

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

- **S.664 – Independent Contractors.** On March 27, bill text was made available for S.664, known as the “Protecting Workers’ Freedom to Organize Act.” The measure, introduced by Sen. Sherrod Brown (D-OH), would amend the National Labor Relations Act to provide that an individual performing any service shall be considered an employee “unless the individual is free from control and direction in connection with the performance of the service, both under the contract for the performance of the service and in fact; the service is performed outside the usual course of the business of the employer; and the individual is customarily engaged in an independently established trade, occupation, profession, or business of the same nature as that involved in the service performed,” and makes other minor changes regarding employer control and time worked. It is unknown whether the bill will move forward in the Republican-led Senate. [Read more.](#)
- **H.R.1650 – Permitting.** On March 27, bill text was made available for H.R.1650, known as the “Ending Duplicative Permitting Act.” The measure, introduced by Rep. Liz Cheney (R-WY), clarifies that “the Bureau of Land Management shall not require permits for oil and gas activities conducted on non-Federal surface estate to access subsurface mineral estate that is less than 50 percent federally owned.” [Read more.](#)

**FEDERAL – Regulatory**

- **BLM Oil & Gas Lease Sale – New Mexico; Oklahoma; Kansas.** On March 22, the Bureau of Land Management (BLM) announced the scheduling of a two-week public scoping period for input on 17 parcels (4,980 acres) of federal minerals proposed for the September 2019 competitive oil and gas lease sale. The public scoping period will begin April 1 and conclude on April 12. The lease sale is tentatively scheduled for September 5, 2019 and will include parcels in Eddy County, Lea County, McKinley County, and Chaves County (New Mexico); Coal County and Major County (Oklahoma); and Greeley County (Kansas). [Read more.](#)

**FEDERAL – Judicial**

- **Royalties; Leasing – New Mexico.** On March 15, in *Ulibarri v. Southland Royalty Co., LLC* (Case No. 1:16-CV-215-RB-JHR), the U.S. District Court for the District of New Mexico addressed a motion related to certifying a proposed class action in a dispute over the calculation of royalty payments for natural gas produced under certain oil and gas leases, alleging that Southland “employs a method of calculating royalty payments that

violates their lease agreements.” The court denied the plaintiffs’ motion to exclude expert testimony on behalf of Southland to “opine on the customs, practices, usage of terms, and historical context that inform lease provisions in the oil and gas industry” and found that this testimony would assist the court in determining whether to approve class certification. The court held, however, that “[p]laintiffs can object during the class certification hearing if they believe Ms. Terry’s [expert] testimony is straying from the narrow boundaries of permissible expert testimony on the class certificate issue.”  
[Read more.](#)

- **Pooling; Leasing; Trespass; Drainage – West Virginia.** On March 18, in *Packard v. Antero Resources Corp.* (Case No. 1:18-CV-04), in a motion to dismiss, the U.S. District Court for the Northern District of West Virginia addressed whether unlawful pooling occurred where leases did not expressly grant the right to pool or unitize and horizontal wells were drilled on the tracts at issue. The court held that the plaintiffs’ trespass claims were barred under the action doctrine, which prevents parties from “recasting” contract claims as tort claims, and the claims at issue are a “question of contract interpretation, not real property law.” The court, however, declined to dismiss the plaintiffs’ breach of contract claims regarding the pooling issue as the court did not recognize an “implied right to pool” absent express language to do so. Finally, the court dismissed the plaintiffs’ claim of drainage because “the plaintiffs have not alleged that Antero is draining neighboring property to their detriment.”  
[Read more.](#)

## **STATE – Legislative**

- **Regulatory Amendments; Pooling; Permitting; Setbacks – Colorado.** (*Update to 3/18/19 Weekly Report*) On March 29, the Democrat-backed sweeping oil and gas bill, [SB19-181](#), passed the House. The bill previously passed the Senate on March 13. According to news reports, because the bill was amended in the House, “negotiators from both chambers will have to consolidate the two bills into one that can be agreed upon before the session ends on May 3.” ([See full list of amendments here](#)) One amendment that failed ([SB181 L.125](#)) was a Republican-led effort to allow for a statewide ballot referendum vote by citizens to set up the possibility of repealing the law, and which would have also delayed bill implementation until 2020. The raft of approved bill amendments failed to significantly alter the scope of the bill, which among other provisions, changes the mission of the Colorado Oil & Gas Conservation Commission (COGCC) from fostering development of oil and gas to one that “protects public health, safety, and welfare, including protection of the environment and wildlife resources.” The bill also reduces oil and gas industry representation on the COGCC from three commissioners to one; raises the threshold for forced pooling to require a majority of mineral owners; grants local governments the flexibility to set their own drilling rules, including setback limits and the minimum distance for production activity. This includes requiring operators to file, with the application for a permit to drill, either

