

WEEKLY HIGHLIGHTS AT-A-GLANCE

FEDERAL – Regulatory

- **BLM Oil & Gas Lease Sale – New Mexico; Oklahoma.** On April 1, the Bureau of Land Management (BLM) announced that its latest quarterly lease sale raised \$15,390,258 despite nine parcels near Chaco Canyon in northwest New Mexico were deferred earlier this year. For this sale, the BLM offered leases on 45 parcels, totaling 13,888 acres, in New Mexico and Oklahoma. The highest bid per acre and highest bid per parcel were sold in Eddy County, New Mexico. [Read more.](#)
- **BLM Oil & Gas Lease Sale – Colorado.** On April 1, the BLM announced that it is accepting public scoping comments on approximately 78,692 acres of public lands proposed for its upcoming September 2019 oil and gas lease sale in Routt, Moffat, Garfield, Rio Blanco, Jackson, Kiowa, Cheyenne, and Weld counties. Seventy-five of the 83 parcels in the sale consist of acreage previously deferred due to Greater Sage-Grouse concerns. Before beginning an environmental analysis, “the BLM would like to hear from the public about issues that should be considered. Parcels located within Greater-Sage Grouse habitat will comply with the recent Greater-Sage Grouse Resource Management Plan Amendment.” The public scoping comment period runs through April 16, 2019. [Read more.](#)

FEDERAL – Judicial

- **BLM Leasing; Climate Change – Colorado.** On March 27, the U.S. District Court for the District of Colorado addressed the Bureau of Land Management’s (BLM) approval of a master development plan; the United States Forest Service’s approval of certain natural gas wells, well pads, and related infrastructure; and both defendants’ approval of related applications for permits to drill. In the case, [Citizens for a Healthy Community v. BLM](#) (Case No. 1:17-cv-02519-LTB-GPG), the court ordered the parties to reach an agreement as to remedies concerning the issues on which the defendants were not in compliance with the National Environmental Policy Act. While the court agreed with the defendants on certain issues regarding their analysis of greenhouse gas emissions (GHG), the court faulted BLM’s analysis “on the consideration of downstream GHG emissions from the proposed development. The court concluded that BLM should have used the production estimates it used in its economic analysis to calculate those secondary GHG emissions in order to compare them to regional and national GHG emissions.” The court held that “Simply put an agency cannot rely on production estimates while simultaneously claiming it would be too speculative to rely upon the predicted emissions from those same production estimates.” Earlier in March, the

U.S. District Court of the District of Columbia rendered a related decision in [WildEarth Guardians v. Zinke](#) (See 3/25/19 Weekly Report for coverage) where the court temporarily blocked oil and gas drilling on 300,000 acres of land in Wyoming, ruling that the Interior Department “did not sufficiently consider climate change” when auctioning off federal land in that state. [Read more.](#)

