



Please Note: Due to the upcoming Memorial Day holiday, there is no report next Monday. The next report will be published on June 3, 2019. Enjoy your holiday!

WEEKLY HIGHLIGHTS AT-A-GLANCE

FEDERAL – Legislative

- **S. 1265 – Oil Region National Heritage Area Reauthorization Act.** On May 1, Sen. Bob Casey (D-PA) introduced [S. 1265](#), known as the *Oil Region National Heritage Area Act*, to reauthorize the Oil Region National Heritage Area (NHA) through September 30, 2026, and increases appropriations to \$20 million from \$10 million. Casey says the legislation, which honors and promotes the history and contributions of the oil and gas industry in the area, will help ensure the Oil Region NHA is “able to continue to promote tourism and economic development in Northwestern Pennsylvania.” An analysis of the “Oil Region NHA found that this investment, and the tourism it attracts, generates over \$21.2 million in regional economic activity, supports 313 jobs and generates \$1.5 million in state and local taxes.” The House companion bill, [H.R. 642](#), sponsored by Rep. Glenn Thompson (R-PA), has been moving through committee. Without reauthorization, the designation would sunset in December 2019. [Read more.](#)
- **S. 258 – Ruby Mountains Protection Act.** (*Update to 2/11/19 Weekly Report*) On May 14, the Senate Committee on Energy and Natural Resources Subcommittee on Public Lands, Forests, and Mining held a [hearing for S. 258](#), known as the *Ruby Mountains Protection Act*. The bill, sponsored by Sen. Catherine Cortez Masto (D-NV), would prohibit oil and gas leasing on National Forest System land in the Ruby Mountains Ranger District located in the Humboldt-Toiyabe National Forest, Elko and White Pine Counties, Nevada. It is uncertain whether the bill will receive further consideration in the Republican-led Senate. [Read more.](#)
- **S. 526 – Buffalo Tract Protection Act.** On May 14, the Senate Committee on Energy and Natural Resources Subcommittee on Public Lands, Forests, and Mining held a [hearing for S. 526](#), known as the *Buffalo Tract Protection Act*. The bill, sponsored by Sen. Martin Heinrich (D-NM), “would withdraw four parcels of BLM lands, including the Buffalo Tract and the Crest of Montezuma, from mineral development.” According to Sen. Tom Udall (D-NM), who is a [cosponsor of the legislation](#), the “bill would also maintain BLM’s authority over the surface rights to the parcels. And if the surface rights are transferred,

the mineral rights will remain under federal management and will remain withdrawn.” It is uncertain whether the bill will receive further consideration in the Republican-led Senate. [Read more.](#)

- **S. 1079 – Chaco Cultural Heritage Area Protection Act of 2019.** (*Update to 2/11/19 Weekly Report*) On May 14, the Senate Committee on Energy and Natural Resources Subcommittee on Public Lands, Forests, and Mining held a [hearing for S. 1079](#), known as the *Chaco Cultural Heritage Area Protection Act of 2019*. The bill, sponsored by Sen. Tom Udall (D-NM), “would prevent any future leasing or development of minerals owned by the U.S. government on lands within an approximately 10-mile protected radius around Chaco, which includes many sites that are sacred and culturally important to the Pueblos and Navajo Nation.” It is uncertain whether the bill will receive further consideration in the Republican-led Senate. [Read more.](#)

FEDERAL – Regulatory

- **BLM Oil & Gas Lease Sale – Kansas; New Mexico; Oklahoma.** On May 14, the Bureau of Land Management (BLM) announced a two-week public review and comment period for environmental documents released for its September oil and gas lease sale. Seventeen parcels, totaling 4,980 acres, are proposed for lease. The parcels are located in Eddy, Chaves, Lea and McKinley counties, New Mexico; Coal and Major counties, Oklahoma; and Greeley County, Kansas. The review and public comment period will run through May 24, 2019. [Read more.](#)

FEDERAL – Judicial

- **Royalties; Production Costs; Leasing – New Mexico.** On May 6, in *Anderson Living Trust, et al. v. Energen Resources Corp.* (Case No. 13-CV-00909WJ/CG), the U.S. District Court for the District of New Mexico addressed a case concerning the calculation and payment of royalties on natural gas from wells located in parts of New Mexico and Colorado, in the San Juan Basin. “Energen contends that it owes no royalties to Plaintiff after allowing for Plaintiff’s share of gathering and processing costs—in other words, Energen’s royalty obligations are ‘precisely equal’ to its share of gathering and processing costs. Plaintiff disagrees, claiming that Energen undervalues the fuel gas used in the royalty calculations and disputes the accuracy of the mathematical calculations used by Energen.” Here, the court denied a motion for summary judgment by Energen finding that “it appears that Energen is subtracting post-production costs directly from the royalties owed, which is contrary to the Tenth Circuit’s description of the ‘netback method’ that should be used. It is also not clear how Energen arrives initially at a gas value, and whether that value represents the value of gas at the wellhead or at the market. Because Defendant has left the details of its methodology unexplained, the Court cannot determine whether Energen has correctly concluded that it owes Plaintiff no royalty payments.” As stated, the court found and concluded “that disputes of fact preclude summary judgment.” The court

