

WEEKLY HIGHLIGHTS AT-A-GLANCE

FEDERAL – Regulatory

- **BLM Lease Sale – Wyoming.** On March 1, the Bureau of Land Management (BLM) reported receiving \$87.9 million in its quarterly oil and gas lease sale. The BLM received bids on 437 of these parcels, totaling 527,000 acres, some of which included Greater Sage-Grouse habitat. The sale was held as scheduled despite calls from environmental groups to halt the leasing of certain parcels. [Read more.](#)

FEDERAL – Judicial

- **Royalties; Leasing – Ohio.** On February 26, in *Bounty Minerals, LLC v. Chesapeake Exploration, L.L.C.* (Case No. 5:17-CV-1695), the U.S. District Court for the Northern District of Ohio refused to allow a royalty owner to file an amended complaint which would have removed the case from federal jurisdiction and put it back in state court. The court held that the case had already been delayed on several occasions and “permitting the amendment would necessitate the reopening of discovery in state court, significantly delaying the prosecution and resolution of these claims.” [Read more.](#)

STATE – Legislative

- **Arctic National Wildlife Refuge – Alaska.** On March 6, the House held its first reading of [SJR 7](#), which the Senate passed on March 4. This joint resolution requests that the U.S. Department of the Interior implement last year’s Act of Congress which authorized an oil and gas leasing program in the coastal plain, specifically stating, “the Alaska State Legislature requests that the United States Department of the Interior, Bureau of Land Management, implement an oil and gas leasing program in the coastal plain of the Arctic National Wildlife Refuge as outlined in the December 2018 Coastal Plain Oil and Gas Leasing Program Draft Environmental Impact Statement.” Although the Interior Department is already committed to the plan, the Alaska delegation wanted to make their position known. [Read more.](#) This legislative action coincides with the BLM’s extension of the public comment period to March 13, 2019 for its Coastal Plain Oil and Gas Leasing Program. [Read more.](#)
- **Mineral Rights; Division Orders – Arkansas.** On February 25, HB 1559 was introduced by Rep. Lane Jean (R). The bill amends current law regarding the assessment of mineral rights for purposes of property taxes. The bill sets forth requirements and certain penalties in the submission of a division order or declaration of interest. [Read more.](#)

Featured Legislation - Colorado

- **Regulatory Amendments; Pooling; Permitting; Setbacks – Colorado.** On March 1, Democratic legislators introduced a sweeping oil and gas bill with the backing of the Democratic governor. At present, the bill is moving through the state Senate. The legislation, [SB19-181](#), as described by sponsors, “enhances local governments’ ability to protect public health, safety, and welfare and the environment by clarifying, reinforcing, and establishing their regulatory authority over the surface impacts of oil and gas development.” This industry-opposed bill, introduced by Senate Majority Leader Stephen Fenburg (D), focuses on key changes to Colorado’s oil and gas industry, which include changes to the mission of the Colorado Oil & Gas Conservation Commission (COGCC) from fostering development of oil and gas to regulation that “protects public health, safety, and welfare, including protection of the environment and wildlife resources.”



The bill also reduces oil and gas industry representation on the COGCC from three commissioners to one; raises the threshold for forced pooling to require a majority of mineral owners; grants local governments the flexibility to set their own drilling rules, including setback limits and the minimum distance for production activity. This includes requiring operators to file, with the application for a permit to drill, either proof that the operator has already filed an application with the affected local government to approve the siting of the proposed oil and gas location and of the local government’s disposition of the application or proof that the affected local government does not regulate the siting of oil and gas locations. The bill also repeals an exemption for oil and gas production from counties’ authority to regulate noise.

