

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

- **BLM Lease Sale – Nevada.** On April 25, the Bureau of Land Management (BLM) announced that the Ely District Office will offer eight parcels (totaling approximately 16,244 acres) in White Pine County at the September 2019 Nevada State Office quarterly oil and gas lease sale. The sale includes parcels that are within or intersect Priority or General Habitat Areas for Greater Sage-Grouse. The public comment period is open through May 24, 2019. [Read more.](#)
- **BLM Lease Sale – Wyoming.** On April 25, the BLM released the sale notice for the June 2019 oil and gas lease sale, which includes 160 parcels totaling about 205,167 acres. The BLM is deferring three parcels in part within the Platte River Valley mule deer migration corridor and a portion of one more within the Red Desert to Hoback mule deer migration corridor, based on recommendations from the Wyoming Game and Fish Department (WGFD). The BLM is also applying a special lease notice to certain parcels that overlap migration corridors, mandating that lessees work with the BLM and WGFD to minimize potential impacts to big game before development. Public comments will be open through May 25, 2019. [Read more.](#)
- **BLM Resource Advisory Councils.** On April 30, the BLM published a notice, *National Call for Nominations for Resource Advisory Councils* ([84 Fed. Reg. 18313](#)), which requests public nominations for the BLM's 31 statewide and regional Resource Advisory Councils (RAC) located in the West that have members whose terms are scheduled to expire. These RACs provide advice and recommendations to the BLM on land use planning and management of the National System of Public Lands within their geographic areas. RAC membership must be balanced and representative of various interests concerning the management of public lands, and the RAC notice seeks those who "represent energy and mineral development" among other categories. Interested parties can self-nominate. The deadline to self-nominate or nominate others for RAC membership is June 14, 2019. [Read more.](#)
- **BLM Leadership Official Resigns.** On April 30, it was reported that Brian Steed, BLM Deputy Director of Programs and Policy, will be leaving the agency to become the next Executive Director of the Utah Department of Natural Resources, effective June 1, 2019. Steed has served in the BLM since 2017. No announcement on his replacement has yet been made. [Read more.](#)

- **Interior Department Royalty Policy Committee.** On April 30, the Interior Department announced it has “dissolved an advisory panel that made recommendations on royalty rates from oil, gas and coal leases on federal land, after a legal challenge over its industry ties.” Interior Department spokeswoman Molly Block confirmed that the Royalty Policy Committee’s (RPC) charter, which was created in March 2017, expired on April 21, 2019. “She declined to give a reason or say whether the panel would be replaced. The RPC, which included members drawn from the energy and mining industries, had made several recommendations last year to lower royalty rates on drillers and miners.” [Read more.](#)

FEDERAL – Judicial

- **Royalties; Leasing – Eighth Circuit Court.** (*Update to 6/26/17 Weekly Report*) AAPL first reported on this case in 2017, when in [Smith v. SEECO, Inc. et al.](#) (Case No. 4:14-CV-00435 BSM), a jury in the U.S. District Court for the Eastern District of Arkansas issued a verdict in favor of Southwestern Energy Co. and its subsidiaries in a class action suit brought by royalty owners alleging that the companies attempted to profit in violation of provisions in their lease agreements. The jury, after a 10-day trial, “sided with the companies on every count.” In the present case, those same royalty owners argued on appeal that a new trial was warranted “because of the district court’s erroneous evidentiary and trial management rulings.” However, on April 23, 2019, the U.S. Court of Appeals, Eight Circuit ([Case No. 17-3636](#)), denied the royalty owners’ appeal and affirmed the trial court ruling. [Read more.](#)
- **Leasing; Royalties; Arbitration – Ohio.** (*Update to 1/14/19 Weekly Report*) On April 25, the U.S. District Court for the Northern District of Ohio (Eastern Division) confirmed an arbitration award for payment of royalties that was already upheld in a prior order issued on December 20, 2018, in [Hale v. Chesapeake Exploration, L.L.C.](#) (Case No. 4:18-cv-2217). Here, the lessors again attempted to vacate the arbitration award but the court held in favor of Chesapeake. This case arose from allegations made by the plaintiff-lessors that the arbitrators “exceeded their powers” and “effectively dispensed their own brand of justice.” In the December opinion, the court rejected that argument and instead held that plaintiffs did not demonstrate that any of the statutory provisions that would allow the court to vacate the arbitration award were shown and there was no ground on which to vacate that award. [Read more.](#)

