

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

- **Congressional Recess.** On April 10, federal lawmakers begin their two-week spring recess, returning to Washington on April 24. [Read more.](#)

**FEDERAL – Regulatory**

- **Valuation Rule Repeal.** On April 4, the Department of the Interior's Office of Natural Resources Revenue (ONRR) introduced a proposed repeal rule, *Repeal of Consolidated Federal Oil & Gas and Federal & Indian Coal Valuation* ([82 Fed. Reg. 16323](#)) to nullify the 2017 Valuation Rule and maintain the current regulatory *status quo* by keeping the longstanding pre-existing regulations in effect. On July 1, 2016, ONRR published the *Consolidated Federal Oil & Gas and Federal & Indian Coal Valuation Reform* rule, which was effective on January 1, 2017 ([81 Fed. Reg. 43337](#)). The rule would have changed how Federal oil and gas and Federal and Indian coal lessees value production for royalty purposes. It also revised revenue-reporting requirements. The rule was challenged in three separate petitions in U.S. district court concerning the "validity and prudence of certain provisions". On February 27, 2017, in response to the petitioners' lawsuits and their request to ONRR to halt implementation of the rule, ONRR postponed its implementation, pending judicial review ([82 Fed. Reg. 11823](#)). With the April 4, 2017 proposed rule, ONRR will seek to repeal the rule in its entirety. [Read more.](#)

**FEDERAL – Judicial**

- **Regulations; Hydraulic Fracturing – Oklahoma Federal Court.** In a win for the industry, on April 4, in [Sierra Club v. Chesapeake Operating LLC](#) (Case No. 5:16- cv-00134), the U.S. District Court for the Western District of Oklahoma dismissed an environmentalist lawsuit against multiple oil and gas companies blaming hydraulic fracturing for increased earthquake risk. The lawsuit was premised on the notion that the Oklahoma Corporation Commission (OCC) — which has primacy over the U.S. Environmental Protection Agency's Underground Injection Control program — is doing an inadequate job implementing induced seismicity mitigation measures. The Court disagreed, noting that "the OCC has been taking the action requested by plaintiff." Further, the Court noted that the OCC "has responded energetically to that challenge" and that the OCC "has brought to bear a level of technical expertise that this court could not hope to match." [Read more.](#)

- **BLM Leases – D.C. Federal Court.** On April 5, in *Moncrief v. U.S. Dept. of Interior* (Case No. 1:2017-cv-00609) an oil and gas lessee filed a complaint challenging the Interior Department’s “sudden cancellation of a federal oil and gas lease more than 35 years after its issuance.” In the complaint, the lessee says the “arbitrary” cancellation of Montana’s Badger-Two Medicine area lease contradicts the alleged support of oil and gas development by the area’s Blackfeet Tribal Business Council, among other charges. A public link to the case complaint is not yet available. [Read more.](#)
- **Greater Sage-Grouse – Nevada Federal Court.** On March 31, in *W. Exploration LLC v. Interior* (Case No. 3:15-cv-491), the U.S. District Court for the District of Nevada ruled that the U.S. Department of the Interior, and specifically the BLM and U.S. Forest Service, must provide additional analysis and explanation of changes they made between the proposed and final versions of the regulations they issued in 2015 for protection of the greater sage-grouse. In 2015, the plaintiffs brought this action against the federal government seeking to halt the greater protections as well as compelling a review of agency decisions to amend resource management plans to implement those protections. Under the Court’s ruling, the protections for the sage-grouse will remain in place during the court-ordered analysis, which will include a required supplemental environmental impact statement. [Read more.](#)
- **Leasing; Marketing Covenants – Pennsylvania Federal Court.** On March 22, in *Canfield v. Statoil USA Onshore Properties Inc.* (Case No. CV 3:16-0085), the U.S. District Court for the Middle District of Pennsylvania dismissed all the claims in a class action complaint except for one alleging breach of the implied marketing covenant, noting some disparities in Pennsylvania law defining the scope of implied duties in oil and gas leases, and concluding that the sale of gas to an affiliate may result in a breach of the marketing covenant. [Read more.](#)

