

## WEEKLY HIGHLIGHTS AT-A-GLANCE

### FEDERAL – Legislative

- **H.R. 484.** On January 10, Rep. Darren Soto (D-FL) introduced H.R. 484. The bill would amend the Mineral Leasing Act to authorize the Secretary of the Interior to regulate hydraulic fracturing operations on Federal lands. According to Soto, the purpose of the bill is to resolve various legal challenges that held the Interior Department and Bureau of Land Management did not have the statutory authority to regulate hydraulic fracturing. If passed in the House, the bill is however unlikely to come up for consideration in the Republican-led Senate. [Read more.](#)

### FEDERAL – Regulatory

- **BLM Lease Sale – Montana; North Dakota.** On January 30, the Bureau of Land Management (BLM) announced it has opened a 15-day public scoping period for nominated oil and gas lease parcels located in Montana and North Dakota. The scoping period runs through February 15, 2019, and is intended to solicit public input on nominated lease parcels for the July lease sale, including the preliminary recommendations and stipulations. Parcels nominated for inclusion in the July sale are located in Musselshell, Blaine, Rosebud, Powder River, and Petroleum counties in Montana and Williams, Divide, Mountrail, and Bottineau counties in North Dakota. [Read more.](#)
- **BLM Lease Sale – Utah.** On January 29, the BLM released the March 2019 Notice of Competitive Oil and Gas Lease Sale list, which includes 156 parcels totaling about 217,476 acres and will occur online on March 25-26, 2019. The public comment period ends March 1, 2019. [Read more.](#)
- **BLM Lease Sale – Colorado.** On January 29, the BLM announced it is seeking public scoping comments on offering approximately 4,804 acres of federal oil and gas leases on public lands managed by the Royal Gorge field office in Lincoln, Weld, and Kiowa counties in the upcoming June 2019 competitive oil and gas lease sale. Before beginning an environmental analysis, the BLM wants public feedback. The public scoping period ends February 12, 2019. [Read more.](#)
- **BLM Lease Sale – New Mexico; Kansas; Oklahoma.** On January 29, the BLM announced it has scheduled a 10-day public scoping period for input on 56 parcels of federal minerals proposed for the June 2019 competitive oil and gas lease sale. The public

scoping period will end February 10, 2019. In addition, a two-week public review and comment period of the environmental documents is scheduled to begin March 11 and conclude March 22, 2019. The lease sale is scheduled for June 20, 2019. [Read more.](#)

- **ANWR Leasing – Alaska.** On January 30, the BLM announced dates for public meetings in various Alaska communities and Washington, DC following the release of their Draft Environmental Impact Statement (EIS) which is “the next step in implementing the provisions in the Tax Act to establish and administer a competitive oil and gas program for the leasing, development, production, and transportation of oil and gas in and from the Coastal Plain area within the Arctic National Wildlife Refuge.” The BLM has also extended the public comment period after receiving requests from various stakeholders asking for additional time and meeting locations. “After considering these requests, we have decided to extend the comment period to March 13,” said Joe Balash, Assistant Secretary of the Interior for Land and Minerals Management. “This meeting schedule and format design will give the public an opportunity to engage our scientists and experts directly on key parts of the Draft EIS.” According to the BLM notice, the first lease sale will be held after the Final EIS and Record of Decision are issued and will offer not fewer than 400,000 acres area-wide of high-potential lands for bid. [Read more.](#)

### **FEDERAL – Judicial**

- **BLM Leasing – Nevada.** On January 15, a federal judge in Nevada ruled in favor of the BLM against environmental activists, concluding that the BLM properly conducted the requisite environmental reviews before offering oil and gas leases on nearly 200,000 acres of federal land within the state. The court held that the BLM satisfied the so-called “hard look” at environmental impacts of the leases prior to offering leases on those parcels. In the case, *Center for Biological Diversity v. U.S. Bureau of Land Management* (Case No. 3:17-CV-553-LRH-WGC), the court held that it was the plaintiffs’ burden to show how the agency action was arbitrary and capricious, and it is insufficient to merely argue that the BLM’s Environmental Assessment is inadequate. [Read more.](#)
- **Deed Construction; Royalty Interests – Texas.** On January 9, in *Verde Mineral, LLC v. Burlington Resources Oil & Gas Co.* (Case No. 2:16-CV-463), the U.S. District Court for the Southern District of Texas (Corpus Christi) found in favor of a class of holders of oil and gas interests in more than 2,000 acres located in Live Oak County, Texas. The plaintiffs claimed that the defendants violated obligations that their predecessors-in-interest assumed nearly a 100 years ago when an agreement was made to pay a portion of any oil and gas proceeds derived from the property. In ruling for the plaintiffs, the court deemed those proceeds to be floating royalty interests and also rejected the defendants’ other claims noting that the Statute of Frauds did not negate the conveyance, the deeds do not violate the Rule Against Perpetuities, grantee interests were not voided by vendors’ liens, defendants did not acquire title through adverse possession, and the class claims weren’t barred by the statute of limitations or laches.

