

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

- **BLM Oil and Gas Lease Sale – New Mexico.** On March 2, the Bureau of Land Management (BLM) [announced](#) that it will defer its March 8 oil and gas lease sale near the Chaco Culture National Historical Park “so the agency could complete an ongoing analysis of more than 5,000 cultural sites in the proposed leasing area” after receiving considerable pushback from tribal leaders who say the lease sites were too close to the historical and culturally-significant areas. The proposed lease sale includes 25 parcels, covering 4,434 acres within Rio Arriba, Sandoval, and San Juan counties in northwestern New Mexico. The surface ownership of the proposed parcels includes private land, BLM-managed public land, and tribal trust land. [Read more.](#)
- **Environmental Protection Agency Roundtable – Denver, CO.** On February 28, the U.S. Environmental Protection Agency (EPA) wrapped up a two-day oil and natural gas roundtable with stakeholders, which included state and local governmental leaders, tribes, oil and gas producers, environmentalists, and trade groups. “This roundtable fulfills a commitment I made last year to improve EPA’s working relationship with state regulators and American businesses,” said EPA Administrator Scott Pruitt. “It was a good opportunity for everyone to share ideas,” said Western Energy Alliance President Kathleen Sgamma. [Read more.](#)
- **Interior Department Royalty Policy Committee.** On February 5, the Offshore Oil and Gas Working Group of the Interior Department’s Royalty Policy Committee recommended that the deep-water royalty rate collected by the federal government for fields deeper than 200 feet would decrease from 18.75 percent to 12.5 percent to attract interest in areas that are “maturing basins with only the most challenging prospects remaining.” According to the recommendation, “There are substantial additional resource volumes still accessible and producible under the right leasing, fiscal and regulatory terms.” [Read more.](#)

FEDERAL – Judicial

- **Dunham Rule – Third Circuit Court of Appeals (Pennsylvania).** On February 7, in *Uschock v. Pennsylvania* (Case No. 17-2692), the U.S. Court of Appeals for the Third Circuit, on appeal from a Pennsylvania federal district court, dismissed a civil rights claim brought by a landowner claiming that Pennsylvania’s “Dunham Rule”, which is “a common law rule of construction which provides a rebuttable presumption that a reservation of mineral rights in a conveyance does not include a reservation of rights

to natural gas or oil” is unconstitutional under the Due Process and Takings Clauses of the U.S. Constitution. The Court held that the landowner never stated a claim that he was denied any rights, privilege or immunities under the Constitution nor did he explain how the Dunham Rule deprived him of any property rights. [Read more.](#)

- **Surface Use Agreement – Fifth Circuit Court of Appeals (Texas).** On February 15, in *Fort Worth 4th St. Partners, L.P. v. Chesapeake Energy Corp.* (Case No. 17-10040), the U.S. Court of Appeals for the Fifth Circuit, on appeal from the U.S. District Court for the Northern District of Texas, affirmed the lower court decision finding that the payment provision in a Surface Use Agreement “was a covenant that ran with the surface of the land and when the plaintiff sold the land, the benefit of this covenant was forfeited. [Read more.](#)
- **Purchase and Sale Agreement; Well Spudding – West Virginia Federal Court.** On February 14, in *Statoil USA Onshore Properties, Inc. v. Pine Resources, LLC* (Case No. 2:14-CV-21169), the U.S. District Court for the Southern District of West Virginia (Charleston) held that a well operator breached a Purchase and Sale Agreement (PSA) by failing to spud several wells as required under the PSA, but the counterparty could not recover damages in the form of lost royalties for failure to complete the wells. The Court concluded that royalties are only payable on production and the PSA only required spudding of wells, and not production. [Read more.](#)
- **Leasing; Unit Declarations – West Virginia Federal Court.** On February 7, in *Lucey v. SWN Production Company, LLC, et al.* (Case Nos. 5:17-CV-66; 5:17-CV-126), the U.S. District Court for the Northern District of West Virginia (Wheeling) rejected a breach of contract claim by the plaintiff-lessors against one of the defendants for failing to notify the plaintiffs that the lessee filed a unit declaration. The Court held that the lease only required recording of the unit declaration, which put the plaintiffs on record notice, and regardless, the lessors could not demonstrate any actual harm resulting from a lack of notification. [Read more.](#)

STATE – Legislative

- **Abandoned Wells – New Mexico.** (*Update to 2/19/18 Weekly Report*) On February 28, [SB 189](#), was signed into law by Governor Susana Martinez (R). The Act amends the Oil and Gas Act to correct a conflict with two statutory sections regarding operators providing financial assurance for plugging abandoned wells. The bill increases the maximum amount of a blanket financial assurance that the Oil Conservation Division may require from \$50,000 to \$250,000. The sponsoring bill synopsis notes that the “maximum amount for blanket financial assurance has not been increased for approximately 40 years.” [Read more.](#)
- **Marketability; Royalties – Oklahoma.** On March 1, SB 974, introduced by Sen. Julie Daniels

