

**Please Note:** Due to the AAPL Annual Meeting there is no report next week. The next report will be published on July 2. Hope to see you in Denver!

## WEEKLY HIGHLIGHTS AT-A-GLANCE

### FEDERAL – Legislative

- **Energy and Education Act of 2018.** On May 17, [H.R. 5859](#), known as the *Education and Energy Act of 2018*, was introduced by Rep. Scott Tipton (R-CO) and referred to the House Natural Resources and the House Education and the Workforce Committees. The bill would amend the Mineral Leasing Act to “dedicate more of the federal share of mineral and geothermal lease royalties back to the state in which they were generated to support public education.” The bill would only apply to new leases and will help generate more revenue for states like Colorado to fund teacher pay and other education resources. “Under H.R. 5859, 33 percent of the federal portion of mineral and geothermal revenues would be sent back to the state in which the revenue was generated. Seventeen percent of all federal revenues from new mineral and geothermal leases would be split between all 50 states.” [Read more.](#)

### FEDERAL – Judicial

- **BLM Leasing – New Mexico Federal Court.** On June 14, in [San Juan Citizens Alliance v. U.S. Bureau of Land Management](#) (Case No. 1:16-cv-00376), the U.S. District Court for the District of New Mexico held that Bureau of Land Management (BLM) must set aside 13 issued leases approved in 2015, which cover roughly 20,000 acres of the Santa Fe National Forest, for “further analysis and action” regarding the agency’s finding of no significant environmental impact if hydraulic fracturing were used on those parcels. In its 49-page opinion, the Court described the BLM review as “insufficient”. In the case, environmentalists alleged that the BLM was relying on an outdated 15-year-old Resource Management Plan and failed to prepare a necessary Environmental Impact Statement. The BLM has yet to issue a statement as to whether they will appeal the decision. [Read more.](#)
- **Unitization – Ohio Federal Court.** On June 13, in [Kerns v. Chesapeake Exploration, LLC](#) (Case No. 5:18-cv-00389), the U.S. District Court for the Northern District of Ohio (Eastern Division) rejected the plaintiff-landowner’s takings challenge to a unitization order issued by the Ohio Division of Oil and Gas Resources Management, finding in favor of Chesapeake. The Court found that “the statutory unitization procedure set forth in R.C. § 1509.28 operates to protect the correlative rights of landowners....and it

was passed as a valid exercise of Ohio’s police power.” According to the law firm, Vorys Sate Seymour and Pease LLP, although the “constitutionality of statutory unitization or its analog, mandatory pooling, is well-settled nationwide” this case represents “the first decision to squarely consider Ohio’s unitization law.” [Read more.](#)

## **STATE – Regulatory**

- **Well Permits – Pennsylvania.** In a blow to environmentalists seeking to nullify well permits, on May 11 in *The Delaware Riverkeeper Network, et al. v. Commonwealth of Pennsylvania, et al.* (EHB Docket Nos. 2014-142-B; 2015-157-B), the Pennsylvania Environmental Hearing Board denied an appeal by environmentalists challenging the issuance of an operator’s well permits and renewal permits for six unconventional gas wells. The Board held that the Pennsylvania Department of Environmental Protection (PADEP) complied with the necessary constitutional environmental protections and its trustee duties when PADEP issued those permits. [Read more.](#)
- **Methane Reductions – Pennsylvania.** (*Update to 12/18/17 Weekly Report*) As part of the governor’s strategy to reduce methane emissions from oil and gas sites, on June 7 Governor Tom Wolf (D) and Department of Environmental Protection (DEP) Secretary Patrick McDonnell announced that the new general permits for unconventional natural gas wells and compression, processing, and transmission facilities have been adopted and will go into effect on August 8. According to the DEP, “[t]he plan is designed to reduce emissions from natural gas well sites, compressor stations and along pipelines, and will protect the environment, reduce climate change, and help businesses reduce the waste of a valuable product.” The [final GP-5 and GP-5A general permits](#), which set methane emissions thresholds among other emission reductions, will apply to permits for new, unconventional gas wells. [Read more.](#)

## **STATE – Legislative**

- **Well Disclosures; Permit Logs – Illinois.** (*Update to 5/21/18 Weekly Report*) On May 18, SB 3174 was referred to the House Rules Committee for consideration after passing the Senate on April 26. 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 and 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, well drilling, and completion reports. However, the legislation would protect certain trade secret information from further disclosure if the Department determines that “the information has never been published or disseminated or has otherwise become a matter of general public knowledge” and the information has competitive value. If passed the bill would take effect June 1, 2019. [Read more.](#)

