

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

- **S. 258 – Ruby Mountains Protection Act.** On January 29, S. 258, known as the *Ruby Mountains Protection Act*, was introduced by Sen. Catherine Cortez Masto (D-NV). The bill 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. [Read more.](#)
- **S. 180 – Oil and Gas Permitting.** On January 17, S. 180 was introduced by Sen. John Hoeven (R-ND). The bill would streamline the oil and gas permitting process and recognize fee ownership for certain oil and gas drilling or spacing units. The bill provides that a Bureau of Land Management drilling permit shall not be required under the Federal Oil and Gas Royalty Management Act of 1982 or related regulations for an action occurring within an oil and gas drilling or spacing unit if: (1) less than 50 percent of the minerals within the oil and gas drilling or spacing unit are minerals owned by the Federal Government; and (2) the Federal Government does not own or lease the surface estate within the boundaries of the oil and gas drilling or spacing unit. [Read more.](#)

**FEDERAL – Regulatory**

- **Interior Department Secretary.** (*Update to 12/17/18 Weekly Report*) Last Monday, President Trump [announced](#) that he will nominate David Bernhardt to serve as the next Secretary of the Department of Interior. Bernhardt has been serving as Acting Secretary since last year following Ryan Zinke's resignation. Kathleen Sgamma, president of the Western Energy Alliance, praised Bernhardt in an email Monday as someone with "a deep understanding of public lands issues" who would be "an excellent choice" to head Interior. Bernhardt has previously held several positions within the Department, including serving as Solicitor, and was also a former oil and gas lobbyist with the firm Brownstein Hyatt Farber Schreck. [Read more.](#)
- **BLM Lease Sales.** Last Wednesday, the Bureau of Land Management (BLM) reported record sales for oil and gas lease sales, with Acting Interior Secretary David Bernhardt announcing that the agency generated \$1.1 billion from lease sales in 2018. This represents the highest grossing year on record, and nearly triples the agency's former highest year ever in 2008. "This was a historic year for oil and gas, and clearly illustrates what is possible when public lands are put to work using innovation, best science, and best practices," said Brian Steed, BLM Deputy Director for Policy and Programs. "In fact,

this policy generated nearly as much revenue as the BLM's \$1.1 billion budget for 2018." [Read more.](#)

## **FEDERAL – Judicial**

- **Statutory Unitization – Sixth Circuit (Ohio).** On February 4, the U.S. Court of Appeals for the Sixth Circuit affirmed the constitutionality of Ohio's statutory unitization procedures. In [Kerns v. Chesapeake Exploration, L.L.C.](#) (Case No. 18-3636), the plaintiff-landowners, who refused to sign pooling agreements, opposed a unitization order from Ohio's Division of Oil and Gas Resources Management, claiming that the order resulted in an unconstitutional taking of their oil and gas and subsurface rights. The court disagreed, holding that decisions from the U.S. Supreme Court and other state courts unanimously hold that states may adopt reasonable regulations to protect correlative rights in oil and gas, and that includes statutory pooling/unitization laws. Further, the court concluded that Ohio's Supreme Court previously found that statutory pooling and unitization procedures were a proper exercise of state police powers. Finally, the court rejected the takings claim, finding that the plaintiffs failed to plead sufficient facts that the drilling would actually interfere with the reasonable and foreseeable use of the subsurface property, which is required under Ohio law. [Read more.](#)
- **BLM Leasing – Utah.** On February 6, environmentalists filed suit against the BLM over oil and gas leases offered in a March 2018 lease sale. The parcels at issue are between Canyons of the Ancients National Monument in Colorado and the former boundaries of Bears Ears National Monument in Utah. The organization claims the area contains dozens of ancient community centers and Chacoan Great Houses. In the suit, [Advocates for the West v. U.S. Dept. of the Interior, et al.](#) (Case No. 4:19-cv-00013-DN), filed in the U.S. District Court for the District of Utah (Central Division), the plaintiffs seek to halt leasing in an area covering approximately 51, 400 acres due to "likely harms to historic, cultural, and natural resources." The litigant group also claims the "BLM relied on arbitrary, capricious, and legally inadequate efforts to identify, study, and document the potential impacts to cultural and environmental resources, in violation" of numerous federal statutes and implementing regulations. [Read more.](#)

## **STATE – Legislative**

- **Hydraulic Fracturing – Arizona.** (*Update to 1/28/19 Weekly Report*) On February 4, HB 2498 was referred to committee. The bill, sponsored by Rep. Myron Tsosie (D), was introduced on January 18. The measure, if passed, would prohibit hydraulic fracturing and the collection, storage or treatment of water generated by hydraulic fracturing. [Read more.](#) The Senate version, SB 1197, was introduced by Sen. Juan Menendez (D) on January 28. [Read more.](#)
- **Permitting; Consent – Illinois.** On February 1, HB 1562 was introduced by Rep. Will