proof that the operator has already filed an application with the affected local government to approve the siting of the proposed oil and gas location and of the local government's disposition of the application or proof that the affected local government does not regulate the siting of oil and gas locations. The bill also repeals an exemption for oil and gas production from counties' authority to regulate noise. AAPL and DAPL, along with numerous other stakeholders, had been actively engaged on defeating this bill, and AAPL facilitated the submission of more than 700 member letters to legislators and the governor. We will continue to keep you updated on bill movement through conference negotiations. [Read more.](#)

- **Well Assessment – Indiana.** *(Update to 3/11/19 Weekly Report)* On March 25, HB 1305 passed the Senate by unanimous vote. The bill previously passed the House in February. The measure, sponsored by Rep. Shane Lindauer (R), provides for the imposition of a monetary penalty against owners of oil or gas interests who fail to timely file a property schedule for gas and oil well assessments. The bill would impose a \$25 penalty against those failing to file the property schedule by the May 15 deadline. If an additional 30 days elapses, the penalty would become 10 percent of the taxes finally determined to be due. If signed into law, the bill will take effect July 1. [Read more.](#)
- **Fossils; Mineral Estates – Montana.** *(Update to 3/18/19 Weekly Report)* On March 25, the final version of HB 229 was enrolled after passing both chambers. The bill, introduced by Rep. Brad Hamlett (D), would distinguish fossils from minerals and provides 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. [Read more.](#)
- **Taxation – Montana.** *(Update to 3/25/19 Weekly Report)* On March 26, HB 691 was tabled in committee. The bill, introduced by Rep. Tom Woods (D), would have amended current law by terminating the reduced tax rates for new oil production and new natural gas production and use the proceeds for oil and natural gas impact projects and the promotion of renewable resources. The bill also provided that the revised tax rates apply to oil and natural gas wells drilled after December 31, 2019; defined oil and gas impact projects; established priorities for oil and gas impact projects proposals from local governments; provided for review of oil and gas impact project proposals by the Department of Commerce; and created a community oil and natural gas impact relief account to provide financial assistance to local governments, among other provisions. [Read more.](#)
- **Non-Compete Contracts – Montana.** On March 25, HB 772 was introduced by Rep. Thomas Winter (D). The bill provides that an employer who violates the restraint of trade provisions of [Sec. 28-2-703](#) by falsely conveying information that an employee or an independent contractor is subject to a non-compete or non-poaching contract or agreement may be civilly liable for the penalties for unfair competition ([Sec. 30-14-142](#))

or deceptive practices ([Sec. 30-14-103](#)) under existing law. [Read more.](#)