(R) failed in the Senate Energy Committee. The bill would have removed the requirement that interest rates on certain proceeds be compounded annually, and the bill also detailed certain procedures related to payments in instances of unmarketable title. [Read more.](#)

- **Royalties; Interest Payments – Oklahoma.** On February 13, SB 1143, introduced by Senator Adam Pugh (R), passed the Senate Energy Committee. The bill amends the Production Revenue Standards Act, requiring timely payment for a portion of a person's interest which is marketable, even when another portion is delayed for being unmarketable. The bill also provides interest rate guidance. [Read more.](#)
- **Royalties; Post-Production Expenses – West Virginia.** (*Update to 2/26/18 Weekly Report*) In an effort to reconcile conflicting judicial decisions, the West Virginia legislature is now attempting to prohibit deductions from flat rate royalties. Both bills have moved forward since the last Report. On March 2, [SB 360](#), introduced by lead sponsor Sen. Charles Clements (R), passed the House. The bill includes language to prevent the 1/8th royalties from being subject to post-production expenses. The companion bill, [HB 4490](#), introduced by Del. Jason Harshbarger (R), passed the House on February 28. [Read more.](#)
- **Royalties; Cotenancy – West Virginia.** On February 13, HB 4574 was introduced by Del. Zack Maynard (R). The purpose of this bill is to establish and define rights of mineral estate owners, surface owners, royalty owners, and operators for development of oil and gas interests through co-tenancy in production, to authorize development of oil and gas through agreements for horizontal well drilling, and to levy an additional amount in tax for the severance of natural gas to be distributed to all counties and used to supplement teacher salaries. [Read more.](#)

STATE – Judicial

- **Leasing; Arbitration Clause; Production Costs – West Virginia.** On February 14, in *Chevron U.S.A., Inc. v. Bonar* (Case No. 16-1213), the West Virginia Supreme Court held that pursuant to the plain language of the arbitration agreement contained in the lease, Chevron was under no obligation to seek arbitration before deducting certain production costs from royalty payments. Further, the Court noted that Chevron did not waive its right to seek arbitration in a resulting dispute over whether such deductions are authorized under the terms of the lease. [Read more.](#)

INDUSTRY NEWS FLASH:

◆ **U.S. to become world's top oil producer by 2019.** According to the latest forecast from the International Energy Agency (IEA), the "United States will eclipse Russia to become the world's top oil producer by 2019 at the latest." According to the IEA, while the United States is still a net importer of crude oil, "last week, net imports fell to 4.98 million barrels per day, the lowest since the IEA started recording the figure in 2001." [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, Nebraska, New Hampshire, New Jersey, New York, Ohio, Oklahoma, Oregon, Pennsylvania, Rhode Island, South Carolina, South Dakota, Tennessee, Utah, Vermont, Virginia, Washington, West Virginia and Wyoming are in regular session. The **District of Columbia Council, Puerto Rico** and the **United States Congress** are also in regular session.

Louisiana is expected to convene on March 12.

Wisconsin is in recess to the call of the chair. Legislative staff report that the Assembly has no plans to reconvene in 2018, but that the Senate will reconvene between March 13 and 22.

The following states are expected to adjourn on the dates provided: **Utah** and **Washington** (March 8); **Florida, Oregon** and **Wyoming** (March 9) and **Virginia** and **West Virginia** (March 10).

Oklahoma convened its second special session to address budget issues on December 18, [The Oklahoman](#) reports. The Senate passed a spending bill on February 21, which would end the special session if Republican Gov. Mary Fallin signs the bill as expected. The special session will run concurrently with the regular session. **Louisiana** convened a special session related to fiscal issues on February 19, [The Advocate](#) reports. The session is scheduled to run until March 7.

Wisconsin adjourned a special session related to welfare reform on February 23, reports [U.S. News and World Report](#).

New Mexico Republican Gov. Susana Martinez has until March 7 to act on legislation or it is pocket vetoed. **North Carolina** Democratic Gov. Roy Cooper has until March 15 to act on special session legislation or it becomes law without signature. **Illinois** Republican Gov. Bruce Rauner has 60 days from presentment to act on all legislation passed during the veto session or it becomes law. **Wisconsin** Republican Gov. Scott Walker has six days, Sundays excepted, to act on special session legislation or it becomes law.

The following states are currently holding interim committee hearings: [Louisiana](#), [Montana Nevada](#), [North Carolina](#), [North Dakota](#) and **Texas** [House](#) and [Senate](#).

