

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

- **BLM Oil and Gas Lease Sale – Colorado.** On March 22, the Bureau of Land Management (BLM) announced that it is [seeking public comments](#) on its Environmental Assessment for 28 parcels comprising roughly 22,000 acres within the Royal Gorge Field Office for the September 2018 Competitive Oil and Gas Lease Sale. This figure is comprised of 1,285.20 acres of federal land and 20,889.81 acres of split estate land. The proposal includes parcels in Huerfano County, Kiowa County, Lincoln County, Washington County, and Weld County. [Read more.](#)
- **BLM Oil And Gas Lease Sale – Eastern States.** On March 22, the BLM held its quarterly oil and gas lease sale in the Eastern States that resulted in competitive bids for 464.89 acres offered in Ohio and Arkansas. The combined bids from the sale brought in \$4,629. [Read more.](#)
- **BLM Oil And Gas Lease Sale – Wyoming.** The BLM's first Wyoming oil and gas lease sale of 2018 brought in competitive bids for 152 of the 170 parcels offered at the sale, generating nearly \$20 million in revenue. The BLM offered parcels in Campbell, Converse, Crook, Fremont, Goshen, Hot Springs, Johnson, Natrona, Niobrara, Park, Platte, Sweetwater, and Weston counties, Wyoming. [Read more.](#)

FEDERAL – Judicial

- **BLM Methane Venting and Flaring Rule – Wyoming Federal Court.** In a long-fought victory for the oil and gas industry, last Wednesday a Wyoming federal judge put a stop to the implementation of the 2016 Obama-era methane emissions venting and flaring rule because the Trump administration's BLM is in the process of revising that rule. (See [Waste Prevention, Production Subject to Royalties, and Resource Conservation: Rescission or Revision of Certain Requirements](#)). In [State of Wyoming et al. v. Bureau of Land Management](#) (Case No. 2:15-cv-00041-SWS), the Court granted motions filed by North Dakota, Texas, Montana, Wyoming and oil and gas industry groups, the Independent Petroleum Association of America and the Western Energy Alliance, who sought to lift a stay on the case imposed in December, and which would have required the rule to be put into effect had the Court ruled against them. Kathleen Sgamma, President of the Western Energy Alliance, hailed the decision saying "the Wyoming judge found a practical solution. So rather than having companies suddenly comply with the rule, he recognizes two things. One, that coming into compliance takes time

and two, that this rule is being significantly rewritten so it makes no sense for companies to comply for a short period of time.” [Read more.](#)

- **Federal Land Transfers; State Law – California Federal Court.** Last Monday, the Trump administration filed suit in the U.S. District Court for the Eastern District of California against the state of California to block a new state law that limits transfers of federal lands. (See U.S. Department of Justice [press release here](#)) California’s new law gives the state the first right to purchase federal lands or to arrange for a specific buyer, and essentially gives the state a veto over federal land sales to private interests. The complaint, [United States of America v. State of California, et al.](#) (Case No. 2:18-at-00406), contends that the state law is unconstitutional because it interferes with Congress’ right to control the sale of federal property. Last October, the bill, [SB-50](#), was signed into law with its passage coming at “the urging of environmentalists concerned that the Trump administration was readying plans to sell off federal land for real estate development, mining or drilling.” [Read more.](#)
- **BLM Leasing in Greater Chaco Region – New Mexico Federal Court.** On March 31, the U.S. District Court for the District of New Mexico in [Dine Citizens Against Ruining our Environment, et al. v. U.S. Bureau of Land Management, et al.](#) (Case No. 1:15-cv-00209-JB-LF) ruled in a preliminary order that BLM hydraulic fracturing approvals regarding the Greater Chaco region in New Mexico violated the National Historic Preservation Act, for “some of the wells whose [Areas of Potential Effect] contain historical sites, because some of the cultural resource analyses for those wells are conclusory, contain no finding, or are entirely absent from the record.” Notably, the order does not specify the scope of the violations, nor does it indicate the nature of the forthcoming relief, which will be addressed by the Court in a later ruling. [Read more.](#)

