

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

- **Comprehensive Energy Bill.** (*Update on S. 2012, the Energy Policy Modernization Act*) The Senate bill was expected to come to a floor vote last week, but was derailed by the ongoing negotiations over Flint water funding tied to the bill. According to Oklahoma Senator James Inhofe, don't look for any progress on the energy bill until after the Senate returns from its recess on February 22. We will keep you posted. [Read more.](#)
- **Federal Lands; Leasing.** On February 11, Rep. Jared Huffman (D-CA) introduced the *Keep it in the Ground Act*, which would prohibit the issuing of new leases for oil and gas production on federal lands. The bill – which has yet to be assigned a legislative number by the House Clerk or referred to the appropriate committee by the Speaker – has 17 Democratic cosponsors in the House and is a companion bill to one introduced last November in the Senate ([S. 2238](#)). The Senate bill never moved out of committee, where it has languished since, and it is widely-reported that the House bill will not move forward in the Republican-controlled House. [Read more.](#)

FEDERAL – Regulatory

- **BLM Lease Cancellations – Colorado.** The Bureau of Land Management (BLM) plans to cancel 25 hotly contested undeveloped oil and gas leases in the Thompson Divide area of the White River National Forest in an apparent concession to conservationists. The decision is a departure from the BLM's draft [environmental impact statement](#) unveiled in November 2015 that proposed canceling only 18 of the 25 leases, none of which are held by production. David Boyd, a BLM spokesman, said the proposal to cancel all 25 leases was made after determining that canceling only portions of seven leases would be too difficult for the leaseholders to manage. But David Ludlam, executive director of the West Slope Colorado Oil & Gas Association, said that cancelling already approved leases will set a bad precedent and undermine the agency's credibility with the industry. [Read more.](#)
- **BLM Lease Auction Protests – Colorado.** On February 11, protesters staged a climate rally outside of the BLM's Lakewood office calling for an immediate end to fossil fuel development on public lands. The group also delivered a letter to regional BLM Director Ruth Welch, asking her to cancel all future fossil fuel lease auctions and to keep fossil fuels in the ground on public lands. [Read more.](#)

- **BLM Proposed Lease Sales – Colorado.** The BLM has withdrawn a proposed oil and gas lease sale over concerns that it was too close to McPhee dam in Montezuma County. The 720-acre piece of private land with federal subsurface minerals west of McPhee Reservoir was listed in September for a February 11 lease sale. Local resident Ellen Foster expressed concerns about the potential development impacting the dam because the border of the proposed lease was within one mile of the dam. Montezuma County commissioners agreed with the concern. The BLM also has announced that five proposed parcels for oil and gas leases in Dolores County scheduled for the February sale will be postponed to allow time for tribal consultation. [Read more.](#)
- **Public Lands; Resource Management Plan.** On February 11, the Bureau of Land Management (BLM) unveiled a proposed rule that will amend the regulations governing how agency resource management plans (RMPs) are developed, amended and revised. The new rule is designed to allow BLM to revise and amend the 160 RMPs that guide energy development, wildlife protections and recreation on the agency’s 245 million acres. The oil and gas industry has expressed concern, particularly in light of the fact that the BLM has already proposed contested rules governing methane emissions for producers. “There is already a process for public participation with a deliberative role for cooperating agencies, including counties and states, to provide substantive input,” says Kathleen Sgamma, of the Denver-based Western Energy Alliance. The BLM will formally publish the proposed rule in the Federal Register in the coming weeks, at which point a 60-day public comment period will begin. We will keep you updated once the proposed rules are published. [Read more.](#)
- **BLM Lease Sale Proposals – Colorado.** The Bureau of Land Management is seeking public comment on a proposal to offer 18,349 acres in Garfield and Mesa counties in the November 10, 2016 competitive oil and gas lease sale. The BLM recently completed new RMPs for these areas that include updated restrictions for oil and gas leasing designed to protect natural resources. Before beginning an environmental assessment on the proposal, the [BLM is soliciting public comments](#) about any issues and concerns that should be considered as it evaluates leasing these parcels. The comment period runs through March 10, 2016. [Read more.](#)

FEDERAL – Judicial

- **Dual-Purpose Lease – Federal Appeals Court (West Virginia).** The 4th Circuit U.S. Court of Appeals has ruled that both sections of a dual-purpose West Virginia oil and gas lease dating back to 1989 remain in effect, even though the company holding it has only been using it for one purpose. The decision in *K & D Holdings, LLC v. Equitrans, L.P.* (Case No. 15-1166), issued in December but first published on February 8, reversed a West Virginia federal judge’s conclusion that the part of a lease held by natural gas company Equitrans that covered production and exploration uses had terminated after five years due to inaction. [Read more.](#)