The following states are currently posting bill drafts, prefiles and interim studies: [Louisiana](#), [Montana](#) and [North Dakota](#).

Franchise Tax

Tennessee [HB 1593](#) has been scheduled for a hearing in the House Finance Ways and Means Subcommittee on March 7 immediately following the conclusion of the House Finance and

Budget Committee meeting. This bill would exempt entities that would otherwise have less than \$100 in combined franchise and excise tax liability from franchise and excise taxes for a tax year beginning on or after July 1, 2018, and prior to July 1, 2019. The bill would increase the liability threshold to less than \$250 for the tax year beginning July 1, 2019 and less than \$500 for the tax year beginning July 1, 2020. The bill would also repeal the \$100 minimum franchise tax and would specify that no entity would be relieved from filing a return and paying the franchise tax unless the entity qualifies for an exemption. The bill would take effect July 1. The companion bill, [SB 1744](#), has been scheduled for a March 6 hearing in the Senate Finance Ways and Means Subcommittee.

General Oil and Gas

Pooling

Utah [HB 419](#) passed the House Public Utilities, Energy and Technology Committee with an amendment on February 26 and is currently pending a third reading. As amended, the bill would authorize the Board of Oil, Gas and Mining to make a pooling order retroactive if the board has received an objection, but the board finds that a party has engaged in inequitable conduct. The bill would also provide that the terms and conditions of the board's initial pooling orders would apply to subsequent wells drilled in the same drilling unit except as modified by:

- An accounting for actual costs incurred for each subsequently drilled well in the drilling unit.
- An account for the consenting or nonconsenting status of an owner of each subsequently drilled well in the drilling unit.
- The board after the filing of and hearing upon a petition filed by an affected owner desiring a modification.

The bill would take effect 60 days after adjournment, which is currently scheduled for March 8.

West Virginia [HB 4268](#) passed the Senate Judiciary Committee with a [title amendment](#) on February 28 and is now pending on the Senate floor. The bill would permit the use or development of an oil or natural gas property if an operator or owner makes reasonable efforts to negotiate with all royalty owners in an oil or natural gas mineral property and if royalty owners vested with at least three-fourths of the right to develop agree to do so. The bill would provide that the nonconsenting agent is entitled to receive either a pro rata share of production royalty payments paid on the gross proceeds received at the first point of sale to an unaffiliated third party seller and free post production expenses equal to the highest royalty percentage paid to the other co-tenants; or to participate in the development and receive a pro rata share of the revenue and cost equal to his or her share of the production attributable to the tracts being developed.

The bill would give a nonconsenting lease owner 45 days from the operator's written delivery of its best and final lease offer to make their final decision. The bill would also require that the owner report to the state treasurer each quarter concerning each unknown or unlocatable interest owner and remit the amount reserved. The bill would take effect July 1. A similar bill, [HB 4574](#),

sponsored by Rep. Zack Maynard, R-Lincoln, was referred to the House Energy Committee on February 13.

General

Colorado [HB 1150](#) has been scheduled for a hearing in the House State, Veterans and Military Affairs Committee on March 7 at 1:30 PM. The bill would require local governments that place a moratorium on oil and gas development compensate mineral owners for the costs, damages or loss of fair market value that result from the moratorium. The bill would take effect 91 days following adjournment, which is currently scheduled for May 9.

Mississippi [HB 1350](#) passed the Senate Finance Committee. As previously amended, the bill would extend the repeal of existing law that established a reduced 1.3 percent severance tax rate on the value of oil and gas produced from horizontally drilled wells and horizontally drilled recompletion wells until July 1, 2023. The provisions were originally set to expire on July 1, 2018. The bill would take effect immediately.

Utah [SB 191](#) passed the Senate on February 27 and the House Natural Resources, Agriculture and Environment Committee on March 2. The bill would provide that any municipal ordinance, resolution or rule enacted by a municipality must comply with the state's exclusive jurisdiction to regulate oil and gas. The bill would also provide that a municipality may enact an ordinance that regulates surface activity relating to oil and gas activity provided that the ordinance:

- Is necessary pursuant to existing law.
- Does not unduly limit, ban or prohibit oil and gas activity.
- Does not interfere with the state's exclusive jurisdiction to regulate oil and gas.

The bill would define oil and gas activity to include hydraulic fracturing, drilling and remediation activities among other activities.

Public Lands

South Dakota [SCR 8](#) passed the House on February 23. The concurrent resolution does not require the signature of Republican Gov. Dennis Daugaard. The resolution requests federal agencies to refrain from designating wilderness areas in the state without a two-thirds approval of the state legislature.

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