

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

- **Comprehensive Energy Bill.** As we have been reporting, after many false starts over the past few weeks, bill sponsor Lisa Murkowski said she was down to just one senator holding up a deal to get the bill, [S. 2012](#), to the floor, an apparent reference to Utah's Sen. Mike Lee (R). Lee voted against the bill in committee, and opposes its extension of the Land Water Conservation Fund, and also its budget impact. But, this does not seem to be a deal killer, and the bill is set to come back to the Senate floor in the middle of this week. [Read more.](#)
- **H.R. 4583.** On February 23, H.R. 4583, a bill that would require the U.S. Department of Energy to prioritize education and training for jobs in the energy and manufacturing sectors and create a clearinghouse for information and guidance related to workforce development, was introduced in the House. On February 29, the bill passed the full House chamber after being voted on favorably by the House Energy and Commerce Committee. The measure's purpose is to "promote a 21st century energy and manufacturing workforce." In part, the bill will enable the U.S. Secretary of Energy to "prioritize education and training" for energy-related jobs in the oil and gas industry. While not specifically identifying land professionals in the bill, the measure supports industry-wide education and training efforts. [Read more.](#)
- **Keep it in the Ground Act.** (Update to 2/15/16 Weekly Report) On February 11, Rep. Jared Huffman (D-CA) introduced the *Keep it in the Ground Act*, which would prohibit the issuing of new leases for oil and gas production on federal lands. A bill number has now been assigned, H.R. 4535, and as of February 16, the measure was referred to the House Natural Resources Committee's Subcommittee on Energy and Mineral Resources. As previously, reported, given the Republican-controlled House and the bill's hostility to federal oil and gas resource development, reporting out of the committee for a floor vote is unlikely, but we will continue to monitor and report any movement. [Read more.](#)

FEDERAL – Regulatory

- **Department of Interior Congressional Hearings – Washington, D.C.** As part of the ongoing budget process, on March 1 and 2, officials from the Bureau of Land Management (BLM) again faced off with Congress in hearings before the House Committee on Natural Resources and the Subcommittee on Energy and Mineral Resources. Legislators hit hard, questioning agency panelists on record low levels of onshore leasing and burdensome regulations. "If we cripple oil and gas production,

I'm afraid that we may look more like Venezuela in the future, than say, the Jetsons," said Rep. Jeff Duncan (R-SC) in reference to Obama Administration's onerous energy rules. "It seems that not a Friday afternoon has gone by without receiving a new notice of proposed rulemaking from one of the agencies," said Subcommittee Chairman Doug Lamborn (R-CO). [Read more.](#)

- **BLM Lease Sale – Nevada.** On March 8, the BLM is holding a competitive oil and gas lease sale at the Silver Legacy Resort Casino in Reno. The oil and gas sale includes 39 parcels totaling 50,415.76 acres in Elko and Eureka Counties. We will monitor any possible auction protests. [Read more.](#)

FEDERAL – Judicial

- **Sage Grouse; Oil and Gas Production – Idaho.** On February 26, Idaho Governor C.L. "Butch" Otter filed a brief for summary judgment against the Secretary of the U.S. Department of the Interior detailing the argument that new federal protections for greater sage grouse birds violated federal laws on environmental analysis and land management. In the case, [Otter v. Jewell](#) (D.D.C., Case No. 1:15-cv-1566), the Governor and State Legislature have sought to have the land-management regulations vacated or enjoined within Idaho, claiming that the regulations issued in September 2015 could pose a threat to energy and infrastructure development. The federal government has until March 25 to respond. See the legal brief attached with this week's report.
- **Lesser Prairie Chicken; Oil and Gas Production – Multiple States.** On February 29, the U.S. District Court for the Western District of Texas rejected a motion by the U.S. Fish and Wildlife Service requesting that the court amend its September ruling that overturned the listing of the lesser prairie chicken as a threatened species. This latest ruling in *Permian Basin Petroleum Ass'n v. Interior* (W. Tex., No. 7:14-cv-50, 2/29/16) is reportedly a relief to state and local officials, as well as oil and gas companies, in parts of Texas, New Mexico, Oklahoma, Kansas and Colorado. [Read more.](#)
- **Sage Grouse; Oil and Gas Production – Wyoming.** A group of counties and conservation districts in western Wyoming is the latest to sue the federal government over its plans to protect the habitat for the greater sage grouse over a vast area of the West. The lawsuit, [Wyoming Coalition of Local Governments v. United States Department of the Interior](#) (Case No. 2:2016-cv-00041, 3/1/2016), joins other lawsuits filed by ranchers, mining companies and others who call the management changes for federal land an example of federal overreach. [Read more.](#)

