)

## **INDUSTRY NEWS FLASH:**

◆ **U.S. Onshore Upstream Budgets Rise in 2018.** According to the latest reports from leading financial analysts who track the oil and gas industry, they have already seen higher upstream budgets and more spending, particularly in the Permian, by E&P companies this year. One report shows E&Ps anticipate spending a total of \$80.5 billion this year compared to about \$72.4 billion in 2017. [Read more.](#)

## **State-by-State Legislative Session Overview**

**Alaska, Arizona, California, Colorado, Connecticut, Delaware, Hawaii, Illinois, Iowa, Louisiana, Massachusetts, Michigan, Minnesota, Missouri, New Hampshire, New Jersey, New York, Ohio, Oklahoma, Pennsylvania, Rhode Island, South Carolina, Tennessee and Vermont** are in regular session. The **District of Columbia** Council, **Puerto Rico** and the **United States** Congress are also in regular session.

**Kansas** is in recess until April 26. **Wisconsin** is in recess to the call of the chair. **Maine** concluded legislative business on April 19 and is in recess to the call of the chair. The legislature will reconvene to consider gubernatorial vetoes before formal adjournment.

The following states are expected to adjourn on the dates provided: **Arizona** (April 21), **Kansas** (April 26), **Hawaii** (May 3) and **Vermont** (May 4).

The following states adjourned on the dates provided: **Kentucky** (April 14) and **Nebraska** (April 18). **Alaska** did not adjourn on the April 15 constitutional regular session deadline and must adjourn before May 16, [KTVA](#) reports. **Iowa** is expected to extend its session beyond its target adjournment date of April 21, the [Des Moines Register](#) reports. **Tennessee** did not adjourn on April 19 as expected.

**Oklahoma** convened its second special session to address budget issues on December 18, [KFOR](#) reports. **Virginia** convened a special session on April 11 and held a one-day veto session on April 18. The House voted to pass the \$115 billion, two year spending plan on April 17, [The Washington Post](#) reports, and the session is ongoing.

**Kentucky** Republican Gov. Matt Bevin has until April 26 to act on legislation presented after April 14 or it becomes law without signature. **Georgia** Republican Gov. Nathan Deal has until May 8 to act on legislation presented after March 23 or it becomes law without signature. **Arkansas** Republican Gov. Asa Hutchinson has 20 days from presentment, Sundays excepted, to act on regular session legislation presented after March 8. **Florida** Republican Gov. Rick Scott has 15 days from presentment 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 or it becomes law. **Maryland** Republican Gov. Larry Hogan has 30 days from presentment to act on legislation presented after April 3, and bills

must be presented by April 29. **Mississippi** Republican Gov. Phil Bryant has 15 days from presentment, Sundays excepted, to act on legislation presented after March 27 or it becomes law. **Nebraska** Republican Gov. Pete Ricketts has five days from presentment, Sundays excepted, to act on legislation or it becomes law. **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.

**Oregon** Democratic Gov. Kate Brown had a signing deadline on April 13. **Idaho** Republican Gov. Butch Otter and **Wyoming** Republican Gov. Matt Mead had acted on all legislation as of April 16.

The following states are currently interim committee hearings: [Alabama](#), [Arkansas](#), [Idaho](#), [Indiana](#), [Maryland](#), [Montana](#), [Nevada](#), [New Mexico](#), [North Carolina](#), [North Dakota](#), [Oregon](#), [South Dakota](#), [Texas House](#) and [Senate](#), [Virginia](#), [Washington](#), [West Virginia](#) and [Wyoming](#).

The following states are currently posting 2019 bill drafts, profiles and interim studies: [Montana](#) and [North Dakota](#).

## Franchise Tax

**Tennessee** [SB 1744](#) has been scheduled for a hearing in the Senate Finance Ways and Means Committee on April 23. The time of the hearing was not immediately available. 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, [HB 1593](#), is pending in the House Finance Ways and Means Subcommittee.

## General Oil and Gas

### General

**Colorado** [SB 192](#) was postponed indefinitely in the House State, Veterans and Military Affairs Committee on April 18 and is not expected to move any further. The bill would have required local governments that place a moratorium on oil and gas development to compensate mineral owners for the costs, damages or loss of fair market value that result from the moratorium.

