

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

- **BLM Methane Waste Prevention Rule.** On February 12, the Trump administration announced a proposed Bureau of Land Management (BLM) rule [*Waste Prevention, Production Subject to Royalties, and Resource Conservation; Rescission or Revision of Certain Requirements*](#) to overturn the much-criticized Obama-era venting and flaring rule, *Waste Prevention, Production Subject to Royalties, and Resource Conservation* (81 Fed. Reg. 83008). Among concerns identified in that rule was that “the economic impact on operators was underestimated in the 2016 rule. In addition, a review of existing state and federal regulations found considerable overlap with the rule. As a result, the [BLM is proposing to replace the venting and flaring rule](#) with requirements similar to those that were in force prior to the 2016 final rule. This proposal would align the regulations with administration priorities on energy development, job creation and reduced compliance costs while also working more closely with existing state regulatory efforts.” Support for rescission or revision of the rule has received wide support. “In order to achieve energy dominance through responsible energy production, we need smart regulations not punitive regulations,” said Joe Balash, BLM Assistant Secretary for Land and Minerals Management. “I am glad that Secretary Zinke is proposing to replace the unnecessary and costly methane rule. If left in place, the rule would have discouraged energy production and job creation in Wyoming and across the West,” said Sen. John Barrasso (R-WY). Once the rule is published in the Federal Register public comments will be open for a 60-day period. We will keep you updated once the BLM has officially published the proposed rule. [Read more.](#)
- **BLM Permitting Reforms.** The Trump Administration’s [Fiscal Year 2019 Budget](#), released February 12, will reform the BLM permitting process to streamline permit decisions and address delays. The budget contains \$185 million to address that purpose and will support related rights-of-way concerns on BLM-managed lands, as well as establishing funding for a competitive leasing program in the Arctic National Wildlife Refuge, among other provisions. [Read more.](#)
- **Gulf States Revenue Sharing.** In the Trump Administration’s newly released federal budget the President walked back an earlier proposal to stop sharing oil revenues from offshore drilling with states along the Gulf of Mexico. The “White House preserved the revenue sharing agreement, which was expected to deliver \$275 million to Texas, Louisiana, Alabama and Mississippi this year.” The proposal was roundly criticized by elected officials and oil and gas industry groups serving the Gulf states.

“I’m glad the administration heard us loud and clear and decided to support offshore revenue sharing,” said Sen. Bill Cassidy (R-LA). [Read more.](#)

FEDERAL – Judicial

- **National Petroleum Reserve – Alaska Federal Court.** On February 2, a group of environmentalists filed a lawsuit against the BLM claiming that the government’s December 14 oil and gas lease sale in the National Petroleum Reserve – Alaska violated federal law because it was conducted without proper environmental review. In [Natural Resources Defense Council et al. v. Zinke](#) (Case No. 3:18-cv-00031-JWS), the plaintiffs claim that the BLM failed to meet its obligation under the National Environmental Policy Act to “consider leasing fewer and less sensitive areas with potential lower impacts to the wildlife and other public values of the Western Arctic.” [Read more.](#)

STATE – Legislative

- **Control and Regulation of Operations – Colorado.** On February 9, [HB18-1071](#) passed the House and was referred to the Senate. Originally introduced by Rep. Joseph Salazar (D) in January, the bill seeks to clarify that the Colorado Oil and Gas Conservation Commission “is required to regulate oil and gas operations in a manner consistent with the protection of public health, safety, and welfare, including the protection of the environment and wildlife resources. The commission must regulate oil and gas operations so as to prevent and mitigate adverse environmental or public health impacts.” The bill seeks to codify the decision from the Colorado Court of Appeals in [Martinez v. Colo. Oil & Gas Conservation Cmm'n](#) (Case No. 2017 COA 37), even though that case is now on appeal before the Colorado Supreme Court (*See more below under STATE-Judicial*). According to the law firm Holland & Knight, the bill, which will likely be killed in the Senate where Republicans hold a two-vote majority, seeks to give greater local community control over hydraulic fracturing operations, and “represents on-going skirmishes between cities and counties in Colorado, which increasingly want a say (or even a veto) in oil and gas development impacting their residents, and developers, together with Colorado Attorney General Cynthia Coffman, who appears to marginalize such input in favor of harvesting mineral rights.” [Read more.](#)
- **Hydraulic Fracturing – Maryland.** On February 5, Sen. Richard Madaleno (D) introduced SB 1029. The bill would require a ballot referendum subject to voter approval for any oil and gas drilling in the state on or after November 15, 2018. Additionally, the General Assembly must also approve any such drilling by three-fifths of all members in both houses of the General Assembly. [Read more.](#)
- **Severance Tax Amendment – Mississippi.** On February 7, Sen. Joey Fillingane (R) introduced SB 2858. The bill would amend existing severance tax law to extend until