STATE – Regulatory

- **Permitting; Siting – Pennsylvania.** An ongoing battle in Penn Township, a suburb about 20 miles east of Pittsburgh, is making it difficult for Apex Energy to get permitting

approval for a single shale gas well pad. In 2014, township commissioners agreed to an ordinance that created a “mineral extraction overlay,” which essentially allows drilling in most of the community’s agricultural and industrial zones. However, to drill, gas companies seeking a permit must meet criteria like placing a pad at least 600 feet from homes and go through a public hearing process. The public hearings and activist pushback have effectively forestalled any permitting and have forced Apex in and out of court. [Read more.](#)

STATE – Legislative

- **Surface Damage; Liability – Colorado.** On March 2, Rep. Joseph Salazar (D) introduced HB 1310, which has been referred to the Health, Insurance & Environment Committee. The bill would amend current surface damage liability law to allow proof that the operator’s oil and gas operations harmed the surface owner’s use of the surface, caused injury to the surface owner, or damaged the surface owner’s property, rather than requiring a material interference with surface owner’s use of the land. [Read more.](#)
- **Oil and Gas Conservation Commission – Colorado.** Republican lawmakers have killed a bill that targeted the mission of the Colorado Oil and Gas Conservation Commission. The Democrat-sponsored bill, SB 129, would have tweaked the Commission’s mission away from “fostering” oil and gas development to “administering” it in an effort to push for more neutrality over industry operations within the state. [Read more.](#)
- **Taxes; Royalty and Bonus Payments – Louisiana.** On March 2, SB24 was introduced by Sen. Ryan Gatti (R) and referred to the Senate Committee on Revenue and Fiscal Affairs. The bill would reduce the income tax rate on oil and gas bonus payments and oil and gas royalty payments to zero. [Read more.](#)
- **State Fees – Louisiana.** On March 3, HB 451 was pre-filed by Rep. Jim Morris (R) and provisionally referred to the House Committee on Natural Resources and Environment. The bill would decrease and repeal certain fees collection by the Office of Conservation on certain oil and gas wells. [Read more.](#)
- **Recording Fees – Michigan.** SB 599, a carryover bill from 2015, passed the Michigan Senate on February 16 and has been referred to the House for consideration. The bill would amend the Michigan recording statute to raise recording fees from \$8 for the first page and \$3 for each additional page to a flat fee of \$30 for any document entered and recorded. [Read more.](#)
- **Lien Recordation – Michigan.** SB 600, a carryover bill from 2015, passed the Michigan Senate on February 16 and has been referred to the House for consideration. The bill would amend current law which applies to the rights of contractors and other tradespeople to seek a lien for labor or material provided on oil and gas wells, so that

the fees provided for recording a real estate mortgage also apply when recording a lien against oil and gas wells. [Read more.](#)

- **Forced Pooling – West Virginia.** For the fifth time in six years, a bill to allow forced pooling of Marcellus Shale natural gas rights has stalled in the West Virginia Legislature. Last Wednesday was “crossover day” – the day on which a bill must advance from its house of origin to be considered in the opposite chamber. House Legislators said the bill, [H.B. 4426](#), considered favorable to the industry, faced stiff opposition and would not move forward this year. Under the proposed bill, forced pooling would have been allowed if a driller leases at least 80 percent of the acreage in a proposed unit. [Read more.](#)
- **Nuisance Actions; Property Rights – West Virginia.** (Update to 2/22/16 Weekly Report) SB 508, introduced in the Senate on February 4, passed that chamber on February 23, and has now moved to the House Judiciary Committee for consideration. The bill, viewed as favorable to production, [may ease restrictions on the oil and gas industry](#) by providing greater protections to businesses from private nuisance lawsuits. [Read more.](#)

INDUSTRY NEWS FLASH:

- ◆ **Russian oil executives agree to abide by production freeze.** Following his meeting with Russia’s top oil executives last Tuesday, Russian President Vladimir Putin said company executives personally told him they agreed not to increase oil production this year in an apparent effort to stabilize prices. The agreement follows a similar deal reached last month between Saudi Arabia, Russia, Qatar and Venezuela to put their support behind an oil production freeze. [Read more.](#)
- ◆ **The Independent Petroleum Association of America (IPAA),** which last week was hosting senior oil company executives in Washington, D.C. for meetings with members of Congress, told lawmakers that regulation by federal agencies, tax provisions and endangered species listings remain main issues for its members and the industry. The long list of regulations that IPAA was opposing during their visit includes the BLM’s proposed methane emissions regulations and changes to federal royalty rates. [Read more.](#)