- **County Ordinance Enforcement – Federal District Court (West Virginia).** EQT Corp. won a temporary victory in its continuing effort to defend against the potential shutdown of its 200 oil and gas wells and one wastewater injection well in Fayette County, West Virginia, after the District Court for the Southern District of West Virginia issued a preliminary injunction on February 8 enjoining the enforcement of a new county ordinance aimed at stopping all operation of oil and gas wells in Fayette. Upon the ordinance’s enactment, EQT filed a complaint in [EQT Production Co. v. Wender](#) (Case No. 2:16-cv-00290) against the Fayette County commissioners, seeking injunctive relief and asserting that the “patently illegal ordinance” prohibits gas and oil operations considered legal under state and federal law. A final hearing on the request for a permanent injunction has been set for April 22, 2016. [Read more.](#)

STATE – Judicial

- **Overriding Royalties; Post-Production Costs; Lease Terms – Texas.** On January 29, in *Chesapeake Exploration, L.L.C. v. Hyder* ([Case No. 14-0302](#)), the Texas Supreme Court affirmed the decision of the Court of Appeals for the Fourth District, and trial court, that generally speaking, an overriding royalty on oil and gas production is free of production costs but must bear its share of post-production costs, unless the parties agree otherwise. Here, where the parties’ lease expressed such an agreement with the lease text clearly freeing the gas royalty of post-production costs, the Supreme Court found that the same applies to the overriding royalty. This case is the first Texas Supreme Court case since [Heritage Resources v. NationsBank](#), 929 S.W.2d 118 (Tex. 1996) to examine lease language regarding deductibility of post-production costs from lease royalties. And it is the first Texas Supreme Court case in some time upholding a judgment in favor of royalty owners. [Read more.](#)

STATE – Regulatory

- **Permitting Moratorium – Colorado.** Last Tuesday, the Adams County Board of Commissioners voted 3-2 to enact a six-week moratorium on new development in high density urban areas. For 45 days, the county will not issue new permits for wells or well pads within 1,500 feet of homes, schools or public buildings inside Adams County urban growth boundaries. [Read more.](#)
- **Cancelled State Lease Sale – Idaho.** A public auction of oil and gas leases for nearly 35,000 acres in Twin Falls, Cassia and Owyhee counties has been canceled by the Idaho Department of Lands. The lease auction was first scheduled for December 17 and then rescheduled for February 17. However, on February 5, the auction was canceled after most of the tracts were withdrawn by the applicant because of the low price of gas, according to Sharla Arledge of the Idaho Department of Lands. [Read more.](#)

- **Severance Tax – Ohio.** Good news for the oil and gas industry: Republican and Democratic leaders announced they will not be taking up a severance tax adjustment this year, saying this is not the time to increase Ohio’s tax on oil and gas producers because it could be problematic for the industry. A severance tax increase has been a priority of Republican Governor John Kasich for years. He contends the tax is too low, and he wanted to use tax hike proceeds to help cut the state’s income-tax rate. Legislators are putting that notion on hold until market conditions improve. [Read more.](#)
- **Railroad Commission – Texas.** (Update to 12/21/15 AAPL Governmental Affairs Report) The new chief of one of the country’s most influential oil and gas regulators tells reporters that she wants to enhance communication and openness with the public. Kim Corley, who started February 1 as executive director of the Texas Railroad Commission, reports to three elected commissioners and oversees a staff of nearly 800. Prior to joining the Commission, Corley had a long career in the energy industry, including stints at Tenneco Inc., El Paso Corp. and Royal Dutch Shell PLC. [Read more.](#)
- **Committee on Energy Resources Meeting – Texas.** The Committee on Energy Resources of the Texas House of Representatives met in Midland February 3 to address three interim issues – the impact of declining oil and gas prices on Texas and local economies, oilfield theft, and oversight of the industry’s governing agency, the Texas Railroad Commission. The meeting was one of several the committee is conducting before the 2017 legislative session. The committee will issue several reports later this year that could lead to bills to be introduced in the next session. [Read more.](#)
- **New Flaring Rules – Wyoming.** On February 10, the Wyoming Oil and Gas Conservation Commission modified its current flaring rules. Of particular note, the new flaring rules require operators to report the compositional analysis of the gas being emitted. This analysis will be required within six months of the February 10 final rule approval for wells currently flaring and venting, and within three months from new authorizations to flare or vent. Further, the new rules decrease the daily venting volume limit from 60 MCF to 20 MCF, but the limit on daily flaring volume will remain at 60 MCF. [Read more.](#)