## **STATE – Legislative**

- **Hydraulic Fracturing Ban – Maryland.** (Update to 4/3/17 Weekly Report) Gov. Larry Hogan (R) has signed a bill ([HB 1325](#)) into law to ban the hydraulic fracturing drilling process in Maryland. The Republican governor signed the measure last Tuesday about a week after the bill was passed by the Democrat-controlled legislature. Hydraulic fracturing for oil and gas isn’t currently done in Maryland now, but a moratorium was set to end in October. Supporters of the drilling process contended it could have created jobs in the western part of the state that sits atop the Marcellus Shale, which runs underground from New York to Tennessee. [Read more.](#)
- **Water Use Notification – New Mexico.** (Update to 1/30/17 Weekly Report) On April 6, SB 86, introduced in January by Sen. Carlos Cisneros (D) and which passed the House and Senate, was vetoed by Governor Susana Martinez (R). The Democrat’s bill would have imposed certain notice requirements relating to water usage. [Read more.](#)

- **No Severance Tax – Pennsylvania.** Last Monday, the Pennsylvania House passed its version of the state budget bill ([HB 218](#)) along strong party lines with all yes votes cast by Republicans, and just four of the majority Republicans joining all 80 Democrats on the floor in voting no. In a major victory for the oil and gas industry, the bill does not allow for Democratic Governor Tom Wolf’s proposal for a [6.5 percent natural gas severance tax](#). The bill now moves to the Republican-controlled state Senate, where that chamber will have a chance to declare its own priorities. Wolf and the two chambers are supposed to agree on a final spending plan by the July 1 start of the new fiscal year. We will keep you updated as the bill moves through its next phases. [Read more.](#)
- **Franchise Tax – Texas.** On April 3, HB 4055 was introduced by Rep. Jim Murphy (R). The bill would offer a \$1,000 per student franchise tax credit for entities which employ certain students in an eligible internship program. [Read more.](#)
- **Division of Energy – West Virginia.** On March 28, HB 3037 passed the House, and is now under consideration in the Senate. The bill would amend current law to retain the state Division of Energy, but the name shall be changed to the Office of Energy and will be organized within the Development Office of the Department of Commerce, rather than as a separate agency. [Read more.](#)
- **Reclamation – West Virginia.** On April 4, SB 505 passed the House and Senate. The bill provides a five-year reclamation period following construction of a well pad designed for multiple horizontal wells. [Read more.](#)
- **Pooling; Joint Development; Co-Tenancy – West Virginia.** (Update to 3/20/17 Weekly Report) House leaders decided not to put the Senate-passed bill, [SB 576](#), on the agenda for the Committee on Energy, citing the limited time left in the session (ended April 8) and an inability to build a consensus of support for the legislation among either Republicans or Democrats. “I would say it’s dead for this session,” said House Energy Chairman Bill Anderson (R). “It didn’t have a pathway forward.” The bill contained a “co-tenancy” provision that would have allowed drilling over the objections of a co-owner of mineral rights, unless that co-owner controls at least 25 percent of the mineral rights. In a separate section for what proponents called “joint development,” or lease integration, the bill would have allowed companies to force pool adjacent gas reserves into modern horizontal drilling through older leases, unless those older leases somehow specifically prohibited the practice. [Read more.](#)

## **STATE – Judicial**

- **Well Operations – Michigan.** On March 21, in *Riverside Energy Michigan v. Michigan Public Service Commission* (Case No. 327723), the Michigan Court of Appeals affirmed an order of the Michigan Public Service Commission which authorized operators targeting the Antrim shale to operate wells under vacuum. The Court held that the

agency's order promoted efficient development and reduced wasteful operations and rejected the argument of opposing parties that the recovery technique infringed on the correlative rights of adjoining mineral owners. [Read more.](#)