- **Records Confidentiality – North Dakota.** (*Update to 3/25/19 Weekly Report*) On March 22, HB 1392 was signed into law by Gov. Doug Burgum (R). The Act, sponsored by Rep. Denton Zubke (R), provides that a record received by the Board of University and School Lands from a private entity for purposes of the board's audit of the entity's coal, oil, gas, or other royalty payments to the board is confidential. However, the board may furnish information to the attorney general, other state agencies, a prosecuting official requiring the information for use in the prosecuting official's official duties, or for legislative investigations relevant law. Confidential information furnished by the board to any third party under this section remains confidential while in the possession of the third party. Confidential information received by the board from any third party under this section remains confidential while in the possession of the board. The Act will be effective August 1, 2019. [Read more.](#)
- **Unauthorized Practice of Law – Oklahoma.** (*Update from 3/18/19 Weekly Report*) On March 27, SB 514 passed the House Judiciary Committee and has been scheduled for a floor vote. The bill, sponsored by Sen. Michael Brooks (D), passed the Senate by unanimous vote in March. The legislation addresses unauthorized practice of law and defines terms and sets conditions for defining practice of law within the state and the conditions under which an applicant may be admitted to practice law under certain circumstances. The bill has been substantially amended from its original introduced version following public comment from various stakeholders, including AAPL, so as not to inadvertently affect landmen and their right to work. If signed into law, the bill would be effective November 1, 2019. [Read more.](#)
- **Severance Tax – Pennsylvania.** On March 21, Sen. Robert Tomlinson (D) introduced SB 468. The bill would impose a five percent natural gas severance tax on the gross value of the units of natural gas severed at the wellhead. The existing impact fee would not be effected by the passage of this legislation. The bill is not expected to move forward in the Republican-led legislature. [Read more.](#)
- **Employee Classification – Tennessee.** (*Update to 3/18/19 Weekly Report*) On March 26, SB 466 failed in committee, but the House companion bill, HB 539, passed the House on March 28 and will be transmitted to the Senate. The bill, sponsored by Rep. Dan Howell (R), requires the consideration of the [IRS 20-factor test](#) to determine whether an employer-employee relationship exists for the purposes of various state laws. [Read more.](#)
- **Production Taxes – Texas.** (*Update to 3/25/19 Weekly Report*) On March 27, SB 533 passed the Senate. The bill, sponsored by Sen. Brian Birdwell (R), would amend [Section 202.056 of the Tax Code](#) to make permanent the two-year inactive well exemptions

for oil and natural gas production taxes by removing the deadlines for the application submission and the designation of the wells by the Railroad Commission (RRC). The bill would also narrow the definition of a qualifying two-year inactive well to exclude: (1) a well which has been drilled but not completed, and without a record of hydrocarbon production as reported to the RRC; and (2) a well that is part of an enhanced oil recovery project. The exemption period would be reduced from 10 to five years. The bill also repeals the definition of a three-year inactive well and removes references to the expired three-year inactive well exemptions for oil and natural gas production taxes, which were last certified by the RRC in 1996. If enacted, the legislation would be effective September 1, 2019. [Read more.](#)

- **Pooled Units – Texas.** *(Update to 3/11/19 Weekly Report)* On March 25, HB 3226 was reported favorably out of the House Energy Resources Committee without amendment and the committee report has also since been distributed. The bill, introduced by Rep. Charlie Geren (R), relates to the terms of dissolution of an oil or gas pooled unit whereby a unit is automatically dissolved two years, instead of one year, after its effective date if no production or drilling operations have been had on the unit or surface location for the unit. [Read more.](#)
- **Production Tax Credits – Texas.** After being reported favorably out of committee, SB 925 has been placed on the intent calendar for April 1, 2019. This sets the bill up for debate and possible votes, but not necessarily on that day. The bill, sponsored by Sen. Pete Flores (R), would amend the qualifications for low-producing oil and gas well production tax credits to specify that the production per day would be calculated based on the greater of monthly production from the well as reported in the well production reports made to the Railroad Commission or the monthly production in the producer's reports made to the comptroller including any amendments. [Read more.](#)
- **Independent Contractors – Texas.** *(Update to 3/25/19 Weekly Report)* As of March 25, HB 1522, sponsored by Rep. Chris Paddle (R), has been left pending in the Energy Resources Committee. If the bill moves ahead, it would prohibit the use of covenants not to compete for independent contractors in upstream, downstream and midstream oil and gas operations. The bill would also render such covenants unenforceable. [Read more.](#)
- **Intestate Succession; Mineral Proceeds – Utah.** *(Update to 3/4/19 Weekly Report)* On March 25, Gov. Gary Herbert (R) signed SB 78 into law. The Act, sponsored by Sen. David Hinkins (R), clarifies the no taker provision to provide that when minerals or mineral proceeds pass to the state, the Utah School and Institutional Trust Lands Administration would be required to administer the interest but could exercise its discretion to abandon or decline if the interest provides insufficient or no value. The Act also specifies if a probate or other proceeding has not adjudicated the state's rights the administration would be allowed to pursue action in district court.

