

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

- **Coastal Economies Protection Act – HR 291.** On January 8, Rep. Joe Cunningham (D-SC) introduced HR 291, known as the “Coastal Economies Protection Act.” The bill would amend the Outer Continental Shelf Lands Act to place a ten-year moratorium on oil and gas pre-leasing, leasing, and related activities on the Outer Continental Shelf in the North Atlantic, Mid-Atlantic, South Atlantic, and Straits of Florida planning areas and in the Eastern Gulf of Mexico. Should the bill pass the now-Democrat controlled House of Representatives, it will most likely be blocked from consideration in the Republican-controlled Senate. [Read more.](#)
- **Stop Arctic Ocean Drilling Act of 2019 – HR 309.** On January 8, Rep. Jared Huffman (D-CA) introduced HR 309, known as the “Stop Arctic Ocean Drilling Act of 2019.” The bill would prohibit oil and gas leasing in the Arctic Planning Area of the Outer Continental Shelf. As with the above bill, should the measure pass the Democrat controlled House, it will most likely be blocked from consideration in the Republican-controlled Senate. [Read more.](#)
- **West Coast Ocean Protection Act of 2019 – HR 310.** On January 8, Rep. Jared Huffman (D-CA) introduced HR 310, known as the “West Coast Ocean Protection Act of 2019.” The bill would amend the Outer Continental Shelf Lands Act to permanently prohibit the conduct of offshore drilling on the outer Continental Shelf off the coast of California, Oregon, and Washington. As above, should the measure pass the Democrat controlled House, it will most likely be blocked from consideration in the Republican-controlled Senate. [Read more.](#)

FEDERAL – Judicial

- **BLM Well Site Access – 10th Circuit (Colorado).** In a victory for a well operator, on January 18, in [Maralex Resources v. Barnhardt](#) (Case No. 17-1421), the U.S. Court of Appeals, 10th Circuit, ruled that the Bureau of Land Management (BLM) lacked authority to require an oil and gas company to provide it a key or let it install its own locks to enter gates and inspect well sites on private land. The court held that while the BLM has authority to inspect wells on private land where federal or Indian minerals are involved, and doesn't have to provide advance notice, it must rely on the operator or landowner to access such sites. Although the BLM can “pursue remedies such as lease cancellations or criminal penalties if denied access, federal laws and regulations make no mention of requiring issuance of a key to locks at such sites or letting it install its

own locks.” Consequently, the Court reversed and remanded the case back to the Colorado district court with instructions to enter judgment in favor of the oil and gas operator and surface/mineral estate owners. [Read more.](#)

- **Forced Pooling – Colorado District Court.** On January 23, the Wildgrass Oil and Gas Committee, on behalf of Broomfield mineral owners, filed a lawsuit in the U.S. District Court for the District of Colorado against the state, governor and Colorado Oil and Gas Conservation Commission (COGCC) challenging the constitutionality of the forced pooling provision of the Colorado Oil and Gas Act. The suit is brought by Colorado Rising, the group behind last year’s failed ballot measure, Proposition 112, which sought to increase well setbacks in the state. The suit, [Wildgrass Oil and Gas Committee v. Colorado, et al.](#) (Case No. 19-CV-190), challenges the statute on federal constitutional grounds, including arguments that the law violates mineral owners’ rights to contract, equal protection, freedom of association, and due process, among claims. The complaint also alleges that “the whole mineral market has been negatively affected by forced pooling, and operators use this unconstitutional law to strong arm mineral owners into unreasonable leases.” The plaintiffs have requested an immediate restraining order and a preliminary injunction “due to the eminent threat posed to Colorado mineral owners.” [Read more.](#)

