

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

- **BLM Lease Sale Protest – Colorado.** The movement to halt oil and gas drilling on public lands kicked into higher gear on May 12, as more than 250 protestors tried to shut down an oil and gas lease sale at a Denver Holiday Inn. The rally, which overtook the hotel parking lot and then occupied the lobby, was one of the largest to target Western lease auctions held by the Bureau of Land Management (BLM) in recent months. However, [the lease auction, covering more than 6,000 acres](#), failed to stop the \$5.2 million sale. [Read more.](#)
- **BLM Online Auction Proposal – Colorado.** At last week's annual business meeting of the Interstate Oil and Gas Compact Commission in Denver, Kathleen Sgamma, vice president of governmental affairs for the Western Energy Alliance (WEA), advocated that BLM oil and gas lease sales be moved online to push the auctions out of the public sphere to "get rid of the circus" from the repeated eco-activist "Keep it in the Ground" protests negatively impacting BLM lease sales. The BLM appears receptive to the proposal, stating on the record that, responding to the WEA push, it is now considering online auctions moving forward. "There's been research done that shows the overall participation and bid amounts are enhanced through the internet process," said Kent Hoffman, deputy state director of BLM's Utah office. [Read more.](#)
- **BLM Master Leasing Plan – Utah.** Under federal notice published May 18, the BLM will consider resource management plan decisions related to oil and gas leasing and post-leasing oil and gas development on approximately 525,000 acres of public land in the San Rafael Desert, located in Emery and Wayne Counties, Utah. By this notice the BLM announces the beginning of the scoping process to solicit public comments (due by June 17, 2016) and to identify issues. [Read more.](#)
- **BLM Lease Sale Protest – Utah.** On May 17, climate activists disrupted a BLM oil and gas lease sale held in Salt Lake City. Officers refrained from arresting anyone, although BLM officials cautioned auction observers that disruptions would be met with arrest. On the block were four parcels in Sevier County totaling under 8,000 acres — less than 10 percent of the acreage oil and gas companies had nominated for this sale, which covered lands run by the BLM's field offices in Richfield, Kanab and St. George. The BLM withheld most of these parcels from leasing because they overlap sage grouse habitat. [Read more.](#)

- **Department of the Interior Hearing – Washington, DC.** On May 19, the House Committee on Natural Resources, Subcommittee on Energy and Mineral Resources, held an oversight hearing titled, “*Examining Deficiencies in Transparency at the Department of the Interior*”, in which industry participants argued in part that the BLM and U.S. Forest Service violated the National Environmental Policy Act by relying on studies that were not part of the draft Environmental Impact Statement, and therefore, not available for review and comment by interested or affected parties. [Read more.](#)

STATE – Legislative

- **Employee Misclassification – Kentucky.** (Update to 2/29/16 Weekly Report) In a victory for independent contractors, HB 477, a bill introduced by Majority Caucus Chair Rep. Sannie Overly (D) in February that would have prohibited misclassifying an employee as an independent contractor and presumed that a worker was an employee unless the worker met overly burdensome factors, died pursuant to the legislative session adjournment. Although this bill apparently addressed independent contractors in the construction industry, there was concern from AAPL members that it may have an impact on the landman industry and we followed it closely for that reason. Moreover, since Kentucky does not allow for carryover bills, this bill, in its current form, cannot be introduced in the next legislative session. [Read more.](#)
- **Notary Public – Missouri.** On May 13, HB 2726, originally introduced in March by Rep. Gail McCann Beatty (D), was finally referred to committee. The bill would amend current notary law to require new rules regarding criminal backgrounds and also require if the document to be notarized is a deed, quitclaim deed, deed of trust or other document affecting real property, or a power of attorney document, the notary public shall require the party signing the document to place his or her right thumbprint in the journal, and the notary public shall place his or her right thumbprint on the original document. [Read more.](#)
- **Independent Contractors – Pennsylvania.** We are pleased to report that the long-awaited independent contractor bill, created by AAPL, has finally been introduced in the Pennsylvania House after nearly a year’s effort working with bill sponsors. The bill, [HB 2021](#), was introduced on May 18 and referred to the Committee on Labor and Industry. Our Pennsylvania lobbying team is now working to move the bill favorably through committee and reported out for a floor vote this legislative session. The bill amends the relevant state unemployment compensation statute by adding a statutory definition of “landman” for the first time, and also codifies the distinction between an independent contractor and employee. If passed, the measure is purposed to alleviate the ongoing confusion, audits, and legal actions brought against companies and landmen by clarifying employment and contract relationships. (More detail below in the *State-by-State Legislative Overview* section.) [Read more.](#)