STATE – Legislative

- **Recording Fees – Mississippi.** On February 5, SB 2225 was introduced by Sen. J.P. Wilemon (D) and referred to the Accountability, Efficiency, and Transparency Committee. The bill amends the filing fees charged by chancery clerks for the recording of documents. [Read more.](#)
- **Tax Differential Rate; Severance Tax – New Mexico.** On January 29, HB 285 was introduced by Rep. Nate Gentry (R) and passed the House chamber on February 10. The bill, to be considered next in the Senate Corporations & Transportation Committee, amends the state Oil & Gas Severance Tax Act to increase the availability of a

reduced oil and gas severance tax rate for enhanced oil recovery projects that inject anthropogenic carbon dioxide. HB 285 would allow a 50 percent severance tax reduction on those projects when the price of oil averages less than \$60 a barrel for the prior year rather than less than \$28 per barrel under current law. The bill also adds a definition of “posted price” to mean the price of WTI crude oil. [Read more.](#)

- **Severance Tax – Pennsylvania.** As Pennsylvania’s budget impasse rolls into 2016, Democratic Governor Tom Wolf’s latest proposal attempts to increase taxes on shale gas production through a 6.5 percent severance tax. That’s a change from his failed attempt last year to impose a tax of 5 percent plus a separate fee of 4.7 cents per thousand cubic feet of gas each well produces. Republican leaders and industry groups have long fought efforts to impose the tax and for many lawmakers inclusion of the tax is a non-starter in ongoing budget negotiations. “The severance tax on natural gas production in Pennsylvania was a bad idea when the governor proposed it last year, and it's a bad idea now,” says Stephanie Catarino Wissman, executive director of Associated Petroleum Industries of Pennsylvania. “At first blush, it appears his proposal would not raise any revenue ... at least at this point in time with depressed gas prices,” says Rep. John Maher (R), who chairs the House Environmental Resources and Energy Committee and has been critical of severance taxes. Lou D’Amico, president and executive director of the Pennsylvania Independent Oil and Gas Association, also expressed concern over the tax and how it puts jobs at risk given the current state of energy prices. [Read more.](#)
- **Unitization; Royalty Payments – West Virginia.** On February 5, HB 4426 was introduced by House Delegate Lynwood Ireland (R) and referred to the Energy Committee. The bill amends multiple existing statutes by providing, among other provisions, for the unitization of interests in drilling units in connection with horizontal oil or gas wells generally; establishes prerequisites to filing of an application for a horizontal well unit order; sets forth application requirements; changes Oil and Gas Conservation Commission membership and authority; provides for treatment of interests of unknown and unlocatable interest owners; and creates new provisions on lease and unit modifications as well as royalty payments. [Read more.](#)
- **Reclamation; Partition Actions – West Virginia.** On February 10, SB 576 was introduced by Sen. David Sypolt (R) and referred to the Judiciary Committee. The bill provides that proceeds of partition of any interest in real property that includes oil and gas but not surface that are due to a person whose name or location are unknown and are unclaimed for five years be paid to the Oil and Gas Reclamation Fund rather than paid or delivered to the Treasurer as abandoned and unclaimed property. [Read more.](#)
- **Well Setbacks and Spacing – West Virginia.** On February 10, SB 564 was introduced by Sen. Greg Boso (R) and referred to the Energy, Industry and Mining Committee. The bill provides that the Oil and Gas Conservation Commission may not regulate or establish

minimum well setback or spacing between deep wells operated by the same operator, regardless of whether there are unit boundaries between or crossed by those wells. Further, the commission may not require spacing of more than eight hundred feet between horizontal wells operated by different operators or require a well setback of more than four hundred feet from a unit boundary that divides operators and spacing and setback distances may only be established for the horizontal producing portions of horizontal deep wells. [Read more.](#)

- **Ad Valorem Tax – Wyoming.** On February 5, the Joint Revenue Interim Committee introduced HB 64, which addresses the ad valorem tax. The amendatory language provides for monthly payment of ad valorem taxes on mineral production commencing January 1, 2019 on the value of the gross product produced. The bill also provides for a process for reporting, payment, reconciliation and distribution of the monthly ad valorem tax and a revised payment schedule for the transition period. [Read more.](#)
- **Low Production Well Tax Exemption – Wyoming.** On February 11, HB 125 was introduced by Rep. David Miller (R) relating to taxation and revenue. The bill would modify an existing exemption and provide an additional severance tax exemption for stripper production of oil wells, provides a severance tax exemption for natural gas wells, and amends the definition of “stripper production” to include natural gas wells. [Read more.](#)
- **Transfer of Public Lands – Wyoming.** On February 11, HB 142 was introduced by Rep. Scott Clem (R) relating to the transfer of federal public lands. The bill would require the United States to extinguish title to public lands within the state to Wyoming on or before December 31, 2018. The bill would also establish a public lands commission to make a determination of, or creating a process for determining, interests, rights or uses related to oil and gas, among other public lands management provisions. [Read more.](#)