STATE – Legislative

- **Regulatory Management – California.** On May 1, AB 1440 was re-referred to the Assembly Committee on Appropriations after passing the Assembly Natural Resources Committee. The Appropriations Committee will hold a [public hearing](#) on the legislation on May 8. The bill, sponsored by Asm. Marc Levine (D), revises the purposes of the state’s Oil and Gas Supervisor’s supervision of the drilling, operation, maintenance,

and abandonment of wells to remove references encouraging oil production. The bill also deletes the requirement that the Supervisor administer California's oil and gas law so as "to encourage the wise development of oil and gas resources," among other provisions. [Read more.](#)

- **Setbacks – California.** *(Update to 4/15/19 Weekly Report)* On April 30, AB 345 was re-referred to the Assembly Committee on Appropriations after passing the Assembly Natural Resources Committee. The Appropriations Committee will hold a [public hearing](#) on the legislation on May 8. The bill, sponsored by Asm. Al Muratsuchi (D), would require all new oil and gas development or enhancement operation beginning January 1, 2020 to be located at least 2,500 feet from a residence, school, childcare facility, playground, hospital or health clinic but would allow cities and counties to set their own setback requirement beyond the 2,500 foot minimum. If two or more cities and counties with jurisdiction over the same geographic area set different setback requirements the larger of the two would apply. An operator would be able to file a written request for a variance to reduce the setback requirement to the maximum achievable distance. [Read more.](#)
- **Franchise Tax – California.** On April 30, AB 364 was re-referred to the Assembly Committee on Revenue and Taxation after amendment. The bill, sponsored by Asm. Ian Calderon (D), would eliminate beginning on or after January 1, 2020, and before January 1, 2025, the minimum annual tax for a new, small business that is a limited partnership or a limited liability company in its first taxable year. [Read more.](#)
- **Mineral Rights; Leasing – Louisiana.** *(Update to 4/8/19 Weekly Report)* On May 2, SB 115 was received in the House after passing the Senate. The bill, sponsored by Sen. Rick Ward (R), would amend current law to provide that one who acquires a mineral servitude from a co-owner of land may not exercise his right without the consent of co-owners owning at least an undivided 75 percent interest in the land, down from the present 80 percent. The bill also provides that a co-owner of land may grant a valid mineral lease or a valid lease or permit for geological surveys as to his undivided interest in the land, but the lessee or permittee may not exercise his rights without consent of co-owners owning at least an undivided 75 percent interest in the land, down from the present 80 percent. The bill also provides that a co-owner of a mineral servitude may not conduct operations on the property subject to the servitude without the consent of co-owners owning at least an undivided 75 percent interest in the servitude, down from the current 80 percent. [Read more.](#)
- **Severance Tax – Louisiana.** On April 30, HB 256 was received in the Senate after passing the House by unanimous vote. Current law imposes a severance tax on the production from incapable wells (no more than 25 barrels of oil and at least 50% salt water per producing day) of 6.25% of the value of the oil when severed. This bill, sponsored by Rep. Jim Morris (R), would suspend the tax in any month when the average value is less

than \$75 per barrel. This exemption would be available from January 1, 2020 through June 30, 2029. [Read more.](#)

- **Severance Tax – Louisiana.** On April 30, HB 188 was received in the Senate after passing the House by unanimous vote. Current law imposes a severance tax on the production from stripper wells (no more than 10 barrels of oil per producing day) of 3.125% of the value of the oil when severed. This tax is suspended in any month when the average value is less than \$20 per barrel. This bill, sponsored by Rep. Jim Morris (R), would suspend the tax in any month when the average value is less than \$75 per barrel. The exemption would be available from January 1, 2020 through June 30, 2029. [Read more.](#)
- **Taxation – Montana.** (*Update to 4/1/19 Weekly Report*) HB 691 died in committee with the legislative session ended April 25. The bill, introduced by Rep. Tom Woods (D), would have amended current law by terminating the reduced tax rates for new oil production and new natural gas production and use the proceeds for oil and natural gas impact projects and the promotion of renewable resources. The bill also provided that the revised tax rates apply to oil and natural gas wells drilled after December 31, 2019; defined oil and gas impact projects; established priorities for oil and gas impact projects proposals from local governments; provided for review of oil and gas impact project proposals by the Department of Commerce; and created a community oil and natural gas impact relief account to provide financial assistance to local governments, among other provisions. [Read more.](#)
- **Non-Compete Contracts – Montana.** (*Update to 4/1/19 Weekly Report*) HB 772 died in committee with the legislative session ended April 25. The bill, introduced by Rep. Thomas Winter (D), would have provided that an employer who violated the restraint of trade provisions of [Sec. 28-2-703](#) by falsely conveying information that an employee or an independent contractor is subject to a non-compete or non-poaching contract or agreement may be civilly liable for the penalties for unfair competition ([Sec. 30-14-142](#)) or deceptive practices ([Sec. 30-14-103](#)) under existing law. [Read more.](#)
- **Leasing – Montana.** (*Update to 4/15/19 Weekly Report*) On April 30, SB 41 was signed into law by Gov. Steve Bullock (D) and takes immediate effect. The Act, sponsored by Sen. Tom Richmond (R), eliminates the requirement that bids for state trust land oil and gas lease sales must be made orally. [Read more.](#)
- **Well Permits; Notice – Pennsylvania.** On April 29, [HB 954](#) was introduced and referred to the Environmental Resources and Energy Committee. The bill, introduced by Rep. Scott Conklin (D), would require that well operators provide public notice of a permit application through newspaper publication. The notice would appear in a newspaper that is published in the locality in which the permit has been applied for prior to the filing of an application with the Pennsylvania Department Environmental of Protection. Additionally, the notice would be required to be published once a week

