

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

- **Federal Oil & Gas Royalty Calculations.** On March 2, Sen. Steve Daines (R-MT) introduced [S. J. Res. 29](#) to express disapproval and seek nullification of the Department of Interior's Office of Natural Resource Revenue rule for calculating the value of oil and gas extracted on public lands for royalty purposes. The final rule, *Consolidated Federal Oil & Gas and Federal & Indian Coal Valuation Reform* ([81 Fed. Reg. 43337](#)), published last July, was finalized recently enough for Congress to undo it under the Congressional Review Act. This is the Senate counterpart to [H. J. Res. 71](#), introduced on February 13 by Rep. Scott Tipton (R-CO), as reported in the February 20, AAPL Governmental Affairs Weekly Report. [Read more.](#)
- **BLM Planning 2.0 Rule.** (Update to 2/6/2017 Weekly Report) Last week, the U.S. Senate voted on and passed the disapproval resolution [S. J. Res. 15](#) to overturn the BLM's Resource Management Planning rule, known as "Planning 2.0". "This rule takes authority away from those who know best what we need to do to manage and sustain our resources, and it puts it in the hands of the federal government and bureaucrats here in Washington, D.C.," said Rep. Liz Cheney (R-WY), the resolution's sponsor in the U.S. House of Representatives, which passed its version of the measure, [H. J. Res. 44](#), on February 7. The measure now heads to President Trump for signature. [Read more.](#)
- **Thompson Divide Leasing.** On March 1, Sen. Michael Bennet (D-CO) introduced [S. 481](#), known as the "Thompson Divide Withdrawal and Protection Act of 2017". The bill seeks to withdraw certain Federal lands in this western Colorado territory from future mineral leasing as well as canceling certain existing leases. According to a statement by Bennet, the "bill would withdraw most of the Thompson Divide area near Carbondale and Glenwood Springs from future oil and gas development, while also preserving existing private property rights for current leaseholders and landowners. The acreage to be withdrawn is based on specific requests and feedback from Gunnison, Pitkin, and Garfield counties, as well as local oil and gas developer Gunnison Energy." [Read more.](#)

**FEDERAL – Judicial**

- **Royalties – Louisiana.** On February 17, in *Griffin v. Amerada Petroleum Corp.* (Case No. CV 14-02998), the U.S. District Court for the Western District of Louisiana dismissed a case in which a landowner claimed that his lessees owed him royalties on production from the mid-1980s to present, concluding that the three-year statute of limitations

for unpaid royalties ran and the discovery rule that might otherwise toll the statute didn't apply given the landowner's initial investigation in the 1980s put him on constructive notice of the potential claim. [Read more.](#)

## **STATE – Legislative**

- **Notary Law – Idaho.** On February 23, the State Affairs Committee introduced HB 209. This bill would repeal the current notary statutes and introduces a completely new notary act, “Revised Uniform Law on Notarial Acts”, utilizing a draft that was originally provided by the Uniform Law Commission. The primary purpose of this new Act is to provide notaries public with the option to use technology to perform notarial acts. The measure also requires the Secretary of State to provide a course of education for applicants and notaries who wish to use it. The 3/6/2017 Weekly Report mistakenly identified this bill as HB 208, rather than HB 209. [Read more.](#)
- **Ban on Hydraulic Fracturing – Maryland.** (Update to 2/20/2017 Weekly Report) A bill that would prohibit hydraulic fracturing in the state, [HB 1325](#), passed the House of Delegates last Friday. The bill now heads to the Senate where its prospects are less favorable. “The chairman of the Senate Education Health and Environmental Affairs Committee, Joan Carter Conway of Baltimore City, says she won't bring the bill to the Senate floor unless lawmakers have enough votes to override a possible veto from Governor Hogan.” Conway says she doesn't believe there are the minimum number of 29 votes in the Senate to override a possible veto, and there may not be the 85 votes needed to override a veto in the House of Delegates. [Read more.](#)
- **Recordation – Maryland.** On March 3, SB 376, sponsored by Sen. Wayne Norman (R), passed in the Senate. The bill repeals the requirement that a mortgage or deed of trust bear a specified attorney certification or a certification that the instrument was prepared by a specified party in order to be recorded, and providing that the clerk of the circuit court may record a mortgage or deed of trust prepared by one of the parties named in the instrument without a certain certification. The measure now moves to the House of Delegates for consideration. [Read more.](#)
- **Tax Liens and Tax Deeds – Montana.** (Update to 1/23/17 Weekly Report) On March 2, HB 18 was signed into law by Governor Steve Bullock (D). The Act revises the process for the sale of a tax lien and issuance of a tax deed, which includes the elimination of a tax lien sale, among other provisions. [Read more.](#)
- **Mineral Rights – North Carolina.** On March 7, Sen. Valerie Foushee (D) introduced SB 203. The bill would establish a uniform procedure to determine title to oil, gas or mineral rights, specifically addressing situations of severed estates. [Read more.](#)
- **Hydraulic Fracturing – Oregon.** On March 8, the House Energy and Environment

