

WEEKLY HIGHLIGHTS AT-A-GLANCE

FEDERAL – Legislative

- **National Monument Restrictions.** On March 9, Rep. Don Young (R-AK) introduced [H.R. 1489](#), known as the Marine Access and State Transparency Act, or MAST Act. While the bill focuses primarily on marine national monuments it also requires congressional approval for onshore national monuments and any restrictions on the use of those national monuments. This would limit a U.S. president from closing down a national monument to energy development, as President Obama had done when declaring Utah's Bears Ears a national monument during the final days of his administration. [Read more.](#)

FEDERAL – Regulatory

- **BLM Lease Sale – Colorado.** The Bureau of Land Management (BLM) has announced it will offer 106 oil and gas leases covering 100,816 acres of land in Grand, Jackson, Moffat, Rio Blanco and Routt counties. The June 9 auction will be held online and leases will be subject to certain stipulations and best management practices designed to address air quality and water resources in sensitive areas. [Read more.](#)
- **BLM Lease Sale – Ohio.** Last Thursday, the BLM received nearly \$5.2 million in bids for oil and gas leases in 1,180 acres of land in the Wayne National Forest. "We knew this sale was going to be at least \$2 million, but it more than doubled our conservative projections, and that's great news for taxpayers and private mineral owners in Monroe County," said Jackie Stewart, of *Energy in Depth Ohio*. Up to 40,000 acres of Wayne National Forest land could eventually become available for oil and gas drilling. The next auction is tentatively scheduled for June 22. [Read more.](#)
- **Keystone XL Pipeline Approval.** As reported in POLITICO, the Keystone XL Pipeline has been approved by the Trump administration following the State Department's approval of the permit last week. The move comes 16 months after the Obama administration blocked construction of the 1,200-mile pipeline, which will ship crude from Canada's western oil-sands region to refineries on the Gulf Coast. TransCanada, the pipeline operator, next needs to receive approval of the pipeline's route through Nebraska from state regulators there, a process that could take several more months. [Read more.](#)

FEDERAL – Judicial

- **Pooling; Leasing – Ohio Federal Court.** On March 14, the U.S. District Court for the Southern District of Ohio, in *Hartline v. Statoil USA Onshore Properties, Inc.* (Case No. 2:16-CV-315), dismissed a complaint seeking forfeiture of an oil and gas lease for the lessee’s alleged breach of the pooling clause. The Court held that breach of the pooling clause is not among the events contemplated by the lease as a basis for forfeiture and that the plaintiffs had adequate legal remedies for breach of contract rather than lease forfeiture. [Read more.](#)
- **Regulations – Pennsylvania Federal Court.** On March 23, the U.S. District Court for the Middle District of Pennsylvania, in *Wayne Land & Mineral Grp. v. Del. River Basin Comm.* (Case No. 3:16-cv-00897), dismissed a suit challenging the Delaware River Basin Commission’s authority to oversee natural gas drilling in the basin. The ruling upholds the authority of the Commission to review hydraulic fracturing activities in the Delaware River Basin watershed. The Commission said in 2010 that it would suspend reviews of natural gas drilling proposals in the basin until it issues final natural gas regulations. The plaintiffs said they will file an appeal within 30 days. [Read more.](#)
- **Damage to Producing Wells – 10th Circuit Federal Court.** On March 14, the Tenth Circuit Court of Appeals, in *Max Oil Company, Inc. v. Range Production Company, LLC* (Case No. 16-6238), upheld the dismissal of a complaint filed by owners of oil and gas wells alleging that nearby hydraulic fracturing operations conducted by another operator permanently damaged producing oil and gas wells on the plaintiffs’ property. The Court reasoned that the plaintiffs knew or should have known that the nearby operations may have caused damage to their wells long before the period to bring suit expired and rejected the argument that the period didn’t start running until the well owners eliminated other possible causes of damage. [Read more.](#)

STATE – Legislative

- **Tax Notices on Mineral Interests – Arkansas.** (Update to 1/23/2017 Weekly Report) On March 20, SB 114 was signed into law by Gov. Asa Hutchinson (R). The new law, Act 514, amends the requirements for publishing notice of delinquent taxes on mineral interests. [Read more.](#)
- **Setbacks; Royalty Owners – Idaho.** On March 17, the House Ways and Means Committee introduced HB 301, known as the Oil and Gas Conservation Act. The bill revises the membership of the Oil and Gas Conservation Commission and the duties of the commission and the Department of Lands, and also provides well spacing and setback requirements, reporting requirements, and provides certain remedies for royalty owners. [Read more.](#)