“Even though we still expect that the affected E&P companies and Colorado industry associations will keep meeting with political leaders and regulators in the state to negotiate elements of the proposal, the bill was written without apparent input from the energy industry, and its sudden appearance for consideration in a committee hearing heightens the legislative and regulatory risks for Colorado oil and gas producers,” according to analysts at Moody’s Investors Service. The Colorado Petroleum Council (CPC) said in an [organization statement](#), that SB19-181 contains “the most overreaching provisions of any energy proposal we have ever reviewed and all but guarantees that industry will be forbidden from operating in certain jurisdictions.” According to Tracee Bentley, CPC Executive Director, “This bill simply goes too far. There are far too many unintended consequences.”

Various committee amendments have been adopted since bill introduction and further amendments may be expected ([See here](#)). Since its introduction, AAPL has been actively engaged with our leadership, local associations, and various industry stakeholders to vigorously address this detrimental bill. Please stay tuned for further updates as the bill advances through the legislature. [Read more.](#)

- **Unclaimed Property – Colorado.** On February 27, [SB19-088](#) passed the Senate. The bill, introduced by Sen. Bob Gardner (R), seeks to adopt the “Revised Uniform Unclaimed Property Act” and which also applies to mineral proceeds. According to the bill summary, “The act responds to current transactions and practices, in particular electronic records, and seeks to promote uniformity among state laws regarding the disposition of unclaimed property.” [Read more.](#)
- **Abandoned Wells – Kentucky.** (*Update to 3/4/19 Weekly Report*) On March 5, HB 199, passed the Senate by unanimous vote. The bill passed the House by unanimous vote last month. Gov. Matt Bevin (R) must sign or veto legislation within 10 days following transmittal or it becomes law without signature. The legislation, sponsored by Rep. Jim Gooch (R), makes definition changes applicable to existing sections of the state’s Oil and Gas Conservation statute, as well as adding certain provisions regarding administrative regulations and proceedings related to oil and gas violations, bonds for shallow wells, and plugging abandoned wells, among other provisions. [Read more.](#)
- **Production Tax Rates – Montana.** (*Update to 2/4/19 Weekly Report*) On February 19, SB 28 was signed into law by Gov. Steve Bullock (D). The Act, introduced by Sen. Tom Richmond (R), removes the pricing trigger that determines the tax rate on incremental oil production from an approved tertiary recovery project. However, according to the sponsoring memo, there is currently no incremental tertiary oil production in Montana. [Read more.](#)
- **Tax Funds Appropriations – New Mexico.** On March 1, SB 401 passed the Senate and has been referred to the House. The bill, introduced by Sen. Carlos Cisneros (D), amends current law regarding the distribution of Federal Mineral Leasing Act revenue to the Tax Stabilization Reserve, which, among other provisions, allocates an annual appropriation to the Bureau of Geology and Mineral Resources of the New Mexico Institute of Mining and Technology. If passed, the amendments will be effective July 1, 2021. [Read more.](#)
- **Mineral Rights – North Dakota.** On February 27, [SB 2211](#), was received by the House after passing the Senate by unanimous vote. The bill, introduced by Sen. Brad Bekkedahl (R), relates to the ownership of mineral rights of land inundated by Pick-Sloan Missouri basin project dams. The bill directs the North Dakota Industrial Commission (NDIC) to determine the delineation of the ordinary high water mark of the U.S. Army Corp of Engineers survey segments from the northern boundary of the Fort Berthold Indian reservation to the southern border of Sections 33 and 34, Township 153 North, Range 102 West, McKenzie, Mountrail, and Williams Counties, North Dakota. An engineering firm will be able to provide NDIC with the necessary data to implement any acreage adjustments, lease bonus and royalty refunds, and payment demands as may be necessary relating to state-issued oil and gas leases. [Read more.](#)