Committee held a hearing on HB 2711, a bill introduced by Rep. Ken Helm (D). The measure would impose a moratorium until December 31, 2026, on hydraulic fracturing for oil and gas exploration and production within the state. [Read more](#).

- **Abandoned Wells – Texas.** On March 6, Rep. Tracy King (D) introduced HB 3025. The bill sets requirements for the plugging or capping of open, uncovered, abandoned and deteriorated wells. [Read more](#).
- **Wells – Texas.** On February 22, Rep. Drew Darby (R) introduced HB 2277. The bill makes various changes to high-cost gas well procedures including the process for certification that a well produces or will produce high-cost gas. [Read more](#).
- **Mineral Use – Texas.** On February 28, Rep. Richard Raymond (D) introduced HB 2539. The bill makes changes to definitions of a qualified subdivision as it relates to the law governing mineral use of subdivided land. Senate versions of this bill are [SB 969](#) and [SB 682](#). [Read more](#).
- **Waste; Unitization – Texas.** On March 2, Rep. Greg Bonnen (R) introduced HB 2688. The bill relates to the authority of the Texas Railroad Commission to prevent waste of oil and gas. [Read more](#).
- **Royalties; Audits – Texas.** On March 2, Rep. Roberto Alonzo (D) introduced HB 2713. The bill relates to an audit by the comptroller of unpaid oil and gas royalties held in trust by the Texas Railroad Commission, requiring an audit and report filing. [Read more](#).
- **Texas Railroad Commission – Texas.** On February 27, Sen. Van Taylor (R) introduced SB 300. The bill amends the functions of the Texas Railroad Commission regarding certain rulemaking procedures and alternative resolution policy. [Read more](#).

## **STATE – Judicial**

- **Landman Licensing – Ohio.** (courtesy Vorys Sater, Seymour and Pease LLP) On February 17, in [Dundics v. Eric Petroleum Corp.](#) (Case No. 15 MA 0156), the Ohio Court of Appeals for the Seventh District held that landmen are subject to the requirements of state law, R.C. Chapter 4735, requiring real estate broker’s licenses in order to be entitled to compensation for brokering deals with landowners on behalf of oil and gas companies. Agreeing with the trial court’s ruling, the appellate court held that “real estate,” for purposes of the statute, was broadly defined to include “leaseholds as well as any and every interest or estate in land” – which, under Ohio law, includes oil and gas rights. Thus, to be entitled to compensation for brokering in oil and gas rights, the landmen needed to be licensed. The court rejected the landmen’s argument that the law was inapplicable because oil and gas was different from traditional real property, noting that “the fact that oil and gas rights are different does not excuse third parties