- **Gross Receipts Tax – New Mexico.** [HB 412](#), which was introduced by Rep. Jason Harper (R) in February, and would have made major changes to the state gross receipts tax, died in the Senate Corporations & Transportation Committee last week. Although the bill passed the House on March 8, it was not voted out of Committee or put to a floor vote in the Senate. The legislative session adjourned on March 18. Read a summary of the bill's proposed provisions [here](#).
- **Abstracts – Oklahoma.** HB 2303, which was introduced in February, passed the House on March 22 and was referred to the Senate on March 23. The bill would remove the requirement of an attorney to examine an abstract before issuance of title insurance. The measure requires that a title insurance company or its agent conduct a reasonable examination of title and determined insurability of title. [Read more](#).
- **Surface Owners; Unitization – West Virginia.** On March 20, Sen. David Sypolt (R) introduced SB 680. The bill would permit surface owners to seek damages resulting from oil and gas operations through the Oil and Gas Conservation Commission as well as permitting leaseholders to unitize drilling interests regardless of the type of well to be drilled. [Read more](#).
- **Ad Valorem Taxes; Liens on Mineral Production – Wyoming.** (Update to 1/30/2017 Weekly Report) On March 6, Gov. Matt Mead (R) signed HB 220 into law. The Act provides that mineral liens on production shall not apply to certain interests of an owner who is not a delinquent taxpayer, as well as defining “delinquent taxpayer” in the statute’s context. [Read more](#).

STATE – Regulatory

- **State Lease Sale – Wyoming.** On March 8, the Wyoming Office of State Lands and Investments held its first nominated online lease sale, offering 85,882 acres in 197 parcels, all of which were sold. [Read more](#). The sale earned the state nearly \$30 million, the most it’s made in an oil and gas lease sale since 2011. “This is a big win for the State of Wyoming and the State’s trust beneficiaries,” said Bridget Hill, Director of the Office of State Lands and Investments. “We’ve seen other States and the BLM benefit by holding their oil and gas lease auctions online, we’re now experiencing that benefit in a big way especially for K-12 education funding.” [Read more](#).

STATE – Judicial

- **Regulations – Colorado.** On March 23, in *Martinez v. Colo. Oil and Gas Conservation Cmm’n* (Case No. 16CA0564), the Colorado Court of Appeals ruled in favor of plaintiff activists seeking rulemaking by the Colorado Oil and Gas Conservation Commission (COGCC) to consider a rule halting hydraulic fracturing until it can be proven that the practice does not harm human health and the environment. The Commission claimed it did not have the statutory authority to make or enforce that type of rulemaking. The

Court held instead that Colorado regulators can put more weight on protecting public health and the environment when they draw up rules for oil and gas drilling, giving environmentalists and others a new tool to argue for stricter regulations. The appeals court was careful to note that this case does not require the Commission to adopt the plaintiffs' proposed rulemaking, only that it consider the proposed rule under its authority. However, [according to an AP report](#), it is likely the State Supreme Court will review this case and possibly overrule it if past decisions serve as precedent. For example, last year, the state Supreme Court slapped down attempts by two cities to ban or delay hydraulic fracturing, ruling that only the state has the power to regulate the industry. [Read more](#). Access the Colorado Office of the Attorney General memorandum to the COGCC detailing the rulemaking petition [here](#).

- **Implied Covenants; Leasing – Ohio.** (from Porter Wright Morris & Arthur LLP Oil & Gas Law Report) On March 15, the Ohio Supreme Court accepted an appeal from the Ohio Court of Appeals, 4th District, in [Alford v. Collins-McGregor Operating Company](#) (Case No. 2016-Ohio-5082). The appellate court declined to expand Ohio's implied covenant of reasonable development to encompass unexplored, deep formations, refusing to terminate the unused lease rights. In the case, the plaintiffs sought to forfeit their 1980 oil and gas lease as to depths below the Gordon Sand formation, claiming the operator could not develop the deeper formations. We will continue to monitor and report on this case as it moves through the Ohio Supreme Court. [Read more](#).
- **Dormant Mineral Act – Ohio.** On March 13, in *M&H Partnership v. Hines* (Case No. 2017-Ohio-923), an Ohio appellate court held that mineral owners preserved their interest following their receipt of a notice of abandonment filed by the surface owner when the mineral owner filed an affidavit within 60 days after service to preserve their rights, rejecting the argument that the mineral owner failed to preserve the claim by omitting from the affidavit any mention of a specific "savings event" under the 2006 Dormant Mineral Act. [Read more](#). For more information on the Court's interpretation of the term "holder" in this case under the 2006 version of the Dormant Mineral Act, and stating that the term should be construed broadly to include the heirs and devisees of the record owner of the severed mineral interest that succeed to the severed mineral interest by intestacy or devise, [click here](#).