STATE – Regulatory

- **Local Ordinances – Colorado.** Last Thursday, Boulder County commissioners ended a four-year-old “timeout” moratorium on accepting and processing new applications for oil and gas development in unincorporated areas of the county, which was to have lasted through July 1, 2018, and replaced it with a new and shorter six-month-long moratorium. The commissioners said the new moratorium is needed to prepare, seek public comment on, and adopt updates to Boulder County’s gas-related, land-use and environmental regulations as they relate to oil and gas operations, before any drilling is permitted to resume. [Read more.](#)

STATE – Judicial

- **Subsurface Rights – Alaska.** On May 6, the Supreme Court of Alaska, in *City of Kenai v. Cook Inlet Nat. Gas Storage Alaska, LLC* (Case No. S-15682), held that the co-owners of the mineral rights (the state and a private party) that executed a storage lease own the pore space in the subsurface pursuant to an Alaska statute that presumes the state’s reservation of those rights and rejected the surface owner’s request to apply the usual “American Rule” of pore-space ownership that would’ve presumed the surface owner’s rights to the caverns that remain in the subsurface after the development and depletion of subsurface oil, gas, or other minerals. [Read more.](#)

INDUSTRY NEWS FLASH:

- ◆ **In a \$4.4 billion deal, Range Resources acquires Memorial Resource Development.** Last Monday, Range Resources Corp. said it agreed to buy rival energy company Memorial Resource Development Corp. in an all-stock deal valued at \$3.3 billion. The agreement also calls for Range, a Fort Worth, Texas, natural-gas producer, to take on \$1.1 billion in debt owed by Memorial. Range will absorb the smaller driller, adding its Louisiana operations to existing acreage and wells across Pennsylvania, Texas and Oklahoma. [Read more.](#)

ELECTION ALERT:

- ⊕ Presumptive Republican presidential nominee, Donald Trump, has tapped North Dakota Republican Congressman, Kevin Kramer – a proponent of lower taxes on oil and gas producers and reining-in regulatory overreach – as his energy adviser to assist in drafting Trump’s energy policy. Cramer was also among a group of Trump advisers who recently met with lawmakers from Western energy-producing states, who hope Trump will open more federal land to oil and gas production. [Read more.](#)

State-by-State Legislative Session Overview

West Virginia Democratic Gov. Earl Ray Tomblin called the Republican-led legislature into a special session on May 16, [The Inter Mountain](#) reports. The legislature had adjourned on March 15 without reaching a budget agreement for fiscal year 2017. Lawmakers are considering three key proposals requested by Governor Tomblin to raise revenue. [SB 1003](#), which would impose the existing consumer sales and use tax of six percent on the sales of telecommunications services, is under consideration by the Senate Finance Committee. [SB 1005](#), which passed the Senate Finance Committee on May 17, would increase the tax levied on tobacco products. The proposal is projected to raise \$78 million if passed. Similar bill [HB 103](#) is pending in the House Finance Committee. A third proposal, contained in [SB 1006](#), would authorize the governor to furlough state employees and meet certain financial obligations in the event of a fiscal emergency. Lawmakers need to bridge a gap of \$270 million to balance the budget.

California, Delaware, Illinois, Louisiana, Massachusetts, Michigan, Minnesota, Missouri, New Hampshire, New Jersey, New York, North Carolina, Ohio, Oklahoma, Pennsylvania, Rhode Island and South Carolina are in regular session. The **District of Columbia** and the **U.S. Congress** are also in regular session.

The following states convened special sessions on the dates provided: **Connecticut** (May 12), **West Virginia** (May 16) and **Arkansas** (May 19).