- **Leasing; Pooling; Pugh Clause – Ohio.** (Vorys Energy & Environmental Law Blog, March 31, 2017) On March 20, in [Devitis v. Draper](#) (Case No. 13 MO 0017), Ohio's Seventh District Court of Appeals held, in deciding an issue of first impression in the state, that oil and gas royalty interests may be abandoned under the Ohio Dormant Mineral Act (ODMA). The court first looked to a prior decision, which found that royalty interests are subject to extinguishment under the Ohio Marketable Title Act, of which the ODMA is a part, and that a royalty interest fell within the definition of a "mineral interest" under the ODMA. [Read more.](#)
- **Leasing; Pooling; Pugh Clause – Ohio.** On March 20, in *Burke v. Excalibur Expl., Inc.* (Case No. 2016-A-0041), an Ohio appellate court interpreted a pooling clause as though the lease contained a Pugh clause, concluding that the pooling clause only worked to hold a portion of the leased premises included in a unit and did not hold the remainder of the leased premises excluded from the unit. [Read more.](#)
- **Leasing – Pennsylvania.** On March 17, in *Montgomery v. R. Oil & Gas Enterprises, Inc.* (Case No. 1164 WDA 2015), the Pennsylvania Superior Court concluded that a lease dividing the shallow rights and the deep rights with specific language that says the lessee can "subdivide" the leased premises means the lease rights may be severed such that the shallow rights in the lease expired for lack of production from those formations. [Read more.](#)
- **Tax Sale; Mineral Rights – Pennsylvania.** On March 21, in *Cornwall Mountain Investments, L.P. v. Thomas E. Proctor Heirs Trust* (Case No. 1706 MDA 2017), the Pennsylvania Superior Court held that a landowner acquired the oil and gas rights by tax sale in 1932 and could lease them over the objection of a competing landowner claiming title to the subsurface, holding that "mineral rights" included oil and gas rights for purposes of a tax sale despite the state's "Dunham Rule" (which says that the word "minerals" in a regular conveyance generally does not include "oil and gas"). [Read more.](#)
- **Easements; Mineral Rights – Texas.** On March 22, in *BNSF Railway Company v. Chevron MidContinent, L.P.* (Case No. 08-16-00119-CV), a Texas appellate court held that a deed conveying "that strip of land" for "laying tracks" and removing timber on the surface together with a "right of way" to cross the property conveyed only an easement and not the underlying minerals under that strip of land even though the deed conveyed the interest as a "fee simple." [Read more.](#)

## **INDUSTRY NEWS FLASH:**

◆ **U.S. oil company capital spending most in five years.** (*Fuelfix*, April 3, 2017) According to the U.S. Energy Department, American oil companies have hiked capital spending at the highest rate in half a decade, representing an increase of 72 percent compared to the same period the year before, according to the agency's review of 44 companies. The increased spending by oil producers in the last quarter of 2016 "marked a turning point for an industry that had cut investments sharply for two years after the collapse of oil prices in the summer of 2014." [Read more.](#)

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

**Kentucky** adjourned a busy session near midnight on March 30, [WVXU](#) reports. This year's session was the first in state history in which Republicans held the governor's mansion as well as majorities in both chambers. Highlights included [SB 5/BR 822](#), which imposes new restrictions on abortions; [SB 6/BR 484](#), which implemented a right-to-work policy and [HB 3/BR 449](#), which repealed the state's prevailing wage law. A full list of chaptered acts from the session can be found [here](#). A bill that would have limited the power of the attorney general to challenge the governor in court, [HB 281](#), stalled and died upon adjournment. Several bills that passed in the closing hours of the session now await action by Republican Gov. Matt Bevin. Governor Bevin will have 10 days, Sundays excepted, from presentment to act on the bills or they become law. A full list of enrolled legislation can be found [here](#).

**New York** failed to pass a budget before the legislature's holiday break, the Rochester [Democrat and Chronicle](#) reports. Chaotic negotiations between Democratic Gov. Andrew Cuomo and legislative leaders from both parties devolved into gridlock on April 6, with some lawmakers leaving the capitol. Key points of disagreement between Governor Cuomo and lawmakers are raising the age of criminal responsibility from 16 to 18, the extension of an expired affordable-housing tax credit for New York City builders and a funding boost for charter schools due to take effect in June. The state's fiscal year began on April 1 and legislators passed an emergency budget extender in the form of [AB 7067](#) and [AB 7068](#) on April 3 to avert a government shutdown. The extender funds the budget through May, and both chambers are scheduled to reconvene on April 24.