INDUSTRY NEWS FLASH:

◆ **Oil and gas workers hold rally at West Virginia State Capitol.** On March 21, hundreds of oil and gas industry workers [held a rally at the West Virginia State Capitol](#) to call on lawmakers to generate more job creation and support the tens of thousands of industry workers contributing to the state's economy. "We have a strong presence in the state, nearly 18,000 jobs already right now and there can be so much more," said Anne Blankenship, Executive Director of the West Virginia Oil & Natural Gas Association. [Read more](#).

State-by-State Legislative Session Overview

New Mexico adjourned its legislative session on March 18, the [Santa Fe Gate](#) reports. Republican Gov. Susana Martinez said that she plans to call lawmakers back for a special session over objections to the budget presented to her by the democratically controlled legislature. Governor Martinez called the \$6.1 billion spending plan and \$350 million tax package the legislature sent her reckless and irresponsible and spoke of a potential government shutdown and furlough of state workers. Martinez has until April 7 to act on [HB 2](#), which contains the budget proposal, or it is pocket vetoed. [KRWG](#) reports that other bills, including legislation that would change rules related to campaign finance ([SB 96](#) and [SB 97](#)) and ethics ([HJR 8](#)), eliminate payday lending ([HB 347](#)), and other numerous legislation are also pending gubernatorial action.

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 York, North Carolina, North Dakota, Ohio, Oklahoma, Oregon, Pennsylvania, Rhode Island, South Carolina, Tennessee, Texas, Vermont, 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.

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

New Mexico adjourned on March 18.

Louisiana is scheduled to convene its legislative session on April 10.

The following states are expected to adjourn their legislative sessions on the dates provided: **South Dakota** (March 28), **Kentucky** (March 30) and **Mississippi** (April 2).

Idaho had been tentatively scheduled to adjourn on March 24, but a lack of progress on critical legislation is expected to delay adjournment, [U.S. News and World Report](#) reports.

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. **New Mexico** Republican Gov. Susana Martinez has until April 7 to act on legislation or it is pocket vetoed.

Wyoming Republican Gov. Matt Mead had a signing deadline on March 18.

[Louisiana](#) is currently posting prefiles for the 2017 legislative session.

Endangered Species

Montana [HJ 15](#) was heard in the Senate Fish and Game Committee on March 21, but the committee did not take a vote. Audio of the hearing can be [heard here](#). This resolution would declare that the Montana legislature supports the delisting of the grizzly bear from the Endangered Species Act and that the management of the bears should be returned to the state and no longer be controlled by the federal government. It would also remove the distinct population segment designation for grizzly bears in the Cabinet-Yaak Grizzly Bear Recovery Zone. The resolution would urge the Montana legislature to call upon the state's congressional delegation to introduce federal legislation that delists the grizzly bear. The resolution would have the secretary of state send a copy of HJ 15 to each member of the Montana congressional delegation, the secretary of the U.S. Department of the Interior, the Governor of Montana, the Department of Fish, Wildlife and Parks and the Secretaries of State for **Idaho, Washington and Wyoming**.

Franchise Tax

Louisiana [HB 80](#) was introduced on March 21 and referred to the House Ways and Means Committee. This bill, which is sponsored by Rep. Stephanie Hilferty, R-New Orleans, would reduce the franchise tax levied under current law by 10 percent each year beginning on January 1, 2018, until the franchise tax is eliminated. Under the bill, no corporate franchise tax would be assessed or paid on or after January 1, 2027.

This bill would take effect immediately if enacted.

Mississippi [HC 102](#) was introduced on March 22 and referred to the House Rules Committee. This concurrent resolution would suspend the deadline for the purpose of requesting the drafting, introduction and consideration of a bill to delay the date of the initial scheduled tax reduction for the phase out of the corporation franchise tax that was in [SB 2858](#) and became law in 2016.

Rep. David Baria, D-Bar St. Louis, is the sponsor.