SB 78 will take effect 60 days after adjournment, which was March 14. [Read more.](#)

- **County Recorder Fees – Utah.** (*Update to 3/18/19 Weekly Report*) On March 26, HB 247 was signed into law by Gov. Gary Herbert (R). The Act, sponsored by Rep. Logan Wilde (R), amends county recorder fees which increases certain statutorily defined fees that a county recorder charges; modifies the recording fee structure to a per-recording rather than a per-page fee; removes some distinctions between certain types of documents for purposes of determining fees; repeals authority for a county recorder to charge an additional fee for a document that fails to meet requirements the recorder imposes in addition to the statutory requirements; and modifies the list of documents that are exempt from certain recording requirements. The Act will take effect 60 days after adjournment, which was March 14. [Read more.](#)
- **Abandoned Wells – West Virginia.** (*Update to 3/18/19 Weekly Report*) On March 27, HB 2673 was vetoed by Gov. Jim Justice (R). The bill, sponsored by Del. Joe Canestraro (D), would have created the Oil and Gas Abandoned Well Plugging Fund to plug and reclaim abandoned oil and gas wells without a responsible owner. It would have been funded by a fee of 2.5 percent of the value of oil and gas from wells that produced an average of more than 5,000 cubic feet but less than 60,000 cubic feet of gas or between one half and 10 barrels of oil. The bill would have imposed a fee of five percent on the value of oil and gas produced from wells that produced more than 60,000 cubic feet of gas or more than 10 barrels of oil per day. If the value of the fund exceeded \$4 million on June 1 of any fiscal year the fee would not be imposed. [Read more.](#)
- **Severance Taxes – Wyoming.** (*Update to 2/11/19 Weekly Report*) On February 28, SF 134 was postponed indefinitely after passing both chambers but failing to receive concurrence in the conference committee. The Wyoming legislative session adjourned on February 28, 2019. The bill, sponsored by Sen. Drew Perkins (R), would have amended current law regarding severance taxes on injection wells, shut-in wells and other producing wells under certain conditions. [Read more.](#)

## **STATE – Judicial**

- **Probate; Deeds; Mineral Interests; Life Estates; Trusts – North Dakota.** On March 18, in *In re: Estate of Brandt* (Case No. 2019-ND-87), the North Dakota Supreme Court held, in a dispute over the authority of the probate court to determine the value of certain mineral interests and make certain determinations regarding a life estate, that a “probate court has jurisdiction to determine title to property alleged to belong to the estate and has exclusive jurisdiction over the administration and distribution of the estate, which inherently includes determining the value of estate assets [...] Even though an asset may be contingent or vested in the future, the probate court may value the asset for purposes of administering an estate and distributing the estate’s assets.”

In sum, the court held, that the “probate court did not abuse its discretion by approving the final accounting and distribution, did not err in allowing Bouchard to participate in the proceedings as both the personal representative of the Estate and as an interested person, did not err in approving a distribution of the Estate which included allocation of the Estate’s interest in a pending lawsuit, and did not err in its determination of allowable expenses and attorney fees.” [Read more.](#)

## State-by-State Legislative Session Overview

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

**West Virginia** Republican Gov. Jim Justice signed a [proclamation](#) on March 7 authorizing a special session to act on education matters, the [Charleston Gazette-Mail](#) reports. The proclamation outlines a broad special session scope, authorizing consideration of general improvements to the state’s public education system and employee compensation. Education officials kicked off a series of public hearings on March 18 as part of preparations for their upcoming special legislative session. Additional forums are scheduled to take place in early April. The special session is currently in recess to the call of the House speaker and the Senate president.

**South Dakota** has recessed their 2019 legislative session until March 29 where they will return to consider Republican Gov. Kristi Noem’s vetoes. The **Virginia** legislature is scheduled to return on April 3 to consider gubernatorial amendments and vetoes.

The following state is scheduled to convene its 2019 legislative session on the date provided: **Louisiana** (April 8).

The following state adjourned their 2019 legislative session on the date provided: **Kentucky** (March 28).

The following states are scheduled to adjourn on the dates provided: **Idaho** and **South Dakota** (March 29); **Georgia** (April 2); **Mississippi** (April 7) and **Maryland** (April 8).

The following states have crossover deadlines on the dates provided: **New Hampshire** (April 4); **South Carolina** (April 10) and **Illinois** and **Iowa** (April 12).

