

WEEKLY HIGHLIGHTS AT-A-GLANCE

FEDERAL – Legislative

- **Comprehensive Energy Bill – S. 2012.** (Update to 3/7/16 Weekly Report) Last week, the Senate finally passed the wide-ranging bill, [S. 2012](#), the Energy Policy Modernization Act, the culmination of nearly a year and a half of bipartisan work by top energy senators. The legislation, which would become the first broad energy law in nearly a decade, is a collection of policy changes which includes promoting further natural gas development and streamlining the process for exporting natural gas. Senator Lisa Murkowski (R-Alaska), the bill's prime sponsor, and the chairwoman of the Senate Energy and Natural Resources Committee, said the bill will help America produce more energy "and bring us one step closer to being an energy superpower. At the same time, it will help Americans save more money and save energy with all of the energy-policy provisions." The bill now must be reconciled with a House-passed version that also promotes domestic oil and natural gas development and production. [Read more.](#)
- **Private Mineral Rights – HR 3881.** This bill was first introduced on November 5, 2015 by Rep. Glenn Thompson (R-PA) where it has languished in subcommittee. However, on April 19, the House Natural Resources Subcommittee on Energy and Mineral Resources held a hearing on the measure. The bill would repeal provisions specific to the Pennsylvania Allegheny National Forest in the Mineral Leasing Act and the Energy Policy Act of 1992 which the U.S. Forest Service has cited as providing authority to apply restrictive federal regulations on privately-held mineral rights. Testifying at the hearing were representatives from the Pennsylvania Independent Petroleum Producers Association and the Pennsylvania Independent Oil and Gas Association, among others. The bill would repeal the Forest Service's authority to apply the National Environmental Policy Act in order to restrict oil and gas development. [Read more.](#)

FEDERAL – Regulatory

- **BLM Flaring Rule – Colorado.** Garfield County has joined other Colorado counties in opposing the Bureau of Land Management's (BLM) draft rule aimed at reducing methane emissions from oil and gas facilities on federal land. Minus several small exceptions, last Monday, Garfield County commissioners voiced agreement with the contents of a letter drafted by Mesa County commissioners that said the rules would force new costs and burdens on industry without providing any substantial benefits. [Read more.](#)

- **Public Lands; Leasing – Montana.** The BLM has moved the location of its May 4 oil and gas lease sale from its Montana/Dakotas office to a much larger venue at the Northern Hotel in downtown Billings to better accommodate industry participants, and apparently as a measure to prepare for expected protestors. Wild Earth Guardians has a Montana presence and has planned protests at oil and gas lease sales in several Western states, including Wyoming, even though the group hasn't yet announced a Montana protest. [Read more.](#)
- **BLM Lease Sale Protest – Nevada.** On April 15, the Center for Biological Diversity, Progressive Leadership Alliance of Nevada, and Great Basin Resource Watch filed a formal administrative protest against a BLM planned oil and gas lease sale of 42 parcels covering nearly 75,000 acres of land in Lander and Nye counties in Nevada. [Read more.](#)

FEDERAL – Judicial

- **Public Lands; Leasing – Montana.** (Update to 3/21/16 Weekly Report) On April 15, Solenex, LLC challenged the [cancellation of an oil and gas lease](#) in northwest Montana after federal officials said drilling would disturb an area sacred to the Blackfoot tribes of the U.S. and Canada. The 6,200-acre lease owned by Solenex LLC of Baton Rouge, Louisiana, is in the Badger-Two Medicine area of the Lewis and Clark National Forest. It's just outside Glacier National Park and the Blackfeet Indian Reservation. Attorneys for Solonex want U.S. District Judge Richard Leon to reject the Interior Department's March 17 cancellation of the lease. [Read more.](#)

STATE – Regulatory

- **Updated Regulations – Pennsylvania.** Last Thursday, Pennsylvania's Independent Regulatory Review Commission approved a wide-ranging update to the state's oil and gas production rules, voting 3-2 that the changes proposed by the state Department of Environmental Protection are in the public interest, despite strong opposition from the regional oil and gas industry. The regulations now face another challenge in the Legislature where energy committees led by Republicans in both chambers are expected to advance a resolution that could block the rules from taking effect. These changes to [Chapters 78 and 78a](#) include updates to the permitting process, requirements for abandoned wells, and restrictions on production near schools and public spaces. [Read more.](#)