STATE – Legislative

- **Local Regulations – Indiana.** On January 17, Rep. Jeff Ellington (R) introduced HB 1531. The bill provides that a municipal plan commission’s inclusion in a comprehensive development plan of an unincorporated area within two miles of the corporate boundaries of the municipality does not authorize the municipal plan commission or a board of zoning appeals to regulate the extraction of mineral resources or merchantable timber. The bill also provides that for purposes of a local planning and zoning law stating that a plan commission is not authorized to prevent the use and alienation of mineral resources or forests outside of urban areas, that an area in which there are at least 20 residences within a quarter mile square (instead of eight residences within a quarter mile square) is an “urban area.” Additionally, the bill prohibits a county or municipality from regulating the extraction of mineral resources on private property located outside the corporate boundaries of a municipality. [Read more.](#)
- **Wills; Probate – Indiana.** On January 14, Sen. Eric Koch (R) introduced SB 518. The bill allows a person to contest two or more wills if there is prima facie evidence that: (1) the decedent suffered from an irreversible medical or psychiatric condition that predated the earliest will to be challenged; or (2) a party beneficially interested in one or more of the challenged wills had a direct and active nexus with the preparation or execution process for each will to be challenged. The bill also specifies that the issuance of a court order on any matter related to an unsupervised estate does not revoke the

personal representative's authority to continue the administration of the estate as an unsupervised estate. The measure authorizes the Indiana Supreme Court and Office of Judicial Administration to establish and administer a statewide electronic estate planning documents registry, among other provisions. [Read more.](#)

- **Fossils; Mineral Estates – Montana.** On January 17, Rep. Brad Hamlett (D) introduced HB 229. The bill would distinguish fossils from minerals and providing that the term “minerals” in an instrument does not include fossils. The bill also grants retroactive applicability to instruments severing mineral estates from surface estates that do not convey fossils by a clear and express grant. The House Natural Resources Committee will hold a public hearing on February 6 at 3:00 pm in Room 172 at the State Capitol in Helena. For more information attendees can call 406-444-3064. [Read more.](#)
- **Lease Sale Bidding – Montana.** *(Update to 1/7/19 Weekly Report)* On January 24, SB 41 passed the Senate. The bill would eliminate the current requirement that bids on state lands oil and gas lease sales be made orally. [Read more.](#)
- **State Energy Office – Nebraska.** On January 15, LB 302 was introduced by Sen. Dan Hughes (R) and referred to the Natural Resources Committee. The bill merges the State Energy Office into the Department of Environmental Quality. The combined agencies are renamed the Department of Environment and Energy, effective July 1, 2019. The bill also transfers all statutory powers and duties, responsibilities and obligations, employees, and assets of the State Energy Office to the Department of Environment and Energy. [Read more.](#)
- **Regulatory Penalties; Reporting – New Mexico.** On January 17, Sen. Richard Martinez (D) introduced SB 186. The bill would make certain changes to actions for violations and penalties under the Oil and Gas Act. The bill also imposes a new reporting requirement for the Oil Conservation Division of the Energy, Minerals and Natural Resources Department. [Read more.](#)
- **Gross Receipts Tax – New Mexico.** On January 17, a number of Democrat sponsors introduced [HB 6](#). The legislation is a tax reform bill that makes multiple changes to the gross receipts tax (GRT) and other taxes and fees, notably including lowering the GRT rate by 0.5 percent effective July 1, 2019. The bill generates revenue to lower the GRT rate by amending certain other tax provisions not related to oil and gas production. The bill also now includes the Oil and Gas Proceeds and Pass-Through Entity Withholding Tax Act to be governed by the Tax Administration Act. [Read more.](#)
- **Oil & Gas Production Contracts – North Dakota.** On January 18, Sen. Joan Heckaman (D) introduced SB 2319. The bill would make void and unenforceable indemnity agreements in oil and gas production contracts where the contract of indemnity by its terms purports to relieve the indemnitee from loss or liability for: The indemnitee's

own negligence; The negligence of the indemnitee's agents or employees or an independent contractor who is directly responsible to the indemnitee; or An accident that occurs in operations carried on at the direction or under the supervision of the indemnitee or an employee or representative of the indemnitee or in accordance with methods and means specified by the indemnitee or an employee or representative of the indemnitee. The bill also provides that it "does not deprive an owner of the surface estate of the right to secure an indemnity from a lessee, operator, contractor, or other person conducting operations for the exploration or production of oil or gas on the owner's land." [Read more.](#)

