

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

- **BLM Oil and Gas Lease Sale – North Dakota.** The Bureau of Land Management (BLM) has opened a 15-day public comment period for 22 nominated oil and gas lease parcels located within Bowman, McKenzie, and Divide counties in North Dakota for the September 2018 oil and gas lease sale. This public comment period is intended to solicit input on issues and potential impacts described in the [Environmental Assessment](#). The comment period ends April 18. [Read more.](#)
- **BLM Oil and Gas Lease Sale – Eastern States.** On April 10, the BLM announced the offering of 24 parcels totaling 2,202.87 acres in the State of Arkansas in Cleburne and Van Buren counties for its June 21 competitive oil and gas lease sale. The lands are Private Surface, Public Domain and Acquired Domain. [Read more.](#)

FEDERAL – Judicial

- **Methane Emissions – D.C. Federal Court.** On April 5, the attorneys general of 14 states as well as Washington, D.C. and the city of Chicago, sued the U.S. Environmental Protection Agency (EPA) Administrator Scott Pruitt for allegedly refusing to control methane emissions from existing oil and gas operations under the Clean Air Act. In [State of New York, et al. v. Pruitt](#) (Case No. 1:18-cv-00773), the plaintiffs claim that the EPA has unreasonably delayed implementation of its rule covering methane emissions from new, reconstructed, and modified oil and gas sources. On June 29, the suit's plaintiffs notified the EPA that they intended to sue the agency within 180 days if the EPA did not begin regulating methane emissions from existing oil and gas operations." [Read more.](#)

STATE – Legislative

- **Drilling Units; Pooling Orders – Colorado.** On April 4, SB18-320 was introduced by Sen. Vicki Marble (R). The bill clarifies that an order entered by the Colorado Oil and Gas Conservation Commission (COGCC) establishing a drilling unit may authorize more than one well. The order must specify that a non-consenting owner is immune from liability for costs arising from spills, releases, damage, or injury resulting from oil and gas operations on the drilling unit. This bill also limits this 200% cost recovery to wells 5,000 feet or less in depth and increases the cost recovery to 300% for wells greater than 5,000 feet in depth and for horizontal wells. Additionally, while current law prohibits entry of a pooling order until the mineral rights owners have been given

a reasonable offer to lease their rights, this bill specifies that the offer must be given at least 60 days before the hearing on the order and must include a copy of or link to a brochure supplied by COGCC that clearly and concisely describes the pooling procedures and the mineral owner's options pursuant to those procedures. [Read more.](#)

- **Setback Regulations – Colorado.** On April 3, HB18-1352 was introduced by Rep. Mike Foote (D). The bill clarifies that the minimum 1,000-foot distance from which newly permitted oil and gas production facilities and wells must be located from any school applies to the school property line and not the school building. The bill further clarifies that the minimum distance requirement does not apply if a school commences operations near oil and gas facilities or wells that are already actively in use or permitted; except that the minimum 1,000-foot distance applies to real property owned by a school district on which a future permanent or temporary school building is planned to be constructed within five years. [Read more.](#)
- **Well Sites – Louisiana.** *(Update to 3/19/18 Weekly Report)* On April 11, SB 377 was introduced in the House Committee on Natural Resources and Environment after passing the Senate. The bill, introduced by Sen. R.L. Bret Allain (R), provides that if an inactive well has been designated as being inactive with future utility by the operator for a period of 10 years or more and that well is neither scheduled to be plugged and abandoned on a plan approved by the commissioner nor covered under a site specific trust account in accordance with present law, then the owner may request in writing that the office of conservation determine whether the inactive well has future utility. The bill also provides certain procedures to determine whether the inactive well should be plugged and notes criteria for delay of responsibilities regarding the measure. [Read more.](#)
- **Gross Production Tax – Oklahoma.** *(Update to 3/19/18 Weekly Report)* On March 29, HB1010 was signed into law by Gov. Mary Fallin (R). Among other tax provisions, the measure, initially sponsored by Rep. Mike Wallace (R), makes all production of oil and gas from wells spudded prior to and after the effective date of the Act taxed at five percent for the first 36 months of production and seven percent thereafter. In the event that [State Question 795](#) is approved by voters in the November 2018 election, the statutory gross production tax rate for the initial 36 month production period will be reduced to two percent while the constitutional gross production tax rate at five percent for the initial 36 month production period is in effect. The measure also outlines the apportionment structure for gross production tax on oil and gas levied at the five percent rate. The Act is effective 90 days after the legislative session adjourns on May 25, 2018. [Read more.](#)

