

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

- **BLM Methane Emissions Rule.** (Update to 2/6/17 Weekly Report) Last week, the Senate failed to garner enough votes to repeal the Obama-era Bureau of Land Management (BLM) methane emissions rule, “Waste Prevention, Production Subject to Royalties, and Resource Conservation” (published at [81 Fed. Reg. 83008](#), November 18, 2016). The measure, [H.J. Res. 36](#), passed the House on February 3, but the Senate could not pick up enough support and the resolution was rejected by a 51-49 vote, with some Republicans voting along with Democrats. Under the Congressional Review Act, Congress is able to roll back the last administration’s rulemaking. However, that Act has time limitations, and last week was the deadline to rollback this particular rule. The upside is that the vote came after Interior Department Secretary Ryan Zinke gave assurances that his department will act to address methane admissions administratively. In a [May 10 statement](#), Zinke’s office says “the Department has reviewed and flagged the Waste Prevention rule as one we will suspend, revise or rescind.” We will keep you updated once that new proposed rulemaking is released. [Read more.](#)
- **National Monuments.** On May 2, Rep. Raul Labrador (R-ID) introduced H.R. 2284, the “National Monument Designation Transparency and Accountability Act”. The bill would impose greater limitations on a U.S. president designating areas as national monuments, which has been used under the Obama administration to forestall resource development, such as in Utah’s Bears Ears. The measure would require both congressional approval of a proposed national monument, and also that the State in which the proposed national monument would be located to have enacted legislation approving the designation. [Read more.](#) The Senate version of this bill, [S. 132](#), introduced by 28 Republican Senators in January, 2017, remains in committee. [Read more.](#)

FEDERAL – Regulatory

- **Presidential Guidance Memorandum.** On May 8, the White House issued formal guidance, [Memorandum For: Regulatory Reform Officers and Regulatory Policy Officers at Executive Departments and Agencies](#) (M-17-24), to implement federal energy regulation review. The Memorandum details guidance to implement President Trump’s March 28, Executive Order No. 13783 ([Presidential Executive Order on Promoting Energy Independence and Economic Growth](#)) aimed at promoting energy independence and economic growth. The guidance notes that the Executive Order “requires the head of each Executive Department and Agency (agency) to review all of that agency’s existing

regulations, orders, guidance documents, policies, and any other similar agency actions (collectively, agency actions) that potentially burden the development or use of domestically produced energy resources, with particular attention to oil, natural gas, coal, and nuclear energy resources.” The agencies will be required to report a draft final plan by July 26 with specific recommendations that “could alleviate or eliminate aspects of agency actions that burden domestic energy production.” [Read more.](#)

- **BLM Lease Sale – Colorado.** The BLM is seeking public comment on a proposal to offer 28 parcels, or 27,280 acres, of federal minerals in Mesa and Garfield counties in a December oil and gas lease sale. Comments must be received by June 9. [Read more.](#)
- **BLM Resource Advisory Councils.** Last week, the Interior Department announced it is formally reviewing the “charter and charge” of more than 200 advisory panels that assist federal agencies managing hundreds of millions of acres of public lands. The BLM has told members of its 30 resource advisory councils (RACs) to postpone scheduled meetings through at least September as part of the new national review of Interior's advisory panels to ensure that advisory panels are in line with President Trump’s resource development policies and executive orders concerning federal rules and regulations. The agency’s 30 RACs, whose members are appointed by the Interior Secretary, are designed to help guide BLM administrators on a wide variety of issues including energy resource development and land use. [Read more.](#)