INDUSTRY NEWS FLASH:

- ◆ Jim Cagney, a 37-year BLM veteran who worked primarily in Wyoming and Colorado, offers his observations and analysis on the current state of play on BLM-managed lands and the threats to existing oil and gas leases and post-lease production risks in an ever-increasing activist climate. [Read more.](#)
- ◆ Speaking at the 2016 NAPE Summit Business Conference, Dan Naatz, senior vice president of governmental relations and political affairs with the Independent Petroleum Association of America, discussed the effects of lifting the crude export ban, the challenges of operating on federal lands under Obama’s BLM, and the effects of excessive regulations, among other topics. [Read more.](#)

◆ A handful of shale patches in Texas are profitable with crude oil priced below \$30 a barrel, according to an analysis published last week by *Bloomberg Intelligence*. In DeWitt County in the Eagle Ford, which produced more than 100,000 barrels a day in November, *Bloomberg* said the average well can be profitable with U.S. benchmark crude at \$22.52 a barrel. “It may be harder to kill many U.S. E&Ps than analysts originally thought,” says analyst William Foiles. [Read more.](#)

◆ Manufacturing executives Wayne Zemke and Brett Vassey have taken the top two spots on the Consumer Energy Alliance’s (CEA) board of directors. Zemke, a marketing executive for Caterpillar, Inc. and a CEA board member since 2010, will serve as the panel’s chairman. Vassey, president and CEO of the Virginia Manufacturers Association and a CEA board member since 2013, was named vice chairman. The Houston-based CEA, which touts itself as “the voice of the energy consumer”, brings together consumers, producers and manufacturers to engage in a meaningful dialogue about America’s energy future with a mission to help ensure stable prices and promote energy security. [Read more.](#)

ELECTION ALERT: A candidate in the wide-open race for a spot as one of Texas’ top energy regulators is [under investigation for falsely claiming to be an engineer](#). Ron Hale, a security consultant in Houston, is one of seven Republicans running for the Texas Railroad Commission. Until this week, his website and Twitter home page said he was an engineer, but there’s no record of him being registered with the Texas Board of Professional Engineers. The engineering board received a complaint about Hale and has started an investigation. **SIDE NOTE:** The Midland Reporter-Telegram asked all candidates to briefly answer questions about key issues the Railroad Commission currently contends with and those that are anticipated in the next state legislative session. The newspaper received responses from eight candidates, which were published last Thursday. [Read more.](#)

State-by-State Legislative Session Overview

After convening its 2016 legislative session on February 8, lawmakers in **Wyoming** will begin work on planning the state’s budget for the next two years in the face of a projected \$200 million shortfall. Due to the state’s well-established relationship with the fossil fuel industry, the historically low natural gas and oil prices as well as a prolonged dip in the coal industry has left the state without a significant amount of funds. The state will meet in a budget session for the first 20 days of the year’s regular session. Though the budget session is designed to focus lawmakers on the budget, other bills may be considered, with several hundred in the hopper between both the House and Senate. However, non-budget bills must receive a two-thirds vote to advance during the 20 days, while bills introduced by committees need a simple majority. Legislation on oil production, natural resources taxes and education funding are expected to take center stage during the budget session, the [Gillette News Record](#) reports.

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

The following states are expected to convene their 2016 legislative sessions on the dates provided: **Minnesota** (March 8) and **Louisiana** (March 14).

New Mexico is expected to adjourn its 2016 legislative session on February 18.

Louisiana is now pre-filing for the 2016 legislative session.

The following states are currently holding interim committee hearings: **Arkansas, Minnesota, Montana, Nevada** and **North Dakota**.

Franchise Tax

Tennessee [HB 1480](#) is scheduled to be considered in the House Government Operations Committee on February 16 at noon. The bill would exempt certain taxpayers from all or part of their franchise and excise tax liability for their first and second tax years in existence if the taxpayers meet certain employment and gross receipts requirements. The bill would take effect on July 1, 2016 and would automatically expire on July 1, 2021. Companion bill [SB 2366](#), sponsored by Sen. Bo Watson, R-Hixson, has been pending in the Senate Revenue Subcommittee of the Senate Finance, Ways and Means Committee since February 2.