STATE – Legislative

- **Development Plans – Colorado.** (Update to 4/11/16 Weekly Report) [HB 1430](#), which would implement a recommendation of the Oil and Gas Task Force regarding the sharing of oil and gas operators' development plans with affected local governments and allowing those governments to ask oil and gas operators working in their

jurisdictions what their long-range plans are when it comes to drilling, narrowly cleared the Democratic-led Colorado House last Thursday. While the 34 Democrats who voted for the measure say it merely allows counties to ask that question, the 31 Republicans who voted against it said it's really a mandate against drillers. "If the true intent of the bill is to have these requirements be permissive, I would suggest to you that arguing that this bill is permissive is disingenuous," said Rep. Cole Wist (R). On April 22, the bill moved to the Senate Agriculture, Natural Resources & Energy Committee for consideration, but its prospects for passage in the Republican-led chamber are less likely given strong Republican opposition. [Read more.](#)

- **Plugged Wells – Louisiana.** On April 13, HCR 72 was introduced by Rep. Jim Morris (R) and referred to the Committee on Natural Resources and Environment. This resolution urges and requests the state Department of Natural Resources Office of Conservation to develop and implement a pilot program to reduce the cost of plugging orphaned wells and decrease the number of wells on the orphan wells list. [Read more.](#)
- **Pooling Units – Michigan.** On April 20, SB 903 was introduced by Sen. Tom Casperson (R) and referred to the Committee on Natural Resources. The bill would make changes to the state's Natural Resources and Environmental Protection Act by amending certain percentages regarding the costs of unit operation and production payments from a unit. (See more detail below under State-by-State Legislative Session Overview) [Read more.](#)

STATE – Judicial

- **Habendum Clause; Leasing – Louisiana.** On April 8, in [Guy v. Empress, L.L.C.](#) (Case No. 50,404-CA), the Court of Appeals in Louisiana denied a landowner's bid to have a lease deemed expired for lack of timely drilling and production operations, concluding first that the original lessee's assignment of the deep rights did not divide the lease into two separate leases and second that the lessee and its assigns timely drilled and produced from both shallow and deep formations within the time required by the habendum clause without any break that lasted more than 90 days as required by the continuous operations clause of the lease. [Read more.](#)
- **State Regulations – Pennsylvania.** (Update to 3/28/16 Weekly Report) A key vote on a major revision to Pennsylvania's oil and gas rules can go forward this week after a Commonwealth Court judge [rejected a request by a drilling trade group to delay the meeting](#). The Bradford-based Pennsylvania Independent Petroleum Producers Association had argued that the rules should be stopped before they are finalized because the revisions violate state law and would cripple the state's traditional drilling industry. [Read more.](#)
- **Washouts; Leasing – Texas.** On March 18, in [Anadarko Petroleum Corp. v. TRO-X, L.P.](#) (Case No. 08-15-00158), the Texas Court of Appeals was tasked with determining

whether a prime lessee retained any interest in a mineral estate after its sub-lessee and the lessors, following a purported breach of the prime lease terms and allegedly unbeknownst to the prime lessee, executed new “washout” leases cutting out the prime lessee as a party. The Court’s ruling, in keeping with the trend in Texas courts, allows washouts unless strictly forbidden by agreement and only precludes washouts in cases involving bad faith or a breach of a fiduciary duty. [Read more.](#)

- **Pooling; Ad Valorem Taxes – Texas.** On April 14, in [Haider v. Jefferson Cty. Appraisal Dist.](#) (Case No. 09-14-00311-CV), the Texas Court of Appeals sent back to the trial court for further determination a decision in favor of the city of Beaumont that authorized ad valorem taxes on pooled acreage located outside the city’s boundaries, reasoning that the leases weren’t part of the record on summary judgment and, as a result, the trial court couldn’t determine for certain whether the pooling resulted in a cross-conveyance of the minerals both within and outside the city’s boundaries such that the mineral interests located outside the city’s boundaries could be subject to the city’s tax. [Read more.](#)

INDUSTRY NEWS FLASH:

◆ **Bakken crude sold as export first time since ban lifted.** Hess Corp. confirmed last week that it has sold Bakken crude to a buyer in Europe, the first shipment of North Dakota’s light crude since U.S. Congress lifted the decades-old oil export ban last December. The shipment consisted of 175,000 barrels that was loaded at a terminal in St. James, Louisiana before being transported to a European refinery. Hess declined to name the buyer or the transportation vessel. [Read more.](#)

◆ **Texas Railroad Commission marks 125th anniversary.** At its April 12 meeting, Commissioner Christi Craddick said, “We could not be more proud of the commission’s position as a global leader in energy regulation, standing as a testament to the fact that environmental safety and energy development can coexist for the betterment of all Texans.” Also speaking last week at the Texas Alliance of Energy Producers annual meeting on the downturn in the oil and gas industry, Craddick noted that Texas energy production remains “a pillar of our economy” and that “independent producers are the backbone of the industry, and Texas oil and gas would not be what it is today without their determination and ingenuity.” [Read more.](#)