The court also granted leave to the plaintiff to amend its complaint to include another defendant. [Read more.](#)

## **STATE – Legislative**

- **Hydraulic Fracturing – Arizona.** On January 28, SB 1197 was introduced by Sen. Juan Mendez (D). The bill would amend current law to prohibit hydraulic fracturing in the state. Given that Republicans control the legislature and governor’s office, the bill is unlikely to see further consideration. [Read more.](#)
- **Well Permits – Illinois.** On January 29, HB 282 was referred to the House Energy & Environment Committee after its introduction by Rep. Emanuel Welch (D). The bill would amend the Illinois Oil and Gas Act to require certain information be included in an application for a well permit and provides that horizontal wells or wells drilled using directional drilling are prohibited from classification as confidential, among other provisions. [Read more.](#)
- **Severed Estates – Mississippi.** On January 21, HB 1437 was introduced by Rep. Michael Evans (D). The bill would provide that mineral estates separated from the surface estate shall revert to the owner of the surface estate after ten years of nonproduction. [Read more.](#)
- **Independent Contractors – Missouri.** On January 28, SB 313 was introduced by Sen. Bob Onder (R). The bill creates protections for independent contractors, providing that any worker who is not an independent contractor and who performs services for an employer shall be classified as an employee. The act also defines an independent contractor as any person who: has signed a written contract with an employer that states the employer’s intent to retain the services of the person as an independent contractor and additionally contains certain acknowledgments detailed in the act; has filed, intends to file, or is contractually required to file, in regard to the fees earned from work, an income tax return with the Internal Revenue Service for a business or for earnings from self-employment; provides his or her services through a business entity; has the right to control the manner and means by which the work is to be accomplished, even though he or she may not have control over the final result of the work; or otherwise meets certain criteria put forth in the act. [Read more.](#)
- **Taxation on Oil Production – Montana.** (*Update to 1/21/19 Weekly Report*) On January 25, HB 213, introduced by Rep. Llew Jones (R), passed out of committee. The bill would amend current law regarding stripper well bonus production subject to taxation under the average price provision and removes “for a barrel of west Texas intermediate crude oil” and replaces it with, “reported and received by the producer for Montana oil marketed” during a calendar quarter [that] is equal to or greater than \$54. [Read more.](#)

- **Production Tax Rates – Montana.** *(Update to 12/17/18 Weekly Report)* On January 23, SB 28, introduced by Sen. Tom Richmond (R), passed the House and has been transmitted to the Senate. The bill removes the pricing trigger that determines the tax rate on incremental oil production from an approved tertiary recovery project. According to the bill sponsor, “there is currently no incremental tertiary oil production in Montana.” [Read more.](#)
- **Royalty Rates; State Lands – New Mexico.** On January 29, Rep. Derrick Lente (D) introduced HB 398. The bill amends the Oil and Gas Lease development form for leases on state restricted lands by setting an applicable royalty rate and requires royalties on vented or flared gas. [Read more.](#)
- **Oil & Gas Industry Day – New Mexico.** On January 25, Sen. Gay Kernan (R) introduced Senate Memorial 20 (SM 20) to honor the contributions of the oil and gas industry to the state. The memorial declares February 6, 2019 as “Oil and Gas Industry Day” and directs that “copies of this memorial be transmitted to the New Mexico Oil and Gas Association, the Permian Basin Petroleum Association and the Independent Petroleum Association of New Mexico.” [Read more.](#)
- **Severance Tax – New Mexico.** On January 24, HB 353 was introduced by Rep. Paul Bandy (R). The bill amends current severance tax law by reducing tax rates on oil and natural gas removed from a stripper well when the average annual taxable value of oil or natural gas reaches certain amounts. [Read more.](#)
- **Oil Extraction Tax – North Dakota.** *(Update to 1/28/19 Weekly Report)* On January 29, SB 2336 failed in the Senate. The bill would have permanently raised the oil extraction tax rate from 5 percent to 6.5 percent, effective January 1, 2020. The bill 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.](#) The House version of the bill, HB 1449, is still under consideration in that chamber. If enacted, that bill would be effective for taxable events occurring after June 30, 2019. [Read more.](#)
- **Surface and Ground Water – North Dakota.** *(Update to 1/28/19 Weekly Report)* On January 29, HB 1440 failed in the House. The bill would have imposed certain responsibilities on mineral developers related to groundwater. For example, the bill required certain sample analysis be conducted “at least thirty days before the commencement of construction of any proposed oil or gas well site, tank battery site, access road, or underground gathering pipeline right of way, the mineral developer shall obtain samples from the top six inches of topsoil and from between six to twenty-four inches of the soil.” Additionally, testing results would have been required to be provided to the surface owner and also filed with the North Dakota Industrial Commission to be placed in the well or facility file. [Read more.](#)

