

WEEKLY HIGHLIGHTS AT-A-GLANCE

FEDERAL – Regulatory

- **BLM Drilling Plan – California.** On April 26, the Bureau of Land Management (BLM) released a draft planning document, the [Bakersfield Field Office Hydraulic Fracturing Draft Supplemental Environmental Impact Statement](#) to open more than one million acres of public and private land in California to hydraulic fracturing. “The action would end a five-year moratorium on leasing federal land in California to oil and gas developers. That pause came after a federal judge ordered the Obama administration to halt similar leasing efforts until it could better evaluate the environmental risks of hydraulic fracturing.” The plan targets public and private land spread across eight Central California counties: eastern Fresno, western Kern, Kings, Madera, San Luis Obispo, Santa Barbara, Tulare and Ventura. The public comment period is open for 45 days. [Read more.](#)
- **Interior Department Offshore Drilling Plan.** (*Update to 4/15/19 Weekly Report*) On April 25, Interior Department Secretary David Bernhardt announced that the Trump Administration will not move forward with plans to open nearly 90 percent of federal waters to offshore drilling. The decision comes in the wake of a recent federal court ruling (see [League of Conservation Voters v. Trump](#)), which blocked President Trump’s attempt to overturn President Obama’s [offshore water drilling ban](#). According to Bernhardt, that ruling could lead to a prolonged appeals process that delays the Interior Department’s decision on which offshore areas it will put up for auction. “By the time the court rules, that may be discombobulating to our plan,” said Bernhardt. He said he’s not sure it’s “a very satisfactory and responsible use of resources” to offer offshore blocks that may get tied up in legal proceedings. [Read more.](#)

FEDERAL – Judicial

- **Permitting – California.** On April 12, in *E&B Nat. Res. Mgmt. Corp. v. County of Alameda* (Case No. 4:18-cv-05857-YGR), the U.S. District Court for the Northern District of California denied an oil and gas operator’s civil rights suit over a county’s denial of oil and gas drilling permits. E&B had operated in Alameda County under conditional use permits, which were regularly approved. Its 2017 request to renew the permits was initially granted, but after an appeal by an environmental group, the application was denied in part on grounds related to agricultural issues and possible groundwater contamination. E&B claimed the denial violated its due process and equal protection rights. The court, however, found that only conclusory allegations were made regarding constitutional violations and E&B did not show that the county had a policy

that caused the alleged constitutional violations. Although the suit was dismissed, the court granted E&B leave to file an amended complaint by May 6, 2019. [Read more.](#)

- **Federal Royalties – California.** On March 29, the U.S. District Court for the Northern District of California struck down the Trump administration’s plan to cut royalties that oil and gas producers pay on federal lands. The new valuation rulemaking was part of the administration’s plan to encourage more energy development by overturning an Obama-era rule. In early 2017, former Interior Secretary Ryan Zinke announced the agency would move to repeal that rule, which he said increased costs for coal, oil and gas companies and hampered production on federal lands. However, in [California v. Dept. of Interior](#) (Case No. 17-cv-05948), the court found that the Office of Natural Resources Revenue’s decision to roll back the Obama-era valuation rule was “arbitrary and capricious” under the Administrative Procedure Act and the Interior Department failed to offer a “reasoned justification” for repeal. For now, the ruling leaves in place the 2016 regulation that is expected to increase federal royalties by between \$72 million and \$85 million a year. The Interior Department, which has 60 days to appeal the ruling, is currently reviewing the decision for possible appeal. [Read more.](#)
- **BLM; Greater Sage-Grouse– Idaho.** On April 19, four environmental groups sought a preliminary injunction order to halt natural resources development on Greater Sage-Grouse lands. In [Western Watersheds Project v. Bernhardt](#) (Case No. 1:16-cv-00083-BLW), the group has asked a federal judge “to block new plans that allow drilling, mining and other destructive activities across 51 million acres of greater sage-grouse habitat in seven western states: Idaho, Wyoming, Utah, Colorado, Nevada, California and Oregon.” The litigants claim that the BLM land-management plans approved last month “would gut protections for the birds’ dwindling populations and destroy their habitat.” We will keep members updated once the Interior Department files their answer. [Read more.](#)
- **Farmout Agreements; Royalties – Sixth Circuit (Kentucky).** On April 10, in *EQT Production Co. v. Magnum Hunter Production, Inc.* (Case No. 18-5372), the U.S. Court of Appeals for the Sixth Circuit (Kentucky) addressed a dispute over royalties paid on natural gas liquids (NGLs) and post-production cost deductions. The court held that the language of the relevant instruments recognize the “at-the-well” rule for royalty calculations such that the lessee could take deductions for post-production costs. Further, the court found that the parties did not specifically contract around the default “at-the-well” rule in their agreements. The court remanded the case back to the trial court to determine what royalties, if any, EQT was owed on the NGLs, to calculate the royalty after deducting post-production costs. [Read more.](#)
- **Covenants; Equitable Servitudes; Areas of Mutual Interest – North Dakota.** On April 8, in *Slawson Expl. Co., Inc. v. Nine Point Energy, LLC* (Case No. 1:17-CV-106), the U.S. District Court for the District of North Dakota addressed whether a provision in an oil