suggested that the plaintiff and defendant “attempt a resolution of the discrete issue of damages on royalty payments owed” and if that does not occur by the time trial commences the court will appoint a Special Master “to make the necessary findings on this issue as well as any other matters that require oil and gas accounting or calculations.” We will keep you updated as the case progresses. [Read more.](#)

STATE – Legislative

- **Regulatory Management – California.** *(Update to 5/13/19 Weekly Report)* On May 16, AB 1440 passed the Assembly Committee on Appropriations. The bill, sponsored by Asm. Marc Levine (D), revises the purposes of the state’s Oil and Gas Supervisor’s supervision of the drilling, operation, maintenance, and abandonment of wells to remove references that encourage oil production. Specifically, the bill deletes the requirement that the Supervisor administer California’s oil and gas law so as “to encourage the wise development of oil and gas resources,” among other provisions. [Read more.](#)
- **Leases; Security Interests on Royalties – Louisiana.** On May 16, SB 242 passed the Senate by unanimous vote and has been transmitted to the House. The bill, sponsored by Sen. R.L. Bret Allain (R), authorizes the State Mineral and Energy Board to include in any contract of lease entered into by the state, any state agency, or any political subdivision after July 31, 2019, and in each previously executed lease entered into that is subsequently assigned, amended, or modified by agreement of the parties after July 31, 2019, a clause which grants a continuing security interest in and to all as-extracted collateral attributable to, produced, or to be produced, from the leased premises or from lands pooled or unitized therewith, as security for the prompt and complete payment and performance of the lessee’s obligation to pay royalties or other sums of money that may become due under the lease. [Read more.](#)
- **Severance Tax – Louisiana.** *(Update to 5/6/19 Weekly Report)* On May 14, Senate [committee amendments](#) were adopted for HB 188, which unanimously passed the House in April. Current law imposes a severance tax on the production from stripper wells (no more than 10 barrels of oil per producing day) of 3.125% of the value of the oil when severed. This tax is suspended in any month when the average value is less than \$20 per barrel. This bill, sponsored by Rep. Jim Morris (R), would suspend the tax in any month when the average value is less than \$75 per barrel. The exemption would be available from July 1, 2020 (under the adopted Senate version) through June 30, 2029. [Read more.](#)
- **Severance Tax – Louisiana.** *(Update to 5/6/19 Weekly Report)* On May 14, Senate [committee amendments](#) were adopted for HB 256, which unanimously passed the House in April. Current law imposes a severance tax on the production from incapable wells (no more than 25 barrels of oil and at least 50% salt water per producing day) of

6.25% of the value of the oil when severed. This bill, sponsored by Rep. Jim Morris (R), would impose a reduced tax rate in any month when the average value is less than \$75 per barrel. This exemption would be available from July 1, 2020 (under the adopted Senate version) through June 30, 2029. [Read more.](#)

- **Royalties; Liens – Louisiana.** (*Update to 4/8/19 Weekly Report*) On May 14, a substitute version of SB 179 was adopted by the Senate. The bill, sponsored by Sen. R.L. Bret Allain (R), provides how mineral royalties are classified and creates a lien for mineral royalties due to the state. The bill provides 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. [Read more.](#)
- **Notaries Public – Maryland.** (*Update to 4/15/19 Weekly Report*) On May 13, SB 678 was signed into law by Gov. Larry Hogan (R). The Act, sponsored by Sen. J.B. Jennings (R), alters the qualifications to become a notary public, increases the maximum fee that may be charged for individual notarial acts, authorizes a notary to perform electronic notarization and remote notarization under specified conditions, specifies restrictions on allowable acts by a notary public, and generally updates provisions related to performing and maintaining records of notarial acts. The Act applies to notarial acts performed on or after October 1, 2020. [Read more.](#)
- **Employee Classification – Oklahoma.** (*Update to 5/13/19 Weekly Report*) On May 13, HB 1095 was signed into law by Gov. Kevin Stitt (R). The Act, sponsored by Rep. Mike Osburn (R), utilizes 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 Act takes effect January 1, 2020. [Read more.](#)
- **Employee Classification – Tennessee.** On May 10, HB 539 was signed into law by Gov. Bill Lee (R). The Act, 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. The adopted version includes an amendment that removes references to workers compensation. The House version was substituted for the Senate companion bill, SB 466. [Read more.](#)
- **Eminent Domain – Texas.** (*Update to 4/8/19 Weekly Report*) On May 16, [SB 421](#) was reported favorably in House committee and no amendments were made at this stage. The bill passed the Senate in April. The legislation, sponsored by Sen. Lois Kolthorst (R), relates to the acquisition of real property by an entity with eminent domain authority.

