

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

- **Comprehensive Energy Bill.** Though U.S. Senate Majority Leader Mitch McConnell said he would revisit the wide-ranging energy bill, S. 2012, sponsored by Committee Chairwoman Lisa Murkowski (R-Alaska), lawmakers say they still need time to study the deal to provide aid to Flint, Michigan in its water crisis, according to Texas Senator John Cornyn. Movement on the bill could come this week. [Read more.](#)

FEDERAL – Regulatory

- **Federal Natural Resource Development.** Last Wednesday, nearly 20 U.S. senators pressed President Obama to clarify how federal natural resource management agencies will carry out his memorandum, [Mitigating Impacts on Natural Resources from Development and Encouraging Related Private Investment](#) (November 2015), on mitigating impacts from development. [Read more.](#)
- **BLM Resource Management Plan – California.** Last Friday, environmental groups demanded that the U.S. District Court for the Central District of California [throw out the Bureau of Land Management's resource management plan](#) because it fails to consider unique environmental impacts associated with oil and gas production. The groups are asking for a court order that sets aside the resource management plan and prohibits oil and gas leasing until BLM prepares a supplemental environmental impact statement. [Read more.](#)
- **BLM Resource Advisory Council – Idaho.** The Bureau of Land Management (BLM) has announced new appointments or re-appointments of members to Idaho's Twin Falls District citizen-based Resource Advisory Council, which advises the agency on public land management issues and is composed of citizens chosen for their expertise in natural resources issues. [Read more.](#)
- **BLM Auction Protests – Texas, Oklahoma, Kansas.** Environmentalists have filed a formal [administrative protest](#) challenging a BLM plan to auction about 5,700 acres of federal lands in Texas, Oklahoma and Kansas for production. The protest, filed February 19, came a day after the U.S. Forest Service, responding to the concerns of conservation groups and local officials, withdrew 31,169 acres of national forest lands in Texas from the same auction, slated for April 20 in Santa Fe, N.M (as reported in last week's Report). [Read more.](#)

- **Obama Remarks at National Governors Association Winter Meeting – Washington, D.C.** Speaking on February 22 at the National Governors Association Winter Meeting, President Obama told governors of fossil fuel-heavy states that they should prepare for the nation’s energy mix to transition away from fossil fuels. “If those states with extractive industries are not currently preparing for the fact that the energy mix is going to continue to change over time,” Obama said, “you’re probably doing a disservice to your constituencies.” [Read more.](#)
- **Interior Secretary Testimony – Washington, D.C.** On February 23, Interior Secretary Sally Jewell testified before the Senate Energy and Natural Resources Committee on the department’s [Fiscal Year 2017 budget request](#). During a heated exchange with Senators, the Secretary was peppered with questions on her agency’s handling of energy and minerals development on federal lands. [Read more.](#)
- **BLM Resource Advisory Council Meeting – Wyoming.** On February 23, the BLM announced that the Wyoming Resource Advisory Council will meet on March 9 and 10. Topics for discussion by the 10-member Council, which advises the Secretary of the Interior on a variety of management issues associated with public land management in Wyoming, will be [revisions to the Rock Springs Resource Management Plan](#). The Rock Springs planning area includes 3.6 million acres of surface land and 3.5 million acres of mineral estate, administered by the BLM in portions of Lincoln, Sweetwater, Uinta, Sublette, and Fremont counties in southwestern Wyoming. The Rock Springs field office administers a variety of programs, including exploration and development. [Read more.](#)
- **Paw Paw Prospect Development – Wyoming.** Last week, Nostra Terra announced that the permitting process is underway for the Paw Paw prospect located in Big Horn County, which possibly holds as much as 7.3 million barrels of producible oil. In December, the company announced the approval of an Exploratory Unit by the BLM, which created numerous benefits such as a single commercial well which perpetuates all leases within the entire Unit, as well as allowing Nostra Terra to operate multiple leases as a single lease under a single operator. [Read more.](#)