who ask the courts to enforce their engagement with either owners of surface real estate or those who wish to extract subsurface oil and gas from the real estate broker's license requirement at issue here." Also, based on its conclusion that the statute was unambiguous, the court declined to consider "legislative intent, legislative history, public policy, [or] the consequences of [its] interpretation." For further information on this pivotal case, check out the Vorys Energy & Environmental Law Blog [here](#). Of particular note, AAPL has been engaged in this case since the appeal in December 2015, when we produced and filed an amicus brief in support of the plaintiff's position and member landmen working in Ohio. Although the appellate court ruled adversely to many AAPL members at this time, we will monitor the case as it is appealed to the Ohio Supreme Court and we will determine next steps for further amicus briefs and possible legislative options to address the decision. You may access AAPL's [amicus brief here](#). We will continue to keep you informed as this matter progresses. [Read more](#).

- **Trustees; Conveyances – Ohio.** On February 21, in *Ashtabula Cty. Tech. & Career Ctr. v. Thompson* (Case No. 2016–A–0035), the Ohio Court of Appeals for the Eleventh District rejected a trustee's attempt to claim oil and gas rights on property that a trustor wished to distribute to a technical school upon her death, holding that the trust document unambiguously conveyed all the interests in property at the time of the trustor's death (including the oil and gas rights and a related oil and gas lease). The court reasoned that a trustee's general powers to control trust property does not trump the intent of the trustor particularly when the trust contained no express reservation of the oil and gas rights. [Read more](#).
- **Dormant Minerals Act – Ohio.** On February 27, in a pair of Seventh District appellate decisions, [Williams v. Stillion](#) (Case No. 14 MO 0011) and [Stadler v. Bucher](#) (Case No. 14 MO 0010) the courts affirmed the September 15, 2016 Ohio Supreme Court decision in [Corban v. Chesapeake Exploration, L.L.C.](#) (as reported in the 1/23/2017 Governmental Affairs Weekly Report) that the 2006 Dormant Minerals Act applies to disputes over severed mineral interests arising after the June 2006 amendment to that statute. [Read more](#).
- **Delay Rental Payments – Ohio.** On February 27, in *Wilson v. Beck Energy Corp.* (Case No. 15 MO 0010), the Ohio Court of Appeals for the Seventh District held that a lessor's acceptance of annual delay rental payments did not maintain an expired lease on a year-to-year basis as the lessee claimed, rejecting the lessee's argument that the acceptance of payments triggered a mutual consent provision to maintain the lease and holding instead that the lessor's acceptance at most maintained the oil and gas lease as long as the lessor wanted – similar to a month-to-month tenancy – until the lessor decided to terminate the lease by filing suit. [Read more](#).
- **Top Leases; Rule Against Perpetuities – Texas.** On March 3, in *BP America Prod. Co. v. Laddex, Ltd.* (Case No. 15-0248), the Texas Supreme Court was asked to apply the rule against perpetuities to a top lease and to review the trial court's judgment terminating

a bottom lease based on jury findings that the lease failed to produce in paying quantities over a specified period. The Court of Appeals held that the rule did not invalidate the top lease at issue and that the trial court erroneously charged the jury on the production-in-paying-quantities question, necessitating a new trial. The Supreme Court agreed with the Court of Appeals and ordered a new trial. [Read more.](#)

- **Assignments; Farmout Agreements – Texas.** (from Kiefaber & Oliva LLP Energy Law Update) On January 31, in [Carrizo Oil & Gas, Inc. v. Barrow-Shaver Res. Co.](#) (Case No. 12-15-00083-CV), the Court of Appeals concluded that if a consent-to-assignment provision in the farmout agreement at issue failed to include a reasonableness clause, the consenting party has an unqualified right to withhold consent. Of note is that Texas law does not require reasonableness or good cause to withhold consent. As the Supreme Court points out, this case “highlights the importance of the ‘shall not be unreasonably withheld’ language in all contracts. Without the inclusion of the language, a party may withhold consent arbitrarily.” [Read more.](#)