Guzzardi (D). The bill would amend the Illinois Oil and Gas Act and the Hydraulic Fracturing Regulatory Act to require as part of the permit application for drilling or hydraulic fracturing operations the written consent of each owner of a mineral interest affected by the removal of minerals in the conduct of the proposed operations and each surface owner affected by the removal of minerals in the conduct of the proposed operations, unless he or she is the mineral interest owner and has provided consent as such. The bill also provides for enforcement by the Department of Natural Resources with penalties and cessation of operations for violations, and payment of treble the full market value of the mineral resource extracted in violation to the owner of the mineral interest. [Read more.](#)

- **Well Assessments – Indiana.** *(Update to 1/21/19 Weekly Report)* On February 5, HB 1305 passed the House and has been referred to the Senate. The bill, introduced by Rep. Shane Lindauer (R), would provide for the imposition of a monetary penalty against owners of oil or gas interests who fail to timely file a property schedule for gas and oil well assessments. [Read more.](#)
- **Hydraulic Fracturing – New Mexico.** On February 4, Sen. Linda Lopez (D) introduced SB 459. The bill would prohibit the issuance of new hydraulic fracturing permits and would create new reporting requirements for state agencies related to hydraulic fracturing. [Read more.](#)
- **Oil Extraction Tax – North Dakota.** *(Update to 2/4/19 Weekly Report)* On February 4, HB 1449 failed in the House. [Read more.](#) This follows a defeat of the Senate version, SB 2336, which failed in that chamber on January 29. The bills would have permanently raised the oil extraction tax rate from 5 percent to 6.5 percent, and would have also removed the “high price” trigger which would have increased the oil extraction tax rate from 5 percent to 6 percent at times of “high oil prices.” [Read more.](#)
- **Spacing and Drilling Units; Wellbore Pooling – Oklahoma.** On February 4, HB 1278 was introduced by Rep. Zack Taylor (R). The bill would amend current law to expand the use of the statutory Pugh clause to any sized spacing unit, rather than 160 acres or more as is the current law within the 90-day spacing unit provision. This provision would be effective as of November 1, 2019 to apply to all producing wells, leases and pooling orders, regardless of the date pooled, drilled or of the date of the underlying leases or pooling orders. The bill also adds a new provision allowing for “wellbore pooling” making all new forced poolings limited to the wellbore only. This provision will also be effective on November 1, 2019. [Read more.](#) The Senate version of this bill, SB 503, was introduced on February 4 by Sen. Roland Pederson (R). [Read more.](#)
- **Severance Tax – Pennsylvania.** On January 31, Governor Tom Wolf (D) once again revived his [severance tax proposal](#) in part to fund infrastructure projects. This is Wolf’s fifth year proposing the tax, yet it has never passed. In fact, Republican leadership

continue to reject a severance tax, as they have in previous legislative sessions. “The governor’s proposal includes three of the worst ways to grow an economy: taxing, borrowing and uncontrolled government spending,” they said. The state’s gas industry also says the tax is unnecessary since the state already has a per well impact fee. “Pennsylvania’s tax on natural gas—the impact fee—generates hundreds of millions of dollars annually for critical infrastructure programs,” said Marcellus Shale Coalition President David Spigelmyer, adding that another energy tax will cost consumers and hurt jobs. [Read more.](#)

- **Severance Tax – Pennsylvania.** Related to the above, on February 1, Sen. Daylin Leach (D) introduced SB 143. As part of a package to provide higher education loans, the bill imposes a five percent severance tax. However, the bill is not expected to move to passage in the Republican-led assembly. [Read more.](#)
- **Leasing; State Minerals – South Dakota.** (*Update to 2/4/19 Weekly Report*) On February 5, HB 1030 was signed into law by Governor Kristi Noem (R). The Act allows the Office of School and Public Lands to accept internet bidding for the leasing of state minerals, rather than by the current oral bid requirement. While no effective date is provided in the bill, under South Dakota law the effective date of bills passed during the regular session is July 1. [Read more.](#)
- **Independent Contractors – Texas.** On February 7, Rep. Chris Paddie (R) introduced HB 1522. The bill relates to a prohibition against covenants not to compete for independent contractors in connection with oil and gas operations, and makes a covenant not to compete void and unenforceable against an independent contractor in upstream and other operations. [Read more.](#)
- **Franchise Tax Credits – Texas.** On February 1, Sen. Brandon Creighton (R) introduced SB 570. The bill would provide franchise tax credits for entities that employ certain students in paid internships or similar programs. [Read more.](#)
- **Property Records – Texas.** On February 1, Sen. Jane Nelson (R) introduced SB 73. The bill would amend current law regarding personal information that may be omitted from certain property records to also include “any other record recorded by a county clerk related to real property, including a mineral lease, a mechanic’s lien, and the release of a mechanic’s lien.” [Read more.](#)
- **Oil and Gas Production Tax – Texas.** On February 1, Sen. Kel Seliger (R) introduced a constitutional amendment, SJR 21. This Senate Joint Resolution would lower the oil and gas production tax rate in certain revenue situations related to the Economic Stabilization Fund, among other provisions. If approved by voters in the November 5, 2019 election, the amendment would be effective January 1, 2020. [Read more.](#)