PRACTICE TIP: What to do when a mineral owner vanishes from public records. On April 19, the law firm, Stoll Keenon Ogden PLLC, published a primer on what to do in situations where there is uncertainty of ownership, i.e., where it is presumed the owner is deceased, as it relates to marketable title, defects, and other limitations, and offers a table of applicable laws in the Marcellus/Utica shale and Illinois basin regions. [Read more.](#)

ELECTION ALERT:

🌟 Last Friday, Harold Hamm, CEO of Continental Resources, endorsed Donald Trump for president. In an open letter to the *Wall Street Journal*, Hamm described Trump as “the business leader’s candidate.” He also wrote that with “a slew of onerous regulations now threatening to cripple American business, the next President of the United States must have the courage, determination and intelligence to disrupt politics as usual.” Hamm was the top energy adviser to the Republican Party’s last presidential nominee, Mitt Romney, in 2012. [Read more.](#)

State-by-State Legislative Session Overview

The **Alaska** legislature failed to pass a plan to address an estimated \$4 billion budget deficit before their 2016 legislative session was scheduled to end on April 17, [KBBI](#) reports. Legislators will remain in Juneau for at least a week to complete as much work on the budget deficit as possible before planned renovations to the capitol building force them to leave. Independent Gov. Bill Walker has proposed restructuring the Alaska Permanent Fund, a pooled investment fund owned by the state that pays annual dividends to residents, to cover part of the shortfall. [HB 245](#), currently under consideration by the House Finance Committee, contains Governor Walker’s proposal. The committee is currently working on a new draft of the bill. In addition to Walker’s proposal to tap the Permanent Fund, legislators are considering criminal justice reform and restructuring oil and gas tax credits. Walker also proposed the state's first income tax in more than 35 years. Walker seeks a six percent levy on an individual's federal income tax liability, [Bloomberg BNA](#) reports. The state constitution allows for the regular session to last until May 18, with an option to add an additional 10 days.

Alabama, Alaska, Arizona, Arkansas, California, Colorado, Connecticut, Delaware, Hawaii, Illinois, Iowa, Louisiana, Massachusetts, Michigan, Minnesota, Mississippi, Missouri, New Hampshire, New Jersey, Ohio, Oklahoma, Pennsylvania, Rhode Island, South Carolina, Tennessee, Vermont and Wisconsin are in regular session. The **District of Columbia** and the **U.S. Congress** are also in regular session.

North Carolina is expected to convene its 2016 legislative session on April 25.

Kansas is currently in recess and is expected to reconvene on April 27. **New York** is in recess and is expected to reconvene on May 3.

Maine is scheduled to convene a veto session on April 29.

Kentucky adjourned on April 15. **Maine** adjourned on April 16. **Alaska** did not adjourn as scheduled on April 17 due in part to an unresolved budget, [The Kansas City Star](#) reports. The state constitution allows for an extension of the regular session until May 18, with an option to add an additional 10 days. **Iowa** and **Tennessee** did not adjourn as scheduled on April 19 due to

unfinished legislative business, and adjournment dates have not been officially determined. **Nebraska** adjourned on April 20.

The following states are expected to adjourn their 2016 legislative sessions on the dates provided: **Arizona** (April 23), **Mississippi** (April 24), **Kansas** (April 27) and **Connecticut** (May 4).

Maine Republican Gov. Paul LePage and **Nebraska** Republican Gov. Pete Ricketts have until April 26 to act on pending legislation or it becomes law without signature. **Kentucky** Republican Gov. Matt Bevin has until April 27 to act on legislation or it becomes law without signature. **Georgia** Republican Gov. Nathan Deal has until May 3 to act on legislation presented after March 18 or it becomes law without signature. **Maryland** Republican Gov. Larry Hogan has until May 31 to act on legislation or it becomes law without signature. **Florida** Republican Gov. Rick Scott has 15 days from presentment to act on legislation or it becomes law without signature.

The following states are currently holding interim committee hearings: **Idaho, Indiana, Maryland, Montana, Nebraska, Nevada, North Dakota, Oregon, the Texas House and Senate, Utah, Virginia, Washington and Wyoming.**

Franchise Tax

California [AB 2807](#) is scheduled to be heard in the Assembly Revenue and Taxation Committee on May 9. The bill would reduce the annual minimum franchise tax to \$800 per year. The amendment would also require corporations to pay the state the minimum franchise tax of \$150 per year on an annual basis. It would also extend an exemption to corporations and limited liability companies solely owned by deployed members of the armed forces until January 1, 2020.