### **INDUSTRY NEWS FLASH:**

◆ **Crude oil exports hit record levels.** Barely a year after the 40-year-old ban on exporting U.S. crude was lifted, exports surged to more than 1 million barrels a day in the first two weeks of February. The surge came after exports had averaged a little over half a million barrels a day through November, according to the U.S. Energy Information Administration (EIA). The latest EIA report showed increases in December and January and then a jump to 1.2 million barrels a day for the week ending February 17. [Read more.](#)

## **State-by-State Legislative Session Overview**

**Wyoming** adjourned its 2017 legislative session on March 3, the [Casper Star-Tribune](#) reports. Prior to adjournment, the legislature passed [HB 236](#), an omnibus education funding bill that will cut education funding by \$34 million starting July 1. The bill is pending enrollment and presentation to Republican Gov. Matt Mead, who will have until March 18 to act on the bill or it becomes law. In addition to the funding reduction, the bill would also establish a committee to examine proposals to restructure existing education funding mechanisms. Legislators will now set their sights on closing a projected \$400 million budget shortfall for fiscal year 2019, and some have indicated that a special session between now and next year’s budget session, scheduled to convene next February, may be necessary.

**Alaska, Alabama, 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, Washington, West Virginia and Wisconsin** are in regular session. The **District of Columbia** Council, **Puerto Rico** and the **United States** Congress are also in regular session.

**Wisconsin** convened a special session on January 5 that will run concurrently with the regular session.

**Vermont** is in recess until March 13.

The following states adjourned on the dates provided: **Wyoming** (March 3) and **Utah** (March 9).

**South Dakota** is expected to recess its legislative session on March 10 and reconvene on March 28 to consider vetoes and adjourn.

The following states are expected to adjourn their legislative sessions on the dates provided: **New Mexico** (March 18), **Idaho** (March 24) and **South Dakota** (March 28).

**Wyoming** Republican Gov. Matt Mead has until March 18 to act on legislation presented on or after March 1 or it becomes law without signature. **Virginia** Democratic Gov. Terry McAuliffe has until March 27 to act on legislation presented after February 18 or it becomes law without signature. **Utah** Republican Gov. Gary Herbert has until March 29 to act on legislation presented after February 27 or it becomes law.

[Louisiana](#) is currently posting prefiles for the 2017 legislative session and is scheduled to convene its legislative session on April 10. Democratic Gov. John Bel Edwards had a signing deadline for legislation from the first special session on March 5. A list of enacted legislation from the special session can be found [here](#).

## Endangered Species

**Arizona** [SCM 1001](#) passed the House on March 9 and was returned to the Senate. This resolution urges the U.S. Congress to take action to repeal final rules expanding the definition of critical habitat and would require the Arizona secretary of state to bring this resolution to the president, the Senate president, the House speaker and every member of congress from Arizona.

**New Mexico** [SB 481](#) was heard again in the Senate Conservation Committee on March 7; the bill was previously discussed on March 4. This bill, sponsored by Sen. William Burt, R-Alamogordo, would have the director of the Department of Game and Fish conduct research on the economic impact in New Mexico of having a species being listed, or potentially listed, as being threatened or endangered. The director would also, if requested by local or regional government, residents, property owners or other stakeholders in the state, be required to provide assistance in evaluating and implementing cost effective strategies for mitigating impacts to and recovery of endangered species that are consistent with economic development and growth in the state. The director would also be required to conduct research on species of interest, which are species that are being considered as a candidate for endangered species. If this bill becomes law, it will take effect on July 1, 2017.



## Franchise Tax

**Arkansas** [HB 1644](#) was enrolled on March 7 and was ordered to be sent to Republican Gov. Asa Hutchinson. This bill would change the filing date for corporate franchise tax from December 31 to the end of the last day of the corporation's fiscal year.

If this bill is enacted, it would go into effect for tax years beginning on or after January 1, 2017. The bill is sponsored by Rep. Dwight Tosh, R-Jonesboro.