- **Records Disclosure – North Dakota.** On January 11, SB 2212 was introduced by Sen. Brad Bekkedahl (R). The bill would amend current law regarding inspection of production and royalty payment proceeds. The bill provides that if the person obligated to pay royalties does not make the records available as provided to the board within thirty days of receiving notice from the board, the board may impose a civil penalty of up to \$5,000 per day until the records are made available. [Read more.](#)
- **Leasing; State Minerals – South Dakota.** *(Update to 1/28/19 Weekly Report)* On January 28, HB 1030 was delivered to Governor Kristi Noem (R) for signature. The governor has five days after transmission to sign or veto legislation or it becomes law without her signature, and Noem’s signature is expected. The bill would allow 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. The bill has now been referred to the Senate for its consideration. [Read more.](#)
- **Severance Tax Exemption – Texas.** On January 30, Sen. Brian Birdwell (R) introduced SB 533. The bill relates to the severance tax exemption for oil and gas produced from certain inactive wells. The bill updates the definition of a “two-year inactive well” as well as changing the relevant time period for the severance tax exemption, among other amendments to the existing tax code. [Read more.](#)
- **Railroad Commission – Texas.** On January 28, Sen. Donna Campbell (R) introduced SB 483. The bill makes certain amendments to current law relating to permits for certain injection wells that transect a portion of the Edwards Aquifer. [Read more.](#)
- **Railroad Commission – Texas.** On January 28, Rep. Eddie Lucio III (D) introduced HB 1147. The bill amends current law to direct that the Texas Railroad Commission require the installation and use of subsurface safety valves on oil and gas wells drilled in certain areas. [Read more.](#)
- **Eminent Domain – Texas.** On January 28, HB 991 was introduced by Rep. DeWayne Burns (R). The bill relates to the acquisition of real property by an entity with eminent domain authority. The bill amends current law regarding bona fide offers, required terms for instruments of conveyance by certain private entities, and defines a “private entity” for purposes of this section regarding the acquisition of property by certain private entities. The bill also adds a new section regarding low initial offer payments by a private entity condemner. If passed, the bill would be effective September 1, 2019. [Read more.](#) A related bill, HB 1157, was introduced on January 29 by Rep. Cecil Bell (R). The bill contains provisions related to appraisal disclosures and various judicial procedures related to eminent domain. If passed, the bill would be effective December 1, 2019. [Read more.](#)

- **Tax Credits – Texas.** On January 22, Rep. Harold Dutton (D) introduced HB 966. The bill relates to providing a sales and use tax refund or franchise tax credit for businesses that employ certain apprentices. [Read more.](#)
- **Committee Hearing – Texas.** The House Energy Resources Committee will meet jointly with the House Natural Resources Committee on February 6 to discuss the current status of water use in oil and gas production. The Committee will also review various technologies associated with the recycle and reuse of water in oil and gas production. The meeting will be held in E1.030 at 2:00 pm. For further information, please call the Committee Coordinator at 512-463-0850. [Read more.](#)
- **Property Conveyances – Virginia.** On January 7, SB 1292 was introduced by Sen. Jill Holtzman Vogel (R). The bill 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.](#)
- **Severance Tax – West Virginia.** On January 25, HB 2673 was introduced by Del. Eric Householder (R). The bill would exempt low volume oil and gas wells from severance tax, and provides for a special use fee on sales from oil and gas wells which produce more than 5,000 cubic feet of natural gas or one-half barrel of oil per day but less than 60,000 cubic feet of natural gas or 10 barrels of oil per day. The special use fee shall be used by the Secretary of the Department of Environmental Protection to plug abandoned oil and gas wells. [Read more.](#)