- **Royalty Class Action – Kansas.** On March 27, in *Cooper Clark Foundation v. Oxy USA Inc.* (Case No. 18-1222-JWB), the U.S. District Court for the District of Kansas held that royalty class actions involving disputes over post-production costs and implied covenants that the plaintiffs consolidated under Kansas law before the defendants removed to federal court met certain threshold requirements for amounts in controversy. Further, the court held “in order to avoid imposing the requirement that trial courts apportion class-wide awards across constituent cases in order to enter separate judgments in consolidated class actions, and in order to be consistent with existing and historical Kansas practice, the Kansas Supreme Court would likely find that consolidation of class actions under K.S.A. 60-242(a)(2) merges those cases into a single case.” Thus, the court rejected the argument that the court should treat the cases on a contract-by-contract basis for purposes of calculating the amount in controversy. [Read more.](#)
- **Assignments; Overriding Royalties; Leasing; Recordation – Ohio.** On March 26, in *Talmage, as Trustee of Ralph W. Talmage Trust, et al. v. Bradley, et al.* (Case No. 2:17-cv-544), the U.S. District Court for the Southern District of Ohio (Eastern Division) addressed whether an overriding royalty interest was valid and enforceable as related to an unrecorded assignment. The court held that the plain language of the state recording statute demonstrates that it applies to overriding royalty interests (ORRI) and that the assigning of an ORRI encumbers the landowner’s property as an instrument executed for the “conveyance or encumbrance” of “land, tenements, or hereditaments” of which the statute governs. The court, however, declined to invalidate the unrecorded assignment based on failure to record as there remained questions of fact regarding notice and those issues were left to be determined. [Read more.](#)
- **Joint Operating Agreements; Co-Tenancy; Leasing – Texas.** On March 27, in *Hammerhead Managing Partners, LLC v. Nostra Terra Oil & Gas Co. PLC* (Case No. 3:18-CV-1160-N) the U.S. District Court for the Northern District of Texas (Dallas) addressed a dispute in which Hammerhead sought to enforce a preferential right to purchase option in a Joint Operating Agreement (JOA) to which it was not a party. In a motion to dismiss, the court disagreed with Hammerhead’s argument that it was somehow a party to the JOA because it is a working interest owner and because it is a third-party beneficiary of the JOA. In sum, the court held that the fact that the defendants contracted around Hammerhead does not deprive Hammerhead of its rights as a working interest owner, and “the Court does not hold that. It simply holds that the claims Hammerhead attempts to assert under the JOA, to which it is not a party, are not viable.” [Read more.](#)

- **Leasing; Production Costs – Texas.** On March 20, in *In re: Goodrich Petroleum* (Case No. 16-31975), the U.S. Bankruptcy Court for the Southern District of Texas (Houston), applying Louisiana law, addressed lease terms that provided for royalty payments that were free from the costs of production. However, the royalty clause contained an exception: the parties must share production costs from “unaffiliated third parties” in which Goodrich does not have a “beneficial interest.” The parties disputed the interpretation of this provision. The court held that “unaffiliated” is unambiguous in the context of the lease and requires that control exist between entities before the lessor receives its royalty free of production costs and it was also not established that Goodrich held a beneficial interest. [Read more.](#)

STATE – Legislative

- **Regulatory Amendments; Pooling; Permitting; Setbacks – Colorado.** (*Update to 4/1/19 Weekly Report*) On April 3, the sweeping oil and gas regulatory bill, [SB19-181](#), passed the Democrat-led legislature and is headed to Gov. Jared Polis (D). The governor – who has vocally supported the measure – has 10 days from transmittal to sign or veto legislation or it becomes law without his signature. Primarily, the new law will change 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 bill provides local governments with the authority to restrict the locations of new wells. Under current law, only state regulators had that authority. The bill also changes the makeup of the COGCC to weaken industry influence and sets more stringent requirements for forced pooling that require 45 percent consenting owners, a decrease from the introduced bill version which would have required greater than 50 percent. The bill also makes members of the COGCC full-time professionals instead of part-time volunteers, in hopes of minimizing delays in rule making and approving drilling permits. Following the bill’s passage, the Colorado Oil and Gas Association said in a joint statement with the Colorado Petroleum Council that despite some amendments to the original bill that allayed some of the industry’s concerns, it still opposes the measure. “State officials have committed to working with industry experts during the highly complex regulatory rulemakings following the bill’s enactment,” the statement said. “That will be critical to minimizing the bill’s negative impacts on our state, and we hope that process can begin immediately.” For example, when first introduced, the bill provided that state regulations couldn’t be imposed arbitrarily and capriciously. One of the new industry-supported amendments changes that to say state and local restrictions would have to be “necessary and reasonable.” (For a full summary of final bill provisions, [click here](#)) Additionally, “analysts have so far avoided making predictions on the [impact of the new rules](#). They point out that it may have little effect in the heart of the Wattenberg field, where energy-friendly Weld County is unlikely to impose

tighter rules.” Of particular note, AAPL and DAPL – along with other industry stakeholders – actively engaged on defeating this bill, and AAPL facilitated the submission of more than 700 member letters to legislators and the governor which we believe positively impacted some of the adopted amendments. [Read more](#). Please [read here for effective dates](#) on specific provisions. Once the governor signs the bill into law, the COGCC will have 30 days to release the criteria that will be utilized in reviewing permits in the interim period, before the new rules go into effect. Analysts are keeping an eye on later in the summer for notices of proposed regulations with some conclusive rulemaking by the end of the year.