**California** [AB 1256](#) was referred to the Assembly Revenue and Taxation Committee on March 9 and is eligible to be heard on or after March 21. This bill would reduce that minimum franchise tax in the second taxable year for a new corporation, and that annual tax in the first taxable year for a new limited partnership, new limited liability partnership, and new limited liability company that is a small business, which is defined as a business entity with gross receipts of \$5,000 or less. The franchise tax would be \$100 if the company is doing less than \$5,000 per year in gross receipts.

If this bill becomes law, it would take effect for taxable years beginning on or after January 1, 2018.

Action on **Tennessee** [SB 8](#) in the Senate Finance, Ways and Means Committee's Revenue Subcommittee was deferred from March 1 to March 15. This bill would change the apportionment formula used to calculate franchise tax from a three-factor formula to a single-sales-factor formula.

This bill is sponsored by Sen. Mark Green, R-Clarksville, and would become law immediately if enacted.

The House companion bill, [HB 714](#), is pending in the House Finance, Ways and Means Subcommittee.

**Texas** [SB 17](#) passed the Senate Finance Committee on March 6 as substituted. This bill would decrease the franchise tax rate until it is eliminated. If enacted, the bill would become effective on September 1, 2017. This bill is sponsored by Sen. Jane Nelson, R-Flower Mound.

## Lands

### Leasing

Bill sponsor Sen. Dan Hughes, R-Venango, indicated that **Nebraska** [LB 535](#) is a priority bill for him this session. LB 535 is pending in the Senate Revenue Committee and was heard on February 22, but the committee did not vote on the bill. This bill would exempt oil, gas or mineral lease conveyance from the requirement of filing a statement with the register of deeds. This bill would become effective three months after adjournment if enacted.

## Pooling

**Alabama** [HB 169](#) passed the House on March 7 and was referred to the Senate Finance and Taxation General Fund Committee. Under current law, risk compensation fees cannot be imposed unless all affected parties have been given notice and a public hearing is held by the State Oil and Gas Board and the board determines all necessary requirements for imposing the fee have been met. This bill, which is sponsored by Rep. Victor Gaston, R-Mobile, would clarify that although risk compensation fees cannot be charged against the interest of an owner in a production pool who did not receive a notice of the hearing on the petition requesting the imposition of the fee, the fee is chargeable against the interests of the other nonconsenting owners in the unit who were given the notice. Under current law, if a productive well is drilled on a pool, those owners who did not pay their share of the drilling costs may have what they owed deducted from production proceeds. They would have to also pay a risk compensation fee of equal to 150 percent of that owner's share of the costs but that in all events a 3/16<sup>th</sup> share of production from the well must be treated as royalty and is free from any drilling costs or risk compensation fees.

**Alabama** [SB 212](#) passed the Senate Transportation and Energy Committee on March 9 and is now awaiting third reading. Under current law, risk compensation fees cannot be imposed unless all affected parties have been given notice and a public hearing is held by the State Oil and Gas Board and the board determines all necessary requirements for imposing the fee have been met. This bill, which is sponsored by Rep. Victor Gaston, R-Mobile, would clarify that although risk compensation fees cannot be charged against the interest of an owner in a production pool who did not receive a notice of the hearing on the petition requesting the imposition of the fee, the fee is chargeable against the interests of the other nonconsenting owners in the unit who were given the notice. Under current law, if a productive well is drilled on a pool, those owners who did not pay their share of the drilling costs may have what they owed deducted from production proceeds. They would have to also pay a risk compensation fee of equal to 150 percent of that owner's share of the costs but that in all events a 3/16<sup>th</sup> share of production from the well must be treated as royalty and is free from any drilling costs or risk compensation fees.

Sen. Greg Albritton, R-Bay Minette, is the sponsor. The House companion, [HB 169](#), passed the House on March 7 and was referred to the Senate Finance and Taxation General Fund Committee on March 7.

**North Dakota** [HB 1257](#) is scheduled for a March 10 hearing in the Senate Energy and Natural Resources Committee. When filing for a petition for a proposed plan of unitization, in order for the plan to be approved, it will have to be signed by the person who will be required to pay more than 55 percent of the cost of the unit operation, and by the owners of more than 55 percent of the royalty interests, a proposed decrease from 60 percent in both cases.