- **Surface and Ground Water – North Dakota.** On January 14, Rep. Terry Jones (R) introduced HB 1440. The bill would impose certain responsibilities on mineral developers related to groundwater. For example, the bill requires certain sample analysis be conducted "at least thirty days before the commencement of construction of any proposed oil or gas well site, tank battery site, access road, or underground gathering pipeline right of way, the mineral developer shall obtain samples from the top six inches of topsoil and from between six to twenty-four inches of the soil." Testing results must be provided to the surface owner and also filed with the North Dakota Industrial Commission to be placed in the well or facility file. [Read more.](#)
- **Oil Extraction Tax – North Dakota.** On January 14, Rep. Dick Anderson (R) introduced HB 1449. The bill would amend the current oil extraction tax rate from five percent to six and one-half percent of the gross value at the well of the oil extracted, but eliminates the fluctuating extraction rate triggered by certain market prices of WTI crude oil. If enacted, the bill would be effective for taxable events occurring after June 30, 2019. [Read more.](#) The Senate version of the bill is [SB 2336](#), introduced January 21. The Senate version would be effective for taxable events occurring after December 31, 2019.
- **Independent Contractors – Oklahoma.** Rep. Mike Osburn (R) has pre-filed HB 1095 for a first reading scheduled for February 4, 2019. The bill, cited as the "Empower Independent Contractors Act of 2019," establishes that the Oklahoma Employment Security Commission shall determine whether an individual is an independent contractor or employee by applying the [IRS 20-factor test](#). According to the bill sponsor, "The purpose of this act is to help employers create jobs, help individuals get back to work and out of welfare, and grow the economy." If passed, the bill would be effective January 1, 2020. [Read more.](#)
- **Mineral Interests; Heirship; Affidavits – Oklahoma.** Rep. David Perryman (D) has pre-filed HB 1223 for a first reading scheduled for February 4, 2019. The bill would modify certain affidavit requirements for claiming severed mineral interests in heirship such as those for listing the names of a decedent's heirs and their relationship to the decedent, land descriptions, and intestate shares. [Read more.](#)

- Pooling; Spacing Units – Oklahoma.** Rep. Zack Taylor (R) has pre-filed HB 1378 for a first reading scheduled for February 4, 2019. The bill would amend current law to provide that no oil and/or gas leasehold interest outside the spacing unit involved may be held by production from the spacing unit more than ninety days beyond expiration of the primary term of the lease. The current provision only applies to a spacing unit of 160 acres or more. If passed, this provision shall apply on and after November 1, 2019 to all producing wells, leases and pooling orders, regardless of the date pooled, drilled or of the date of the underlying leases or pooling orders. The bill also adds a provision for a proposed well or wells to the pooling provision and provides that on and after November 1, 2019, “all such orders by the Commission shall only require the separate owners to pool their interests in the spacing unit as to the proposed well or wells, and not as to the entire spacing unit for the common source of supply, this may be commonly referred to as ‘wellbore pooling.’” [Read more](#). A Senate version of the bill, SB 503, has been pre-filed by Sen. Roland Pederson (R) for a first reading scheduled for February 4, 2019. [Read more](#).
- Takings – Oklahoma.** Rep. John Pfeiffer (R) has pre-filed HB 2150 for a first reading scheduled for February 4, 2019. The bill creates a new section of the state code whereby it shall be considered a taking whenever a municipality, county or other political subdivision, other than the Corporation Commission, adopts or implements an ordinance, resolution, rule, regulation or other form of official policy concerning oil and gas operations that has the effect of “substantially interfering with the use and enjoyment of the mineral estate,” imposes or enforces “a limitation that adversely impacts the use and development of minerals,” and prohibits access to develop the mineral estate” and these provisions apply to any “ordinance, resolution, rule, regulation or other form of official policy adopted or implemented prior to December 31, 2014.” [Read more](#).
- Escrow Accounts – Oklahoma.** Rep. John Pfeiffer (R) has pre-filed HB 2153 for a first reading scheduled for February 4, 2019. The bill, which relates to escrow accounts applicable to royalties, bonus payments, or other monies directed to be paid under a pooling order, requires certain monies be held in trust and deposited in an escrow account, require submission of certain reports, allows optional payment of certain monies if held for less than five years, and provides for transmission of certain funds, among other provisions. [Read more](#).
- Royalties – Oklahoma.** Rep. Todd Russ (R) has pre-filed HB 2233 for a first reading scheduled for February 4, 2019. The bill provides that royalty interest owners who are over the age of sixty-five and who are receiving royalty checks from a producing oil and gas well shall have no expense deduction greater than ten percent deducted from their royalty proceed payments. [Read more](#).
- Occupational Licenses – Oklahoma.** Sen. Nathan Dahm (R) has pre-filed SB 651 for a