- **Regulatory Hearings; Notice; Bonds – Virginia.** On January 30, SB 1271, introduced by Sen. Richard Stuart (R), passed the Senate and has been referred to the House. The bill authorizes a person who applies for a hearing in front of the Virginia Gas and Oil Board to provide required notice of such application to certain gas or oil owners, coal owners, mineral owners, or gas storage field operators by commercial delivery service. Current law provides for delivery only by certified mail. The bill also changes the blanket bond amounts that the Director of the Department of Mines, Minerals and Energy may require for an application for permits for gas or oil operations and authorizes additional bonds for any well proposed to be drilled in the Tidewater region. [Read more.](#)
- **Property Conveyances – Virginia.** (*Update to 2/4/19 Weekly Report*) On February 4, SB 1292 was transmitted to the House after passing the Senate. The bill, introduced by Sen. Jill Holtzman Vogel (R), adds to the required residential property disclosure that is furnished by the owner to a buyer that the owner of residential real property makes no representations or warranties as to the condition of the real property with regard to any conveyances of mineral rights. [Read more.](#)
- **Minimum Spacing Provisions – West Virginia.** On February 4, HB 2834 was introduced by Del. E.W. Anderson (R). The bill updates the minimum spacing requirements for the drilling of horizontal deep wells by establishing no spacing limitations on wells that are operated by the same operator or operators that agree in writing to specific spacing limitations. It limits setbacks from unit and lease boundaries between different operators and limits the spacing between the wells of different operators. It also limits the distances that may be established to only those between the estimated productive intervals of horizontal deep wells and not the entire well bore. [Read more.](#)
- **Unknown Owners – West Virginia.** On February 7, HB 2779 was introduced in the Senate after passing the House. The bill, sponsored by Del. John Shott (R), would provide that proceeds from certain oil and gas wells that are due to persons whose name or address are unknown are to be kept in a special fund and if unclaimed within seven years the proceeds shall be transferred to the Oil and Gas Reclamation Fund. [Read more.](#)
- **Independent Contractors – West Virginia.** On January 31, HB 2786 was introduced by Del. Kayla Kessinger (R). The bill would simplify criteria used to define independent contractors and to impose objective standards on the differentiation of independent contractors from employees. [Read more.](#)
- **Employee Classification – West Virginia.** On February 6, HB 2365 passed its first reading in the House after passing in committee. The bill, introduced by Del. Geoff Foster (R), would clarify the definition of an employee for the purposes of unemployment compensation and workers' compensation through the evaluation of a specified factor test. [Read more.](#)