and gas contract runs with the land under North Dakota law regarding an agreement to pay a percentage of the drilling costs for a well in which the party opted to participate. The court found the contractual obligation was a personal covenant, not one running with the land and “is best characterized as a contractual term negotiated by the parties in contemplation of their economic interests.” The court also declined to “apply equitable principles of property law to this type of personal obligation.” [Read more.](#)

- **BLM Methane Regulations – Tenth Circuit (Wyoming).** On April 19, *Wyoming v. Department of Interior* (Case Nos. 18-8027 & 18-8029), the U.S. Court of Appeals for the Tenth Circuit (Wyoming) dismissed an appeal regarding the Trump administration’s revocation of the Obama-era methane emissions rule. Here, appellees sought “review of a district court order enjoining Bureau of Land Management (‘BLM’) regulations pending finalization of a replacement rule. While the appeals were pending, the new rule issued.” Thus, the court dismissed “the appeals as moot and vacate[d] the district court’s order.” [Read more.](#)

STATE – Legislative

- **Royalties – Alaska.** On April 15, HB 134 was introduced by the House Rules Committee by request of the governor. The bill would authorize the Commissioner of Natural Resources to modify a net profit share lease under certain circumstances and provides the procedures under which a lessee submits an application for the royalty or net profit share reduction. The Senate companion bill, [SB 111](#), was also introduced on April 15. [Read more.](#)
- **Oil and Gas Regulatory Overhaul Legislation – Colorado.** (*Update to 4/8/19 Weekly Report*) On April 16, Gov. Jared Polis (D) signed into law the sweeping oil and gas regulatory overhaul bill, [SB19-181](#). This contentious, partisan Democrat legislation 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.” Besides changing the priority of the COGCC, the Act provides local governments with more control over oil and gas activities – authority that was previously under state control. The Act also changes COGCC representation, cutting the number of industry representatives, and also makes COGCC members full-time professionals instead of part-time volunteers. Further, the Act amends forced pooling regulations to require 45 percent consenting owners, although this is a decrease from the introduced bill which required greater than 50 percent. During the bill signing, Polis said “that all of Colorado would win after the bill becomes law, saying political and economic risks facing the industry would be allayed and people living in communities who are concerned about industry development would be comforted by the new rules.” The industry, however, has been less than enthusiastic. “SB 181 is the most comprehensive oil and natural gas legislation Colorado has seen in decades,”

said Colorado Oil and Gas Association spokesperson Scott Prestidge. “While we appreciated and supported a few critical amendments that were added to address some of our concerns and that provide a degree of certainty for our member companies, we still oppose the legislation.” The COGCC has begun releasing criteria that will be utilized in reviewing permits before the new rules go into effect. On April 19, the COGCC issued [interim guidelines](#) for operators and [interim drilling permit application procedures](#). Analysts expect proposed rulemaking to be released this summer, and finalized regulations by the end of the year. Other facets of the bill, such as greater permitting scrutiny and implementation of the updated COGCC member representation plan, will be effective July 1, 2020. [Read more](#).