**West Virginia** Democratic Gov. Jim Justice has issued a [proclamation](#) extending the 2017 legislative session by one day, through and including April 9, to address the budget bill.

**Wyoming** has released its 2017 interim study list. The legislature adjourned on March 10 and will be moving into the interim period within the next two months. The interim study list can be found [here](#).

**Alaska, Alabama, Arizona, California, Colorado, Connecticut, Delaware, Florida, Hawaii, Illinois, Indiana, Iowa, Kansas, Maine, Maryland, Massachusetts, Minnesota, Missouri,**

**Montana, Nebraska, Nevada, New Hampshire, North Carolina, North Dakota, Ohio, Oklahoma, Oregon, Pennsylvania, Rhode Island, South Carolina, Tennessee, Texas, Vermont, Washington, West Virginia and Wisconsin** are in regular session. The **District of Columbia** Council, **Puerto Rico** and the **United States** Congress are also in regular session.

**Wisconsin** convened a special session on January 5 that will run concurrently with the regular session.

The following states are in recess until the dates provided: **Michigan** (April 18), **New York** (April 24) and **New Jersey** (May 11).

**Louisiana** is scheduled to convene its legislative session on April 10.

**Virginia** held a veto session on April 5, [\*The Washington Post\*](#) reports.

**Mississippi** adjourned on March 29. **Arkansas** adjourned its legislative session on April 3 and is expected to reconvene to adjourn sine die on May 1.

The following states are expected to adjourn their legislative sessions on the dates provided: **West Virginia** (April 9), **Arizona** (April 14) and **Arkansas, Tennessee and Washington** (April 21).

**New Mexico** Republican Gov. Susana Martinez has until April 7 to act on legislation or it is pocket vetoed. **Idaho** Republican Gov. Butch Otter has until April 8 to act on legislation or it becomes law. **South Dakota** Republican Gov. Dennis Daugaard has until April 12 to act on legislation presented after March 23 or it becomes law. **Arkansas** Republican Gov. Asa Hutchinson has until April 23 to act on legislation presented after March 29 or it becomes law. **Virginia** Democratic Gov. Terry McAuliffe has until May 5 to consider legislation returned after the veto session on April 5 or it becomes law. **Georgia** Republican Gov. Nathan Deal has until May 9 to act on legislation presented after March 24 or it becomes law. **Kentucky** Republican Gov. Matt Bevin has 10 days, Sundays excepted, to act on legislation or it becomes law. **Mississippi** Republican Gov. Phil Bryant has 15 days, Sundays excepted, from presentment to act on legislation presented after March 24.

[Louisiana](#) is currently posting prefiles for the 2017 legislative session.

## Endangered Species

**Montana** [HJ 15](#) passed the Senate Fish and Game Committee on April 5 and was put on the calendar for third reading on April 7. This resolution would declare that the Montana legislature supports the delisting of the grizzly bear from the Endangered Species Act and that the management of the bears should be returned to the state and no longer be controlled by the federal government. It would also remove the distinct population segment designation for grizzly bears in the Cabinet-Yaak Grizzly Bear Recovery Zone. The resolution would urge the Montana legislature to call upon the state's congressional delegation to introduce federal legislation that delists the grizzly bear. The resolution would have the secretary of state send a copy of HJ 15 to

each member of the Montana congressional delegation, the secretary of the U.S. Department of the Interior, the Governor of Montana, the Department of Fish, Wildlife and Parks and the Secretaries of State for **Idaho, Washington and Wyoming**.

## Franchise Tax

**Louisiana [HB 355](#)** was prefiled on March 31 and referred to the House Ways and Means Committee. Existing law levies a franchise tax law on every domestic and foreign company doing business in the state at a rate of \$1.50 per \$1,000 of taxable capital up to \$300,000, and then \$3 per \$1,000 of taxable capital above \$300,001. HB 355 contains a provision that would repeal the franchise tax.