FEDERAL – Judicial

- **BLM Lease Plans – California.** (Update to 9/12/16 Weekly Report). On May 3, a federal court approved a [legal settlement](#) between environmentalists and the BLM to put an end to the suit [Los Padres ForestWatch v. U.S. Bureau of Land Management](#) (Case No. CV-15-4378-MWF). In that suit, a federal judge in the U.S. District Court for the Central District of California rejected a resource management plan by the BLM to open more than 1,500 square miles of lands in central California to oil resource development. “The agreement requires the Bureau of Land Management to rework a resource-management plan that would have auctioned off drilling rights on vast stretches of public land in California’s Central Valley, the southern Sierra Nevada, and Santa Barbara, San Luis Obispo and Ventura counties.” The BLM has not held a single lease sale in California since 2013, when a federal judge first ruled that the agency had violated the National Environmental Policy Act by issuing oil leases in Monterey County without considering the environmental dangers of hydraulic fracturing. “The new settlement will continue that de facto leasing moratorium.” However, Dave Quast, California director of the pro-industry group Energy in Depth, says the “legal settlement changes nothing, as there has been a moratorium on such development for years” and stresses that the moratorium does more harm than good by requiring Californians to import most of their needed oil by ship or rail “from places with laxer environmental protections.” [Read more.](#)

STATE – Legislative

- **Notice – Montana.** (Update to 5/8/17 Weekly Report) On May 8, Gov. Steve Bullock (D) vetoed SB 93. Since the legislature has now adjourned it is unlikely that a special vote would be called to override the veto, so the bill is effectively dead for this session. The bill would have updated current law to require oil and gas developers and operators to give notice upon completion, in addition to the existing drilling notice, of their operations to the owner of an occupied dwelling within 990 feet of a wellbore’s surface location, amended from the introduced bill’s 660 feet of a wellbore location. [Read more.](#)
- **Forest Lands – Pennsylvania.** On May 4, Sen. Camera Bartolotta (R) introduced Senate Resolution 104, which urges the Governor to end the moratorium on “new nonsurface disturbance natural gas drilling leases” on state forest land. [Read more.](#)
- **Notaries Public – Pennsylvania.** On May 9, Rep. Harry Readhsaw (D) introduced HB 1356. The bill revises the uniform law on notarial acts to exempt licensed attorneys satisfying certain requirements from the requirements for appointment and commission as a notary public. [Read more.](#)

STATE – Regulatory

- **Lease Sales – New Mexico.** The New Mexico Stand Land Commissioner announced that the April oil and gas lease sale produced nearly \$4 million. Up for auction were 35 tracts covering about 9,000 acres in Eddy, Chaves and Lea counties in southeastern New Mexico. With a little less than two months remaining in the state’s fiscal year, revenues from monthly oil and gas lease sales have already topped \$61 million, compared to total earnings last year of only \$36 million. [Read more.](#)

STATE – Judicial

- **Local Zoning – Pennsylvania.** On May 1, in *Juskowich v. Washington Township Zoning Hearing Board* (Case No. 536 C.D. 2016), the Pennsylvania Commonwealth Court upheld a local zoning board’s decision to grant a well operator’s application for a special exception for gas well drilling and related activities on two properties in Washington Township. The Court concluded that the landowner waived challenges to the decisions of the local zoning officer regarding conditions on the zoning permit upon which the zoning board relied in issuing the permit. [Read more.](#)
- **Mineral Interests – Texas.** On May 3, in *Reed v. Maltsberger* (Case No. 04-16-00231-CV), a Texas appellate court held that in interpreting a 1942 deed that the instrument by conveying to the grantees “an undivided one-fourth (1/4) interest in and to all of the oil, gas and other minerals in and under and that may be produced from the following

described lands” but also stripped certain rights associated with mineral ownership from the grantees nevertheless conveyed a 1/4 mineral interest, not a 1/4 fixed royalty interest. The Court reasoned that the language stripping the grantee of mineral rights would be redundant because a royalty interest owner has no such rights to take away. [Read more.](#)

- **Top Leases; Shut-In Clause – Texas.** On April 28, in *BP Am. Prod. Co. v. Red Deer Res., LLC* (Case No. 15-0569), the Texas Supreme Court held that a top lessee failed to introduce evidence that a gas well didn’t produce in paying quantities to support a claim that the lease expired. The Court reasoned that the lease shut-in royalty clause preserved the lease as a substitute for actual production upon tender of the negotiated annual shut-in royalty within a year after the last gas was “sold or used” from a well capable of producing gas, thus deeming the original lease as valid. [Read more.](#)

State-by-State Legislative Session Overview

Alaska, Alabama, California, Connecticut, Delaware, Illinois, Kansas, Louisiana, Maine, Massachusetts, Michigan, Minnesota, Missouri, Nebraska, Nevada, New Hampshire, New Jersey, New York, North Carolina, Ohio, Oklahoma, Oregon, Pennsylvania, Rhode Island, Texas, Vermont and **Wisconsin** are in regular session. The **District of Columbia** Council, **United States** Congress and **Puerto Rico** are also in regular session.