- **Well Assessment – Indiana.** (*Update to 4/15/19 Weekly Report*) On April 24, HB 1305 was signed into law by Gov. Eric Holcomb (R). The Act, 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 Act imposes a \$25 penalty against those failing to file the property schedule by the May 15 deadline each year. If an additional 30 days elapses, a 10 percent penalty would be added. The bill takes effect July 1, 2019. [Read more](#).
- **Severance Tax – Louisiana.** (*Update to 4/8/19 Weekly Report*) HB 256 is scheduled for floor debate on April 29 after it passed a third reading in the House. The bill, introduced by Rep. Jim Morris (R), establishes a severance tax exemption, effective July 1, 2019-June 30, 2029, for oil produced from incapable wells when the average price of oil is less than \$75 per barrel. [Read more](#).
- **Corporation Franchise Tax – Louisiana.** On April 8, SB 125 was introduced by Sen. Rick Ward III (R). The bill would provide for a single rate of corporation franchise tax. If enacted, the measure would be effective for all taxable periods beginning on or after January 1, 2020. [Read more](#).
- **Fossils; Mineral Estates – Montana.** (*Update to 4/1/19 Weekly Report*) On April 16, HB 229 was signed into law by Gov. Steve Bullock (D). The legislation, sponsored by Rep. Brad Hamlett (D), distinguishes fossils from minerals and provides that the term “minerals” in an instrument does not include fossils. The Act also grants retroactive applicability to instruments severing mineral estates from surface estates that do not convey fossils by a clear and express grant. The Act is effective immediately. [Read more](#).
- **Mineral Rights – North Dakota.** (*Update to 3/11/19 Weekly Report*) On April 24, SB 2211 was returned back to the Senate from conference committee to reconcile bill provisions after passing both the Senate and House. The bill, introduced by Sen. Brad Bekkedahl (R), relates to the ownership of mineral rights of land inundated by Pick-Sloan

Missouri basin project dams. The bill directs the North Dakota Industrial Commission (NDIC) to determine the delineation of the ordinary high water mark of the U.S. Army Corp of Engineers survey segments from the northern boundary of the Fort Berthold Indian reservation to the southern border of Sections 33 and 34, Township 153 North, Range 102 West, McKenzie, Mountrail, and Williams Counties, North Dakota. An engineering firm will be able to provide NDIC with the necessary data to implement any acreage adjustments, lease bonus and royalty refunds, and payment demands as may be necessary relating to state-issued oil and gas leases. [Read more.](#)

- **Gross Production Tax – Oklahoma.** *(Update to 2/25/19 Weekly Report)* On April 25, SB 427 was signed into law by Gov. Kevin Sitt (R). The Act, sponsored by Sen. Stephanie Bice (R), amends current law regarding property exempt from ad valorem taxation due to payment of the gross production tax. The Act is effective November 1, 2019. [Read more.](#)
- **Production Proceeds – Texas.** *(Update to 4/15/19 Weekly Report)* On April 24, a committee report was distributed for [HB 3372](#), which has been reported favorably out of committee. The measure, sponsored by Rep. Tom Craddick (R), relates to causes of action for withholding payments of oil and gas production proceeds and disallows a payee from bringing an action for breach of contract against a payor pursuant to existing [Section 91.402\(b\)](#) of the state code. The updated committee report version provides that “A payee does not have a common law cause of action against a payor for withholding payments” under that section of the code. [Read more.](#) The Senate version, [SB 1988](#), introduced by Sen. Pat Fallon (R) on March 7, is still pending in committee as of March 19.
- **Pooled Units – Texas.** *(Update to 4/15/19 Weekly Report)* On April 15, [HB 3226](#) was reported favorably out of Senate committee. The bill, which passed the House on April 9, and is sponsored by Rep. Charlie Geren (R), seeks to update a statutory provision relating to automatic dissolution to ensure that an oil or gas pooled unit is not dissolved for lack of drilling operations on the unit when drilling operations are taking place on an adjacent surface location that benefits the unit. The bill would amend the Natural Resources Code to change one of the terms for automatic dissolution of an oil or gas pooled unit under the Mineral Interest Pooling Act from one year after its effective date if no production or drilling operations have been had on the unit to two years after that date if no production or drilling operations have been had on the unit or surface location for the unit. [Read more.](#)
- **Severance Tax – Texas.** *(Update to 4/15/19 Weekly Report)* On April 25, the final version of SB 533 was signed in the House and Senate after passing both chambers and being reconciled in conference. The measure 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 a record of production. The House companion bill, [HB 1558](#), sponsored by Sen. Brian Birdwell (R), was substituted out in favor of SB 533. [Read more.](#)

- **Production Tax Credits – Texas.** (*Update to 4/15/19 Weekly Report*) SB 925 has been reported favorably out of committee and a committee report version has been distributed. The bill, sponsored by Sen. Pete Flores (R), already passed the Senate on April 4. The measure would amend the qualifications for low-producing oil and gas well production tax credits to specify how production-per-day would be calculated. [Read more.](#)