PRACTICE TIPS: Obama’s budget request for the next fiscal year provides \$10 million to combat independent contractor misclassification. The request says it will “improve state efforts to detect and remedy misclassification of workers as independent contractors.” Check out tips and the latest practice updates on employee misclassification and independent contractor issues from the authors of the Independent Contractor Compliance blog. [Read more.](#)

ELECTION ALERT:

🗳️ **Texas Railroad Commission March 1 Primary Results.** After last Tuesday's election, the Republican race for the open commissioner seat on the Texas Railroad Commission is chugging toward a runoff between Rosenberg rancher and real estate mogul Gary Gates (29% of vote) and former state Rep. Wayne Christian (20% of vote). Since neither candidate reached a majority, the top vote-getter in the runoff will face the winner of the Democratic primary, where former U.S. Senate candidate, Grady Yarbrough (40% of vote), and a former Democratic campaign director, Cody Garrett (35% of vote), advanced to a runoff as well. The primary runoff election is held May 24, with early voting May 16-20.

[Read more.](#)

🗳️ **Harold Hamm, CEO of Continental Resources,** said in an email to the *Wall Street Journal* that he would support Donald Trump if he secures the Republican Party's nomination for president of the United States. The one-time Mitt Romney, and early Marco Rubio, supporter reportedly told the newspaper that Trump was "unstoppable" and encouraged the Republican Party to "unify to help him." [Read more.](#)

🗳️ **At last night's Democratic debate,** while Democratic frontrunner Hillary Clinton stopped short of calling for an outright ban on hydraulic fracturing, she stressed that she'd lay out a number of conditions which would make the drilling technique all but history. "By the time we get through all of my conditions, I do not think there will be many places in America where fracking will continue to take place, and I think that's the best approach," said Clinton. [Read more.](#)

State-by-State Legislative Session Overview

Alabama, Alaska, Arizona, California, Colorado, Connecticut, Delaware, Florida, Georgia, Hawaii, Idaho, Illinois, Indiana, Iowa, Kansas, Kentucky, Maine, Maryland, Massachusetts, Michigan, Mississippi, Missouri, Nebraska, New Hampshire, New Jersey, New York, Ohio, Oklahoma, Pennsylvania, Rhode Island, South Carolina, South Dakota, Tennessee, Utah, Vermont, Virginia, Washington, West Virginia, Wisconsin and Wyoming are in regular session. The **District of Columbia** and the **U.S. Congress** are also in regular session.

The following states are expected to convene their 2016 legislative sessions on the dates provided: **Minnesota** (March 8) and **Louisiana** (March 14).

Louisiana is currently meeting in a special session and is expected to adjourn on March 9. The 25-day special session must conclude before March 9, only a few days before the legislature is expected to convene its 2016 legislative session. The pre-filing deadline for the regular session is March 4 for all bills other than retirement bills or constitutional amendments.

California adjourned a special session on health care on March 3. **Oregon** adjourned its 2016 legislative session on March 3.

The following states are expected to adjourn their 2016 legislative sessions on the dates provided: **Wyoming** (March 4); **Utah** and **Washington** (March 10); **Florida** (March 11) and **Virginia** and **West Virginia** (March 12).

New Mexico Republican Gov. Susana Martinez has until March 9 to act any legislation presented to her after February 15 or it is pocket vetoed. **Oregon** Democratic Gov. Kate Brown has until April 14 to act on legislation or it becomes law without signature.

The following states are currently holding interim committee hearings: **Arkansas**, **Minnesota**, **Montana**, **Nevada** and **North Dakota**.

Franchise Tax

Louisiana [SB 23x](#) was introduced on February 24 and referred to the Senate Revenue and Fiscal Affairs Committee. The bill would modify the corporate income tax deduction by discontinuing the deduction for drilling and well costs. These drilling and well expenses are used to calculate well cost payouts that are used for the horizontal drilling severance tax exemption. This bill is sponsored by Sen. Jean-Paul Morrell, D-New Orleans, chair of the Senate Revenue and Government Affairs.

Mississippi [SB 2841](#) was introduced on February 29 and referred to the Senate Finance Committee. The bill aims to phase out the corporation franchise tax by January 1, 2021 in which it would then be repealed. The current franchise tax rate of \$2.50 for every \$1,000 would be phased out by decreasing the tax by \$0.50 per year until 2021. This bill would take effect upon being signed and is sponsored by Sen. Chris McDaniel, R-Ellisville, the chair of the Senate Constitution Committee.