**Louisiana** [HB 331](#) passed the Senate Natural Resources Committee on April 19. The bill would provide that the oil site restoration fee charged on the production of oil is payable upon the initial disposition of each barrel of oil and condensate. The bill would take effect July 1 and would apply retroactively to July, 2017.

**Louisiana [HB 860](#)** passed the Senate Natural Resources Committee on April 19. Present law authorizes the Conservation Commissioner to develop and implement a program to expedite the processing of permits, modifications, licenses, registrations and variances. The bill would retain present law but would allow the commissioner to expedite the review of plans, proposals and exceptions of related correspondence. The bill would also specify that the minimum fee for administrative costs associated with expedited processing would be \$500. The bill would require that public notice be given once the expedited permit review is granted rather than when it is requested. The bill would take effect August 1.

**Louisiana [SB 377](#)** was heard in the House Natural Resources Committee on April 17; the committee took testimony but did not vote on the bill during the hearing. As passed the Senate the bill would provide that if an inactive well has been designated as being inactive with future utility by the operator for a period of 10 years or more and that well is neither scheduled to be plugged and abandoned on a plan approved by the commissioner nor covered under a site specific trust account in accordance with present law, then the owner may request in writing that the Office of Conservation determine whether the inactive well has future utility. The bill would also establish the following procedure to determine whether a well should be plugged:

- That the commissioner notifies the operator of the request within 30 days of receipt.
- The operator submits written justification to the office to prove that the well has future utility within 90 days of receipt of the notice.
- The office reviews the written justification and determines whether or not the well has future utility.
- The office shall submit the operator's written justification and the office's final determination to the owner with 10 days. The owner would have 10 days from the receipt of the justification to request in writing that the well be plugged. If the owner requests that the well be plugged, then the operator would be required to submit a plan to the office to plug the well within 90 days of a final determination by the office that the well does not have future utility.
- The commissioner could approve the plan submitted by the operator along with any revisions the commissioner deems necessary.
- The operator plugs the well in accordance with the approved plan.

The bill would provide that the operator could appeal the office's determination in accordance with existing law and would allow an operator to pursue a contractual claim for reimbursement of the costs of plugging and abandonment. The bill would provide a definition of an inactive well and would permit owners to donate an amount determined by the Conservation Commissioner to defray the cost of an expedited determination. The bill would take effect on August 1.

**Ohio [HB 430](#)** was heard in the Senate Ways and Means Committee on April 18; the committee took testimony but did not vote on the bill. Current law exempts the sale or use of tangible personal property used "directly" in the production of oil and natural gas. This bill would amend current law to remove the qualification that the property be directly used in the production of oil and gas. The bill also amends the regulatory definition of what is considered a production operation to exclude:

- Operations, activities or equipment used in or associated with the exploration and production of any mineral resource other than oil and gas.
- Storing, holding or blending solutions or chemicals used in well stimulation.
- Preparing, installing or reclaiming foundations for drilling or pumping equipment or well stimulation material tanks.
- Transporting, delivering or removing equipment to or from the well site or storing such equipment.
- Gathering operations occurring off the well site, including gathering pipelines, transporting hydrocarbon gas or liquids away from a crude oil or natural gas production facility.

The bill would take effect 90 days after enactment.

## **Hydraulic Fracturing**

**California** [SB 1370](#) passed the Senate Natural Resources and Water Committee on April 17 and is now pending in the Senate Appropriations Committee, where it has been scheduled for hearing on April 30 at 10:00 AM. 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.

**Illinois** [SB 3174](#) has been scheduled for a third reading in the Senate on April 23. As amended, the bill would require the following information to be included on a well permit:

- The GPS surface and bottom hole locations for all wells drilled utilizing directional or horizontal drilling techniques.
- A list of chemicals and additives intended to be used in the drilling or completion operations.

The bill would also prohibit horizontal wells or directionally drilled wells from being classified as confidential. The bill would require the Department of Natural Resources to make specified information available on its website including drilling permits issued as well as well drilling and completion reports. The bill would protect furnished trade secret information from further disclosure if the department determines that the information has not been published, disseminated or otherwise become a matter of general public knowledge and the information has competitive value. The bill would take effect January 1, 2019 if passed prior to May 31; however, if the bill is passed after May 31 then it would take effect June 1, 2019.

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