

## WEEKLY HIGHLIGHTS AT-A-GLANCE

### FEDERAL – Regulatory

- **BLM Leadership Appointments.** *(Update to 3/4/19 Weekly Report)* On March 20, new Bureau of Land Management (BLM) Alaska State Director, Chad Padgett, took the oath of office. Padgett spent the past 10 years as the Alaska State Director for Alaska Congressman Don Young (R) and reportedly has a broad range of knowledge on Alaska issues. He will oversee management of BLM Alaska's 70 million acres of public land across the state. [Read more.](#)
- **Interior Department Secretary.** *(Update to 2/11/19 Weekly Report)* On March 28, Trump's pick for Interior Secretary, David Bernhardt, will receive a [full committee hearing](#) on his nomination before the Senate Energy & Natural Resources Committee. Earlier this year, [Trump chose David Bernhardt](#) to serve as the next Interior Secretary. Bernhardt has been serving as Acting Secretary since last year following Ryan Zinke's resignation. Kathleen Sgamma, president of the Western Energy Alliance, praised Bernhardt as someone with "a deep understanding of public lands issues" who would be "an excellent choice" to head Interior. Bernhardt has previously held several positions within the Department, including serving as Solicitor, and was also a former oil and gas lobbyist with the firm Brownstein Hyatt Farber Schreck LLP. [Read more.](#)

### FEDERAL – Judicial

- **BLM Leasing – Wyoming.** On March 19, in [WildEarth Guardians, et al. v. Zinke, et al.](#) (Case No. 16-724), a federal judge temporarily blocked oil and gas drilling on 300,000 acres of land in Wyoming, ruling that the Interior Department "did not sufficiently consider climate change" when auctioning off federal land in that state. According to *The Hill*, the D.C. Circuit ruling marks the first time the Trump administration's energy agenda has been halted for not considering climate change. "Given the national, cumulative nature of climate change, considering each individual drilling project in a vacuum deprives the agency and the public of the context necessary to evaluate oil and gas drilling on federal land before irretrievably committing to that drilling," wrote Obama-appointed Judge Rudolph Contreras in his opinion. The court found that although "BLM summarized the potential on-the-ground impacts of climate change in the state, the region, and across the country [...] it failed, however, to provide the information necessary for the public and agency decisionmakers to understand the degree to which the leasing decisions at issue would contribute to those impacts. In short, BLM did not adequately quantify the climate change impacts of oil and gas

leasing.” The governor of Wyoming suggested that the state might appeal the decision. [Read more.](#)

## **STATE – Legislative**

- **Mineral Rights; Division Orders – Arkansas.** *(Update to 3/11/19 Weekly Report)* On March 19, HB 1559 was transmitted to Gov. Asa Hutchinson (R). The governor must sign or veto legislation within five days of transmittal (excluding Sunday), or it becomes law without his signature. The bill, sponsored by Rep. Lane Jean (R), 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.](#)
- **Abandoned Wells – Kentucky.** *(Update to 3/11/19 Weekly Report)* On March 18, HB 199 was signed into law by Gov. Matt Bevin (R). 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. [Read more.](#)
- **Notaries Public – Maryland.** On March 18, SB 678 passed the Senate by unanimous vote and has been referred to the House. The bill, sponsored by Sen. J.B. Jennings (R), would amend the qualifications to become a notary public; increases the maximum fee that may be charged for individual notarial acts; authorizes a notary to perform electronic notarization and remote notarization under specified conditions; specifies restrictions on allowable acts by a notary public; and generally updates provisions related to performing, and maintaining records of notarial acts. [Read more.](#)
- **Taxation – Montana.** On March 15, HB 691 was introduced by Rep. Tom Woods (D). The bill would amend current law by terminating the reduced tax rates for new oil production and new natural gas production and use the proceeds for oil and natural gas impact projects and the promotion of renewable resources. The bill also provides that the revised tax rates apply to oil and natural gas wells drilled after December 31, 2019; defines oil and gas impact projects; establishes priorities for oil and gas impact projects proposals from local governments; provides for review of oil and gas impact project proposals by the Department of Commerce; and creates a community oil and natural gas impact relief account to provide financial assistance to local governments, among other provisions. [Read more.](#)
- **State Energy Office – Nebraska.** *(Update to 1/28/19 Weekly Report)* On March 21, LB 302 was signed into law by Gov. Pete Ricketts (R). The Act, sponsored by Sen. Dan Hughes (R), merges the State Energy Office into the Department of Environmental Quality. The combined agencies are renamed the Department of Environment and

