

## WEEKLY HIGHLIGHTS AT-A-GLANCE

### FEDERAL – Legislative

- **H.R. 2711 (Methane Waste Prevention Act of 2019).** On May 14, [H.R. 2711](#), known as the “Methane Waste Prevention Act of 2019,” was introduced by Rep. Diana DeGette (D-CO). The bill is aimed at limiting methane emissions from oil and gas operations by requiring oil and gas producers to capture 85% of all gas produced on public lands within three years of bill enactment, and 99% of all gas produced on such lands within five years of enactment. The measure would also ban venting of any natural gas on public lands, and prohibit methane flaring at any new wells established two years after the bill is passed. We will continue to monitor this bill should it move forward in the Democrat-led House. [Read more.](#)

### FEDERAL – Regulatory

- **BLM Oil and Gas Leasing – Chaco Canyon, New Mexico.** On May 29, Sen. Martin Heinrich (D-NM) announced that Interior Secretary David Bernhardt agreed to a one-year moratorium on Bureau of Land Management (BLM) oil and gas leasing near Chaco Canyon in northwestern New Mexico. Bernhardt reportedly made the decision after touring the park with Sen. Heinrich last week as he was told of the cultural significance of certain ancestral sites. The one-year moratorium applies to a 10-mile radius, covering 909,000 acres and 316,000 acres of subsurface minerals, that surrounds the park. Bernhardt also committed to consider other ways of respecting the protection zone, according to Heinrich. “I have directed BLM to promptly publish a draft Resource Management Plan that includes an alternative that reflects the tribal leaders’ views and the proposed legislative boundaries,” said Bernhardt. [Read more.](#)
- **BLM Oil and Gas Lease Sale – Nevada.** On May 29, the BLM announced its proposal to offer 22 parcels, totaling nearly 17,478.82 acres of land in northeastern Nevada within the Elko District, at its September 2019 quarterly oil and gas lease sale. The 30-day public review period will end June 11, 2019 on the associated environmental assessment. [Read more.](#)
- **BLM Oil and Gas Lease Sale – New Mexico; Oklahoma.** On May 24, the BLM announced the opening of a two-week public scoping comment period for input on 16 parcels, totaling 7,619.46 acres, of federal minerals proposed for the November 2019 oil and gas lease sale. The parcels are located in Eddy County, Lea County, and Sandoval County in New Mexico, and Dewey County and Woodward County in Oklahoma.

The public scoping period began on May 28 and concludes on June 10. The lease sale is tentatively scheduled for November 7, 2019. [Read more.](#)

- **BLM Oil and Gas Lease Sale – Utah.** On May 30, the BLM announced its proposal to offer 149 parcels, totaling nearly 183,668 acres on lands managed by the Canyon Country, Color Country, Green River, and West Desert districts at the September 10, 2019 quarterly oil and gas lease sale. This notice initiates the public comment period on the associated environmental documents that will end on July 1, 2019. [Read more.](#)
- **BLM Oil and Gas Lease Sale – Wyoming.** On May 17, the BLM Wyoming office announced its plans to offer 212 oil and gas lease parcels, totaling about 322,000 acres, at the September 2019 quarterly oil and gas lease sale. In coordination with the State of Wyoming and the Wyoming Game and Fish Department, the BLM is deferring one 2,520-acre parcel within the Red Desert from leasing to accommodate the Hoback mule deer migration corridor. This step is consistent with Interior Department [Secretarial Order 3362](#), signed by then Secretary Ryan Zinke on February 9, 2018, which seeks to improve habitat quality in western big-game winter range and migration corridors. [Read more.](#)
- **BLM Resource Management Plan – Montana.** On May 17, the BLM released the Lewistown Draft Resource Management Plan and associated Draft Environmental Impact Statement (Draft RMP/Draft EIS). The BLM is revising current RMPs to reflect changing needs and uses of public lands in the planning area over the next several decades. The Draft RMP/Draft EIS planning area covers 651,200 acres of BLM-administered surface and 1.2 million acres of federal mineral estate in Cascade, Judith Basin, Meagher, Petroleum, Pondera, Teton, and portions of Fergus, Chouteau, and Lewis and Clark counties. The Lewistown Draft RMP proposes a range of management options for minerals and energy resources, livestock grazing, recreation and visitor services, transportation and access, and forest products. The Lewistown Draft RMP/Draft EIS also balances resource requirements for fish and wildlife, soils and vegetation, visual resources, wilderness characteristics, and cultural, paleontological and heritage resources. The [public comment period](#) will be open through August 15, 2019. [Read more.](#)
- **BLM Oil and Gas Lease Sale – Montana; North Dakota.** On May 16, the BLM announced that it has opened a 30-day public comment period for nominated oil and gas lease parcels located in Montana and North Dakota for the upcoming September 2019 oil and gas lease sale. The comment period runs through June 16, 2019, and is intended to solicit public input on issues and potential impacts described in the Environmental Assessment. Parcels nominated for inclusion in the September sale are located in Musselshell and Wibaux counties in Montana and Burke, Divide, and Williams counties in North Dakota. [Read more.](#)