The conference committee voted to adopt [committee report #2](#) of **Mississippi** SB 2858. The bill is now awaiting delivery to Republican Gov. Phil Bryant. Once Governor Bryant receives it, he has five days (Sundays excepted) to act on the bill or it will become law without his signature. The bill aims to phase out income tax on the first \$5,000 of taxable income, and phase out the franchise tax. The bill would phase out the corporation franchise tax by January 1, 2028; at that time it would be repealed. The current franchise tax rate of \$2.50 for every \$1,000 in excess of \$100,000 of the capital used, invested or employed would be phased out by decreasing the tax by \$0.25 per year, starting on January 1, 2018 until the proposed repeal in 2028.

Lands

Louisiana [HB 632](#) passed the House Natural Resources and Environment Committee on April 20 and is scheduled for a floor debate on April 27. As amended, this bill relates to the financial security needed for oil and gas drilling activities. It says that an applicant would have to provide financial security for a permit to drill within 30 days of the completion date or from the date the operator is notified that the financial security is required. The financial security that is required is

contingent on the type and depth of the well. This legislation would exempt an owner in good standing from the financial security requirements needed to drill new wells.

Oil and Gas

General Oil and Gas

California [AB 1882](#) was heard in the Assembly Appropriations Committee on April 20 and was referred to the committee suspense file. Any bill having a fiscal impact of \$150,000 or more is automatically placed on the Appropriation Committee's suspense file where they can be voted out eventually to continue the legislative process. Not all bills will be considered and bills left on the suspense fill will die when the session ends. The bill would allow the State Water Resources Control Board and regional water quality control boards to review, comment on, and propose additional requirements for Class II underground injection well projects starting January 1, 2017. The Oil, Gas, and Geothermal Division would not be able to approve a new project suggested by the review without written concurrence from the state or regional board that the injection of fluids would not affect the quality of water.

Colorado [HB 1430](#) passed the House without amendments on April 21. The bill was introduced in the Senate on April 22 and referred to the Senate Agriculture, Natural Resources and Energy Committee. In addition to registering development plans with the state oil and gas conservation committee, this bill would require oil and gas operators to share their development plans with local governments and municipalities where their operations will be taking place.

Michigan [SB 880](#) was introduced on April 13 and referred to the Senate Energy and Technology Committee. This bill would eliminate the Department of Energy's ability to grant an easement for the transport of crude oil or liquid petroleum products over, through, under or upon the bottom of the Great Lakes. Those that are currently authorized to transport crude oil or liquid petroleum products near over, through, under or upon the bottom of the Great Lakes would be required to submit a spill risk analysis to the legislature and the governor under the law.

This bill is sponsored by Sen. Rick Johns, R-Grand Ledge, and if enacted, would take effect 90 days after enactment.

Oklahoma [HB 2651](#) unanimously passed the Senate on April 13 and was returned to the House the following day. The House will now consider the Senate's version of the bill. The bill has been sent to the Senate floor. The bill would create a policy that would reduce and recycle oil and gas waste whenever feasible, and to treat waste that cannot be recycled. Oil and gas waste includes saltwater, mineral brines, waste oil and other substances produced or obtained during the drilling, development, producing and operation of wells.

The committee substitute adds a section to encourage the commissioner to work in conjunction with the Secretary of Energy and Environment, the Oklahoma Water Resources Board and the Department of Environmental Quality to encourage industrial use of water produced in oil and natural gas operations.

Bundling & Pooling

Michigan [SB 903](#) was introduced on April 20 and referred to the Senate Natural Resources Committee. This bill would require that the unit operator of a pool or pools would be required to pay at least 51 percent of the cost of all operations, a decrease from 75 percent. The operators will be entitled to at least 51 percent of the production from the unit area, a decrease from 75 percent, or the proceeds of that production that will be credited to interests that are free of cost, including royalties and production payments. This bill is sponsored by Sen. Tom Casperson, R-Escanaba.

Mineral Rights

Louisiana [SB 404](#) passed the Senate with [amendments](#) on April 18. SB 404 was then received in the House the following day, and referred to the House Civil Law and Procedure Committee on April 20. This bill would regulate the sale or transfer of mineral rights by mail. The bill would require a disclosure to highlight the sale of the mineral rights by mail. If the proper disclosure is provided, the transferor may rescind the agreement within 60 days after the date on which the transferor signs it. If the instrument does not include the required disclosure, the transferor may rescind the agreement within three years after the date on which the transferor signs it. The rescission will not be effective against a party to make royalty payments until 60 days after that part is furnished with a certified copy of the notice of rescission. A transferor who exercises the right to rescind is required to return any payments, including royalties and interest, made by the transferee within 60 days.

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