Utah adjourned a special session on May 18.

Kansas is in recess until June 1 and is expected to adjourn its legislative session on that day.

Alaska adjourned its legislative session on May 18 without passing a budget agreement.

Wisconsin ended its veto review floor period on May 18. The legislature is in recess and has yet to schedule a reconvening date.

The following states are expected to adjourn their legislative sessions on the dates provided: **Minnesota** (May 23), **Oklahoma** (May 27), **Missouri** (May 30), **Kansas** (June 1), **South Carolina** (June 2) and **Louisiana** (June 6).

Iowa Republican Gov. Terry Branstad has until May 30 to act on legislation presented after April 26 or it is pocket vetoed. **Maryland** Republican Gov. Larry Hogan has until May 31 to act on legislation or it becomes law without signature. **Colorado** Democratic Gov. John Hickenlooper has until June 10 to act on legislation presented after May 1 or it becomes law without signature. **Hawaii** Republican Gov. David Ige has until July 11 to act on legislation presented after April 21 or it becomes law without signature. **Alaska** Independent Gov. Bill Walker has 20 days from presentment, Sundays excluded, to act on legislation or it becomes law without signature. **Connecticut** Democratic Gov. Dannel Malloy has 15 days from presentment, Sundays and legal holidays excepted, to act on legislation or it becomes law without signature. **Mississippi** Republican Gov. Phil Bryant has 15 days from presentment, Sundays excepted, to act on legislation or it becomes law without signature. **Tennessee** Republican Gov. Bill Haslam

has 10 days from presentment, excluding Sundays, to act on legislation or it becomes law without signature. **Vermont** Democratic Gov. Peter Shumlin has five days from presentment, Sundays excepted, to act on legislation or it is pocket vetoed.

Utah Republican Gov. Gary Herbert has until June 7 to act on legislation passed during the second special session or it becomes law.

Alabama Republican Gov. Robert Bentley had a signing deadline on May 15. **Arizona** Republican Gov. Doug Ducey had a signing deadline on May 19.

The following states are currently holding interim committee hearings: **Alabama, Arkansas, Colorado, Idaho, Iowa, Indiana, Kentucky, Maine, Maryland, Mississippi** House and Senate, **Montana, Nevada, North Dakota, Oregon, Tennessee**, the **Texas** House, Senate and Joint, **Utah, Vermont, Virginia, Washington** and **Wyoming**.

Franchise Tax

Delaware [HB 371](#) passed the Senate Judiciary Committee on its merits on May 18. This bill would require any corporation that revokes its dissolution, or restores its certificate of incorporation to file all annual franchise tax reports and pay all franchise taxes as it would have if it had not dissolved or expired. If enacted, this section would take effect on August 1, 2016.

Louisiana [HB 735](#) will be heard in the Senate Revenue and Fiscal Affairs Committee after the legislature adjourns, which is scheduled for June 6. This bill would change the date corporate franchise taxes are due from the 15th day of the third month following the month the tax is due, to the 15th day of the fourth month following the month the tax is due.

Republican Gov. Phil Bryant signed **Mississippi** [SB 2858](#) into law on May 13, the bill is still awaiting a chapter number. Starting January 1, this law will 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 will be phased out by decreasing the tax by \$0.25 per year, starting on January 1, 2018 until the repeal in 2028.

Landmen

Employee Misclassification

Ohio [HB 568](#) was introduced on May 17 and is awaiting committee assignment. This bill would prohibit an employer from retaliating against an individual who opposes employee misclassification. HB 568 would protect individuals from being required to enter into an agreement that would result in the misclassification of the individual as an independent contractor or otherwise does not accurately reflect the individual's relationship with an employer. However, the bill is not specific to landmen, and does not change the relevant statute which protects independent contractor relationships, and continues to do so. In fact, it retains the factor tests to be used to determine whether a worker is an independent contractor, and these existing provisions will continue to protect against misclassification actions as they have before.

If the director of Commerce finds that an employer has misclassified employees, this bill would give the Director the authority to collect the amount of any wages, salary, employment benefits, or other compensation denied or lost to an individual due to the misclassification, among other actions.