Tennessee [HB 1480](#) was deferred to the March 9 agenda in the House Ways and Means Committee. Often in Tennessee, bills are deferred multiple times in committee without prior notice. They could be rescheduled multiple times before being considered or could not be considered at all. The bill would exempt certain taxpayers from all or part of their franchise and excise tax liability for their first and second tax years in existence if the taxpayers meet certain employment and gross receipts requirements. The bill would take effect on July 1, 2016 and would automatically expire on July 1, 2021. Companion bill [SB 2366](#), sponsored by Sen. Bo Watson, R-Hixson, has been pending in the Senate Revenue Subcommittee of the Senate Finance, Ways and Means Committee since February 2.

Landmen

Employee Misclassification

Update to Kentucky [HB 477](#), relating to misclassification of construction employees, passed the House Labor and Industry Committee on March 3 with [multiple amendments](#) relating to the

workers' compensation special fund and changing the membership of the board of directors for the funding commission. The bill would prohibit misclassifying an employee as an independent contractor and would presume that a contractor is an employee and not an independent contractor unless they are a separate business entity and the person:

- Is performing the services free from the direction or control over the means and manner of providing the service, subject only to the right of the contractor, for whom the service is provided, to specify the desired result.
- Has the right to perform similar services and make those services available to the general public or the business community on a continuing basis.
- Hires, if necessary, its own employees without contractor approval, pays the employees without reimbursement from the contractor and reports the employees' income to the IRS.
- Has a capital investment beyond ordinary tools and equipment and a personal vehicle, and furnishes the tools and equipment necessary to perform the services.
- Includes services rendered on a federal income tax schedule as an independent business or profession.
- Gains the profits and bears the losses of the business.
- Performs the services for the contractor under a business entity's name and the contractor does not represent the business entity as an employee of the contractor to its customers.

If someone believes a contractor is in violation, they could file a complaint with the Division of Employment Standards, Apprenticeship and Mediation in the Department of Workplace Standards. The division would then conduct an investigation and if found to be in violation, the contractor could be served a cease and desist order and be ordered to pay any wages, salary, benefits or other compensation that was lost. Civil penalties could also apply. The person aggrieved by the contractor could file a civil action against the contractor.

The bill would also require contractors to post a notice prominently and accessible on a job site that describes: the responsibility of an independent contractor to pay state and federal taxes; the rights of employees to workers' compensation, unemployment benefits, minimum wage, overtime and other protections; protections if the employee files a complaint; and penalties that would apply if the contractor fails to properly classify their employees. The notice would have to include contact information for filing a complaint, be provided in English, Spanish and any other language required by the commissioner and be made of materials to withstand adverse weather conditions. The notice would have to be posted within 30 days of the bill's effective date, which would be 90 days after the legislature adjourns.

Lands

Land Permits

Louisiana [HB 313](#) was pre-filed on March 2 and referred to the House Civil Law and Procedure Committee. The bill would amend current law requiring certain disclosures before exercising the right of expropriation by entities including those engaged in marketing, transportation and supply

of natural gas. This bill would require the entity to provide the property owner with a notice including a statement that:

- The property owner is entitled to receive just compensation for the property to be acquired to the fullest extent allowed by law.
- The property may be acquired only by an authority authorized by law to do so.
- The property owner is entitled to receive from the expropriating authority a written appraisal or evaluation of the amount of compensation due.
- Identifies the website of the expropriating authority where the property owner can read the expropriation statutes upon which the expropriating authority relies.
- Offers to provide upon request of the property owner a copy of the expropriation statutes upon which the expropriating authority relies.
- Identifies each agency responsible for regulating the expropriating authority, including the name, website and telephone number of each agency.
- The property owner may hire an agent or attorney to negotiate with the expropriating authority and an attorney to represent the property owner in any legal proceedings involving the expropriation.

The bill is sponsored by Rep. Ray Garofalo, R-Chalmette, chair of the House Civil Law and Procedure Committee.

Oil and Gas

General Oil and Gas

Kentucky [SB 188](#) passed the Senate unanimously on March 3 and is now awaiting transmittal to the House. The bill passed the Senate Natural Resources and Energy Committee on February 24 with a [substitute amendment](#) making technical changes. The bill would require a permit for drilling a stratigraphic test well, which is defined as “an exploratory borehole drilled for the sole purpose of acquiring subsurface geological and structure test data.”