The House Government Operations Committee recommended that **Tennessee** [HB 65](#) be passed during a March 22 hearing. The bill was then referred to House Finance, Ways and Means Committee and assigned to the subcommittee. This bill would exempt certain new companies from paying franchise tax or excise tax for their first two years in business if they employ no more than 25 people and revenue is below \$1.5 million. This bill is sponsored by Rep. Eddie Smith, R-Knoxville, and would become effective on July 1, 2017 if enacted.

The Senate companion, [SB 901](#), is pending in the Senate Finance, Ways and Means Committee after being recommended for passage by the subcommittee on March 15. The bill is sponsored by Sen. Mile Bell, R-Riceville, and would take effect on July 1 if enacted.

On March 21, the Senate Finance, Ways and Means Committee's Revenue Subcommittee referred **Tennessee** [SB 8](#) to the Senate Finance, Ways and Means Committee with a neutral recommendation. 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. The bill is sponsored by Rep. Sam Whitson, R-Franklin, and would take effect immediately if it becomes law.

Texas SB 17 passed the Senate on March 21 and was delivered to the House the following day. 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

Permits

A March 17 hearing for **Arkansas HB 2086** in the House Insurance and Commerce Committee was postponed until March 27. 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.

Under the committee rules of the Senate Energy and Public Utilities Committee, **Illinois SB 974** must be heard before April 7. Sponsored by Sen. Julie Morrison, D-Deerfield, this bill would not allow any new permits to be issued for surface extraction operations for oil and gas on lands owned by the Department of Natural Resources or the federal government. The bill would prohibit new oil and gas leases on lands that have state parks, recreation areas, fish and wildlife areas, forests, historical sites, national forests, national grasslands or national wildlife refuges. It would prohibit the Department of Natural Resources from entering into contracts that would designate any person as the permittee of the State of Illinois with the exclusive right to prospect and explore public lands for petroleum.

If this bill becomes law, it will take effect immediately.

Pennsylvania [SB 303](#) passed the Senate State Government Committee on March 21 and was considered on the Senate floor for the first time. Sponsored by Sen. Judith Schwank, D-Reading, this bill would release the Project 70 restrictions on certain pieces of land owned by the borough of Topon, Berks County, in exchange for imposing the same restrictions on other sections of land in the town.

Pooling

North Dakota [HB 1257](#) was delivered to Republican Gov. Doug Burgum on March 22; he has three days from presentment, not including Sundays, to sign or veto the bill or it will become law without his signature. 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

California [SB 44](#) was read a second time, amended and returned to the Senate Environmental Quality Committee. This bill would require the State Lands Commission in the Natural Resources Agency to administer a legacy oil and gas well removal, plugging and remediation program. Carrying out this program is contingent on appropriation of funds by the legislature.

This bill is sponsored by Sen. Hannah-Beth Jackson, D-Santa Barbara, chair of the Senate Judiciary Committee.

Colorado [HB 1256](#) passed the House Health, Insurance and Environment Committee on March 23 and was referred to the Committee of the Whole. Sponsored by Rep. Mike Foote, D-Lafayette, this bill would require that all oil and gas production facilities and wells be located at least 1,000 feet from school buildings and other high occupancy buildings. All new oil and gas production facilities and wells must be located at a minimum of 1,000 feet from the school property line, not the school building. The bill does not apply if a school commences operations near oil and gas facilities or wells that are actively in use, or have been permitted.

North Dakota [HB 2333](#) was signed into law by Republican Gov. Doug Burgum on March 22. Effective August 1, this law requires any land that is disturbed by the construction of oil and gas well sites, treating plants, saltwater handling facilities, access roads, underground gathering pipelines and associated facilities and from remediation of leaks and spills, to be reclaimed as close as practical to its original condition before oil and gas activities took place there. The Oil and Gas Commission, in conjunction with appropriate government land managers or surface owners, can waive the reclamation requirements of the site and access road after the well is plugged or the treating plant and saltwater handling facility is decommissioned. Nothing in this law can be constructed to require the removal of a properly reclaimed reserve pit or properly abandoned underground gathering pipelines. No one can bring legal action under this section unless they have exhausted all existing administrative remedies.

West Virginia [SB 680](#) was introduced on March 20 and referred to the Senate Judiciary Committee. Sponsored by Sen. David Sypolt, R-Kingwood, this bill would allow surface property owners to seek damages resulting from oil and gas operations through a negotiation and mediation process developed by the Oil and Gas Conservation Commission. The director of the commission would be required to propose rules for legislative approval in order to achieve the goals of the bill. The bill would also allow leaseholders to unitize drilling interests regardless of what type of well they would like to drill.

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