- **Eminent Domain – North Dakota.** *(Update to 2/25/19 Weekly Report)* On March 6, HCR 3013 failed in the House by an 8(Y)-83(N) vote. This concurrent resolution, sponsored by Rep. Jon Nelson (R), which sought to amend the state constitution, would have allowed public entities to exercise eminent domain over pooled or unitized minerals and pooled or unitized pore space for the benefit of private industry. [Read more.](#)
- **Permitting; Public Hearings – Texas.** *(Update to 3/4/19 Weekly Report)* On March 1, HB 2920 was introduced by Rep. Chris Turner (D). The bill relates to the requirement of a public hearing on certain applications for a permit to drill an oil or gas well and would require an applicant for a permit to drill a new oil or gas well to indicate on the application whether the proposed well site is located within 1,500 feet of the property line of a child-care facility, private school, or primary or secondary public school. The Railroad Commission would also determine whether such an application would be approved as well as hold hearings related to such applications. [Read more.](#) The Senate version of this bill, SB 1156, sponsored by Sen. Judith Zaffirini (D), was introduced on February 26. [Read more.](#)
- **Oil and Gas Facilities – Texas.** On March 1, SB 1380 was introduced by Sen. Jose Rodriguez (D). The bill relates to the analysis of inspection and maintenance requirements for air quality permits issued by the Texas Commission on Environmental Quality for certain oil and gas facilities. [Read more.](#)
- **Gas Production Tax Reductions – Texas.** On March 1, SB 1417 was introduced by Sen. Nathan Johnson (D). Regarding the gas production tax, the bill would set certain dates for the phasing out of the tax reduction for certain high-cost gas. [Read more.](#)
- **Severance Tax – Texas.** *(Update to 2/25/19 Weekly Report)* On March 4, HB 1558 was referred to the House Ways & Means Committee. The bill, introduced by Rep. Chris Paddie (R) in February, would make changes related to the severance tax exemption for oil and gas produced from certain inactive wells. [Read more.](#)
- **Tax Credits – Texas.** On March 4, HB 3067 was introduced by Rep. Trent Ashby (R). The bill relates to an oil and gas production tax credit for oil and gas producers that provide produced water for recycling. [Read more.](#)
- **Severance Tax – Texas.** On March 5, HB 3275 was introduced by Rep. Jessica Gonzalez (D). The bill would repeal the exemption of vented or flared gas from the severance tax, and if passed would take effect September 1. [Read more.](#)
- **Pooled Units – Texas.** On March 5, HB 3226 was introduced by Rep. Charlie Geren (R). The bill relates to the terms of dissolution of an oil or gas pooled unit whereby a unit is automatically dissolved two years, instead of one year, after its effective date if no

production or drilling operations have been had on the unit or surface location for the unit. [Read more.](#)

- **Production Proceeds – Texas.** On March 7, SB 1988 was introduced by Sen. Pat Fallon (R). The bill relates to causes of action for withholding payments of oil and gas production proceeds and disallows a payee from bringing an action for breach of contract against a payor pursuant to existing [Section 91.402\(b\)](#) of the state code. [Read more.](#)
- **Methane Emissions – Texas.** On March 7, SB 2064 was introduced by Sen. José Menéndez (D). As it relates to the University of Texas System, the bill states that “Under each lease relating to oil or gas issued under this subchapter, the lessee shall implement a methane reduction plan reviewed and approved by the board of regents of The University of Texas System under procedures adopted by the board. The University of Texas Bureau of Economic Geology shall assist the board and the lessee in matters relating to the plan.” [Read more.](#)
- **Production Taxes – Texas.** On March 7, HB 3865 was introduced by Rep. Ernest Bailes (R). The bill relates to calculation of daily production for purposes of the oil and gas production tax credits for low-producing wells and leases. [Read more.](#)
- **Production Taxes – Texas.** On March 7, HB 3717 was introduced by Rep. Alex Dominguez (D). The bill relates to an oil and gas production tax credit for oil and gas producers that provide treated produced water to aquifer storage and recovery project operators. [Read more.](#) The Senate version of the bill, SB 1999, was also introduced the same day by Sen. Juan Hinojosa (D). [Read more.](#)
- **Public Hearings – Texas.** On March 13, the House Ways & Means Committee will be holding a public hearing on a number of bills, including some related to ad valorem taxes, among others. The hearing will be held at 8:00 AM in Room JHR 140 of the State Capitol complex. For further information, contact the Texas House Committee Coordinator at 512-463-0850. [Read more.](#)