**Utah** Republican Gov. Gary Herbert has until April 3 to act on legislation or it becomes law without signature. **New Mexico** Democratic Gov. Michelle Grisham has until April 5 to act on legislation presented on or after March 13 or it is pocket vetoed. **Illinois** Democratic Gov. Jay Pritzker has 60 calendar days while the legislature is in session to act on legislation or it becomes law without signature. **Kentucky** Republican Gov. Matt Bevin has 10 days from presentment, Sundays excepted, to on legislation or it becomes law with out signature.

**Virginia** Democratic Gov. Ralph Northam had a signing deadline on March 26. **West Virginia** Republican Gov. Jim Justice had a signing deadline on March 27.

The following state is currently posting 2019 bill drafts and pre-files: [Louisiana](#). The following states are currently holding 2019 interim committee hearings: [Virginia](#) and [Wyoming](#).

## Hydraulic Fracturing

**Illinois** [HB 282](#), sponsored by Rep. Robyn Gabel, D-Evanston, was heard in the House Energy and Environment Committee on March 26; the committee took testimony but did not vote on the bill during the hearing. 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.

**Illinois** [HB 1562](#), sponsored by Rep. Will Guzzardi, D-Chicago, was heard in the House Business and Industry Regulations Subcommittee on March 27; the subcommittee took testimony but did not vote on the bill during the hearing. The bill would require the written consent of each owner of a mineral interest and each surface owner as part of a permit for drilling or hydraulic fracturing operations. Violations would result in an immediate cessation of operations, penalties and payment of treble the full market value of the mineral resource extracted.

## Oil and Gas

### General

**Louisiana** [HB 256](#), sponsored by Rep. Jim Morris, R-Belcher, was pre-filed on March 27 and will be referred to the House Ways and Means Committee when the legislature convenes on

April 8. The bill would provide a severance tax exemption on oil produced from incapable wells when the average value of oil is less than \$75 per barrel. The exemption would be in effect between July 1, 2019 and July 30, 2029. The bill would take effect immediately.

**Pennsylvania [HB 828](#)**, sponsored by Rep. Johnathan Fritz, R-Honesdale, passed the House Environmental Resources and Energy Committee with [amendments](#) on March 26. The bill would extend the term for well permits from one year to three years. The bill would also permit an unconventional well operator to apply for a multi-well pad permit. The operator would not be required to re-permit a well unless the surface hole location of the well deviates more than 50 feet. The amendment would clarify that all other application requirements apply to the multi-well pad permit.

**Texas [HB 1558](#)**, sponsored by Rep. Chris Paddle, R-Marshall, passed House Ways and Means Committee on March 27. The bill would revive and modify a severance tax exemption for inactive oil and gas wells. The bill would provide severance tax relief for wells that have been returned to activity after a two year period of inactivity. The bill would define a two year inactive well to exclude wells that are part of an enhanced oil recovery project or wells that have been drilled but not completed and do not have record of production. The companion bill, [SB 533](#), sponsored by Sen. Brian Birdwell, R-Granbury, passed the Senate on March 27 and is now pending in the House.

**Texas [HB 3838](#)**, sponsored by Rep. Ernest Bailes, R-Shepard, was heard in the House Energy Resources Committee on March 25; the committee took testimony but did not vote on the bill during the hearing. The bill would provide that an offer to lease a mineral interest in oil and gas in a property is considered an offer to purchase a mineral or royalty interest and must include specified statements if the property is subject to an existing oil and gas lease and the lease being offered has the effect of conveying all or a portion of the mineral or royalty owner's interest in production. If the required notice is not provided then the person would be allowed to bring a lawsuit if the matter is not adequately resolved and if they prevail, would be entitled to exemplary damages if the conduct constituted fraud.

## **Mineral Rights**

**Louisiana [SB 115](#)**, sponsored by Sen. Rick Ward, R-Maringouin, was pre-filed and will be referred to the Senate Natural Resources Committee when the legislature convenes on April 8. The bill would reduce the consent threshold from 80 percent to 75 percent to exercise mineral rights, grant a mineral lease or conduct operations in instances of co-ownership. The bill would take effect August 1, 2019.

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