STATE – Legislative

- **Local Regulations; Hydraulic Fracturing – Colorado.** (*Update to 3/26/18 Weekly Report*) On April 3, SB18-192 was sent to the House after passing the Senate. 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. The bill would take effect 91 days following session adjournment, which is currently scheduled for May 9. [Read more.](#)
- **Hydraulic Fracturing – Georgia.** On April 2, [HB 205](#) was delivered to Gov. Nathan Deal (R) after passing the legislature. The bill, sponsored by House Rules Committee Chairman John Meadows (R), would open up an eight-county region of the state to hydraulic fracturing to draw natural gas out of the Conasauga Shale. The bill notes that “The General Assembly further finds and declares that it should continue to encourage oil

and gas exploration.” To facilitate the exploration of natural gas, the bill establishes a regulatory structure, permitting processes, the creation of an Oil and Gas Board, and the imposition of a severance tax at three-cents per barrel of oil and one-cent per thousand cubic feet of gas. The Act will become effective upon the Governor’s signature. Under Georgia law, the “governor then has forty days to decide whether to sign the bill into law, veto the bill (in which event it is returned to the house where it was introduced for veto override consideration), or do nothing (which allows the bill to become law automatically at the end of the forty-day period).” [Read more.](#)

- **Injection Well Setbacks – Ohio.** On March 28, HB 578 was introduced by Rep. Glenn Holmes (D). 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.](#)
- **Unmarketable Title; Interest Rates – Oklahoma.** (*Update to 3/26/18 Weekly Report*) On April 3, HB 2775 was delivered to Gov. Mary Fallin (R) for signature after passing the legislature. The Republican-sponsored bill will 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. Once signed, the bill would take effect November 1. [Read more.](#)
- **Local Regulations – Utah.** (*Update to 3/26/18 Weekly Report*) On March 26, SB 191 was signed into law by Gov. Gary Herbert (R) and takes effect immediately. The Act provides 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 Act also provides 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; and does not interfere with the state’s exclusive jurisdiction to regulate oil and gas. The Act defines oil and gas activity to include hydraulic fracturing, drilling and remediation activities among other activities. [Read more.](#)

STATE – Regulatory

- **Gas Well Site Operations – Pennsylvania.** On March 30, the Pennsylvania Department of Environmental Protection (DEP) announced that it is seeking public comment on [Draft Final Methane General Permits](#) that address methane emissions and other air pollutants from unconventional well sites, among other sources. “The permits will only apply to new emission sources. A separate package of new regulations for

existing emission sources was supposed to be proposed in 2016, but the DEP has yet to introduce the rules.” The 45-day comment period closes on May 15, 2018. [Read more.](#)

STATE – Judicial

- **Oil and Gas Site Inspections – Colorado.** On March 23, the law firm Spencer Fane LLP reported that the Colorado Court of Appeals recently held that the authority of the Colorado Oil and Gas Conservation Commission (COGCC) “to undertake unannounced, warrantless inspections (*i.e.*, administrative searches) at oil and gas sites does NOT violate the U.S. or Colorado constitutions.” In the case, [Maralex Resources, Inc. v. Colorado Oil and Gas Conservation Commission](#) (Case No. 2018COA40), “the court held that such warrantless searches by the COGCC at oil and gas sites fall within the administrative search exception to the otherwise applicable warrant requirement for a government agency to conduct a ‘search’ of private property. The Court also held that such inspections do NOT violate the constitutional rights of surface owners. As a result of the Court’s ruling, Colorado property owners with oil and gas sites cannot deny access to the COGCC performing an agency inspection on the basis that an administrative search warrant is compulsory before entry.” [Read more.](#)
- **Rule of Capture – Pennsylvania.** On April 2, in [Briggs v. Southwestern Energy Production Company](#) (Case No. 2018 PA Super 79), the Pennsylvania Superior Court recognized claims for subsurface trespass from hydraulic fracturing and rejected the argument that the rule of capture precludes such claims as a matter of law. In reversing the lower court, the Pennsylvania Superior Court held that the long-established “[Rule of Capture](#)” principle did not apply to prohibit a trespass claim by an adjoining unleased landowner against a producer when that producer utilizes hydraulic fracturing for a horizontal well. In its opinion, the Pennsylvania Superior Court “drew a distinction between gas purportedly trapped within shale rock formations and released by fracturing operations and fugacious gas within an underground reservoir released by conventional vertical wells. In remanding the action back to the lower court, the Superior Court held that questions of fact existed concerning the length of subterranean cracks created by hydraulic fracturing, and whether the cracks extended across property lines and released trapped shale gas from the adjoining landowner’s tract.” [Read more.](#)

State-by-State Legislative Session Overview

Alaska, Arizona, California, Colorado, Connecticut, Delaware, Hawaii, Illinois, Iowa, Kansas, Kentucky, Louisiana, Maine, Maryland, Massachusetts, Michigan, Minnesota, Missouri, Nebraska, 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.