first reading scheduled for February 4, 2019. The bill, cited as the “Right to Earn a Living Act,” would limit occupational license regulations. Specifically, the bill provides that “All occupational regulations shall be limited to those demonstrably necessary and carefully tailored to fulfill legitimate public health, safety or welfare objectives.” The bill also would require where a regulation is deemed necessary that an analysis be made on how licensing regulations might impair opportunities for workers, affect costs and market competition, among other provisions. [Read more.](#)

- **Spacing Units; Pooling – Oklahoma.** Sen. Roland Pederson (R) has pre-filed SB 503 for a first reading scheduled for February 4, 2019. The bill, which relates to well spacing and drilling units, removes certain qualifications for spacing units; requires application of certain provisions of law by a certain date to producing wells, leases and pooling orders; clarifies when owners may validly pool their interests; and clarifies certain Corporation Commission orders for pooling within spacing units, among other provisions. [Read more.](#)
- **Leasing; State Minerals – South Dakota.** On January 23, HB 1030 passed the Senate by a vote of 35-0. The bill passed the House on January 15 with a vote of 67-0. The bill, which was original introduced earlier this month by the House Commerce and Energy Committee, would allow the Office of School and Public Lands to accept internet bidding for the leasing of state minerals, rather than by the current oral bid requirement. The bill has now been referred to the Senate for its consideration. [Read more.](#)
- **Injection Wells – Texas.** On January 17, HB 1044 was introduced by Rep. Erin Zwiener (D). The bill would amend current law regarding permits for certain injection wells that transect a portion of the Edwards Aquifer. [Read more.](#)
- **Intestate Succession; Mineral Proceeds – Utah.** On January 17, SB 78 was pre-filed by Sen. David Hinkins (R). The bill modifies intestate succession law to clarify the no taker provision, addresses minerals or mineral proceeds where there is no taker, and makes certain technical changes to existing law. [Read more.](#)
- **Pooling; Drilling Units; Proceeds – Virginia.** On January 8, Del. Terry Kilgore (R) introduced HB 2187. The bill provides that proceeds of certain gas or oil wells, escrowed because the owner’s identity and location remain unknown, shall be presumed abandoned and paid into the Coalbed Region Elderly Assistance Fund. The bill also provides that one year after the last provision of notice to a known claimant who (i) is locatable, (ii) has been properly notified pursuant to the provisions of this subsection, and (iii) has failed to present to the Board or the gas well operator any instrument or documentation sufficient to serve as a basis for payment, the escrowed proceeds attributable to such claimant shall be deemed to be abandoned and shall be deposited in the Coalfield Region Tourism Fund. [Read more.](#)