- Idle and Orphaned Wells – Ohio.** (*Update to 5/21/18 Weekly Report*) On June 7, the House concurred with the Senate version of HB 225, which passed the Senate on May 23. The bill is now awaiting transmittal to Governor John Kasich (R). 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. [Read more.](#)
- Sales Tax Exemption for Oil and Gas Property – Ohio.** (*Update to 5/21/18 Weekly Report*) On June 14, Governor John Kasich (R) signed HB 430 into law, and the Act will take effect in 90 days. The new law gives Ohio’s oil and gas industry clearer guidelines on what purchases qualify for a sales tax break, and arose out of industry concerns over tax audits. Previously, state law exempted the sale or use of tangible personal property used “directly” in the production of oil and natural gas. This Act amends the law to remove the qualification that the property be directly used in the production of oil and gas. The Act 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; and 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. [Read more.](#)

## **STATE – Judicial**

- Leasing; Offset Wells – Texas.** On June 1, in [Murphy Exploration & Production Co.—USA v. Adams](#) (Case No. 16-0505), the Texas Supreme Court was tasked with interpreting an offset provision in an oil and gas lease. In its opinion, the Court reversed the appellate court, holding that the “court of appeals read a requirement into the lease that its unambiguous language does not support”. The Texas Supreme Court held that the phrase “offset well” in the relevant lease clause did “not necessarily refer to a well that would protect the leasehold against drainage, but instead referred to a well drilled anywhere on the leased premises that was drilled to a depth required by the lease.” The Court reached its conclusion based on interpreting that phrase in light of “surrounding circumstances” evidence of “the discovery of the Eagle Ford and drainage patterns of horizontal shale wells.” [Read more.](#)

- **Working Interests; Leasing – Texas.** On May 25, in *TRO-X, L.P. v. Anadarko Petroleum Corp.* (Case No. 16-0412), the Texas Supreme Court affirmed the appellate court decision on a claim by TRO-X that it was entitled to a back-in percentage of the working interest in five mineral leases under which Anadarko is the lessee. At trial, the court agreed with TRO-X, but the appellate court disagreed and reversed. The Texas Supreme Court affirmed the reversal and found in favor of Anadarko. The facts surround multiple leases, including the interpretation of various leases as either those that coexisted or were to be construed as top leases. Ultimately, through the application of contract interpretation, the Texas Supreme Court held that the more recent leases at issue were not top leases subject to TRO-X’s back-in interest. [Read more.](#)
- **Deeds; Mineral Reservations – West Virginia.** On May 11, in *Kupfer v. Chesapeake Appalachia, LLC* (Case No. 17-0527), the West Virginia Supreme Court of Appeals held that a grantor’s deed reservation which “excepted and reserved from said parcels all the coal, oil, gas and other minerals” only applied to those specific parcels named in the reservation but not to one of the other parcels also mentioned in the deed which did not explicitly contain any such reservation language. [Read more.](#)

### **INDUSTRY NEWS FLASH:**

◆ **Permian Basin oil production to double between 2018 and 2023.** A new *Oil & Gas Journal* report by energy research and advisory firm, IHS Markit, forecasts Permian basin oil production will reach 5.4 million barrels-per-day by 2023, which is “more than current production from any single Organization of Petroleum Exporting Countries member other than Saudi Arabia.” According to the report, the “growth will come from nearly 41,000 new wells and \$308 billion in upstream spending during 2018-23.” [Read more.](#)

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

**North Carolina, Ohio, Pennsylvania and Rhode Island** are in regular session. The **District of Columbia** Council, **Puerto Rico** and the **United States** Congress are also in regular session.

The **South Carolina** House and Senate postponed their May 24 meeting and are in recess until June 27 and 28 to address the governor’s budget vetoes, reports the [Greenville News](#). **Illinois** and **Wisconsin** are in recess to the call of the chair.

The **Virginia** Senate reconvened on May 14 for a special session and was in recess until June 11, the [Richmond Times-Dispatch](#) reports. **Missouri** lawmakers convened for a special session on May 18 and they were in recess until June 11, according to the House website. **Vermont** convened a special session on May 23 to address the governor’s opposition to the state budget

and tax bills. Governor Scott hopes to use one-time money to keep tax rates level while passing a plan for future years.

**Louisiana** concluded a second two-week special session on June 4, reports the [San Francisco Chronicle](#). Democratic Gov. John Bel Edwards is likely to call for a third special session.