Energy, effective July 1, 2019. The bill also transfers all statutory powers and duties, responsibilities and obligations, employees, and assets of the State Energy Office to the Department of Environment and Energy. [Read more.](#)

- **Taxation – New Mexico.** On March 16, tax bill package, [HB 6](#), passed the legislature. Relevant changes to the tax law include Senate amendments which removed increases in personal income taxes and capital gains increases as well as increased working family tax credits; reduced capital gains from 50 percent to 40 percent; and establishing a new top personal income tax rate of 5.9 percent, contingent on FY 2020 general fund recurring revenues, among other provisions. [Read more.](#)
- **Women in Oil and Gas – New Mexico.** (*Update to 3/4/19 Weekly Report*) On March 16, HB 610 unanimously passed the Senate. The bill passed the House by unanimous vote on February 26. The bill, sponsored by Rep. Candy Spence Ezzell (R), adds a new section to the Workforce Solutions Department Act entitled, “Career Development—Women in the Oil and Gas Industry,” which establishes and promotes programs to create opportunities for women in the oil and gas industry. [Read more.](#)
- **Oil and Gas Tax Revenue Allocations – North Dakota.** On March 19, [HB 1066](#) was signed into law by Gov. Doug Burgum (R). The Act, sponsored by Rep. Mike Nathe (R), amends multiple sections of the oil and gas gross production tax distribution formula, including how several political subdivision amounts are calculated. It also creates a number of new state funds and modifies the order in which state funds will be filled. The Act is effective for taxable events occurring after June 30, 2019. [Read more.](#)
- **Postproduction Deductions; Royalties – North Dakota.** (*Update to 3/4/19 Weekly Report*) On March 14, SCR 4010 was enacted. The concurrent resolution, sponsored by Sen. Brad Bekkedahl (R), directs the Legislative Management to consider studying postproduction deductions from royalty payments. Resolutions are not laws, and as with this resolution, merely requests a study on a policy issue. [Read more.](#)
- **Records Confidentiality – North Dakota.** On March 15, HB 1392 passed the Senate by unanimous vote, and previously passed the House by an 86(Y)-2(N) vote on February 8. The bill, sponsored by Rep. Denton Zubke (R), provides that a record received by the Board of University and School Lands from a private entity for purposes of the board’s audit of the entity’s coal, oil, gas, or other royalty payments to the board is confidential. However, the board may furnish information to the attorney general, other state agencies, a prosecuting official requiring the information for use in prosecuting an official’s official duties, or for certain legislative investigations. Confidential information furnished by the board to any third party under this section remains confidential while in the possession of the third party. Confidential information received by the board from any third party under this section remains confidential while in the possession of the board. [Read more.](#)

- **Hydraulic Fracturing Ban – Oregon.** On March 18, in what was neither unexpected nor surprising, HB 2623 passed the House and has been referred to the Senate. The bill, introduced by Rep. Julie Fahey (D), bans hydraulic fracturing in the state by imposing a “statewide moratorium on hydraulic fracturing used in the exploration for, or production of, oil or gas until 2030.” The bill exempts natural gas storage wells, geothermal activities, and existing coal bed methane extraction wells from the definition of “hydraulic fracturing” subject to the moratorium. The bill would be effective upon passage. [Read more.](#)
- **Landman Registration – Pennsylvania.** *(Update to 2/25/19 Weekly Report)* On March 20, [HB 906](#) was introduced by Rep. Danielle Otten (D). This is the companion bill to SB 257, which was introduced in February and is a reintroduction of a similar failed bill (SB 835) filed in 2018 that never moved forward. Neither bill is expected to move in this session. For background, last year, AAPL was successful in working with various stakeholders to defeat SB 835. That bill would have provided for the mandatory registration of land agents. Under the bill definitions, a “land agent” would also include landmen and related land professionals. The bill would establish and maintain a registry of land agents operating in the state, which would be available for public inspection on the Pennsylvania Real Estate Commission’s website. The commission would also be instructed to establish an initial registration application fee and a biennial renewal fee, which each applicant would have to submit along with specified information, including a list of any other state or other jurisdiction in which the applicant holds or has held a similar registration or license and a list of any other state or jurisdiction in which the applicant has had a similar registration or license suspended or revoked. AAPL is watching both bills closely and will report on any developments. [Read more.](#)
- **Severance Tax – Pennsylvania.** On March 19, Sen. James Brewster (D) introduced SB 457, an “unconventional gas well fee” known as the Extraction for Education and Environmental Protection Tax, to be levied beginning July 1, 2019, that would impose a five percent severance tax on energy extraction. According to the bill sponsor, “Under my plan, the local impact fee, now distributed to state and local governments, would not be impacted. However, gas drillers could credit their fee payment against their severance tax payment.” The bill is not expected to move forward in the Republican-led House. [Read more.](#)
- **Property Conveyances – Virginia.** *(Update to 2/25/19 Weekly Report)* On March 18, SB 1292 was signed into law by Gov. Ralph Northam (D). The Act, sponsored by Sen. Jill Vogel (R), 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. The Act will be effective July 1, 2019. [Read more.](#)