- **Onshore Oil and Gas Operations Annual Civil Penalties Adjustment.** On May 17, the Interior Department published its final rule in the Federal Register, *Onshore Oil and Gas Operations-Annual Civil Penalties Inflation Adjustments* ([84 Fed. Reg. 22379](#)), which adjusts for inflation the existing level of civil monetary penalties contained in the BLM regulations governing onshore oil and gas operations as required by the Federal Civil Penalties Inflation Adjustment Act Improvements Act of 2015 (see [43 CFR 3160](#)) and consistent with applicable Office of Management and Budget guidance. The adjustments made by this final rule constitute the 2019 annual inflation adjustments to civil penalties regulations, accounting for one year of inflation spanning the period from October 2017 through October 2018. [Read more.](#)

## **FEDERAL – Judicial**

- **Offshore Leasing – Alaska.** (*Update to 4/15/19 Weekly Report*) On May 28, the Trump administration [appealed](#) the March 29 federal court judgment in [League of Conservation Voters v. Trump](#) (Case No. 3:17-CV-00101-SLG). In that case, the U.S. District Court for the District of Alaska blocked the Trump administration’s plans to re-open portions of Alaska’s Arctic waters to drilling by undoing an Obama-era ban. Specifically, the court addressed Trump’s revocation of memoranda and an executive order issued by President Obama in 2015 and 2016 “withdrawing certain areas of the Outer Continental Shelf [OCS] from leasing.” The court held that President Trump did not have the legal authority to rescind orders by his predecessor to withdraw roughly 95 percent of the Outer Continental Shelf from drilling. The court explained that the President is not “the exclusive judge” of “determining the OCS lands subject to leasing; that power ultimately is vested in Congress under the Property Clause.” In short, the court held that relevant federal law only authorizes a President to withdraw lands from disposition, but it does not authorize a President to revoke a prior withdrawal. [Read more.](#)

## **STATE – Legislative**

- **Regulatory Management – California.** (*Update to 5/20/19 Weekly Report*) On May 30, AB 1440 passed the Assembly chamber and has been sent to the Senate. The bill, sponsored by Asm. Marc Levine (D), revises the purpose of the state’s Oil and Gas Supervisor regarding supervision of the drilling, operation, maintenance, and abandonment of wells to remove references encouraging oil production. Per the [Assembly bill analysis](#), the major provisions are: (1) Revises the purposes of the Supervisor supervision of the drilling, operation, maintenance, and abandonment of wells to remove references encouraging oil production; (2) Prohibits the Supervisor from supervising the drilling, operation, maintenance, abandonment of well in a way that allows operations that risk damage of life, health, property, and natural resources; damage to underground oil and gas deposits from infiltrating water and other causes; loss of oil, gas, or reservoir energy; or damage to underground and surface waters suitable for irrigation or domestic purposes by the infiltration of, or the addition of,

detrimental substances; (3) Requires the Supervisor to administer California's oil and gas laws so as to help ensure the wise oversight of oil and gas development instead of encouraging the wise development of oil and gas resources; and (4) Deletes findings relating to State Land Commission oil and gas leases that states, "that the people of the State of California have a direct and primary interest in assuring the production of the optimum quantities of oil and gas from lands owned by the state, and that a minimum of oil and gas be left wasted and unrecovered in such lands." [Read more.](#)