New Jersey [AR 105](#) was introduced on February 22 and referred to the Assembly Telecommunications and Utilities Committee. This resolution seeks to affirm the importance of modernizing the state’s natural gas pipeline by replacing older natural gas pipelines to ensure public safety, improve the reliability of the natural gas infrastructure, and to foster economic growth and job creation. The bill is sponsored by Asm. Ronald Dancer, R-Jackson. The same language was filed last year by Senator Dancer in [AR 258](#), which was also referred to the Assembly Telecommunications and Utilities Committee. It did not advance from the committee.

West Virginia [HCR 96](#) was introduced on February 29 and referred to the House Rules Committee. This resolution aims to request that the Federal Regulatory Commission expedite the approval of six interstate natural gas pipeline projects in West Virginia. The resolution states the pipelines would maximize natural gas resources, create thousands of jobs, provide needed tax revenue to pay for government services and reduce America’s dependence on foreign sources of energy. The resolution is sponsored by Del. Lynwood Ireland, R-Pullman.

Wisconsin [AB 547/Act 158](#) was signed by Republican Gov. Scott Walker on February 29. Effective March 2, the new law increases the criminal penalty for intentionally damaging property if the property is owned, leased or operated by an energy provider and the person perpetrating the damage caused or intended to cause a substantial interruption of the energy provider's goods or services. It also increases the criminal penalty for entering a property that is part of an energy plant or electric generation, distribution or transmission system or part of a natural gas distribution system without lawful authority or the consent of the energy provider that owns, operates or leases the property.

Wyoming [SF 28](#) passed the House on February 29 and the Senate agreed with House changes on the same day. The bill is now awaiting delivery to Republican Gov. Matt Mead. The bill would transfer the regulation of a geologic sequestration facility and site to the Department of Environmental Quality if an oil and gas operator converts to geologic sequestration after ending recovery operations or injects carbon dioxide for long-term storage. If the operator does not convert to geologic sequestration, the wells would have to be plugged and abandoned. The Wyoming Oil and Gas Commission supervisor would determine whether the operation is injecting carbon dioxide that would risk the drinking water supply. The operator could request a hearing before the commission within 15 days of receiving notice of the supervisor's findings.

Mineral Rights

Louisiana [HB 214](#) was pre-filed on March 1 and referred to the House Natural Resources and Environment Committee. This bill would authorize the transfer or lease of certain state property in Rapides Parish from the Department of Health and Hospitals to the Diocese of Alexandria, a non-profit corporation. It provides for the reservation of mineral rights to the state. This bill is sponsored by Rep. Lance Harris, R-Alexandria. Similar bill [HB 323](#) was pre-filed on March 2 and referred to the House Natural Resources and Environment Committee. This bill would allow the state to retain the mineral rights during a transfer or lease of state property from the Department of Wildlife and Fisheries to Kenneth W. Cook, Jr. and Annie S. Cook. Rep. Katrina Jackson, D-Harvey, sponsors this bill.

Royalty Payments

The **Pennsylvania** House Environmental Resources and Energy Committee is scheduled to hold an informational hearing on [HB 1391](#) on March 15. The bill is primarily sponsored by Rep. Garth Everett, R-Muncy, Rep. Matthew Baker, R-Wellsboro, Rep. Sandra Major, R-Montrose, and Rep. Tina Pickett, R-Towanda, and was introduced and referred to the House Environmental Resources and Energy Committee on June 29. The bill would require the minimum royalty payment to a lessor for unconventional gas well production to not be less than one-eighth of the lessor's percentage ownership in the production from the production, calculated on the total price received by the operator for the production in an arm's-length transaction. No deductions of any costs could result in a royalty payment less than the one-eighth requirement. This requirement would apply to all leases for unconventional gas well production existing on or after the effective date of the bill. The bill would further provide for legal remedies and penalties, up to treble damages, for failure to pay the minimum royalty. If enacted, the bill would take effect 60 days after passage.

According to stateimpact.npr.org, Representative Everett did not want to push the bill during the state's budget stalemate, but continues to hear from people who feel they are not being paid fair royalty payments so has brought the bill up for discussion. Everett said he expects the committee to take action on the bill in the spring and has a good chance of passing the House.

West Virginia [HB 4500](#) passed the House Finance Committee with a substitute on February 27 and the House 96-3 on March 1. It is now pending in the Senate Energy, Industry and Mining Committee. The bill would require a quarterly report to be filed with the Office of Oil and Gas and made public on their website. The bill would also require certain information to be included with the royalty check, including, but not limited to, the total number of barrels or volume of gas sold, the net value of total sales from the property without the taxes and deductions and the total amount of severance and other production taxes and other deductions permitted under the lease.

Royalty payments would have to be made within 90 days from the date that a financial gain is realized from the oil and gas production.

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