**Missouri** Republican Gov. Eric Greitens offered his resignation and officially stepped down as of June 1, reports [The New York Times](#). Former Governor Greitens signed 77 bills into law on his last day, including decreases to the corporate income tax rate and allowing telephone companies to choose a different way to be taxed.

**Colorado** Democratic Gov. John Hickenlooper had until June 8 to act on legislation presented after April 29 or it becomes law without signature. **Hawaii** Democratic Gov. David Ige has until July 10 to act on legislation presented after April 19 or it becomes law without signature. **Alaska** Independent Gov. Bill Walker has 20 days from presentment, Sundays excepted, to act on legislation or it becomes law without signature. **Connecticut** Democratic Gov. Dannel Malloy has 15 days from presentment to act on 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. **Kansas** Republican Gov. Jeff Coyle has 10 days, not including the day of presentment, to act on legislation or it becomes law without signature. **Louisiana** Democratic Gov. John Bel Edwards has 20 days from presentment to act on legislation presented after May 8 or it becomes law. **Minnesota** Democratic Gov. Mark Dayton has 14 days from presentment to act on legislation presented on or after May 17 or it is pocket vetoed. **Missouri** acting Republican Gov. Mike Parson has 45 days from presentment to act on legislation or it becomes law without signature. **Vermont** Republican Gov. Phil Scott has five days, Sundays excepted, to act on legislation presented after May 16. The disposition of legislation not acted on after that period will be determined on a case-by-case basis. **West Virginia** Republican Gov. Jim Justice has 15 days from adjournment of the special session, Sundays excepted, to act on legislation or it becomes law without signature. **Wisconsin** Republican Gov. Scott Walker has six days, Sundays excepted, to act on special session legislation or it becomes law.

**Iowa** Republican Gov. Kim Reynolds had a signing deadline on June 4.

The following states are currently holding 2019 interim committee hearings: [Alabama](#), [Alaska](#), [Arizona](#), [Arkansas](#), [Colorado](#), [Connecticut](#), [Hawaii](#), [Idaho](#), [Indiana](#), [Iowa](#), [Kansas](#), [Kentucky](#), [Maine](#), [Maryland](#), [Minnesota](#), [Mississippi Senate](#), [Montana](#), [Nevada](#), [New Mexico](#), [North Dakota](#), [Oklahoma House](#), [Oregon](#), [South Carolina](#), [South Dakota](#), [Tennessee](#), [Texas House](#) and [Senate](#), [Utah](#), [Virginia](#), [Washington](#), [West Virginia](#) and [Wyoming](#).

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

## General Oil and Gas

### Bundling and Pooling

**Colorado** [SB 230](#) was signed by Democratic Gov. John Hickenlooper on May 15 and takes effect July 1. The law will clarify that a pooling order entered into by the Colorado Oil and Gas Conservation Commission could authorize more than one well. The law will require that the order specify that a nonconsenting owner is immune from liability for costs arriving from spills, releases, damage or injury resulting from oil or gas operations on the drilling unit. Current law prohibits entry of a pooling order until the mineral rights owners have been given a reasonable offer to lease their rights; the law will require that the offer be given at least 60 days before the hearing on the order and must include a copy of or link to a commission brochure that clearly and concisely explains the pooling procedures.

### General

**Louisiana** [SR 32xx](#), sponsored by Sen. R. L. Bret Allain, was introduced on June 4 and was immediately placed on the calendar for a second reading however the legislature adjourned its second special session on that same day. The resolution would request the Louisiana State University Center for Energy Studies, the LSU Public Administration Institute and the Louisiana Tax Institute, in consultation with the director of the Louisiana Mineral Law Institute, to analyze the mineral tax laws and make specific recommendations to the Senate. The resolution would require a preliminary status report no later than February 1, 2019, a final report of recommendations no later than February 1, 2020 and specific bills implementing these recommendations no later than February 1, 2021.

## Hydraulic Fracturing

**Pennsylvania** [SB 1189](#), sponsored by Sen. Lisa Baker, R-Lehman, received a second vote (consideration) on June 13 and has been re-referred to the Appropriations Committee for further consideration. Due to the value of mineral rights and gas drilling in the state, the bill would require the Delaware River Basin Commission to compensate owners of oil and gas estates in the impacted Basin counties for lost revenue resulting from a hydraulic fracturing moratorium in the same manner as is used to determine the value in any other eminent domain action. Upon signing, the bill would take effect immediately.

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