- Mineral Interests – West Virginia.** On January 21, SB 384, was introduced by Sen. Randy Smith (R). The bill provides that proceeds from certain oil and gas wells that are due to persons whose name or address are unknown are to be kept in a special fund and if unclaimed within seven years the proceeds shall be transferred to the Oil and Gas Reclamation Fund. The bill also provides that if there is a surface disturbance those named surface owners of a leased interest subject to pooling for a horizontal well are the only surface owners insofar as the well permit is concerned. The bill provides that if another surface owner should become known his or her name shall be added as a surface owner on the permit. The bill also provides that if proceeds from other mineral tracts in a unit or pool of a horizontal well are not claimed by an unknown, missing or abandoned owner within seven years the proceeds shall be transferred to the Oil and Gas Reclamation Fund. The bill provides that certain provisions take effect beginning when funds have been unclaimed for seven years after the special commissioner's lease regardless of when the lease was signed. [Read more.](#)
- Energy Severance Tax Credits – West Virginia.** On January 9, Sen. Randy Smith (R) introduced SB 52. The bill would entitle natural resource producers to the economic opportunity tax credit and allows the credit to be used to offset the severance tax. [Read more.](#)
- Severance Tax – West Virginia.** On January 17, Del. E.W. Anderson (R) introduced HB 2489. The bill would remove the severance tax on oil and gas produced from low producing wells. The bill has already passed the House Energy Committee and is now in the House Finance Committee for consideration. [Read more.](#)
- Taxation – West Virginia.** On January 21, Del. Joe Canestraro (D) introduced HB 2543. The bill would increase the privilege tax on severing natural gas or oil from its current five percent up to seven and one-half percent. [Read more.](#) A similar bill, HB 2568, was introduced by Del. John Doule (D) on the same day, but that bill seeks a rate increase to ten percent. [Read more.](#)
- Surety Bond; Guaranty – Wyoming.** On January 23, Rep. Aaron Clausen (R) introduced HB 208. Regarding a surety bond or guaranty, the bill would authorize surface owner objections for a failure to comply with good faith negotiations. [Read more.](#)
- Surface Damage; Payments – Wyoming.** On January 23, Rep. Aaron Clausen (R) introduced HB 209. Regarding surface damage and disruption payments, the bill amends the manner and procedure in which surface damage and disruption payments are effectuated. [Read more.](#)
- Split Estates – Wyoming.** On January 23, Rep. Chuck Gray (R) introduced HB 224. The bill amends current law regarding entry to conduct oil and gas operations by clarifying

the applicability of statutory requirements prior to the commencement of oil and gas operations on split estates. [Read more.](#)

- **State Lands Mineral Royalties – Wyoming.** On January 18, Rep. Timothy Hallinan (R) introduced HJ 5. This Joint Resolution proposes to amend the Wyoming Constitution to provide that for a six year period (July 1, 2021 through June 30, 2027) all state mineral royalties earned from the lease of state school lands may be appropriated by the legislature for the support of public schools. [Read more.](#)

INDUSTRY NEWS FLASH:

◆ **U.S. is energy independent by 2020, says EIA.** According to a new report from the U.S. Energy Information Administration (EIA), U.S. oil production will continue rising at least through the mid-2020s, making the United States “energy independent” by 2020. EIA reports that “even in the worst case scenarios ... oil production will get above 14 million barrels a day and not fall below that level through 2040.” The report also shows the highest production growth in natural gas through 2050. [Read more.](#)

State-by-State Legislative Session Overview

Alaska, Arizona, Arkansas, California, Colorado, Connecticut, Delaware, Georgia, Hawaii, Idaho, Illinois, Indiana, Iowa, Kansas, Kentucky, Maine, Maryland, Massachusetts, Michigan, Minnesota, Mississippi, Missouri, Montana, Nebraska, New Hampshire, New Jersey, New Mexico, New York, North Carolina, North Dakota, Ohio, Oregon, Pennsylvania, Rhode Island, South Carolina, South Dakota, Tennessee, Texas, Vermont, Virginia, Washington, West Virginia, Wisconsin and Wyoming are in regular session. The **District of Columbia, Puerto Rico** and the **United States Congress** are also in regular session.

The following states are scheduled to convene their 2019 legislative sessions on the dates provided: **Utah** (January 28); **Nevada** and **Oklahoma** (February 4); **Alabama** and **Florida** (March 5) and **Louisiana** (April 8).