July 1, 2023 the repeal date on the reduced severance tax on oil and natural gas produced from horizontally drilled wells or horizontally drilled recompletion wells from which production commences from and after July 1, 2018. [Read more.](#)

- **Abandoned Wells – New Mexico.** On February 6, [SB 189](#), introduced by Sen. Richard Martinez (D) on January 26, passed the Senate Conservation Committee and has been referred to the Judiciary Committee. The bill would amend the Oil and Gas Act to correct a conflict with two statutory sections regarding operators providing financial assurance for plugging abandoned wells. The bill increases the maximum amount of a blanket financial assurance that the Oil Conservation Division may require from \$50,000 to \$250,000. The sponsoring bill synopsis notes that the “maximum amount for blanket financial assurance has not been increased for approximately 40 years.” [Read more.](#)
- **Orphaned Wells – Ohio.** On January 17, [HB 225](#) passed the House and was introduced in the Senate. The bill, introduced by Rep. Andy Thompson (R), would make amendments to the reporting, categorization, notice requirements and procedures for the plugging of idle and orphaned wells. [Read more.](#)
- **Marketable Title – Oklahoma.** On February 5, Rep. Mike Osburn (R) introduced HB 2775. The bill amends current law to provide that “if title remains unmarketable for two (2) years after an operator provides written notice of the unmarketable title, the operator may deem all accrued proceeds related to such interest to be abandoned and remit such proceeds as payment pursuant to the Uniform Unclaimed Property Act until such time as title is marketable.” [Read more.](#)
- **Drilling Prohibition – South Dakota.** On January 25, HB 1224 was introduced by Rep. Shawn Bordeaux (D). The bill would prohibit oil and gas drilling within the boundaries of the Black Hills, unless consent is given, by resolution, by each of the federally recognized Indian Tribes in the State of South Dakota. [Read more.](#)
- **Hydraulic Fracturing – Virginia.** (*Update to 2/5/18 Weekly Report*) On February 8, [SB 951](#), introduced by Sen. Scott Surovell (D) on January 19, failed to report out of the Senate Finance Committee and has been defeated. The bill would have prohibited hydraulic fracturing in the Eastern Virginia Groundwater Management Area. [Read more.](#)
- **Cotenancy – West Virginia.** (*Update to 2/5/18 Weekly Report*) The cotenancy bill, [HB 4268](#), passed the House on February 15 and was transmitted to the Senate for consideration. The bill would allow where there are seven or more royalty owners horizontal drilling into a natural gas reserve if 75 percent of the rights holders agree. Under current law, 100 percent of the rights holders have to agree. According to the sponsoring statement, “The purpose of this bill is to provide an exception to waste and trespass for certain oil and natural gas use and development to encourage the efficient economic development of oil and natural gas resources. The bill provides that use and

development of oil and gas mineral property that has been consented to by three fourths of the oil and gas owners is permissible, is not waste, and is not a trespass. The bill provides that cotenants and operators are not liable for damages for the development and use of the property if they pay nonconsenting cotenants in accordance with either of two defined options and report and reserve interests for unknown or unlocatable tenants. The bill provides a method to determine certain leasehold and contractual terms, including review and determination by the Oil and Gas Conservation Commission in limited circumstances.” [Read more.](#)

- **City Leasing Approval – West Virginia.** On February 6, the Wheeling City Council unanimously approved a natural gas leasing project which allows drilling from 335 acres of city-owned property and which will provide the city with \$2 million in revenue. Government officials say these acres are mostly old landfills, and much of it is outside city limits. [Read more.](#)
- **Royalties; Leasing – West Virginia.** On January 24, Sen. Charles Clements (R) introduced SB 360. The bill’s purpose is “to clarify the royalty owed to a royalty owner in an oil and gas lease” and amends existing law to detail how such royalty is paid when an applicant for a permit files an application for such permit in lieu of filing leases or other contracts. [Read more.](#)
- **Royalties; Reporting – West Virginia.** On January 24, Del. Frank Deem (R) introduced HB 4270. The bill provides for timely payment of moneys owed from oil and natural gas production from horizontal wells; establishes interest penalties for certain late payments; requires specified information be remitted with such payments; and requires quarterly reporting of production data to the state Department of Environmental Protection for horizontal wells. [Read more.](#)