FEDERAL – Judicial

- **Sage Grouse; Oil and Gas Production – Idaho.** A coalition of environmental groups has filed a federal lawsuit challenging the Obama administration’s greater sage grouse conservation plans across the West, claiming they are riddled with loopholes, scientific flaws and “political compromises” and won’t protect the bird or its habitat. The four groups are asking in [their 107-page complaint](#) filed in the U.S. District Court for the District of Idaho on February 25 that the court remand the plans to the BLM and U.S. Forest Service to strengthen protections and close loopholes that they say allow oil and gas drilling, among other practices they find objectionable. [Read more.](#)

STATE – Regulatory

- **State Land Exploration – Alaska.** The state is looking to encourage oil and gas production in a large chunk of south-central Alaska under an exploration licensing program geared toward small-scale efforts that might help local communities. The state Division of Oil and Gas plans to declare about 50 million acres open for exploration and has a public comment and proposal period that ends on March 11. [Read more.](#)

STATE – Legislative

- **Royalties; Mineral Rights – Colorado.** (Update to 2/22/16 Weekly Report) As previously reported, HB 1181, introduced on February 2 and referred to the House State, Veterans & Military Affairs Committee, would require local governments that ban hydraulic fracturing of an oil and gas well to compensate the mineral interest owner for the value of lost royalties. On February 24, the Committee indefinitely postponed any action on this bill. [Read more.](#)
- **Permits; Spacing Units; Tracts – Idaho.** (Update to 2/22/16 Weekly Report) As previously reported, SB 1339, streamlines the process for issuing permits for oil and gas production, and is considered a favorable measure for the oil and gas industry. The bill overwhelmingly passed the Idaho Senate last week by a 31-4 vote in favor and now moves to the House for consideration. [Read more.](#)
- **Royalty Payments – Pennsylvania.** HB 1391, a carryover bill from the 2015 legislative session, is scheduled for a hearing on March 15 before the House Environmental Resources & Energy Committee. No action was taken on this bill in 2015. The measure would amend the state Oil and Gas Lease Act to provide for minimum royalty payments for unconventional wells as defined in the bill. (See more details on this bill under the State-by-State Legislative Overview below.) [Read more.](#)
- **Industry Regulations – Nebraska.** (Update to 2/1/16 Weekly Report) LB 1070, introduced on January 20, and referred to the Natural Resources Committee, was indefinitely postponed on February 25. The bill would have changed the powers and duties of the Nebraska Oil and Gas Conservation Commission to require liability insurance and restrict permits for injection and disposal wells. [Read more.](#)
- **Industry Regulations – Nebraska.** (Update to 2/1/16 Weekly Report) LB 1100, introduced on January 20, and referred to the Natural Resources Committee, was indefinitely postponed on February 25. The bill would have created a board of industry members to promote the state's oil and gas industry and would have prohibited the Nebraska Oil and Gas Conservation Commission from engaging in any industry-promoting efforts. [Read more.](#)

- **Ad Valorem Tax – Wyoming.** (Update to 2/15/16 Weekly Report) Since the original reporting, the bill status on HB 64 has changed. On February 22, the bill was withdrawn by the sponsor. Background: On February 5, the Joint Revenue Interim Committee introduced the bill, which addressed the ad valorem tax. The amendatory language provided 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 provided 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.](#)

INDUSTRY NEWS FLASH:

- ◆ **Saudi Arabia weighs in on American eco-activists.** In addition to telling oil producers to cut costs or get out of the market, Saudi Arabia’s energy minister delivered another unpalatable message this week: the green movement can’t be ignored. Saudi oil minister Ali Ibrahim Al-Naimi, whose nation is the biggest exporter of crude, said that the industry for too long “has been portrayed as the dark side” of energy by environmentalists seeking to curb global warming. He urged executives, who often try to sidestep the debate on climate change, to promote technologies that will rein in emissions – alongside the idea that fossil fuels are needed to sustain economic growth. “We should not be apologizing,” al-Naimi said in a speech to the IHS CERAWEEK conference in Houston last Tuesday. “We must not ignore the misguided campaign to ‘keep it in the ground’ and hope it will go away.” [Read more.](#)
- ◆ **The Texas Independent Producers and Royalty Owners Association (TIPRO)** celebrated its 70th anniversary last week at its annual convention in San Antonio, Texas. Speakers included Rep. Joe Straus, speaker of the Texas House of Representatives, Rep. Drew Darby, Chairman of the House committee on energy resources, Texas comptroller Glenn Hegar, and Harold G. Hamm, chairman and CEO of Continental Resources. And as part of the event, on February 23, TIPRO announced that Drilling Info CEO, Allen Gilmer, has been elected chairman, for a two-year term beginning June 30. [Read more.](#)
- ◆ **A Colorado group opposed to oil and gas development** pulled several proposed ballot initiatives targeting the industry leaving only three proposals for consideration. The proposed measures pulled off the table focused mostly on some types of mandatory setbacks. The three remaining proposed measures by the group, Coloradans Resisting Extreme Energy Development, or CREED, are No. 63 (would give residents the right to a “healthy environment” by allowing residents to file lawsuits against oil and gas companies for failing to maintain a healthy environment), No. 75 (would give local governments authority over state government with regard to oil and gas development within their borders), and No. 78 (mandatory setback of at least 2,500 feet for new oil and gas development). [Read more.](#)