## **STATE – Judicial**

- **Leasing – Pennsylvania.** On March 15, in *Anadarko Petroleum Corp. v. Commonwealth of Pennsylvania* (Case No. 58 C.D. 2018), the Pennsylvania Commonwealth Court held that oil and gas leasing is subject to the state’s consumer protection law. In a case of first impression pertaining to the Pennsylvania Unfair Trade Practices and Consumer Protection Law (UTPCPL), the court found that leases constitute “trade” and “commerce” under the UTPCPL and as such are subject to UTPCPL action by the state Attorney General. However, the court limited the authority of the Attorney General to bring alleged antitrust claims against the litigant oil and gas companies. [Read more.](#)
- **Co-Tenancy; Working Interests; Leasing – Texas.** On March 13, in *Cimarex Energy Co. v. Anadarko Petroleum Corp.* (Case No. 08-16-00353-CV), the Texas Court of Appeals, Eighth Circuit (El Paso) interpreted primary and secondary term lease obligations, requirements to make certain royalty payments on another co-tenant’s production, and the possible finding that a Joint Operating Agreement (JOA) existed between the parties. As to the former issues, the court held that a lease held by a working interest co-tenant expired for lack of production and could not be maintained by production on separate leases held by another working interest co-tenant. The court also analyzed whether a settlement agreement regarding distribution of a share of production was the equivalent of a JOA. Rejecting this claim, the court noted that “In the present case, the Settlement Agreement gave Cimarex the rights of a co-tenant, i.e., the right to an accounting of its 1/6th share of production, less costs and expenses, but did not include any language that would suggest that the parties intended to enter into a joint operating agreement.” [Read more.](#)

## **INDUSTRY NEWS FLASH:**

◆ **U.S. shale production reaches record highs.** According to the U.S. Energy Information Administration’s latest Monthly Crude Oil, Lease Condensate, and Natural Gas Production Report, U.S. natural gas production grew by 10.0 billion cubic feet per day (Bcf/d) in 2018, an 11 percent increase from 2017. “The growth was the largest annual increase in production on record, reaching a record high for the second consecutive year.” Additionally, the Appalachian area remained the largest natural gas-producing region in the United States, with Texas still holding title as the top gas-producing state. [Read more.](#)

## State-by-State Legislative Session Overview

**Alabama, 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 York, North Carolina, North Dakota, Ohio, Oklahoma, Oregon, Pennsylvania, Rhode Island, South Carolina, Tennessee, Texas, Vermont, Washington and Wisconsin** are in regular session. The **District of Columbia, Puerto Rico** and the **United States Congress** are also in regular session.

**Alabama** adjourned their first special session sine die on March 12 after passing three bills related to the Republican Gov. Kay Ivey's infrastructure plan, reports the [Alabama Political Reporter](#).

**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. The proclamation outlines a broad special session scope, authorizing consideration of general improvements to the state's public education system and employee compensation. Education officials kicked off a series of public hearings on March 18 as part of preparations for their upcoming special legislative session. Additional forums are scheduled to take place in early April. The special session is currently in recess to the call of the House speaker and the Senate president.

**South Dakota** has recessed their 2019 legislative session until March 29 where they will return to consider Republican Gov. Kristi Noem's vetoes.

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: **Utah** (March 14) and **New Mexico** (March 16).

The following states are scheduled to adjourn on the dates provided: **Idaho** (March 25); **Kentucky** (March 28); **South Dakota** (March 29); **Georgia** (April 2); **Mississippi** (April 7) and **Maryland** (April 8).

The following states had crossover deadlines on the dates provided: **Washington** (March 13); **Oklahoma** (March 14); **Vermont** (March 15) and **Maryland** (March 18).

The following state has a crossover deadline on the date provided: **New Hampshire** (April 4).