for four consecutive weeks in a newspaper publication. Well operators would be required to include proof of the publication with their permit applications. [Read more.](#)

- **Franchise Taxes – Texas.** On April 30, HB 2611 passed the House and has been transmitted to the Senate. The bill, sponsored by Rep. Geanie Morrison (R), relates to the treatment of certain limited liability companies as passive entities for purposes of the franchise tax. According to the legislature’s bill analysis, “It has been noted that a number of limited liability companies operate as passive entities but are not able to be treated as passive entities for purposes of the franchise tax. C.S.H.B. 2611 seeks to allow for certain limited liability companies to be treated as passive entities for franchise tax purposes.” [Read more.](#)

STATE – Regulatory

- **State Trust Land Leasing – New Mexico.** Last week, State Land Commissioner Stephanie Garcia Richard placed a moratorium on new oil and gas leasing on nearly 73,000 acres of state trust land in a buffer zone around Chaco Canyon through December 31, 2023. Richard says the move will help protect archaeological and cultural resources of the state’s pueblos and tribes. The [Executive Order 2019-002](#) also creates the Chaco Canyon Land Office Working Group, composed of tribal and environmental activists who are tasked with finding ways to protect the Chaco area from further development or drilling. [Read more.](#)

INDUSTRY NEWS FLASH:

◆ **New oil and gas wells to soar through 2023.** According to industry research firm, Rystad Energy, more than 620,000 miles of new oil and gas wells will be drilled over the next five years – enough to get to the moon and back with distance to spare. “North America will be in a league of its own thanks to the shale boom. Nearly six in ten new wells on the continent will be drilled in shale basins,” said Erik Reiso, head of consulting at Rystad. [Read more.](#)

State-by-State Legislative Session Overview

Alabama, Alaska, Arizona, California, Colorado, Connecticut, Delaware, Florida, Hawaii, Illinois, Kansas, Louisiana, Maine, Massachusetts, Michigan, Minnesota, Missouri, Nebraska, Nevada, New Hampshire, New Jersey, New York, North Carolina, Ohio, Oklahoma, Oregon, Pennsylvania, Rhode Island, South Carolina, Texas, Vermont and

Wisconsin are in regular session. The **District of Columbia** Council, **Puerto Rico** and the **United States** Congress are also in regular session.

Maryland convened a one-day special session on May 1 to elect the next House speaker after the unexpected passing of former speaker Michael Busch on April 7. Del. Adrienne Jones, D-Baltimore City, was unanimously elected to be the next speaker, even after dropping out of the race last week to support her opponent Del. Maggie McIntosh, D-Baltimore City, reports [WBAL Baltimore](#).

West Virginia Republican Gov. Jim Justice signed a [proclamation](#) on March 7 authorizing a special session to act on education matters, the [Charleston Gazette-Mail](#) reports. The proclamation outlines a broad special session scope, authorizing consideration of general improvements to the state's public education system and employee compensation. Education officials kicked off a series of public hearings on March 18 as part of preparations for their upcoming special session. The special session is currently in recess to the call of the House speaker and the Senate president, but is anticipated to overlap with the May 20-21 interim meetings, reports the [Herald Dispatch](#).

The following states adjourned their 2019 legislative sessions on the dates provided: **Arkansas** and **Indiana** (April 24); **Montana** (April 25); **North Dakota** (April 26); **Iowa** (April 27); **Washington** (April 28) and **Tennessee** (May 2).