## Oil and Gas

### Oil and Gas General



**Arkansas** [HB 2086](#) is scheduled for a hearing in the House Insurance and Commerce Committee on March 13. This bill, which is sponsored by Rep. Warwick Sabin, D-Little Rock, aims to empower landowners who are facing the seizure of their property by a pipeline company using the power of eminent domain. At least 30 days before requesting an order from the Arkansas Public Service Commission and a permit from the Department of Environmental Quality, pipeline companies would be required to provide a notice of their intent to exercise a right of eminent domain and include specifics for their development in the plan. The pipeline company would also have to obtain an order verifying that the pipeline will operate a common carrier facility and include certain information in the application process. Pipeline companies would be required to obtain a permit from the Department of Environmental Quality before exercising the right of eminent domain. The bill would hold pipeline companies liable to the landowner for damage caused to the property from surveying. There is an emergency clause in the bill and the bill would become effective when the governor signs it. If the bill is not signed by the governor it will become law without signature or if it is vetoed and the veto is overridden, it will become effective on that date.

**Minnesota** [HF 1949](#) was introduced on March 2 by Rep. Mike Sundin, DFL-Esko, and was referred to the House Civil Law and Data Practices Committee. When private land is proposed to be purchased for the construction of a site or rout for a pipeline by eminent domain proceedings, this bill would give the landowner the option to require the pipeline owner to condemn a fee interest in any amount of contiguous, commercially viable land the landowner owns in undivided fee and elects in writing to transfer to the pipeline owner within 60 days after receipt of the notice. Within 60 days of the pipeline owner receiving the request from the landowner to exercise this option, the pipeline owner must provide written notice to the landowner of any objection the pipeline has to the landowner's decision and if no objection is made within that time, any objection would be waived. Within 120 days of the objection by the pipeline owner, the district court that has jurisdiction over the eminent domain proceeding must hold a hearing to determine whether the pipeline owner's objection is upheld or rejected.

When a pipeline has ceased operation for any reason, this bill would require that the operator notifies the landowner and the pipeline owner would be responsible for removing all the abandoned property that was the pipeline. The pipeline owner would be responsible for all removal and land remediation costs. This bill would become effective immediately, if enacted.

**Nevada** [AB 33](#) was heard in the Assembly Natural Resources, Agriculture and Mining Committee on March 9. This bill would abolish the Mining Oversight and Accountability Commission and relinquish the responsibilities of overseeing the mining industry in the state to the Administrator of the Division of Industrial Relations of the Department of Business and Industry. If enacted, this bill would take effect on July 1, 2017.

This bill is sponsored by the Senate Government Affairs Committee.

**North Dakota** [HB 1151](#) was heard in the Senate Energy and Natural Resources Committee on March 9; the committee did not take action on the bill during the hearing. This bill would make it

so that people operating or controlling an oil well do not have to report a spill that is 10 or fewer barrels of oilfield fluid over a 15-day period.

**Texas** [HB 3025](#) was introduced on March 6 and is awaiting committee referral. Sponsored by Rep. Tracy King, D-Uvalde, this bill would change the number of days after a landowner or other person who possess an abandoned well has to plug or cap the well from 180 days to 30 days after discovering it. The bill would add a new section to the existing law that says no later than 10 days after a landowner who possesses a deteriorated well learns of its condition the landowner would have to have the well plugged. Districts would require that owners or a lessee of land with deteriorated wells plug or repair the well sufficiently to prevent pollution of any water, including ground water. If this bill becomes law, it will take effect immediately.

## Royalty Payments

**West Virginia** [HB 2777](#) was introduced on March 2 by Del. Frank Deem, R-Wood, and referred to the House Energy Committee. This bill would require that all unclaimed oil and gas royalties due to a leaseholder of a mineral estate to be transferred and paid to the legal surface owner.

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