HB 568 would encourage the Director of Commerce, the Director of Job and Family Services, the Tax Commissioner, and the Administrator of Workers' Compensation to share all information concerning any suspected misclassification by an employee. Upon finding violators, this bill would require them to all notify the other agencies so that appropriate action can take place. The bill would also create the Employee Classification Fund to finance the expenses related to the administration, investigation, and all other activities related to carrying out the duties laid out in this bill. This bill is sponsored by Rep. Debbie Phillips, D-Athens.

Independent Contractors

Pennsylvania [HB 2021](#) was introduced on May 18 and referred to the House Labor and Industry Committee. The bill states that if a landman is compensated for performing specific tasks as laid out in a written contract, and not for the number of hours worked, than that individual would be classified as an independent contractor and not an employee. For the purpose of this section, the term "landman" means a land professional who has been engaged primarily in:

- Negotiating the acquisition of divestiture of oil and gas or other mineral rights.
- Negotiating business agreements that provide for the exploration for or development of minerals.
- Determining ownership of minerals through research of public and private records.
- Reviewing the status of a title, curing title defects and otherwise reducing title risk associated with ownership of the minerals.
- Managing rights or obligations derived from ownership of interests and minerals.
- Activities to secure the unitization or pooling or interests in minerals.

This bill is sponsored by Rep. Jaret Gibbons, D-Franklin Township, and, if enacted, would take effect 60 days after becoming law.

Lands

Land Permits

Louisiana [HB 632](#) passed the Senate Natural Resources Committee with [amendments](#) on May 19. HB 632 was then referred to the Legislative Bureau on May 19. 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 2756](#) passed the Assembly Appropriations Committee on May 18 and was read a second time the following day and ordered to third reading. The bill would give the Oil and Gas Supervisor the authorization to treat each day a violation is not cured as a separate violation, and would set the penalty at no less than \$10,000 per violation. The bill would also authorize the supervisor to allow for a supplemental environmental project in lieu of a portion of the penalty, but not to exceed 50 percent of the amount of the fee. It would change the penalty limit to allow for an appeal from \$10,000 to \$25,000. As amended, the bill would also give the division the ability to manage the Oil and Gas Environment Remediation Account in which money can be used to remediate wells, and other areas that may pose a danger to health, water quality, wildlife or natural resources.

Leasing

Kansas [SB 280](#) was vetoed by Republican Gov. Sam Brownback on May 17 and returned to the Senate. Governor Brownback's veto message can be [viewed here](#). The bill would require that the production information used to establish the fair market value of producing oil and gas leases that have finished production in the preceding year must be limited to production occurring prior to April 1 of the calendar in which the property is assessed. Information used to establish the fair market value of a lease for the first time after October 1 of the preceding calendar year would be limited to production occurring prior to July 1 of the calendar year for which the property is being assessed. This bill would take effect immediately upon passage.

Mineral Rights

California [AB 2729](#) was heard in the Assembly Appropriations Committee on May 19 and referred to the committee's suspense file. Any bill having a fiscal impact of \$150,000 or more is automatically placed on the committee's suspense file where they can be voted out eventually to continue the legislative process. This bill would make changes to the definitions of active observation well, idle well and long-term idle well. An idle well would be defined as a well that had six months of not producing or being used for injection. An idle well would continue to be an idle well until the well has been properly abandoned in accordance with existing law. For active observation wells, the bill would require the user to report their data once every month, instead of every three years. The bill would define a long-term idle well as a well that has been idle for five or more years. As amended, the bill would provide that the abandoned underground personal property, including a well, of an operator becomes the property of the mineral interested owner when the operator loses the right to remove it under common law or lease or any other agreement that initially gave the operator the right to conduct activity on the well.

The amendment would require that the division review, evaluate, and update all regulations pertaining to idle wells until January 1, 2020 unless additional statutes are enacted to delete or extend that date. If enacted, this bill would take effect on January 1, 2018.

Louisiana SB 404 was delivered to Democratic Gov. John Bel Edwards on May 13. He has 10 days from presentment to act, or it will become law. 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. This bill would become effective immediately if enacted.

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