STATE – Regulatory

- **Drilling Permit Fees – Pennsylvania.** The state Department of Environmental Protection (DEP) plans to present a proposal to the Environmental Quality Board to increase the price of a permit to drill from \$5,000 to \$12,500 per well to “protect the state’s oil and gas oversight program from a deficit beginning in the summer of 2019.” According to the DEP, “The number of well permits submitted to DEP does not generate sufficient revenue to cover the costs of administering DEP’s oil and gas program.” While the DEP does have a statutory mandate to review such fees every three years, as part of its [3-Year Regulatory Fee and Program Cost Analysis Report](#), industry representatives said they were blindsided by the size of the fee increase DEP is proposing. “While we very much appreciate the attention of both the governor and the DEP secretary to improve permit review times, the proposed fee amount appears excessive and may be prohibitive for some operators, particularly given that permit wait times have more than doubled in the past year alone,” said David Spigelmyer, president of the Marcellus

Shale Coalition. Spigelmyer noted that the industry had supported two permit fee increases since 2009. The DEP last raised well permit fees for horizontal wells in 2014, and it took 14 months for the new regulations to take effect from the time of proposal. The DEP has yet to publish its proposed rulemaking on this proposal, and we will keep you updated once they do for AAPL engagement and public comment. [Read more.](#)

STATE – Judicial

- **State Regulations – Colorado.** (*Update to 5/8/17 Weekly Report*) On January 29, the Colorado Supreme Court agreed to hear the case, [Martinez v. Colo. Oil and Gas Conservation Cmm’n](#) (Case No. 17SC297) after the Colorado Oil and Gas Conservation Commission (COGCC), American Petroleum Institute, and Colorado Petroleum Association urged them to do so. The plaintiffs in the case want regulators to halt new drilling permits pending a safety review of hydraulic fracturing. However, the COGCC has argued for months that the Colorado Supreme Court needs to provide them with direction on how to proceed. In March, the Colorado Court of Appeals ruled that the COGCC erred when it declined to hold a rulemaking hearing on a petition filed by the plaintiffs who want to halt the issuance of new drilling permits until the state can determine that hydraulic fracturing is safe. The court sent the issue back to the COGCC for further consideration. Finally, the high court will hear COGCC’s arguments. According to the Colorado Supreme Court [announcement](#), the Court will determine “Whether the court of appeals erred in determining that the Colorado Oil and Gas Commission misinterpreted section 34-60-102(1)(a)(I), C.R.S. as requiring a balance between oil and gas development and public health, safety, and welfare.” We will keep you updated as the case moves forward. [Read more.](#)

INDUSTRY NEWS FLASH:

◆ **U.S. oil production to hit another record level.** On February 6, the U.S. Energy Department reported that domestic “oil production likely averaged a new record of 10.2 million barrels a day” and “production levels are projected to keep growing at least through 2019, making the United States the world’s leader in oil production. The U.S. already leads in natural gas output.” [Read more.](#)

State-by-State Legislative Session Overview

Alabama, Arkansas, 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 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 Council, Puerto Rico** and the **United States Congress** are also in regular session.

New Mexico adjourned sine die on February 15.

Oklahoma convened its second special session to address budget issues on December 18, [The Oklahoman](#) reports. The session will run concurrently with the regular session, which convened on February 5. **Wisconsin** convened a special session on January 18 to address a number of bills related to public assistance reform, the [Milwaukee Journal Sentinel](#) reports. An executive order that convenes and describes the scope of the special session from Republican Gov. Scott Walker can be found [here](#). The special session will run concurrently with the regular session.

North Carolina adjourned a special session on February 13, [WWAY](#) reports. The legislature is expected to convene for the regular 2018 session on May 16.

Louisiana is scheduled to convene a special session related to fiscal issues on February 19, [The Times-Picayune](#) reports. The session will run until March 7.

Minnesota is scheduled to convene on February 20.

New Mexico Republican Gov. Susana Martinez has until March 7 to act on legislation or it is pocket vetoed. **North Carolina** Democratic Gov. Roy Cooper has until March 15 to act on special session legislation or it becomes law without signature. **Illinois** Republican Gov. Bruce Rauner has 60 days from presentment to act on all legislation passed during the veto session or it becomes law.