This bill is sponsored by Rep. Barry Ivey, R-Baton Rouge.

**Louisiana [HB 361](#)** was prefiled on March 31 and referred to the House Ways and Means Committee. Sponsored by Rep. Barry Ivey, R-Baton Rouge, the bill would repeal the franchise tax on January 1, 2018.

**Louisiana [HB 433](#)**, sponsored by Rep. Rob Shadoin, R-Ruston, was prefiled on March 31 and referred to the House Ways and Means Committee. This bill would phase out the corporate franchise tax over a 10-year period starting on January 1, 2020.

**Tennessee [HB 65](#)** is scheduled to be heard on April 12 in the House Finance, Ways and Means Committee's subcommittee. This bill would exempt certain new companies from paying franchise tax or excise tax for their first two years in business if they employ no more than 25 people and revenue is below \$1.5 million. This bill is sponsored by Rep. Eddie Smith, R-Knoxville, and would become effective on July 1, 2017 if enacted.

The Senate companion, [SB 901](#), is pending in the Senate Finance, Ways and Means Committee after being recommended for passage by the subcommittee on March 15. The bill is sponsored by Sen. Mike Bell, R-Riceville, and would take effect on July 1 if enacted.

**Texas [HB 388](#)** was heard in the House Ways and Means Committee on March 29, where testimony was given but the bill was left pending in the committee. This bill would begin phasing out the franchise tax in 2018 by decreasing it every year until it is repealed in 2021. This bill is sponsored by Rep. Jim Murphy, R-Houston.

## Lands

### Leasing

**Montana [HB 384](#)** is scheduled for an April 11 hearing in the Senate Energy and Technology Committee. This bill would require a lessee to pay all costs of production from a working interest unless the Board of Land Commissioners finds that sharing the expense of transporting the oil to the nearest market better serves the interest of the state or a lessor and a lessee agree to other terms. This bill would take effect immediately if enacted.

**Nebraska** [LB 535](#) was enrolled on April 3 and is now awaiting delivery to Republican Gov. Pete Ricketts. This bill, sponsored by Sen. Dan Hughes, R-Venango, would exempt oil, gas or mineral lease conveyance from the requirement of filing a statement with the register of deeds. This bill would become effective three months after adjournment if enacted.

## Permits

**Arkansas** [HB 2086](#) was heard in the House Insurance and Commerce Committee on March 31, but the committee did not take a vote on the bill. This bill, which is sponsored by Rep. Warwick Sabin, D-Little Rock, aims to empower landowners who are facing the seizure of their property by a pipeline company using the power of eminent domain. At least 30 days before requesting an order from the Arkansas Public Service Commission and a permit from the Department of Environmental Quality, pipeline companies would be required to provide a notice of their intent to exercise a right of eminent domain and include specifics for their development in the plan. The pipeline company would also have to obtain an order verifying that the pipeline will operate a common carrier facility and include certain information in the application process. Pipeline companies would be required to obtain a permit from the Department of Environmental Quality before exercising the right of eminent domain. The bill would hold pipeline companies liable to the landowner for damage caused to the property from surveying. There is an emergency clause in the bill and the bill would become effective when the governor signs it. If the bill is not signed by the governor it will become law without signature or if it is vetoed and the veto is overridden, it will become effective on that date.

## Oil and Gas

### Oil and Gas General

**California** [SB 44](#) is scheduled for an April 19 hearing in the Senate Environmental Quality Committee. This bill would require the State Lands Commission in the Natural Resources Agency to administer a legacy oil and gas well removal, plugging and remediation program. Carrying out this program is contingent on appropriation of funds by the legislature.

This bill is sponsored by Sen. Hannah-Beth Jackson, D-Santa Barbara, chair of the Senate Judiciary Committee.