The bill “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.](#)

- **Severance Tax – Texas.** (*Update to 5/6/19 Weekly Report*) On May 7, SB 533 was signed into law by Gov. Greg Abbott (R). The Act, sponsored by Sen. Brian Birdwell (R), revives and modifies a severance tax exemption for inactive oil and gas wells. The Act provides 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 Act is effective September 1, 2019. [Read more.](#)
- **Production Tax Credits – Texas.** (*Update to 5/13/19 Weekly Report*) On May 8, SB 925 was transmitted to Gov. Greg Abbott (R). The governor must sign or veto legislation within 10 days of transmittal (excluding Sunday), or it becomes law without his signature. 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.](#)
- **Hydraulic Fracturing– Washington.** On May 8, Gov. Jay Inslee (D) signed SB 5145 into law. The Act, sponsored by Sen. Jesse Salomon (D), prohibits the use of hydraulic fracturing in the exploration for and production of oil and natural gas. The Act is effective July 28, 2019. [Read more.](#)

STATE – Judicial

- **Local Ordinances; Permitting; Drilling Operations – Pennsylvania.** On May 14, the Pennsylvania Supreme Court upheld the Commonwealth Court (appellate) decision in [Frederick v. Allegheny Township Zoning Hearing Board](#) (Case No. 2295 C.D. 2015) in a blow to environmental activists and local objectors by denying their [petition for appeal](#) and in so doing upheld the holding allowing drilling in all districts under a local zoning ordinance “as long as they satisfy standards to protect public health, safety and welfare.” The case arises from a challenged local zoning ordinance adopted in 2010 which involved Allegheny Township issuing a zoning permit for an unconventional gas well permit in 2014 for a site in an agricultural-residential use zoning area. The appeal to the Commonwealth Court involved three issues: “the Township zoning ordinance represents spot zoning; the ordinance violates the state’s Environmental Rights Amendment; and allowing oil and gas

development in every zoning district violates the state Municipalities Planning Code.” The Court held that “the state Oil and Gas Act specifically says a municipality lacks the power to regulate how gas wells operate. A municipality can only use its zoning powers to regulate where mineral extraction takes place, not how drilling will be done. The Court also said the objectors did not prove the local zoning ordinance does not reasonably account for the natural, scenic, historic and esthetic values of the Township’s environment.” [Read more.](#)

INDUSTRY NEWS FLASH:

◆ **Oxy to acquire Anadarko; Chevron ends bid.** On May 10, Occidental Petroleum Corp., known as Oxy, formally announced it “entered into a definitive agreement to acquire Anadarko Petroleum Corporation. The deal, which is for \$59 in cash and 0.2934 shares of Occidental common stock per share of Anadarko common stock, is valued at \$57 billion, including the assumption of Anadarko’s debt.” On May 6, “Anadarko announced that it intended to terminate its Chevron merger deal in order to enter into a merger agreement with Occidental. Anadarko confirmed on Thursday that it had terminated its deal with Chevron and that it had paid the company a termination fee of \$1 billion.” [Read more.](#)

State-by-State Legislative Session Overview

Alabama, Arizona, California, Connecticut, Delaware, Illinois, Louisiana, Maine, Massachusetts, Michigan, Minnesota, Missouri, Nebraska, Nevada, New Hampshire, New Jersey, New York, North Carolina, Ohio, Oklahoma, Oregon, Pennsylvania, Rhode Island, Texas, Vermont and Wisconsin are in regular session. The **District of Columbia** Council, **Puerto Rico** and the **United States** Congress are also in regular session.

Alaska Republican Gov. Mike Dunleavy issued a [proclamation](#) calling for a 30-day special session beginning May 16. The special session will deal with subjects relating to appropriations for public education and transportation of students, appropriations for the operating and loan program and appropriations for mental health programs.

According to a **South Carolina** [concurrent resolution](#), the legislature will return for a three-day special session on May 20 to deal with the state budget and other contested issues not resolved during conference committees, reports [WACH](#).