STATE – Judicial

- **Dormant Mineral Act – Ohio.** On March 5, the Ohio Court of Appeals for the Seventh

District analyzed whether a surface owner complied with the notice requirement of the 2006 version of the Ohio Dormant Mineral Act. In [Shilts v. Beardmore](#) (2018-Ohio-863) the Court considered whether the surface owner was required to at least attempt to serve his notice of abandonment by certified mail prior to serving his notice of abandonment by publication. In this case, the Court held that service by publication was sufficient. [Read more.](#)

- **Rule Against Perpetuities – Texas.** On March 23, the Texas Supreme Court in [ConocoPhillips Company v. Koopman](#) (Case No. 16-0662), was tasked with determining “whether the common law rule against perpetuities invalidates a grantee’s future interest in the grantor’s reserved non-participating royalty interest” and held that it did not. According to law firm, Kiefaber & Oliva LLP, “[t]he *Koopman* decision is significant because the Texas Supreme Court clearly stated its position that [the rule against perpetuities] should not be applied to invalidate conveyances of oil and gas interests when the holder of the interest can be ascertained and the condition is certain to terminate. *Koopman* upholds the long-standing industry practice of inclusion of ‘as long thereafter as there is production in paying quantities’ language in oil and gas conveyances.” [Read more.](#)

INDUSTRY NEWS FLASH:

♦ **U.S. sees record natural gas production in 2017.** According to the U.S. Department of Energy, domestic natural gas production reached record levels last year. Louisiana saw the largest growth, followed by Marcellus and Utica shale fields in Ohio, West Virginia and Pennsylvania. As a result, natural gas exports increased 36 percent, making the United States a net natural gas exporter for the first time in nearly 60 years. [Read more.](#)

State-by-State Legislative Session Overview

Alaska, Arizona, California, Colorado, Connecticut, Delaware, Hawaii, Illinois, Iowa, Kentucky, Louisiana, Maine, Massachusetts, Michigan, Minnesota, Missouri, Nebraska, New Hampshire, New Jersey, New York, Ohio, Oklahoma, Pennsylvania, Rhode Island, South Carolina, Tennessee and Vermont are in regular session. The **District of Columbia** Council, **Puerto Rico** and the **United States** Congress are also in regular session.

Kansas is in recess until April 26. **Wisconsin** is in recess to the call of the chair.

The following states are expected to adjourn on the dates provided: **Kentucky** (April 13), **Alaska** (April 15), **Tennessee** (April 16), **Arizona** and **Iowa** (April 17) and **Maine** and **Nebraska** (April 18).

Maryland adjourned on April 9.

Oklahoma convened its second special session to address budget issues on December 18, [KFOR](#) reports. **Virginia** convened a special session on April 11. The House Appropriations Committee is expected to meet April 13 to continue working on its version of the state budget and the full House is set to reconvene on April 17, [Richmond Free Press](#) reports.

Oregon Democratic Gov. Kate Brown has until April 13 to act on legislation or it becomes law without signature. **Georgia** Republican Gov. Nathan Deal has until May 8 to act on legislation presented after March 23 or it becomes law without signature. **Arkansas** Republican Gov. Asa Hutchinson has 20 days from presentment, Sundays excepted, to act on regular session legislation presented after March 8. **Florida** Republican Gov. Rick Scott has 15 days from presentment to act on legislation or it becomes law. **Idaho** Republican Gov. Butch Otter has 10 days, Sundays excepted, to act on legislation or it becomes law. **Illinois** Republican Gov. Bruce Rauner has 60 days from presentment to act on all legislation passed during the veto session or it becomes law. **Louisiana** Democratic Gov. John Bel Edwards has 20 days from presentment to act on special session legislation or it becomes law. **Maryland** Republican Gov. Larry Hogan has 30 days from presentment to act on legislation presented after April 3, and bills must be presented by April 29. **Mississippi** Republican Gov. Phil Bryant has 15 days from presentment, Sundays excepted, to act on legislation presented after March 27 or it becomes law. **Oklahoma** Republican Gov. Mary Fallin has five days from presentment, Sundays excepted, to act on special session legislation or it becomes law. **Wisconsin** Republican Gov. Scott Walker has six days, Sundays excepted, to act on special session legislation or it becomes law. **Wyoming** Republican Gov. Matt Mead has 15 days to act on legislation presented after March 12 or it becomes law.