Landmen

Wisconsin [AB 456](#) passed the Assembly on February 9 as amended by Assembly Amendments [1](#) and [3](#), and was immediately messaged to the Senate. The bill would generally amend current law regulating the practice and licensure of real estate brokers and real estate salespersons. It would create provisions addressing independent real estate practice by brokers, which is not addressed under current law. Under these provisions, a broker who is associated with a firm would also be authorized to engage in independent real estate practice, as specified. The bill would also define an “employee” for the purposes of these provisions to specify that a licensee would not be considered an employee of a firm if:

- A written agreement has been entered into with the firm that provides that the licensee may not be treated as an employee for federal and state tax purposes.
- 75 percent or more of the annual compensation related to sales or output paid by the firm to the licensee pursuant to the agreement is directly related to the brokerage services performed by the licensee on behalf of the firm.

The majority of the bill would take effect on July 1, 2016 or on the day after publication by the Legislative Reference Bureau, whichever is later. AB 456 is significantly similar to [SB 375](#), which was reported passed as amended by the Senate Insurance, Housing and Trade Committee with [Senate Amendment 1](#) and [Senate Amendment 2](#) on February 2 and is awaiting scheduling.

Lands

Wisconsin [AB 319/2015 Wisconsin Act 148](#) was signed by Republican Gov. Scott Walker on February 4 and was published by the Legislative Reference Bureau on February 5. Previous law prohibited the condemnation of real property owned by the state, a municipality or a county, with an exception for high-voltage transmission lines constructed by electric public utilities and cooperative associations. Act 148 extends the exception regarding condemnation to include natural gas distribution and transmission lines constructed by natural gas public utilities. It took effect on February 6.

Oil and Gas

General Oil and Gas

Michigan [SB 600](#) was reported favorably without amendments by the Senate Committee of the Whole on February 11 and was placed on order of third reading. It was then referred to the Senate Committee of the Whole. The bill would clarify the fee for recording and indexing a statement claiming a lien for labor on an oil or gas well. If enacted, the bill would take effect 90 days after final passage and approval. The Senate committee's summary and fiscal analysis is available [here](#).

West Virginia [SB 396](#) passed the Senate Energy, Industry and Mining Committee on February 11 and was subsequently sent to the Senate Judiciary Committee. The bill would require oil and gas wells that are otherwise capable of producing at least 1,000 cubic feet of natural gas per day to be shut-in, as defined, when the well cannot be economically produced. A well shut-in under this provision would not be considered a nonproducing or abandoned well and would not have to be plugged, as required under current law. If a consumer who is legally entitled to receive natural gas and who actually consumes natural gas from a well shut-in under these provisions becomes unable to receive sufficient natural gas supply because of the shut-in, the consumer would be entitled to demand that the well be placed in production to the extent necessary to supply the consumer with natural gas or to the normal operating flow of the well, whichever is less. The bill would take effect 90 days after passage.

Wisconsin [AB 547](#) passed the Senate 20-12 on February 9 and was immediately messaged to the Assembly. The bill would increase the criminal penalty for intentionally damaging property if the property is owned, lease, or operated by an energy provider and the person perpetrating the damage caused or intended to cause a substantial interruption of the energy provider's goods or services. It would also increase the criminal penalty for entering a property that is part of an energy plant or electric generation, distribution or transmission system or part of a natural gas distribution system without lawful authority or the consent of the energy provider that owns,

operates or leases the property. If enacted, the bill would take effect one day after publication by the Legislative Reference Bureau. The bill is similar to [SB 457](#) as amended by [Senate Amendment 1](#), which passed the Senate Judiciary and Public Safety Committee 3-2 on January 28 and is awaiting scheduling.

Royalty Payments

New Hampshire [HB 1149](#) was voted inexpedient to legislate (i.e., the bill was killed) by the House on February 10. Under the bill, any utility or pipeline company would have been required to pay a royalty of at least 12.5 percent of the wholesale price of natural gas conveyed on any pipeline that is intended for use in, or otherwise sold for use in, a foreign country. Deductions from the royalty payment of any taxes, fees, or costs, including post production costs, would have been prohibited. The utility or pipeline company would have been required to deposit the royalty on a quarterly basis into a separate fund, then divide and distribute the royalty to all persons owning property that was taken by the company on *pro rata* basis, as specified. The royalty would have been required to be distributed no later than three months after it was deposited into the fund. The bill would have taken effect 60 days after final passage and approval.