**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. **West Virginia** Republican Gov. Jim Justice has until March 27 to act on legislation presented on or after March 5 or it becomes law without signature. **Utah** Republican Gov. Gary Herbert has until April 3 to act on legislation or it becomes law without signature. **New Mexico** Democratic Gov. Michelle Grisham has until April

5 to act on legislation presented on or after March 13 or it is pocket vetoed. **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.

**Wyoming** Republican Gov. Mark Gordon had a signing deadline on March 15.

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

The following states are currently holding 2019 interim committee hearings: [Virginia](#) and [Wyoming](#).

## Hydraulic Fracturing

**Illinois** [HB 282](#), sponsored by Rep. Robyn Gabel, D-Evanston, was heard in the House Energy and Environment Committee on March 19. The bill has been scheduled for another hearing in that committee on March 26 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 March 20. The bill has been scheduled for a hearing in the Business and Industry Regulations Subcommittee on March 27 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** [HB 539](#), sponsored by Rep. Dan Howell, R-Cleveland, passed the House Consumer and Human Resources Committee with an amendment on March 18 and was placed on the

House calendar for March 28. As introduced 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 amendment removes references to workers compensation. The bill's companion [SB 466](#), sponsored by Sen. Kerry Roberts, R-Springfield, has been scheduled for a hearing in the Senate Commerce and Labor Committee on March 26 at 1:00 PM.

**Texas** [HB 1522](#), sponsored by Rep. Chris Paddle, R-Marshall, has been scheduled for a hearing in the House Energy Resources Committee on March 25 at 2:00 PM. The bill would prohibit the use of covenants not to compete for independent contractors in upstream, downstream and midstream oil and gas operations. The bill would also render such covenants unenforceable.

**Montana** [HB 213/Chapter 71](#) was signed by Democratic Gov. Steve Bullock on March 19 and takes effect July 1. The law will amend existing law relating to stripper well bonus production subject to taxation under the average price provision by removing “for a barrel of west Texas intermediate crude oil” and replacing it with “reported and received by the producer for Montana oil marketed during a calendar quarter is less than \$54 a barrel.”

**Pennsylvania** [HB 828](#), sponsored by Rep. Johnathan Fritz, R-Honesdale, has been scheduled for a hearing in the House Environmental Resources and Energy Committee on March 26 at 10:00 AM. The bill would extend the term for well permits from one year to three years. The bill would also permit an unconventional well operator to apply for a multi-well pad permit. The operator would not be required to re-permit a well unless the surface hole location of the well deviates more than 50 feet.

**Texas** [HB 3838](#), sponsored by Rep. Ernest Bailes, R-Shepard, has been scheduled for a hearing in the House Energy Resources Committee on March 25 at 2:00 PM. The bill would provide that an offer to lease a mineral interest in oil and gas in a property is considered an offer to purchase a mineral or royalty interest and must include specified statements if the property is subject to an existing oil and gas lease and the lease being offered has the effect of conveying all or a portion of the mineral or royalty owner's interest in production. If the required notice is not provided then the person would be allowed to bring a lawsuit if the matter is not adequately resolved and if they prevail, would be entitled to exemplary damages if the conduct constituted fraud.

**Texas** [HB 1558](#), sponsored by Rep. Chris Paddle, R-Marshall, was heard in the House Ways and Means Committee on March 20. The committee took testimony but did not vote on the bill during the hearing. The bill would revive and modify a severance tax exemption for inactive oil and gas wells. The bill would provide severance tax relief for wells that have been returned to activity after a two year period of inactivity. The bill would define a two year inactive well to exclude wells that are part of an enhanced oil recovery project or wells that have been drilled but not completed and do not have record of production. The companion bill, [SB 533](#), sponsored by Sen. Brian Birdwell, R-Granbury, passed the Senate Natural Resources and Economic Development Committee on March 14.

**Texas** [SB 925](#), sponsored by Sen. Pete Flores, R-Pleasanton, passed the Senate Natural Resources and Economic Development Committee on March 14. The bill would amend the qualifications for low-producing oil and gas well production tax credits to specify that the

production per day would be calculated based on the greater of monthly production from the well as reported in the well production reports made to the Railroad Commission or the monthly production in the producer's reports made to the comptroller including any amendments.

## **Leasing**

**Montana [SB 41](#)**, sponsored by Sen. Tom Richmond, R-Billings, was heard in the House Natural Resources Committee on March 20; the committee heard from the sponsor but did not vote on the bill. The bill would eliminate the requirement that bids for oil and gas lease sales must be made orally.

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