District of Columbia Democratic Mayor Muriel Bowser has 10 days from presentment, not including weekends or holidays, to sign or veto a bill or it becomes law without signature. **Illinois** Democratic Gov. Jay Robert Pritzker has 60 calendar days while the legislature is in session to act on legislation or it becomes law without signature. **Massachusetts** Republican Gov. Charlie Baker has 10 days after a bill has been presented to either sign or veto the measure or it becomes pocket vetoed. **New York** Democratic Gov. Andrew Cuomo has 10 days from presentment, Sundays excepted, to sign or veto legislation or it becomes law without signature.

U.S. Republican President Donald Trump has 10 days from presentment to act on legislation, Sundays excepted, or the bill is pocket vetoed.

The following states are currently holding 2019 interim committee hearings: [Alabama](#), [Florida House](#) and [Senate](#), [Nevada](#), [Oklahoma House](#) and [Utah](#).

The following states are currently posting 2019 bill drafts, pre-files and interim studies: [Florida House](#) and [Senate](#), [Nevada](#), [Oklahoma House](#) and [Senate](#) and [Utah](#).

Hydraulic Fracturing

Arizona [HB 2498](#), sponsored by Rep. Myron Tsosie, D-Chinele, was introduced on January 18 and has not yet been referred to a committee. The bill would prohibit hydraulic fracturing and the collection, storage or treatment of water generated by hydraulic fracturing. Companion bill [SB 1197](#), sponsored by Sen. Juan Menendez, D-Tempe, was similarly introduced on January 25.

Landmen

Independent Contractors

Oregon [HB 2498](#), sponsored by Rep. Paul Holvey, D-Eugene, was referred to the House Rules Committee on January 18. The bill would amend the independent contractor determination to add that the independent contractor does not perform services that are within the usual course of business of the person that hired the independent contractor. The bill would take effect 91 days after adjournment.

Oil and Gas

General

North Dakota [SB 2319](#), sponsored by Senate Minority Leader Joan Heckman, D-New Rockford, has been scheduled for a hearing in the Senate Energy and Natural Resources Committee on February 1 at 9:00 AM. It would provide that any indemnity agreement, covenant or promise contained in, collateral to or affecting an oil or gas well agreement would be void and unenforceable if it relieves the indemnitee from loss or liability from:

- Their own negligence.
- The negligence of the indemnities agents, employees or independent contractors.
- An accident that occurs in operations carried on at the direction of or under the supervision of the indemnitee.

The bill would take effect August 1.

North Dakota [SB 2332](#), sponsored by Sen. Tim Mathern, D-Fargo, has been scheduled for a hearing in the Senate Energy and Natural Resources Committee on February 1 at 9:00 AM. The bill would require producers to pay royalties and gross production tax on flared gas at a rate imposed under [existing law](#) in order to continue flaring gas beyond one year. The bill would take effect August 1.

Oklahoma [HB 2150](#), sponsored by Rep. John Pfeiffer, R-Orlando, was pre-filed and will be considered when the legislature convenes its 2019 session on February 4. The bill would specify that it would be considered “taking of property rights” as defined in the state constitution whenever a municipality, county or other political subdivision adopts or implements an ordinance resolution, rule, regulation or other form of official policy concerning oil and gas operations that has the effect of:

- Substantially interfering with the use and enjoyment of the mineral estate.
- Imposing or enforcing a limitation that adversely impacts the use and development of minerals.
- Prohibiting access to develop the mineral estate.

The bill would not apply to any ordinances or regulations adopted prior to December 31, 2014. It would take effect immediately.

West Virginia [HB 2641](#), sponsored by Rep. Joe Canestraro, D-Benwood, was referred to the House Energy Committee on January 24. The bill would require owners of oil and gas wells to install and maintain separate meters that calculate the amount of production which would be shared with county assessors and mineral owners. The bill would also require the Secretary of the Department of Environmental Protection and the state Tax Commissioner to implement procedures allowing the Office of Oil and Gas to verify production.

DISCLAIMER: Links and/or information from non-governmental sources provided in this report may be among the many sources available to you. This report does not endorse nor advocate for any particular attorney or law firm, or other private entity, unless expressly stated. Any legal information contained herein is not legal advice. Links are provided for reference only and any cited outside source information is derived solely from material published by its author for public use.