- **Severance Tax – Louisiana.** HB 256 was pre-filed on March 27. The legislative session convenes April 8. 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](#).
- **Mineral Rights; Leasing – Louisiana.** SB 115 was pre-filed on March 27. The legislative session convenes April 8. The bill, introduced by Sen. Rick Ward (R), amends current law to provide that one who acquires a mineral servitude from a co-owner of land may not exercise his right without the consent of co-owners owning at least an undivided 75 percent interest in the land, down from the present 80 percent. The bill also provides that a co-owner of land may grant a valid mineral lease or a valid lease or permit for geological surveys as to his undivided interest in the land, but the lessee or permittee may not exercise his rights without consent of co-owners owning at least an undivided 75 percent interest in the land, down from the present 80 percent. The bill also provides that a co-owner of a mineral servitude may not conduct operations on the property subject to the servitude without the consent of co-owners owning at least an undivided 75 percent interest in the servitude, down from the current 80 percent. [Read more](#).
- **Employee Misclassification – Nevada.** On March 29, SB 493 was introduced by Sen. Marilyn Loop (D). The bill would require the offices of the Labor Commissioner, the Division of Industrial Relations of the Department of Business and Industry, the Employment Security Division of the Department of Employment, Training and Rehabilitation, the Department of Taxation and the Attorney General to share amongst their respective offices information relating to suspected employee misclassification that is received in the performance of their official duties under certain circumstances. The bill also defines “employee misclassification” and sets forth the duties of and representation on the task force. [Read more](#).
- **Records Disclosure – North Dakota.** (*Update to 2/4/19 Weekly Report*) On March 29, SB 2212 was passed with amendments by the House Energy and Natural Resources Committee. The bill unanimously passed the Senate in February. The bill, sponsored by Sen. Brad Bekkedahl (R), would amend existing law regarding inspection of production and royalty payment proceeds. The bill provides that if the person obligated

to pay royalties does not make the records available as provided to the board within thirty days of receiving notice from the board, the board may impose a civil penalty of \$2,000 per day. [Read more.](#)

- **Eminent Domain – Texas.** On April 4, [SB 421](#) passed the Senate. The bill, introduced by Sen. Lois Kolkhorst (R), relates to the acquisition of real property by an entity with eminent domain authority. The legislation “consists of three components designed to provide additional protections and transparency for landowners who are forced to undergo the condemnation process. It is largely limited to private condemners.” The measure defines minimum easement terms, provides for a public meeting requirement, and contains a provision designed to prevent low offers. [Read more.](#)
- **Railroad Commission – Texas.** On April 3, HR 1075 was adopted in the House. This House Resolution, sponsored by Rep. Chris Paddie (R), commemorates the 100th anniversary of the Railroad Commission’s role in regulating the oil and gas industry in Texas. [Read more.](#)
- **Production Proceeds – Texas.** (*Update to 3/18/19 Weekly Report*) On April 1, [HB 3372](#) was left pending in 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 Senate version, [SB 1988](#), was introduced by Sen. Pat Fallon (R) on March 7 and is still pending in committee. [Read more.](#)
- **Corporate Income Tax – Utah.** (*Update to 3/4/19 Weekly Report*) On March 27, SB 28 was signed into law by Gov. Gary Herbert (R). The Act, recommended by the Revenue and Taxation Interim Committee and sponsored by Sen. Curt Bramble (R), modifies corporate income tax provisions by defining when a corporation is doing business or exercising a corporate franchise in the state for income tax purposes. Regarding the effective date, the Act has “retrospective operation for a taxable year beginning on or after January 1, 2019.” [Read more.](#)
- **Probate Procedures – Wyoming.** On February 26, Gov. Mark Gordon (R) signed HB 86 into law. The Act, sponsored by Rep. Mike Greear (R), amends the summary procedure for distribution of real or personal property. This Act defines who is a distributee for purposes of the summary probate procedure. The Act clarifies that an untimely objection to a summary distribution is forever barred. The Act also authorizes summary distribution to a person who claims title to the decedent’s property through intervening estates if the person meets the definition of distributee, and no further action on the part of the distributee is required. The Act is effective immediately and applies to any summary-distribution application filed on or after the effective date. [Read more.](#)