PRACTICE TIPS: This week, we offer you a must-read for anybody working in Pennsylvania regarding employee misclassification, the factor test for independent contractor treatment, and other vital employment practice laws governing working relationships in the state. Most notably, according to the Pennsylvania office for employment law firm, Cozen O'Connor, the term "independent contractor" is defined neither by common law nor by a single statute in Pennsylvania. Thus, courts consider certain factors to determine whether an individual should be classified as an employee or as an independent contractor. [Read more.](#)

Also this week, the law firm, Holland and Hart, offers practical guidance regarding pooling clauses. According to their article appearing in the latest issue of *Oil & Gas Report*, "Pooling is a fundamental concept within oil and gas law, but one that is often misunderstood." [Read more.](#)

ELECTION ALERT:

✪ On February 22, Republican presidential candidate Marco Rubio selected Devon Energy Corp. co-founder Larry Nichols to help oversee his campaign's stance on energy issues. Nichols, who is credited with helping to develop the combination of horizontal drilling and hydraulic fracturing along with developer George Mitchell, says he is enticed by Rubio's view that "the path to our [energy future is not through regulation](#) but through innovation." [Read more.](#)

✪ According to a new report in the *Scientific American*, this year's presidential candidates give voters a big choice on energy plans. As the political heat increases, candidates' contrasting plans for actual energy use are worth voter attention. [Read more.](#)

✪ Ten out of the 12 Texas Railroad Commission race candidates were in San Antonio last Monday where they faced off at a forum that was part of the TIPRO annual convention. Each of the 10 candidates who participated were given time to present their own opening remarks followed by questions from the moderator and the audience. The *San Antonio Business Journal* compiled a list of memorable quotes from that forum. [Read more.](#)

State-by-State Legislative Session Overview

The **New Mexico** legislature's adjournment on February 18 featured major political compromises for spending and beyond. Lawmakers ended their 2016 session with a \$6.2 billion spending plan that would shift additional funds to Medicaid, state prisons, police, teachers and child protective services, [Artesia Daily Press](#) reports. Legislators opted to reduce agency revenue by \$88 million in one-time funding over additional tax increases. As part of Republican Gov. Susana Martinez's legislative objectives, new austerity measures at state agencies would offset declining revenues linked to low oil prices and tax receipts that proved to be weaker than

expected. The legislature also compromised to bring driver's licenses into compliance with federal REAL ID Act requirements. Though Governor Martinez is not expected to present line-item vetoes this year, her deadline to act on legislation from the 2016 legislative session is March 9.

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 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).

Louisiana is currently meeting in a special session and is expected to adjourn on March 9. The 25-day special session must conclude before March 9, only a few days before the legislature is expected to convene its 2016 legislative session. The pre-filing deadline for the regular session is March 4 for all bills other than retirement bills or constitutional amendments.

North Carolina adjourned its special session on February 19.

The following states are expected to adjourn their 2016 legislative sessions on the dates provided: **Wyoming** (March 4); **Oregon** (March 5); **Utah** and **Washington** (March 10) and **Florida** (March 11).

New Mexico Republican Gov. Susana Martinez has until March 9 to act any legislation presented to her after February 15 or it is pocket vetoed.