STATE – Judicial

- **Overriding Royalties; Leasing – Texas.** On March 1, in *Burlington Resources Oil & Gas Company LP v. Texas Crude Energy, LLC* (Case No. 17-0266), the Texas Supreme Court was tasked with having to “construe an opaquely worded oil and gas agreement” and in so doing reversed the appellate court and held that post-production costs could be deducted when calculating royalty payments. Amber Harvest, an affiliate of Texas Crude Energy, owned overriding royalty interests in the oil and gas leases operated by Burlington. Texas Crude sued Burlington, alleging that the parties’ agreements prohibited Burlington from charging post-production costs to the royalty holder.

After construing the agreements based on the language the parties chose, the Supreme Court held that Burlington’s construction of the parties’ contracts was correct and that Burlington may deduct post-production costs when calculating royalty payments. [Read more](#).

INDUSTRY NEWS FLASH:

◆ **U.S. will soon surpass Saudi Arabia in petroleum exports.** According to a new report from Rystad Energy, the United States’ surging oil and gas production will soon allow the country to surpass Saudi Arabia in liquid petroleum exports. “Increasingly profitable shale production and a robust global appetite for light oil and gasoline is poised to bring the U.S. to a position of oil dominance in the next few years.” [Read more](#).

State-by-State Legislative Session Overview

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

Vermont is in recess until March 12. **Alabama**’s regular session is in recess until March 19.

Alabama’s Republican Gov. Kay Ivey called an immediate [special session](#), beginning on March 6, focused on a proposed gasoline tax increase to fund road and bridge construction, reports [Alabama Public Radio](#).

West Virginia Republican Gov. Jim Justice signed a [proclamation](#) on March 7 authorizing a special session to act on education matters, the [Charleston Gazette-Mail](#) reports. A brief press release from the office of Governor Justice can be found [here](#). The proclamation outlines a broad special session scope, authorizing consideration of general improvements to the state’s public education system and employee compensation.

The following state is scheduled to convene its 2019 legislative session on the date provided: **Louisiana** (April 8).

The following states adjourned their 2019 legislative sessions on the dates provided: **Virginia** (February 24) and **Wyoming** (February 28).

The following states are scheduled to adjourn on the dates provided: **West Virginia** (March 9) and **South Dakota** (March 13).

The following states had crossover deadline on the dates provided: **Montana** (March 2); **Georgia** (March 7) and **Hawaii** (March 8).

The following states have crossover deadlines on the dates provided: **Utah** (March 11); **Washington** (March 13); **Oklahoma** (March 14) and **Vermont** (March 15).

Wyoming Republican Gov. Mark Gordon has until March 15 to act on legislation presented on or after February 25 or it becomes law without signature. **Virginia** Democratic Gov. Ralph Northam has until March 26 to act on legislation presented on or after February 16 or it becomes law without signature. **Illinois** Democratic Gov. Jay Pritzker has 60 calendar days while the legislature is in session to act on legislation or it becomes law without signature.

The following state is currently posting 2019 bill drafts, pre-files and interim studies: [Louisiana](#).

Hydraulic Fracturing

Illinois [HB 282](#), sponsored by Rep. Robyn Gabel, D-Evanston, was heard in the House Energy and Environment Committee on March 7. The bill has been scheduled for another hearing in that committee on March 12 at 4:00 PM. The bill would require the following information to be included on a well permit:

- The GPS surface and bottom hole locations for all wells drilled utilizing directional or horizontal drilling techniques.
- A list of chemicals and additives intended to be used in the drilling or completion operations.