State-by-State Legislative Session Overview

Alabama, Alaska, Arizona, Arkansas, California, Colorado, Connecticut, Delaware, Florida, Hawaii, Idaho, Illinois, Indiana, Iowa, Kansas, Maine, Maryland, 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, 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 session. Additional forums are scheduled to take place in early April, reports the [Register Herald](#). The special session is currently in recess to the call of the House speaker and the Senate president.

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

The following states adjourned their 2019 legislative session on the dates provided: **Kentucky** (March 28); **Mississippi** and **South Dakota** (March 29) and **Georgia** (April 2).

The following states are scheduled to adjourn on the dates provided: **Idaho** (April 5); **Maryland** (April 8) and **Alaska** (April 14).

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

The following state had a crossover deadline on the date provided: **New Hampshire** (April 4).

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. **Georgia** Republican Gov. Brian Kemp has until May 12 to sign or veto legislation or it becomes law without signature. **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 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.

South Dakota Republican Gov. Kristi Noem has acted upon all legislation as of March 29. **Utah** Republican Gov. Gary Herbert had a signing deadline on April 3.

The following state is currently posting 2019 bill drafts and pre-files: [Louisiana](#).

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

Hydraulic Fracturing

Illinois [HB 282](#), sponsored by Rep. Robyn Gabel, D-Evanston, failed to meet a March 29 committee deadline and was re-referred to the House Rules Committee. 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.

Landmen

Independent Contractors

Oklahoma [HB 1095](#), sponsored by Rep. Mike Osburn, R-Edmond, passed the Senate Business, Commerce and Tourism Committee with amendments on April 4. The bill would utilize the IRS 20-factor test to determine whether or not an employer-employee relationship exists but would give the Oklahoma Employment Security Commission the authority to make the determination. The bill would take effect January 1, 2020.

Tennessee [SB 466](#), sponsored by Sen. Kerry Roberts, R-Springfield, which had previously failed in the Senate Commerce and Labor Committee on March 26 has been scheduled for a further hearing in that committee on April 9 at 1:00 PM. As introduced the bill would require the consideration of the IRS 20-factor test to determine whether an employer-employee relationship exists for the purposes of various state laws. A recently adopted amendment removes references to workers compensation. The bill's companion, [HB 539](#), sponsored by Rep. Dan Howell, R-Cleveland, passed the House on March 28 and is now pending in the Senate.

Oil and Gas

Louisiana [HB 545](#), sponsored by Rep. James Morris, R-Oil City, was pre-filed on March 29 and will be considered by the House Natural Resources and Environment Committee when the legislature convenes on April 8. The bill would authorize the disposal of produced water into the productive interval of the Blossom Formation.

Texas [HB 1558](#), sponsored by Rep. Chris Paddle, R-Marshall, has been placed on the House General State Calendar for consideration on April 8. 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 Ways and Means Committee.

Royalty Payments

Louisiana [SB 179](#), sponsored by Sen. R.L. Bret Allain, R-Adeline, was pre-filed on March 27 and will be considered by the House Natural Resources and Environment Committee when the legislature convenes on April 8. The bill would provide that royalties paid to the lessor on production and the state's in-kind royalty portion are not rent. The bill would amend present law which gives the lessor a right of pledge on all equipment, machinery and other property of the lessee for payment of rent and other obligations of the lease to include royalty payments. It would also authorize the state to have a lien or privilege on all oil and gas produced on any lands belonging to the state that have been leased by the State Mineral and Energy Board in order to secure payment.

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