Alabama Republican Gov. Kay Ivey had a signing deadline on April 8. **Virginia** Democratic Gov. Ralph Northam had a signing deadline on April 9. **South Dakota** Republican Gov. Dennis Daugaard had a signing deadline on April 10.

The following states are currently holding interim committee hearings: [Arkansas](#), [Idaho](#), [Maryland](#), [Montana](#), [Nevada](#), [New Mexico](#), [North Carolina](#), [North Dakota](#), [Oregon](#), [South Dakota](#), [Texas House](#) and [Senate](#), [Virginia](#), [Washington](#), [West Virginia](#) and [Wyoming](#).

The following states are currently posting 2019 bill drafts, prefiles and interim studies: [Montana](#) and [North Dakota](#).

Franchise Tax

California [AB 2131](#) was heard in the Assembly Appropriations Committee on April 11 and was sent to the Appropriations suspense file. The suspense file is a holding place for bills that carry a fiscal impact of \$150,000 or more and may be voted out eventually to continue the legislative process. As amended, this bill would reduce the minimum franchise tax to \$400 for taxable years beginning on or after January 1, 2019 and before January 1, 2024. The bill would take effect immediately.

Louisiana [HB 341](#) passed the Senate Revenue and Fiscal Affairs Committee on April 9 and is pending a third reading and final vote on April 16. The bill would change the due date for corporate franchise tax filings from the 15th day of the third month to the 15th day of the fourth month. The bill would take effect one day following enactment.

General Oil and Gas

General

Louisiana [HB 331](#) passed the House following a 100 to 1 vote on April 12 and is now awaiting committee referral in the Senate. The bill would provide that the oil site restoration fee charged on the production of oil is payable upon the initial disposition of each barrel of oil and condensate. The bill would take effect July 1 and would apply retroactively to July, 2017.

Ohio [HB 225](#) was heard in the Senate Natural Resources Committee on April 10; information from the hearing was not immediately available. This bill would allow a landowner to report an idle and orphaned well and would require the Chief of the Division of Oil and Gas Resources Management to inspect the well within 30 days after the landowner report. The bill would also require the chief to establish a scoring matrix for idle and orphaned wells and to use the matrix to determine the priority of plugging wells. The bill would also require the chief to use 45 percent of the revenue credited to the oil and gas well fund to be used for plugging idle and orphaned wells rather than 14 percent. The bill would take effect 90 days after becoming law.

Ohio [HB 430](#) is scheduled for a hearing in the Senate Ways and Means Committee on April 18 at 9:00 AM. Current law exempts the sale or use of tangible personal property used “directly” in the production of oil and natural gas. This bill would amend current law to remove the qualification that the property be directly used in the production of oil and gas. The bill also amends the regulatory definition of what is considered a production operation to exclude:

- Operations, activities or equipment used in or associated with the exploration and production of any mineral resource other than oil and gas.
- Storing, holding or blending solutions or chemicals used in well stimulation.
- Preparing, installing or reclaiming foundations for drilling or pumping equipment or well stimulation material tanks.
- Transporting, delivering or removing equipment to or from the well site or storing such equipment.
- Gathering operations occurring off the well site, including gathering pipelines, transporting hydrocarbon gas or liquids away from a crude oil or natural gas production facility.

The bill would take effect 90 days after enactment.

Hydraulic Fracturing

California [SB 1370](#) has been scheduled for a hearing in the Senate Natural Resources and Water Committee on April 16 at 9:30 AM. The bill would remove a provision of existing law that

exempted well stimulation treatments that are used for routine maintenance of wells from permitting requirements. The bill would take effect the January 1 following a 90-day period from the date of enactment.

Colorado [HB 1352](#) has been scheduled for a hearing in the House Health, Insurance and Environment Committee on April 26 at 1:30 PM. The bill would require newly permitted production facilities to be located at least 1,000 feet from any school. The bill would not apply to production facilities that are actively in use or permitted at the time the school commences operations. The bill would define a production facility to be any storage, separation, treating, dehydration, artificial lift, power supply, compression, pumping, metering, monitoring, flowline, or other equipment directly associated with oil, gas or injection wells.

Royalty Payments

Oklahoma [HB 2775](#) was signed by Republican Gov. Mary Fallin on April 9 and takes effect November 1. The law will set the interest rate for proceeds from an oil and gas lease not paid due to unmarketable title at the prime interest rate reported in the *Wall Street Journal*, beginning on November 1, 2018. The law will also provide that when the lease holder has not been provided an affidavit of death and heirship, the holder of the proceeds may elect to interplead the proceeds and all accrued interest into court for a determination as to whom is entitled to them.

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