Wisconsin convened a special session on January 5 that will run concurrently with the regular session.

Washington convened a 30-day special session on April 24. [SCR 8404](#), adopted the same day, reintroduced and retained in present status all legislation that had been pending prior to adjournment of the regular session. A list of bills that passed both chambers prior to the end of the regular session can be found [here](#). **West Virginia** convened a special session related to budget issues on May 4 that is in recess until May 15.

The following states adjourned on the dates provided: **Florida** (May 8), **Arizona, Colorado** and **Tennessee** (May 10) and **South Carolina** (May 11).

The following states are expected to adjourn their legislative sessions on the dates provided: **Minnesota** (May 22), **Alabama** (May 23), **Oklahoma** (May 26), **Texas** (May 29) and **Missouri** (May 30). **Alaska** did not adjourn as anticipated on April 27, but must adjourn before May 17.

Vermont did not adjourn as expected on May 6, but is expected to adjourn at the conclusion of budget negotiations. **Kansas** did not adjourn as expected on May 11.

Washington Democratic Gov. Jay Inslee has until May 16 to act on legislation from the regular session or it becomes law. **Iowa** Republican Gov. Terry Branstad has until May 22 to act on

legislation presented after April 19 or it is pocket vetoed. **Maryland** Republican Gov. Larry Hogan has until May 30 to act on legislation or it becomes law. **Colorado** Democratic Gov. John Hickenlooper has until June 9 to act on legislation or it becomes law. **Hawaii** Democratic Gov. David Ige has until July 3 to act on legislation presented after April 25 or it becomes law. **Arizona** Republican Gov. Doug Ducey has 10 days from presentment, Sundays excepted, to act on legislation presented after May 5 or it becomes law. **Florida** Republican Gov. Rick Scott has 15 days from presentment to act on legislation presented after May 1 or it becomes law without signature. **Mississippi** Republican Gov. Phil Bryant has 15 days from presentment, Sundays excepted, to act on legislation presented after March 24 or it becomes law. **Montana** Democratic Gov. Steve Bullock has 10 days after delivery to act on legislation or it becomes law. **North Dakota** Republican Gov. Doug Burgum has 15 days, weekends excepted, to act on legislation or it becomes law. **South Carolina** Republican Gov. Henry McMaster has until two days after the next meeting of the legislature to act on legislation presented after May 6 or it becomes law. **Tennessee** Republican Gov. Bill Haslam has 10 days from presentment, starting the day after presentment, to act on legislation or it becomes law. **Virginia** Democratic Gov. Terry McAuliffe had a signing deadline on May 5 for legislation returned after the veto session. **Georgia** Republican Gov. Nathan Deal had a signing deadline on May 9.

Franchise Tax

California [AB 1256](#) passed the Assembly Revenue and Taxation Committee on May 8 with amendments and was re-referred to the Assembly Appropriations Committee. The amended text has not been made available yet. This bill would reduce that minimum franchise tax in the second taxable year for a new corporation, and that annual tax in the first taxable year for a new limited partnership, new limited liability partnership, and new limited liability company that is a small business, which is defined as a business entity with gross receipts of \$5,000 or less. The franchise tax would be \$100 if the company is doing less than \$5,000 per year in gross receipts.

If this bill becomes law, it would take effect for taxable years beginning on or after January 1, 2018.

Louisiana [HB 80](#) passed the House Ways and Means Committee on May 9 with [amendments](#) and then was read again, amended and sent to the House Appropriations Committee the following day. 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.