The bill would also prohibit horizontal wells or directionally drilled wells from being classified as confidential. The bill would require the Department of Natural Resources to make specified information available on its website including drilling permits issued, as well as well drilling and completion reports. The bill would protect furnished trade secret information from further disclosure if the department determines that the information has not been published, disseminated or otherwise become a matter of general public knowledge and the information has competitive value. The bill would take effect January 1, 2019 if passed prior to May 31; however, if the bill is passed after May 31 then it would take effect June 1, 2019.

Illinois [HB 1562](#), sponsored by Rep. Will Guzzardi, D-Chicago, was heard in the House Labor and Commerce Committee on February 6. The bill has been scheduled for another hearing in that committee on March 13 at 2:30 PM. The bill would require the written consent of each owner of a mineral interest and each surface owner as part of a permit for drilling or hydraulic fracturing operations. Violations would result in an immediate cessation of operations, penalties and payment of treble the full market value of the mineral resource extracted.

Landmen

Independent Contractors

Tennessee [SB 466](#), sponsored by Sen. Kerry Roberts, R-Springfield, had been scheduled for a hearing in the Senate Commerce and Labor Committee on March 5 but action was deferred until March 19. The bill would require the consideration of the IRS 20-factor test to determine whether an employer-employee relationship exists for the purposes of various state laws. The bill's companion [HB 539](#), sponsored by Rep. Dan Howell, R-Cleveland, has been scheduled for a hearing in the House Employee Affairs Subcommittee on March 12 at 3:00 PM.

Oil and Gas

General

Indiana [HB 1305](#), sponsored by Rep. Shane Lindauer, R-Jasper, has been scheduled for a hearing in the Senate Utilities Committee upon adjournment. 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.

New Mexico [SB 186](#), sponsored by Sen. Richard Martinez, D-Espanola, was heard in the Senate Judiciary Committee on March 1 and March 6; information from the hearings was not immediately available. The bill would amend the oil and gas act to allow the Oil Conservation Division of the Energy, Minerals and Natural Resources Department to hold administrative proceedings to enforce the act by issuing compliance orders and assessing civil penalties. The bill would increase the civil penalties from \$1,000 per day to \$15,000 per day and would add civil penalties of not more than \$25,000 for violations of court orders or compliance orders. The bill would also provide that knowingly violating the oil and gas act would constitute a third-degree felony. The bill would take effect July 1.

West Virginia [HB 2673](#), sponsored by Del. Joe Canestraro, D-Benwood, passed the Senate Finance Committee with an amendment on March 7. The bill would create the Oil and Gas Abandoned Well Plugging Fund that would be used to plug and reclaim abandoned oil and gas wells without a responsible owner. It would be funded by a fee of 2.5 percent of the value of oil and gas from wells that produced an average of more than 5,000 cubic feet but less than 60,000 cubic feet of gas or between one half and 10 barrels of oil. The bill would impose a fee of five percent on the value of oil and gas produced from wells that produced more than 60,000 cubic feet of gas or more than 10 barrels of oil per day. If the value of the fund exceeds \$4 million on June 1 of any fiscal year the fee would not be imposed.

West Virginia [SB 665](#), sponsored by Senate Energy, Industry and Mining Committee Chair Randy Smith, R-Thomas, passed the House Energy Committee with an amendment on March 5 and is now pending a third reading in the House. As amended, the bill would allow for expedited oil and gas well permitting and permit modifications after the payment of applicable expedited

fees. The fees would be \$10,000 for the initial horizontal well and \$5,000 for each additional horizontal well drilled on a single well pad at the same location. If the permit is not approved 45 days after the submission of a permit application a daily refund would be provided for each day the department fails to act on the permit until the fee is reduced to the normal permit fee amount.

Leasing

Montana [SB 41](#), sponsored by Sen. Tom Richmond, R-Billings, has been scheduled for a hearing in the House Natural Resources Committee on March 20 at 3:00 PM. The bill would eliminate the requirement that bids for oil and gas lease sales must be made orally.

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