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

Franchise Tax

California [AB 2807](#) was introduced on February 19 and is awaiting committee referral. The bill would reduce the annual minimum franchise tax to \$800 for taxable years beginning before January 1, 2017 and \$700 for taxable years beginning on or after January 1, 2017. It would also extend an exemption to corporations and limited liability companies solely owned by deployed members of the armed forces until January 1, 2020. It is sponsored by Asm. Chad Mayes, R-Yucca Valley.

Illinois [SB 2852](#) was introduced on February 17 and is pending in the Senate Assignments Committee. The bill was introduced with only a technical change to the franchise tax section of the "Business Corporation Act of 1983", but could be amended to include more substantial

changes at a later date. It is sponsored by Majority Caucus Chair Sen. Ira Silverstein, D-Chicago, vice-chair of the Senate Executive Committee.

Tennessee [HB 1480](#), which was scheduled to be considered in the House Government Operations Committee on February 16, was deferred to a hearing in the same committee on March 1. 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

Employee Misclassification

Kentucky [HB 477](#) was introduced on February 23 and referred to the House Labor and Industry Committee. Majority Caucus Chair Rep. Sannie Overly, D-Paris, is the primary sponsor. The bill would prohibit misclassifying an employee as an independent contractor and would presume that a contractor is an employee and not an independent contractor unless they are a separate business entity and the person:

- Is performing the services free from the direction or control over the means and manner of providing the service, subject only to the right of the contractor, for whom the service is provided, to specify the desired result.
- Has the right to perform similar services and make those services available to the general public or the business community on a continuing basis.
- Hires, if necessary, its own employees without contractor approval, pays the employees without reimbursement from the contractor and reports the employees' income to the IRS.
- Has a capital investment beyond ordinary tools and equipment and a personal vehicle, and furnishes the tools and equipment necessary to perform the services.
- Includes services rendered on a federal income tax schedule as an independent business or profession.
- Gains the profits and bears the losses of the business.
- Performs the services for the contractor under a business entity's name and the contractor does not represent the business entity as an employee of the contractor to its customers.

If someone believes a contractor is in violation, they could file a complaint with the Division of Employment Standards, Apprenticeship and Mediation in the Department of Workplace Standards. The division would then conduct an investigation and if found to be in violation, the contractor could be served a cease and desist order and be ordered to pay any wages, salary, benefits or other compensation that was lost. Civil penalties could also apply. The person aggrieved by the contractor could file a civil action against the contractor.

The bill would also require contractors to post a notice prominently and accessible on a job site that describes: the responsibility of an independent contractor to pay state and federal taxes; the rights of employees to workers' compensation, unemployment benefits, minimum wage, overtime and other protections; protections if the employee files a complaint; and penalties that would apply if the contractor fails to properly classify their employees. The notice would have to include contact information for filing a complaint, be provided in English, Spanish and any other language required by the commissioner and be made of materials to withstand adverse weather conditions. The notice would have to be posted within 30 days of the bill's effective date, which would be 90 days after the legislature adjourns.

Lands

Washington [SB 5363](#) is scheduled for an executive session in the House Judiciary Committee on February 26. A public hearing was held on February 23 and the committee considered an [amendment](#) that would reaffirm existing state law relating to the use of eminent domain by state and local governments. The bill would prohibit private property from being taken by a public entity through eminent domain for the purpose of economic development, as defined. Private property could only be taken for a public use, which would not include economic development. Transfer of property to a public service company, a consumer-owned utility, or a common carrier for the purpose of constructing, operating or maintaining generation, transmission or distribution facilities would not count as economic development. The bill would take effect 90 days after adjournment.

Oil and Gas

General Oil and Gas

Kentucky [SB 188](#) passed the Senate Natural Resources and Energy Committee on February 24 with a [substitute amendment](#) making technical changes. It is now pending in the Senate Rules Committee. The bill would require a permit for drilling a stratigraphic test well, which is defined as "an exploratory borehole drilled for the sole purpose of acquiring subsurface geological and structure test data."

Michigan [HB 5389](#) was introduced on February 18 and referred to the House Energy Policy Committee. It is sponsored by Rep. Peter Lucido, R-Shelby Township, a member of the committee. The bill would prohibit drilling an oil or gas well in a county with a population of 750,000 or more unless the proposed well would be located at least 1,320 feet from a residential building and is in compliance with all applicable local ordinances and the Department of Natural Resources holds a public hearing where the well would be located and considered public opinion.