Louisiana [HB 355](#) passed the House Ways and Means Committee on May 9 with [amendments](#) and is now scheduled for third reading in the House on May 16. Existing law levies a franchise tax law on every domestic and foreign company doing business in the state at a rate of \$1.50 per \$1,000 of taxable capital up to \$300,000, and then \$3 per \$1,000 of taxable capital above \$300,001. HB 355 contains a provision that would repeal the franchise tax. This bill is sponsored by Rep. Barry Ivey, R-Baton Rouge.

Louisiana [HB 361](#) passed the House Ways and Means Committee on May 9 with [amendments](#) and is now scheduled for third reading on May 16. Sponsored by Rep. Barry Ivey, R-Baton Rouge, the bill would repeal the franchise tax on January 1, 2018.

New York [SB 138](#) advanced to third reading on May 8. This bill would offer taxpayers a personal income or business franchise tax credit of 25 percent of their property taxes if their land is committed to forestry stewardship or habitat conservation, or both. If this bill becomes law it will take effect immediately.

The Assembly companion, [AB 1874](#), is pending in the Assembly Ways and Means Committee.

Tennessee [HB 65](#) was removed from the House Finance, Ways and Means Subcommittee calendar on May 8. 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](#), was assigned to the General Subcommittee of the Senate Finance, Ways and Means Committee on May 9. The bill is sponsored by Sen. Mike Bell, R-Riceville, and would take effect on July 1 if enacted.

Oil and Gas

Oil and Gas General

Colorado [HB 1372](#) passed the House State, Veterans and Military Affairs Committee on May 5 and then passed the House Appropriations Committee on May 8, but the bill failed to advance further before the May 10 adjournment of the legislature. Sponsored by Rep. Steve Lebsock, D-Thornton, this bill would have required oil and gas operators to give electronic notice of the location of each flow line, gathering pipeline and transmission pipeline that the operator installed, owned or operated. These electronic notices would have been required to be delivered to the director of the Oil and Gas Commission who would have been required to post the information online.

Montana [SB 93](#) was vetoed by Democratic Gov. Steve Bullock on May 8. Governor Bullock's veto letter can be [read here](#). This bill would have required oil and gas developers and operators to give notice upon completion of their operation to the owner of an occupied dwelling within 990 feet of a borehole, amended from 660 feet of a borehole. This bill was sponsored by Sen. Tom Richmond, R-Billings.

Oklahoma [SB 867](#) passed second reading on May 9 and was referred to the Joint Appropriations and Budget Committee. This bill would authorize the Corporation Commission to create well spacing units for horizontal oil or gas wells of up to 1,280 acres. Any application for a horizontal spacing unit larger than 640 acres would require the basis for requesting a larger unit. The bill would require that the horizontal lateral must be at least 7,500 feet in order to receive a spacing larger than 640 acres. The drilling of a multiunit horizontal well would be prohibited as the

initial unity well for a spacing unit, unless the contemplated completed portion of the lateral is to extend 10,560 feet. This bill is sponsored by Sen. Mike Schulz, R-Altus.

Texas [HB 3025](#) was read for the first time in the Senate on May 5 and referred to the House Agriculture, Water and Rural Affairs Committee. Sponsored by Rep. Tracy King, D-Uvalde, this bill would change the number of days after a landowner or other person who possesses an abandoned well has to plug or cap the well from 180 days to 30 days after discovering it. The bill would add a new section to the existing law that says no later than 10 days after a landowner who possesses a deteriorated well learns of its condition the landowner would have to have the well plugged. Districts would require that owners or a lessee of land with deteriorated wells plug or repair the well sufficiently to prevent pollution of any water, including ground water. If this bill becomes law, it will take effect immediately.

Royalty Payments

Pennsylvania [HB 2319](#) was introduced on May 10 by Rep. Cris Dush, R-Indiana, and referred to the House Environmental Resources and Energy Committee. This bill would clarify the definition of royalty and wellhead. Royalty would be defined as a lessor's ownership interest in the oil, natural gas or gas of any other designation produced from below a specific tract of real property, valued at the wellhead free of expenses of production and transportation. Wellhead would be defined as the point at which oil, natural gas or gas of any other designation reaches the ground surface or departs from the subject real property for which a lease or other such agreement conveys the right to remove or recover oil, natural gas or gas of any other designation from the lessor to the lessee.

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