- **Notaries Public – Illinois.** (*Update to 5/13/19 Weekly Report*) On May 21, HB 2176 passed the Senate. The bill passed the House in April. The legislation, sponsored by Rep. Celina Villanueva (D), now heads to Gov. J.B. Pritzker (D) for signature. The measure amends the Illinois Notary Public Act to require every notary public who is not an attorney or an accredited immigration representative to, prior to rendering notary services, provide a person seeking notary services with a written acknowledgment and the bill provides the requisite contents for such an acknowledgment as well as procedures related to retention of acknowledgments. [Read more.](#)
- **Independent Contractors – Nebraska.** On May 21, Sen. Tony Vargas (D) introduced Legislative Resolution 213 that directs the Business and Labor Committee of the Legislature to conduct an interim study, the purpose of which is "to examine potential solutions and approaches to benefits traditionally enjoyed by workers in an employer-employee relationship, including, but not limited to, health insurance, workers' compensation, and retirement savings, for the growing population of independent contractors and self-employed workers." [Read more.](#)
- **Hydraulic Fracturing Ban – Oregon.** (*Update to 3/25/19 Weekly Report*) On May 29, the Senate passed HB 2623, which temporarily bans hydraulic fracturing in the state. The bill passed the House in March. The House version, introduced by Rep. Julie Fahey (D), imposes a "statewide moratorium on hydraulic fracturing used in the exploration for, or production of, oil or gas until 2030." The Senate version reduces the length of the moratorium to instead run through January 2, 2025. The House is expected to adopt the Senate amendment. The bill would also exempt natural gas storage wells, geothermal activities, and existing coal bed methane extraction wells from the definition of "hydraulic fracturing" subject to the moratorium. If signed into law, the legislation would be effective upon passage. [Read more.](#)
- **Pooled Units – Texas.** (*Update to 5/13/19 Weekly Report*) On May 17, HB 3226 was signed into law by Gov. Greg Abbott (R). The Act, sponsored by Rep. Charlie Geren (R), updates 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 specifies that a pooled unit is automatically dissolved two years after its effective date if no production or drilling operations have been had on the unit or surface

location for the unit. Prior to this legislation, state law required dissolution after just one year. The Act takes effect September 1, 2019. [Read more.](#)

- **Eminent Domain – Texas.** (*Update to 5/20/19 Weekly Report*) On May 24, the House granted a request for [conference committee](#) and conferees were appointed for [SB 421](#), sponsored by Sen. Lois Kolkhorst (R), to reconcile any differences between the House and Senate passed versions. If the conference committee report is acceptable to both chambers, the bill is enrolled, signed by both presiding officers in the presence of their respective chambers, and sent to the governor. According to the final Committee Report bill analysis, “It has been suggested that additional protections and increased transparency are needed for property owners who are forced to undergo the condemnation process with respect to the acquisition of property by certain private entities. C.S.S.B. 421 seeks to address this issue by setting out provisions relating 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 condemnors.” The measure defines minimum easement terms, provides for a public meeting requirement, and contains a provision designed to prevent low offers. For a complete bill analysis including a comparison between the initially introduced version and the final adopted version: [Read more.](#)
- **Leasing; Minerals and Royalty Interests – Texas.** (*Update to 5/20/19 Weekly Report*) On May 26, HB 3838 was transmitted to Gov. Greg Abbott (R), who will have until June 16 to sign or veto the measure, or the legislation would become law if no action is taken by that date. The bill, sponsored by Rep. Ernest Bailes (R), also had been amended to remove confusion regarding language which may have appeared to have the effect of purporting to affect oil, gas or mineral *leasing* and the bill was not intended to do so but rather to provide certain disclosures in the *sale* of a mineral or royalty interest. According to the legislature’s [bill analysis](#), “Reports indicate incidents in which mineral and royalty interest owners, primarily the elderly and less educated, have been the target of a scam by which they are presented with a document that purports to lease those interests, but instead authorizes their sale. Concerns have been raised that existing fraud statutes do not provide adequate protection for these mineral and royalty interest owners. C.S.H.B. 3838 seeks to provide protection for these owners by requiring a specific disclosure in certain offers to purchase a mineral or royalty interest.” Thus, “The bill does not apply to a conveyance of a mineral or royalty interest by an instrument that: is an oil, gas, or mineral lease; conveys a mineral or royalty interest for a term; and provides that the interest conveyed vests in possession after the expiration or termination of all or a portion of the interest conveyed by an existing oil, gas, or mineral lease in effect at the time of the execution of the instrument, commonly referred to as a top lease.” If signed into law, the Act would be effective September 1, 2019. [Read more.](#)