### **STATE – Regulatory**

- **Hydraulic Fracturing Ban – Delaware River Basin.** On January 28, New Jersey Governor Philip Murphy (D) [sent a letter](#) to the Delaware River Basin Commission (DRBC) voicing support for expanding current rules banning hydraulic fracturing in the watershed. In addition to barring hydraulic fracturing, he also wants to prevent drillers from extracting freshwater and treating the water that comes up with oil and natural gas. Murphy currently serves as the DRBC chair, and is joined on the commission by the governors of Delaware, Pennsylvania and New York, as well as a representative of the U.S. Army Corps of Engineers. A temporary moratorium on hydraulic fracturing in the Basin has been in place since 2010. The DRBC is currently considering a proposal – introduced in 2017 – to make that ban permanent. [Read more.](#)

### **STATE – Judicial**

- **Deeds; Quiet Title Action – North Dakota.** On January 15, in *Western Energy Corporation v. Stauffer* (Case No. 2019 ND 26), the North Dakota Supreme Court affirmed a lower court ruling finding a quiet title action to be barred by applicable

statutes of limitation and laches and awarding the mineral interests at issue to the Stauffers. The court held that “a simple examination of the title records would have revealed competing leases on the property as well as the discrepancy between the 1959 contract for deed and the warranty deed. The stipulated facts establish that the last transaction on the property involving Western or its predecessors in interest took place in May 1990. Even using this most recent transaction as the time in which the discrepancy between the contract for deed and the warranty deed accrued, the ten-year statute of limitations” under state law had run. [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, New Hampshire, New Jersey, New Mexico, New York, North Carolina, North Dakota, Ohio, 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: **Nevada** and **Oklahoma** (February 4); **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](#), [Florida House](#) and [Senate](#), [Nevada](#) and [Oklahoma House](#).

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

## Franchise Taxation

**California** [AB 308](#), sponsored by Asm. Al Muratsuchi, D-Rolling Hills Estates, was introduced on January 29 and has not yet been referred to a committee. The bill would reduce the franchise tax to \$400 for a small business and \$100 for a microbusiness. The bill would take effect immediately.

## Landmen

### Worker Misclassification

**Indiana** [SB 289](#), sponsored by Sen. David Niezgodski, D-South Bend, has been scheduled for a hearing in the Senate Pensions and Labor Committee on February 6 at 10:00 AM. 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

**Indiana** [HB 1305](#), sponsored by Rep. Shane Lindauer, R-Jasper, passed the House Energy, Utilities and Telecommunications Committee with an [amendment](#) on January 30. The bill would impose a \$25 penalty against owners of oil and gas interests who fail to file a property schedule by the May 15 deadline. If an additional 30 days elapses the penalty would become 20 percent of the taxes finally determined to be due. The bill would take effect July 1.

**Pennsylvania** [HB 247](#), sponsored by Rep. Donna Oberlander, R-Clarion, was referred to the House Environmental Resources and Energy Committee on January 28. The bill would authorize an operator to conduct cross unit drilling when they have the right to drill on separate leases or units, provided an operator reasonably allocates production from the well among leases or units. The bill would take effect 60 days after enactment.

**West Virginia** [SB 52](#), sponsored by Sen. Randy Smith, R-Thomas, passed the Senate Energy, Industry and Mining Committee on January 30. Senator Smith serves as the chair of that committee. The bill is now pending in the Senate Finance Committee. It would entitle natural resource producers to the economic opportunity tax credit. Producers would be able to use the tax credit to offset the severance tax.

**Wyoming** [HB 261](#), sponsored by Rep. John Eklund, R-Cheyenne, was referred to the House Minerals Committee on January 28. The bill would change 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 would also specify that drilling permits are valid for two years but could be extended by an additional two years upon a showing of good cause. The bill would take effect July 1.

## **Leasing**

**Montana [SB 41](#)**, sponsored by Sen. Tom Richmond, R-Billings, has been scheduled for a hearing in the House Natural Resources Committee on February 8. The committee heard from the bill sponsor, a representative of the state Mineral Management Bureau and the Montana Petroleum Association who all testified in support of the bill. The bill would eliminate the requirement that bids for oil and gas lease sales must be made orally.

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