West Virginia [SB 646](#) was introduced on February 20 and referred to the Senate Judiciary Committee. It is sponsored by Sen. Mitch Carmichael, R-Jackson, a member of the committee. The bill would provide that use of mineral property that is consented to by the majority of the ownership interest is not considered waste or trespassing. It would also promote efficient

extraction of oil and gas resources and waste prevention by authorizing the development of horizontal drilling or multiple adjacent leases held by the same operator.

West Virginia [SB 698](#) was introduced on February 22 and referred to the Senate Judiciary Committee. It is sponsored by Sen. Greg Boso, R-Nicholas, chair of the Senate Energy, Industry and Mining Committee. The bill would allow natural gas companies to enter real property without the owner's permission in order to conduct "studies," meaning, make examinations, inspections, studies, tests, hand auger borings, hand excavations, appraisals and surveys. The company would not need a certificate of convenience and necessity at the time of entry as long as it intends to use the studies to:

- Satisfy any regulatory requirements.
- Prepare any necessary applications for approval by any regulatory body or agency.
- Respond to any data requests or other inquiries from any regulatory or agency authority or public official.
- Aid in the selection or a location for proposed pipelines or other facilities or the relocation or expansion of existing facilities.
- Aid in the engineering and design or any proposed or existing facilities.

The company would have to send a "request for permission" and "notice of intent to enter" to perform the studies to the owners at least 15 days before the proposed date of entry on the property. The bill would not allow the company to park or use motor vehicles on the property or to use chainsaws or other power equipment and the company would be required to reimburse the owner for any damages. Nothing in the bill would limit the company's right by power of eminent domain, any easement granted by the landowner, or any right-of-way agreement.

Wyoming [SF 28](#) passed the House Minerals, Business and Economic Development Committee 8-1 on February 24 with [amendments](#). The bill would transfer the regulation of a geologic sequestration facility and site to the Department of Environmental Quality if an oil and gas operator converts to geologic sequestration after ending recovery operations or injects carbon dioxide for long-term storage. If the operator does not want to convert to geologic sequestration, the wells would have to be plugged and abandoned. The Wyoming Oil and Gas Commission supervisor would determine whether the operation is injecting carbon dioxide that would risk the drinking water supply. The operator could request a hearing before the commission within 15 days of receiving notice of the supervisor's findings.

Royalty Payments

The **Pennsylvania** House Environmental Resources and Energy Committee is scheduled to hold an informational hearing on [HB 1391](#) on March 15. The bill is primarily sponsored by Rep. Garth Everett, R-Muncy, Rep. Matthew Baker, R-Wellsboro, Rep. Sandra Major, R-Montrose, and Rep. Tina Pickett, R-Towanda, and was introduced and referred to the House Environmental Resources and Energy Committee on June 29. The bill would require the minimum royalty payment to a lessor for unconventional gas well production to not be less than one-eighth of the lessor's percentage ownership in the production from the production, calculated on the total price

received by the operator for the production in an arm's-length transaction. No deductions of any costs could result in a royalty payment less than the one-eighth requirement. This requirement would apply to all leases for unconventional gas well production existing on or after the effective date of the bill. The bill would further provide for legal remedies and penalties, up to treble damages, for failure to pay the minimum royalty. If enacted, the bill would take effect 60 days after passage.

According to stateimpact.npr.org, Representative Everett did not want to push the bill during the state's budget stalemate, but continues to hear from people who feel they are not being paid fair royalty payments so has brought the bill up for discussion. Everett said he expects the committee to take action on the bill in the spring and has a good chance of passing the House.

West Virginia HB 4500 passed the House Energy Committee with [amendments](#) on February 20 and is on the February 26 agenda in the House Finance Committee. One amendment would clarify the legislature's finding that there is a need for more transparency in royalty dealings and to ensure fairness. The bill would require a quarterly report to be filed with the Office of Oil and Gas and made public on their website. The bill would also require certain information to be included on a royalty check stub, including, but not limited to, the total number of barrels or volume of gas sold, the net value of total sales from the property without the taxes and deductions and the total amount of severance and other production taxes and other deductions permitted under the lease.

Royalty payments would have to be made within 90 days from the date that a financial gain is realized from the oil and gas production.