- Pipeline Trespass Penalties – Texas.** On May 29, [HB 3557](#), sponsored by Rep. Chris Paddie (R), was transmitted to Gov. Greg Abbott (R), who will have until June 16 to sign or veto the measure, or the legislation would become law if no action is taken by that date. The bill imposes fines and possible jail sentences on those who damage or impede the operation of “critical infrastructure” which includes oil pipelines that have become recent protest targets. Under the bill, “a person who trespasses on such facilities and intentionally destroys the facility or interrupts its operation could be charged with a third-degree felony. A corporation or association also found guilty could face fines of up to \$500,000.” According to Paddie, the bill “simply seeks to increase these penalties in an effort to deter these individuals from committing these crimes.” And despite environmental activist claims that the legislation is an “anti-protest” bill, Paddie says the “bill does not affect those who choose to peacefully protest for any reason. It attaches liability to those who potentially damage or destroy critical infrastructure facilities.” The Texas Oil & Gas Association applauded the bill passage and said the measure provides property owners and pipeline companies “greater protections against intentional damage, delays, and stoppages caused by illegal activity.” [Read more.](#)
- Production Tax Credits – Texas.** (*Update to 5/20/19 Weekly Report*) On May 20, SB 925 was signed into law by Gov. Greg Abbott (R). The Act, sponsored by Sen. Pete Flores (R), amends 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. The Act takes effect September 1, 2019. The House companion bill, [HB 3865](#), was set aside in favor of the Senate bill. [Read more.](#)

## **STATE – Judicial**

- Public Notice; State Leasing – North Dakota.** On May 16, in *Twin City Technical LLC v. Williams County and Williams County Commission* (Case No. 2019 ND 128), the North Dakota Supreme Court addressed an appeal by Williams County from a judgment following the district court’s determination that its oil and gas leases with various lessees were void because the County failed to comply with the public advertising requirements for the lease of public land as provided under state law. The county also challenged the district court’s decision concluding the lessees were entitled to a return of the bonus payments relating to the leases because the county was unjustly enriched. The Supreme Court affirmed the lower court holding finding the leases were invalid, however, the court also found there were genuine issues of material fact as to whether the equitable defense of laches – the legal doctrine that an unreasonable delay in seeking a remedy for a legal right or claim will prevent it from being enforced or allowed if the delay has prejudiced the opposing party – applied to bar the lessees’ claim for repayment of the bonus payments and as such reversed and remanded the case back to the district court on that issue. [Read more.](#)

## **INDUSTRY NEWS FLASH:**

◆ **Oil from domestic shale on track to rise 16% in 2019.** “U.S. shale operators are on course to increase oil production markedly in 2019.” The growth in domestic onshore production from the first through the fourth quarter of this year could come in at around 1.1 to 1.2 million b/d, or 16% for the full year, according to Rystad Energy. “Several operators have in fact raised their production guidance for the remainder of the year,” said a Rystad senior analyst. [Read more.](#)

## **State-by-State Legislative Session Overview**

**Alabama, California, Connecticut, Delaware, Illinois, Louisiana, Maine, Massachusetts, Michigan, Nebraska, Nevada, New Hampshire, New Jersey, New York, North Carolina, Ohio, Oklahoma, Oregon, Pennsylvania, Rhode Island 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.

**West Virginia** has returned for a special session to deal with proposed education legislation, reports the [Charleston Gazette](#). Senate President Mitch Carmichael, R-Jackson, revealed the Student Success Act plan last week which would lump together the pay raises school workers want with the charter schools that many oppose within the state. According to the plan, the state and county boards of education would oversee the charter schools.