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 sessions on the dates provided: **South Carolina** (May 9) and **Alaska** (May 15).

The following states are scheduled to adjourn on the dates provided: **Missouri** (May 17); **Arizona** and **Minnesota** (May 20); **Vermont** (May 24); **Texas** (May 27) and **Illinois** and **Oklahoma** (May 31).

Washington Democratic Gov. Jay Inslee has until May 21 to act on legislation presented on or after April 23 or it becomes law without signature. **Iowa** Republican Gov. Kim Reynolds has until May 27 to act on legislation presented on or after April 24 or it is pocket vetoed. **Maryland** Republican Gov. Larry Hogan has until May 28 to act on legislation or it becomes law without signature. **Colorado** Democratic Gov. Jared Polis has until June 2 to act on legislation presented on or after April 23 or it becomes law without signature. **Hawaii** Democratic Gov. David Ige has until July 9 to act on legislation presented on or after April 19 or it becomes law without signature. **Alaska** Republican Gov. Mike Dunleavy has 20 days from delivery, Sundays excepted, 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. **Florida** Republican Gov. Ron DeSantis has 15 days from presentment to act on legislation presented on or after April 27 or it becomes law without signature. **Kansas** Democratic Gov. Laura Kelly has 10 days from presentment 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. **Montana** Democratic Gov. Steve Bullock has 10 days from presentment to act on legislation or it becomes law without signature. **North Dakota** Republican Gov. Doug Burgum has 15 days from presentment, Saturdays and Sundays excepted, to act on legislation or it becomes law without signature. **South Carolina** Republican Gov. Henry McMaster has until two days after the next meeting of the legislature to act on legislation presented on or after May 3 or it becomes law without signature. **Tennessee** Republican Gov. Bill Lee has 10 days starting the day after presentment, Sundays excepted, to act on legislation or it becomes law without signature.

Indiana Republican Gov. Eric Holcomb had a signing deadline on May 8. **Georgia** Republican Gov. Brian Kemp had a signing deadline on May 12.

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

The following states are currently posting 2019 bill drafts, pre-files and interim studies: [Arkansas](#) and [Kentucky](#).

Franchise Tax

Louisiana SB 125, sponsored by Sen. Rick Ward, R-Livonia, was heard in the Senate Finance Committee on May 14; the committee took testimony from the bill sponsor but did not vote on the bill during the hearing. The bill would provide for a single rate of corporate franchise tax. The bill would take effect immediately and would apply to taxable periods beginning on or after January 1, 2021. The amendments make technical changes and change the date the single rate would take effect from January 1, 2020 to January 1, 2021.

Landmen

Independent Contractors

California AB 5, sponsored by Asm. Lorena Gonzales, D-San Diego, passed the Assembly Appropriations Committee on May 16 and is now pending on the Assembly floor. This bill would codify the state Supreme Court case [Dynamex Operations West, Inc. v. Superior Court of Los Angeles](#) and clarify its application in a case specific to delivery drivers and does not address other types of workers, but is however instructive on California wage law. The bill would apply the “ABC test” to the Labor Code and Unemployment Insurance Code for instances when a definition of employee is not otherwise provided but exempts specified professions including a securities broker dealer and a direct sales salesperson.

Oil and Gas

Leasing

Texas HB 3838, sponsored by Rep. Ernest Bailes, R-Shepard, was heard in the Senate Natural Resources Committee on May 16; the committee took testimony but did not vote on the bill during the hearing. The committee had been scheduled to consider a proposed committee substitute, which has not been made available online, but did not do so due to lack of a quorum. 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 conveyance instrument would be considered void and 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. The bill would apply to conveyance of a mineral or royalty by an instrument that is an oil and gas mineral lease, conveys a mineral or royalty interest for a time or a top lease. A recently adopted amendment provides that the remedies provided under the bill are in addition to any other rights that the person may have.

Mineral Rights

Louisiana [SB 115](#), sponsored by Sen. Rick Ward, R-Maringouin, has been scheduled for a hearing in the House Civil Law and Procedure Committee on May 20 at 10:00 AM. 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. Recent amendments specify that the bill would only apply to contracts entered into on or after the effective date of the bill. The bill would take effect August 1, 2019.

DISCLAIMER: Information and/or website links provided by sources in this report may be among the many resources 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 and/or tax information contained herein is neither legal nor tax advice. Links are provided for reference only and any cited outside source is derived solely from material published by its author for public use. Any copyrighted material remains the property of its respective owner and no use or distribution authorization is granted herein.