- **Heirs; Cotenants; Partition – West Virginia.** On February 1, HB 2802 was introduced by Del. John Kelly (R). The bill would enact the Uniform Partition of Heirs Property Act. The measure defines terms and provides for a court hearing to determine if the partition action concerns heirs' property and the manner in which such property and interests may be sold. [Read more.](#)
- **Oil and Gas Flaring – Wyoming.** On January 28, HB 272 was received for introduction by Rep. Donald Burkhart (R). On February 4, the House did not consider the bill for introduction. The bill would have amended the definition of "waste" to include the flaring of oil but includes an exception for that flaring necessary for the drilling, completing or testing of the well "or flaring incidental to processing or storage of the gas or oil." [Read more.](#)
- **Tax Liability; Mineral Production – Wyoming.** On February 6, SF 118 passed the Senate. The bill, introduced by Sen. Ogden Driskill (R), provides for tax lien priority for liens on mineral production based upon certain criteria required of the county. [Read more.](#)
- **Severance Taxes – Wyoming.** On February 6, SF 134 passed the Senate. The bill, introduced by Sen. Drew Perkins (R), amends current law regarding severance taxes on injection wells, shut-in wells and other producing wells under certain conditions. [Read more.](#)
- **Drilling Units; Pooling Orders; Nonconsenting Owners – Wyoming.** *(Update to 1/7/19 Weekly Report)* On February 1, SF 36 was defeated in committee. The bill would have amended the calculation of costs regarding drilling units in cases of nonconsenting owners where an owner does not agree with the pooling order or order settling a dispute, specifically lowering the portion of costs and expenses from 300 percent to 125 percent, and lowering from 200 percent to 110 percent "of that portion of the cost of newly acquired equipment in the well, to and including the wellhead connections, which would have been chargeable to the nonconsenting owner if he had participated therein." [Read more.](#)
- **State Lands Mineral Royalties – Wyoming.** *(Update to 1/28/19 Weekly Report)* On February 4, HJ 5 was postponed indefinitely after failing in the House Education Committee. This Joint Resolution had proposed to amend the Wyoming Constitution by providing that for a six year period all state mineral royalties earned from the lease of state school lands may be appropriated by the legislature for the support of public schools. [Read more.](#)
- **Surety Bond; Guaranty – Wyoming.** *(Update to 1/28/19 Weekly Report)* On February 4, HB 208 died in committee. The bill would have authorized surface owner objections if an oil or gas operator fails to negotiate in good faith. [Read more.](#)



- **Surface Damage; Payments – Wyoming.** (*Update to 1/28/19 Weekly Report*) On February 7, HB 209 was introduced in the Senate after passing the House. The bill, regarding surface damage and disruption payments, sponsored by Aaron Clausen (R), amends the manner and procedure in which surface damage and disruption payments are effectuated. [Read more.](#)
- **Split Estates – Wyoming.** (*Update to 1/28/19 Weekly Report*) On February 4, HB 224 died in committee. The bill, sponsored by Rep. Chuck Gray (R), would have amended current law regarding entry to conduct oil and gas operations by clarifying the applicability of statutory requirements prior to the commencement of oil and gas operations on split estates. [Read more.](#)
- **Permitting – Wyoming.** (*Update to 2/4/19 Weekly Report*) On February 4, HB 261 died in committee. The bill, sponsored by Rep. John Eklund (R), would have changed the permit fee for drilling wells to \$10,000 but would specify that \$9,500 would be refunded upon the commencement of drilling operations. It also specified that drilling permits are valid for two years but could be extended by an additional two years upon a showing of good cause. [Read more.](#)

### **STATE – Regulatory**

- **Methane Emissions – Wyoming.** On February 1, the state’s Department of Environmental Quality (DEQ) [finalized methane regulations](#) went into effect. These new rules, promulgated in 2018, require oil and gas producers to regularly check new and modified oil and gas wells and associated infrastructure for leaks. John Robitaille of the Petroleum Association of Wyoming said his members are supportive of the new DEQ standards. These new Wyoming rules build upon [similar requirements](#) the state put in place in the Upper Green River Basin in 2015 that have proved successful at reducing emissions. These new requirements were noted as one of the final actions taken by outgoing Governor Matt Mead (R). [Read more.](#)

### **STATE – Judicial**

- **Deeds; Royalty Interest Reservation; Leasing – Pennsylvania.** On January 24, in *Julia v. Huntley* (Case No. 632 MDA 2018), the Pennsylvania Superior Court, in affirming the trial court order, found that a deed reservation clause at issue was unambiguous and did not limit the royalties and income provision to a specific lease. [Read more.](#)

## **INDUSTRY NEWS FLASH:**

♦ **U.S. oil production projected to eclipse Russia and Saudi Arabia combined.** According to energy research firm Rystad Energy, the United States is projected to produce more oil and hydrocarbon liquids than Russia and Saudi Arabia combined by 2025. “The United States, having regained its position as the world’s top liquids producer in 2014, is poised to accelerate into a league of its own over the next six years and eclipse the collective output of its two closest rivals by 2025,” said Rystad Energy partner Artem Abramov. [Read more.](#)

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

**Alaska, Arizona, Arkansas, California, Colorado, Connecticut, Delaware, Georgia, Hawaii, Idaho, Illinois, Indiana, Iowa, Kansas, Kentucky, Maine, Maryland, Massachusetts, Michigan, Minnesota, Mississippi, Missouri, Montana, Nebraska, Nevada, New Hampshire, New Jersey, New Mexico, New York, North Carolina, North Dakota, Ohio, Oklahoma, Oregon, Pennsylvania, Rhode Island, South Carolina, South Dakota, Tennessee, Texas, Utah, Vermont, Virginia, Washington, West Virginia, Wisconsin and Wyoming** are in regular session. The **District of Columbia, Puerto Rico** and the **United States Congress** are also in regular session.