Wisconsin is in recess to the call of the chair. A planned special session for April 4 related to special election law was scuttled when Republican Gov. Scott Walker called two special elections that made the session unnecessary, legislative staff report.

Mississippi adjourned on April 1.

The following states are expected to adjourn on the dates provided: **Kansas** (April 6), **Maryland** (April 9), **Kentucky** (April 13), **Alaska** (April 15), **Tennessee** (April 16), **Arizona** and **Iowa** (April 17) and **Maine** and **Nebraska** (April 18).

Oklahoma convened its second special session to address budget issues on December 18, [KGOU](#) reports.

Virginia is scheduled to convene a special session on April 11 to finish work on the budget.

Alabama Republican Gov. Kay Ivey must act on legislation presented after March 24 by April 8 or it is pocket vetoed. **Virginia** Democratic Gov. Ralph Northam has until April 9 to act on legislation or it becomes law without signature. **South Dakota** Republican Gov. Dennis Daugaard has until April 10 to act on legislation presented after March 21 or it becomes law without signature. **Oregon** Democratic Gov. Kate Brown has until April 13 to act on legislation 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. **Idaho** Republican Gov. Butch Otter has 10 days, Sundays excepted, 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. **Mississippi** Republican Gov. Phil Bryant has 15 days from presentment, Sundays excepted, to act on legislation presented after March 27 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. **Wyoming** Republican Gov. Matt Mead has 15 days to act on legislation presented after March 12 or it becomes law.

Washington Democratic Gov. Jay Inslee had a signing deadline on March 31.

The following states are currently holding 2019 interim committee hearings: [Arkansas](#), [Montana](#), [Nevada](#), [New Mexico](#), [North Carolina](#) (2018 interim hearings), [North Dakota](#), [Oregon](#), [South Dakota](#), [Texas House](#) and [Senate](#), [Virginia](#), [Washington](#) and [Wyoming](#).

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

Franchise Tax

California [AB 2131](#) was formally amended and re-referred to the Assembly Appropriations Committee on April 3. As amended, this bill would reduce the minimum franchise tax to \$400 for taxable years beginning on or after January 1, 2019 and before January 1, 2024. The bill would take effect immediately.

Louisiana [HB 341](#) has been scheduled for a hearing in the Senate Revenue and Fiscal Affairs Committee on April 9 at 1:30 PM. The bill would change the due date for corporate franchise tax filings from the 15th day of the third month to the 15th day of the fourth month. The bill would take effect one day following enactment.

Tennessee [HB 1593](#) has been scheduled for a hearing in the House Finance Ways and Means Subcommittee on April 13. 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, [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

General

Colorado [SB 192](#) has been scheduled for a hearing in the House State, Veterans and Military Affairs Committee on April 18 at 1:30 PM. The bill would require 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. The bill would take effect 91 days following adjournment, which is currently scheduled for May 9.

Louisiana [SB 377](#) passed the Senate with two amendments, [floor amendment 1994](#) and [floor amendment 2053](#), on April 5 and is awaiting committee referral in the House. 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.

Louisiana [SB 456](#) passed the Senate on April 3 and is now pending in the House Civil Law and Procedure Committee. The bill would remove the disposal of salt water or another waste substance from the list of activities that is not included in the definition of operations. The bill would take effect August 1.

Ohio [HB 225](#) has been scheduled for a hearing in the Senate Natural Resources Committee on April 10 at 9:30 AM. This bill 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 inspect the well within 30 days after the landowner report. The bill would also require the chief to establish a scoring matrix for idle and orphaned wells and to use the matrix to determine the priority of plugging wells. The bill would also require the chief to use 45 percent of the revenue credited to the oil and gas well fund to be used for plugging idle and orphaned wells rather than 14 percent. The bill would take effect 90 days after becoming law.

Hydraulic Fracturing

Colorado [HB 1352](#), sponsored by Rep. Mike Foote, D-Lafayette, was referred to House Health, Insurance and Environment Committee on April 3. The bill would require newly permitted production facilities to be located at least 1,000 feet from any school. The bill would not apply to production facilities that are actively in use or permitted at the time the school commences operations. The bill would define a production facility to be any storage, separation, treating, dehydration, artificial lift, power supply, compression, pumping, metering, monitoring, flowline, or other equipment directly associated with oil, gas or injection wells.

Royalty Payments

Oklahoma [HB 2775](#) passed the Senate on April 2 and was delivered to Republican Gov. Mary Fallin on April 3. Governor Fallin will have until April 9 to sign or veto the bill or it becomes law without signature. 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.

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