**Colorado** [HB 1256](#) is scheduled to be heard in the Senate Agriculture, Natural Resources and Energy Committee on April 12. Sponsored by Rep. Mike Foote, D-Lafayette, this bill would require that all oil and gas production facilities and wells be located at least 1,000 feet from school buildings and other high occupancy buildings. All new oil and gas production facilities and wells must be located at a minimum of 1,000 feet from the school property line, not the school building. The bill does not apply if a school commences operations near oil and gas facilities or wells that are actively in use, or have been permitted.

**Montana** [SB 93](#) passed the House Energy, Technology and Federal Relations Committee on April 6 and the bill was put on the calendar for third reading the following day. This bill would



require oil and gas developers and operators to give notice upon completion of their operation to the owner of an occupied dwelling within 990 feet of a borehole, amended from 660 feet of a borehole.

This bill is sponsored by Sen. Tom Richmond, R-Billings.

**Nevada** [AB 33](#) passed the Assembly Natural Resources, Agriculture and Mining Committee as [amended](#) on April 5. This bill would abolish the Mining Oversight and Accountability Commission and relinquish the responsibilities of overseeing the mining industry in the state to the Administrator of the Division of Industrial Relations of the Department of Business and Industry. If enacted, this bill would take effect on July 1, 2017.

This bill is sponsored by the Senate Government Affairs Committee.

The House concurred in the Senate's changes to **North Dakota** [HB 1151](#) on April 4 and now the bill is awaiting delivery to Republican Gov. Doug Burgum. This bill would make it so that people operating or controlling an oil well do not have to report a spill that is 10 or fewer barrels of oilfield fluid over a 15-day period.

**Pennsylvania** [HB 1103](#) was filed by title only on April 6. The [sponsor memo](#) from Rep. Curtis Sonney, R-Erie, indicates that this bill will aim to exempt existing home use oil wells from electronic reporting requirements.

**Pennsylvania** [SB 566](#) was introduced on April 5 and referred to the Senate Environmental Resources and Energy Committee. Sponsored by Sen. Robert Tomlinson, R-Bucks, this bill would impose a five percent natural gas severance tax on the gross value of the units of natural gas served from the wellhead. Pennsylvania is the largest natural gas producing state that does not have a severance tax on natural gas producers.

If this bill is enacted, it will take effect immediately.

**Texas** [HB 3025](#) was heard in the House Natural Resources Committee on April 5 and testimony was given, but the bill was left pending in the committee. Sponsored by Rep. Tracy King, D-Uvalde, this bill would change the number of days after a landowner or other person who possess an abandoned well has to plug or cap the well from 180 days to 30 days after discovering it. The bill would add a new section to the existing law that says no later than 10 days after a landowner who possesses a deteriorated well learns of its condition the landowner would have to have the well plugged. Districts would require that owners or a lessee of land with deteriorated wells plug or repair the well sufficiently to prevent pollution of any water, including ground water.

If this bill becomes law, it will take effect immediately.

**Texas** [HB 3403](#), sponsored by Rep. Terry Canales, D-Edinburg, was read for the first time on April 3 and referred to the House Energy Resources Committee. This bill would give authority to municipalities or other forms of local government to regulate or prohibit the drilling of new oil

and gas wells located within 1,500 feet of the property line of a child-care facility, private school or primary or secondary school. If enacted, this bill would take effect on September 1, 2017.

## **Royalty Payments**

**Oklahoma** [SB 731](#) passed the House Energy Natural Resources Committee on April 6, but then had its enacting clause stricken the same day. The bill will have to have its enacting clause amended back in order to become law. In the case of an unmarketable title, this bill would require an oil and gas operator to deem related royalty proceeds abandoned and remit those proceeds to the Unclaimed Property Funds. The bill would also provide exceptions to the standard time period when proceeds must be paid, including when mineral owners elect to take their share of production in kind or cannot be located and those proceeds have been remitted to the Unclaimed Property Funds. The bill also removes a requirement that proceeds from sale of oil or gas production not timely paid earn compound interest and would rather receive simple interest at the rate of 12 percent.

This bill would take effect on November 1 if it becomes law.

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