The following states are scheduled to convene their 2019 legislative sessions on the dates provided: **Alabama** and **Florida** (March 5) and **Louisiana** (April 8).

**District of Columbia** Democratic Mayor Muriel Bowser has 10 days from presentment, not including weekends or holidays, to sign or veto a bill or it becomes law without signature. **Illinois** Democratic Gov. Jay Robert Pritzker has 60 calendar days while the legislature is in session to act on legislation or it becomes law without signature. **Massachusetts** Republican Gov. Charlie Baker has 10 days after a bill has been presented to either sign or veto the measure or it becomes pocket vetoed. **New York** Democratic Gov. Andrew Cuomo has 10 days from presentment, Sundays excepted, to sign or veto legislation or it becomes law without signature. **U.S.** Republican President Donald Trump has 10 days from presentment to act on legislation, Sundays excepted, or the bill is pocket vetoed.

The following states are currently holding 2019 interim committee hearings: [Alabama](#) and **Florida** [House](#) and [Senate](#).

The following states are currently posting 2019 bill drafts, pre-files and interim studies: **Florida** [House](#) and [Senate](#) and [Louisiana](#).



# Landmen

## Worker Classification

**Indiana [SB 289](#)**, sponsored by Sen. David Niezgodski, D-South Bend, passed the Senate Pensions and Labor Committee on February 7. The bill would require the Department of Labor, Department of Revenue, Department of Workforce Development and the Workers Compensation Board to prepare an annual report for the legislature regarding the number of employers who improperly classified at least one worker, the total number of improperly classified workers and an estimate of the costs to the state as a result of misclassified employees. The bill would take effect July 1 and would expire December 31, 2021.

## Oil and Gas

### General

**Montana [HB 213](#)**, sponsored by Rep. Llew Jones, R-Conrad, passed the House following at 78 to 21 vote on January 31. The bill would amend existing law relating to stripper well bonus production subject to taxation under the average price provision by removing “for a barrel of west Texas intermediate crude oil” and replacing it with “reported and received by the producer for Montana oil marketed during a calendar quarter is less than \$54 a barrel.” The bill would take effect July 1.

**New Mexico [SB 186](#)**, sponsored by Sen. Richard Martinez, D-Espanola, has been scheduled for a hearing in the Senate Conservation Committee on February 12 at 9:00 AM. The bill would amend the oil and gas act to allow the Oil Conservation Division of the Energy, Minerals and Natural Resources Department to hold administrative proceedings to enforce the act by issuing compliance orders and assessing civil penalties. The bill would increase the civil penalties from \$1,000 per day to \$15,000 per day and would add civil penalties of not more than \$25,000 for violations of court orders or compliance orders. The bill would also provide that knowingly violating the oil and gas act would constitute a third degree felony. The bill would take effect July 1.

**Oklahoma [HB 2150](#)**, sponsored by Rep. John Pfeiffer, R-Orlando, has been scheduled for a hearing in the House Energy and Natural Resources Committee on February 12 at 1:30 PM. The bill would specify that it would be considered “taking of property rights” as defined in the state constitution whenever a municipality, county or other political subdivision adopts or implements an ordinance resolution, rule, regulation or other form of official policy concerning oil and gas operations that has the effect of:

- Substantially interfering with the use and enjoyment of the mineral estate.
- Imposing or enforcing a limitation that adversely impacts the use and development of minerals.
- Prohibiting access to develop the mineral estate.

The bill would not apply to any ordinances or regulations adopted prior to December 31, 2014. If passed, the bill would take effect immediately.

Utah [SB 78](#), sponsored by Sen. David Hinkins, R-Orangeville, passed the Senate Natural Resources and Agriculture Committee with an amendment on February 4. The bill is now pending a second reading in the Senate. As amended, the bill would clarify the no taker provision of existing law to provide that when minerals or mineral proceeds pass to the state the Utah School and Institutional Trust Lands Administration would be required to administer the interest but could exercise it discretion to abandon or decline if the interest provides no or insufficient value. The bill would also specify if a probate or other proceeding has not adjudicated the state's rights the administration would be allowed to pursue action in district court. The bill would take effect 60 days after adjournment, which is currently scheduled for March 14.

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***Please Note: Due to NAPE Summit there is no Weekly Report next Monday.  
Look for the next report on February 25. Hope to see you at NAPE Summit in Houston.***

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