The following states are currently holding interim committee hearings: [Louisiana](#), [Minnesota](#), [Montana](#), [Nevada](#), [North Carolina](#), [North Dakota](#) and **Texas** [House](#) and [Senate](#).

The following states are currently posting bill drafts, prefiles and interim studies: [Louisiana](#), [Montana](#) and [North Dakota](#)

Franchise Tax

California [AB 2131](#), sponsored by Asm. Melissa Melendez, D-Lake Elsinore, was introduced on February 12 and has not yet been referred to a committee. This bill would reduce the minimum franchise tax to \$400 for taxable years beginning on or after January 1, 2019. The bill would take effect immediately.

Wisconsin [AB 734](#) passed the Assembly with [amendments](#) on February 13. The bill is now pending in the Senate Organization Committee. The bill would provide an income and franchise tax deduction for tuition expenses paid by an individual to participate in an apprenticeship program that is approved by the Department of Workforce Development. The bill would apply to taxable years beginning after December 31, 2017. The bill's companion, [SB 620](#), is currently pending in the Senate Revenue, Financial Institutions and Rural Issues Committee.

Hydraulic Fracturing

Florida [SB 462](#) passed the Senate Environment and Natural Resources Appropriations Subcommittee on February 14 and is now in the Senate Appropriations Committee. The bill would prohibit the performance of advance well stimulation treatments in the state. The bill's companion [HB 237](#) is pending committee referral in the House. These bills would take effect immediately.

Maryland [SB 1029](#) is scheduled for a hearing in the Senate Education, Health and Environmental Affairs Committee on March 6 at 1:00 PM. The bill would propose an amendment to the constitution that would prohibit the general assembly from authorizing any drilling for oil or natural gas beginning November 15, except as specified. The general assembly would only be able to authorize oil and natural gas drilling if they passed an act supported by three-fifths of the members elected to each chamber and if approval is granted by a majority of voters through a statewide referendum. The bill would take effect June 1.

General Oil and Gas

Pooling

West Virginia [HB 4268](#) passed the House with numerous amendments on February 14. As passed the House, the bill would permit the use or development of an oil or natural gas property if an operator or owner makes reasonable efforts to negotiate with all royalty owners in an oil or natural gas mineral property and if royalty owners vested with at least three-fourths of the right to develop agree to do so. The bill would provide that the nonconsenting agent is entitled to receive either a pro rata share of production royalty payments paid on the gross proceeds received at the first point of sale to an unaffiliated third party seller and free post production expenses equal to the highest royalty percentage paid to the other co-tenants; or to participate in the development and receive a pro rata share of the revenue and cost equal to his or her share of the production attributable to the tracts being developed.

The bill would give a nonconsenting lease owner 45 days from the operator's written delivery of its best and final lease offer to make their final decision. The bill would also require that the owner report to the state treasurer each quarter concerning each unknown or unlocatable interest owner and remit the amount reserved. The bill would take effect July 1. A similar bill, [HB 4574](#), sponsored by Rep. Zack Maynard, R-Lincoln, was referred to the House Energy Committee on February 13.

General

Utah [SB 191](#), sponsored by Sen. Kevin Van Tassell, R-Vernal, was referred to the Senate Natural Resources, Agriculture and Environment Committee on February 16. The bill would provide that any municipal ordinance, resolution or rule enacted by a municipality must comply with the state's exclusive jurisdiction to regulate oil and gas. The bill would also provide that a

municipality may enact an ordinance that regulates surface activity relating to oil and gas activity provided that the ordinance:

- Is necessary pursuant to existing law.
- Does not unduly limit, ban or prohibit oil and gas activity.
- Does not interfere with the state's exclusive jurisdiction to regulate oil and gas.

The bill would define oil and gas activity to include hydraulic fracturing, drilling and remediation activities among other activities.

West Virginia [HB 4551](#), sponsored by Del. Frank Deem, R-Wood, was referred to the House Energy Committee on February 13. The bill would require the mineral estate of an unknown owner be sold to the legal surface owner at the fair market value of the mineral interest as determined by the Division of Oil and Gas. The bill would provide that if the surface owner declines to purchase the estate, the estate would be sold at auction to the highest bidder. The bill would provide that all unclaimed royalties be transferred to the new owner.

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