**Missouri** reconvened for a technical session on May 29.

The **Minnesota** legislature adjourned their special session on May 25 after passing a \$48.3 billion budget, reports the [MinnPost](#).

The following states adjourned their 2019 legislative sessions on the dates provided: **Vermont** (May 24) and **Arizona** and **Texas** (May 27).

The following states are scheduled to adjourn on the dates provided: **Illinois** and **Oklahoma** (May 31); **Nevada** (June 3); **Connecticut** (June 5) and **Louisiana** and **Nebraska** (June 6).

**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. **Arizona** Republican Gov. Doug Ducey has until June 7 to act on legislation presented on or after May 22 or it becomes law without signature. **Texas** Republican Gov. Greg Abbott has until June 16 to act on legislation 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. **Missouri** Republican Gov. Mike Parson has until July 14 to act on legislation 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. **Minnesota** DFL Gov. Tim Walz has three 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. **Vermont** Republican Gov. Phil Scott has five days from presentment, Sundays excepted, to act on legislation or it becomes law without signature.

**Iowa** Republican Gov. Kim Reynolds had a signing deadline on May 27. **Maryland** Republican Gov. Larry Hogan had a signing deadline on May 28.

The following states are currently holding 2019 interim committee hearings: [Colorado](#), [Georgia House](#) and [Senate](#), [Idaho](#), [Indiana](#), [Kansas](#), [Kentucky](#), [Maryland](#), [New Mexico](#), [North Dakota](#), [South Carolina House](#) and [Senate](#), [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](#).

## Landmen

### Independent Contractors

**California AB 5**, sponsored by Asm. Lorena Gonzales, D-San Diego, was amended on May 24 and passed the Assembly on May 30. The bill is now pending committee referral in the Senate. 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 work performed by landman, but is however instructive on California wage law and employment classification. According to [Forbes](#), the *Dynamex* decision saw the court adopt a standard that presumes that all workers are employees instead of independent contractors.



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. The recent amendment would exempt additional professions, including a real estate license holder and a worker providing hairstyling or barbering services.

**Nevada SB 493**, sponsored by Sen. Marilyn Dondero Loop, D-Las Vegas, passed the Senate Finance Committee with amendments on May 30. The text of the amendment was not immediately available. 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 bill 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

**Louisiana HB 188**, sponsored by House Ways and Means Committee Vice Chair Jim Morris, R- Belcher, failed to pass the Senate Finance Committee following a hearing on May 28. 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 verifying that the well did not produce an average of more than 10 barrels per day. The exemption would be in effect from July 1, 2020 through June 30, 2029. The amendments changed the date the exemption would take effect to July 1, 2020 and make other technical changes. Similar bill [HB 256](#), also sponsored by Representative Morris, was up for consideration during that same hearing but Representative Morris pulled the bill from consideration following the defeat of HB 188. The bill provides that in order to qualify for the reduced quarter severance tax rate, the producer must submit all required reports in a timely manner verifying that the well did not produce an average of more than 25 barrels per day rather than 10 as noted in the previous bill.

## Mineral Rights

**Louisiana SB 115**, sponsored by Sen. Rick Ward, R-Maringouin, passed the House on May 30. The bill is now pending delivery to Democratic Gov. John Bel Edwards who will have 20 days from presentment to sign or veto the bill or it becomes law. 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.

## Royalty Payments

**Louisiana SB 242**, the substitute for **SB 179**, sponsored by Sen. R.L. Bret Allain, R-Adeline, passed the House on May 30, but the Senate unanimously rejected House [amendments](#) on May 31 and the bill is now pending. As amended, the bill would authorize the Mineral and Energy Board to include in “state, any state agency, or any political subdivision after July 31, 2019” leases a clause granting a continuing security interest in and to all as-extracted collateral attributable to, produced, or to be produced from the leased premises as security for the prompt and complete payment of royalties or other sums of money due under the lease. The bill would apply to any new lease or previously executed lease that is subsequently assigned, amended or modified by agreement of all parties after July 31. Prior to entering into any lease containing a continuing security interest clause, the board would be required to submit the clause to the both the House and Senate Natural Resources committees for their approval.

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