STATE – Regulatory

- **Oil and Gas Division Monitoring and Enforcement Plan – Texas.** According to the Texas Railroad Commission, “In 2017 the Texas Legislature (H.B. 1818, 85th Legislature, Regular Session, 2017) directed the Railroad Commission of Texas (Commission) to develop an annual plan to assess the most effective use of its limited resources to ensure public safety and minimize damage to the environment. The purpose of this plan is to define and communicate the Oil and Gas Division’s strategic priorities for its monitoring and enforcement efforts. The plan confirms many of the Division’s current priorities—to ensure public safety and protect the environment—as well as establishing direction for data collection, stakeholder input, and new priorities for fiscal year 2020. [House Bill 1818](#) directed the Commission to seek input from stakeholders in the development of this plan.” The Commission has released the draft plan and instructions on how to submit public comments, which are open through May 23, 2019. [Read more.](#)

STATE – Judicial

- **Royalties; Leasing – Pennsylvania.** On April 17, in *SWEPI, LP v. Wood* (Case No. 508-MDA-2018), the Pennsylvania Superior Court enforced a settlement agreement in favor of the lessee. The landowner asserted that certain terms were not agreed to, such as the amount of acreage to be leased, amounts of compensation, and certain lease provisions. Here, the court found “the settlement agreement contained the requisites for a valid contract, including an offer, acceptance, and consideration.” On the issue as to whether a certain oral agreement was enforceable against the landowners, the court found that their “subsequent behavior demonstrated their intent to be bound by the oral agreement.” [Read more.](#)
- **Pooling; Royalties – Texas.** On April 24, in *Strickhausen v. Petrohawk Operating Company* (Case No. 04-18-00636-CV), the Texas Fourth Court of Appeals (San Antonio) addressed issues on appeal regarding whether the lessor’s depositing of royalty checks for production from an improperly pooled unit constituted a ratification and whether the lessor was estopped from denying she ratified the pooled unit because she would

have been entitled to royalties on production from the property in which she owns a mineral interest. Here, the court found that the deposit of royalty checks from Petrohawk didn't bar the lessor from challenging the drilling company's move to pool her lease with others in violation of her contract. The court remanded the case back to the trial court for further proceedings based on this finding. [Read more.](#)

- **Leasing – Texas.** On April 18, in *BlueStone Natural Resources II, LLC v. Randle et al.* (Case No. 02-18-00271-CV), the Court of Appeals for the Second Appellate District of Texas (Fort Worth) addressed the “perennial struggle in Texas oil and gas law” of whether the lessor or the lessee pays post-production costs. Here, the court noted that “[o]ur specific task of interpretation begins with a royalty provision contained in a printed form lease that placed the burden on Appellees to pay post-production costs. The complication is that the parties appended additional terms to the printed form, and Appellees argue that one of the terms in the addendum created a royalty measure that shifted the burden of post-production costs onto Appellant.” In its 57-page opinion and lengthy discussion, the court ultimately held “that the printed and appended terms are contrary to each other and that the controlling provision is in the appended terms. This resolution places the burden of paying post-production costs on Appellant.” [Read more.](#)
- **Leasing – Texas.** On April 12, in *Texas Outfitters Limited, LLC v. Nicholson* (Case No. 17-0509), the Texas Supreme Court addressed the issue that a holder of the executive right to lease a mineral estate owes non-participating mineral- and royalty-interest owners a duty of utmost good faith and fair dealing. Here the court was “asked to apply the duty in the context of an executive’s refusal to lease in contravention of the non-executive’s known wishes.” The facts showed that Texas Outfitters refused a lease to benefit its surface interest and was found by the trial court to rise to the level of self-dealing which diminished the value of the non-executive interest. The trial court found that the executive violated its duty, and the court of appeals affirmed. Here, the court held that “under the facts and circumstances of this case, we hold that legally sufficient evidence supports the trial court’s finding and therefore [we] affirm the court of appeals’ judgment.” [Read more.](#)

INDUSTRY NEWS FLASH:

◆ **Occidental outbids Chevron in Anadarko acquisition proposal.** (*Update to 4/15/19 Weekly Report*) Last Wednesday, Occidental Petroleum announced it is making a “superior proposal” of \$76 per share to best Chevron’s recent offer of \$65 per share in the acquisition of Anadarko. According to *Bloomberg* reporting, “the Occidental offer is \$38 billion compared to Chevron’s \$33 billion. The acquisition would be the largest ever for Occidental.” [Read more.](#)

State-by-State Legislative Session Overview

Alabama, Alaska, Arizona, California, Colorado, Connecticut, Delaware, Florida, Hawaii, Illinois, Iowa, Louisiana, Maine, Massachusetts, Michigan, Minnesota, 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** and **Puerto Rico** are also in regular session.

The following are in recess until the dates provided: **United States** Congress (April 29) and **Kansas** (May 1).

Maryland Republican Gov. Larry Hogan signed an [executive order](#) on April 18 to convene a special session on May 1, which will allow the House of Delegates to elect a new House speaker after the unexpected passing of former speaker Michael Busch on April 7.

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 session. The special session is currently in recess to the call of the House speaker and the Senate president, but is anticipated to overlap with the May 20-21 interim meetings, reports the [Herald Dispatch](#).

The following states adjourned their 2019 legislative session on the date provided: **Arkansas** and **Indiana** (April 24).

The following states are scheduled to adjourn on the dates provided: **Washington** (April 28) and **Arizona** (April 29).

Indiana Republican Gov. Eric Holcomb has until May 8 to act on legislation or it becomes law without signature. **Georgia** Republican Gov. Brian Kemp has until May 12 to act on legislation or it becomes law without signature. **Maryland** Republican Gov. Larry Hogan has until May 28 to act on legislation or it becomes law without signature. **Arkansas** Republican Gov. Asa Hutchinson has 20 days from presentment to act on legislation presented on or after April 18 or it becomes law without signature. **Kentucky** Republican Gov. Matt Bevin has 10 days from presentment, Sundays excepted, to act on legislation or it becomes law without signature. **Mississippi** Republican Gov. Phil Bryant has 15 days from presentment, Sundays excepted, to act on legislation presented on or after March 24 or it becomes law without signature.

Idaho Republican Gov. Brad Little had a signing deadline on April 23.

The following states are currently holding 2019 interim committee hearings: [Kentucky](#), [Maryland](#), [South Dakota](#), [Utah](#), [Virginia](#), [West Virginia](#) and [Wyoming](#).

Landmen

Employee Classification

Nevada [SB 493](#), sponsored by Sen. Marilyn Dondero Loop, D-Las Vegas, was amended and re-referred to the Senate Finance Committee on April 23. As introduced, the bill would create an employee misclassification task force and require various state agencies including the attorney general, labor commissioner and the Department of Taxation to share information related to suspected employee misclassification that they have received. The bill would define employee misclassification as the practice of an employer of improperly classifying employees as independent contractors to avoid any legal obligation under state labor, employment and tax laws.

The amendment retains those provisions but would specify that a person is presumed to be an independent contractor if they:

- Have been and will continue to be free from control or direction.
- Perform a service that is outside the scope of the usual course of business of the business for which the service is performed.
- Perform a service in the course of a trade, occupation, profession or business that was established independent from the person they are contracting with or meets the requirements of [existing law](#).

The bill would create penalties for employers found to have improperly classified employees.

Oil and Gas

General

California [AB 345](#), sponsored by Asm. Al Muratsuchi, D-Rolling Hills Estates, passed the Assembly Natural Resources Committee and on April 25 was referred to the Assembly Appropriations Committee. According to the most recent text version, the bill would require all new oil and gas development beginning January 1, 2020 to be located at least 2,500 feet from a residence, school, childcare facility, playground, hospital or health clinic but would allow cities and counties to set their own setback requirement beyond the 2,500 foot minimum. If two or more cities and counties with jurisdiction over the same geographic area set different setback requirements the larger of the two would apply. An operator would be able to file a written request for a variance to reduce the setback requirement to the maximum achievable distance.

Louisiana [HB 188](#), sponsored by House Ways and Means Committee Vice Chair Jim Morris, R-Belcher, passed that committee with [amendments](#) on April 23. The bill has been scheduled for floor debate on April 29. The bill would exempt stripper wells and wells in stripper fields from the severance tax when the average value of oil is less than \$75 per barrel. The bill would require the Department of Revenue to determine the value of oil on a quarterly basis that would qualify

for the exemption. In order to qualify the producer must submit all required reports in a timely manner. The exemption would be in effect from July 1, 2019 through June 30, 2029. Similar bill [HB 256](#), also sponsored by Representative Morris, passed the same committee on April 23 with similar [amendments](#). The bill has been scheduled for floor debate on April 29. 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.

Mineral Rights

Louisiana [SB 115](#), sponsored by Sen. Rick Ward, R-Maringouin, was heard in the Senate Natural Resources Committee on April 25; information from the hearing was not immediately available. 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. If passed, the bill would take effect August 1, 2019.

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