The following states are scheduled to adjourn on the dates provided: **Colorado**, **Florida**, **Hawaii** and **Kansas** (May 3) and **South Carolina** (May 9).

Indiana Republican Gov. Eric Holcomb has until May 8 to act on legislation or it becomes law without signature. **Georgia** Republican Gov. Brian Kemp has until May 12 to act on legislation or it becomes law without signature. **Washington** Democratic Gov. Jay Inslee has until May 21 to act on legislation presented on or after April 23 or it becomes law without signature. **Iowa** Republican Gov. Kim Reynolds has until May 27 to act on legislation presented on or after April 24 or it is pocket vetoed. **Maryland** Republican Gov. Larry Hogan has until May 28 to act on legislation or it becomes law without signature. **Arkansas** Republican Gov. Asa Hutchinson has 20 days from presentment to act on legislation presented on or after April 18 or it becomes law without signature. **Kentucky** Republican Gov. Matt Bevin has 10 days from presentment, Sundays 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 presented on or after March 24 or it becomes law without signature. **Montana** Democratic Gov. Steve Bullock has 10 days from presentment to act on legislation or it becomes law without signature. **North Dakota** Republican Gov. Doug Burgum has 15 days from presentment, Saturdays and Sundays excepted, to act on legislation or it becomes law without signature. **Tennessee** Republican Gov. Bill Lee has 10 days starting the day after presentment, Sundays excepted, to act on legislation or it becomes law without signature.

The following states are currently holding 2019 interim committee hearings: [Kansas](#), [Kentucky](#), [Maryland](#), [New Mexico](#), [South Dakota](#), [Utah](#), [Virginia](#), [West Virginia](#) and [Wyoming](#).

The following states are currently posting 2019 bill drafts, pre-files and interim studies: [Arkansas](#) and [Kentucky](#).

Franchise Tax

Louisiana SB 125, sponsored by Sen. Rick Ward, R-Livonia, has been scheduled for a hearing in the Senate Revenue and Fiscal Affairs Committee on May 6 at 11:00 AM. The bill would provide for a single rate of corporate franchise tax. The bill would take effect immediately and would apply to taxable periods beginning on or after January 1, 2020.

Landmen

Independent Contractors

Tennessee HB 539, sponsored by Rep. Dan Howell, R-Cleveland, was delivered to Republican Gov. Bill Lee on May 5. Governor Lee has until May 12 to sign or veto the bill or it becomes law. The bill would require the consideration of the IRS 20-factor test to determine whether an employer-employee relationship exists for the purposes of various state laws.

Oil and Gas

Bundling and Pooling

Texas HB 3226, sponsored by Rep. Charlie Geren, R-Lake Worth, passed the Senate on May 3 and is awaiting transmittal to Republican Gov. Greg Abbott who will have 10 days, Sundays excepted, to sign or veto the bill or it becomes law. According to the [sponsoring statement](#), “It has been suggested that certain provisions of the Mineral Interest Pooling Act are outdated and do not reflect modern drilling technology and practices that allow for drilling operations to occur at surface locations adjacent to tracts from which they are producing. H.B. 3226 seeks to update a statutory provision relating to automatic dissolution to ensure that an oil or gas pooled unit is not dissolved for lack of drilling operations on the unit when drilling operations are taking place on an adjacent surface location that benefits the unit. H.B. 3226 amends current law relating to the terms of dissolution of an oil or gas pooled unit.” The bill specifies that a pooled unit is automatically dissolved two years after its effective date if no production or drilling operations have been had on the unit or surface location for the unit. Current law requires dissolution after just one year. The bill would take effect September 1, 2019.

General

Texas SB 533, sponsored by Sen. Brian Birdwell, R-Granbury, was delivered to Republican Gov. Greg Abbott on April 29. Governor Abbott will have until May 10 to sign or veto the bill or it becomes law. The bill would revive and modify a severance tax exemption for inactive oil and gas wells. The bill would provide severance tax relief for wells that have been returned to activity after a two-year period of inactivity. The bill would define a two-year inactive well to

exclude wells that are part of an enhanced oil recovery project or wells that have been drilled but not completed and do not have record of production.

Leasing

Texas [HB 3838](#), sponsored by Rep. Ernest Bailes, R-Shepard, was [amended](#) on May 2 and is pending a third reading in the House. The amended version corrects certain provisions which may have had the effect of purporting to affect oil, gas or mineral leasing and was not intended to do so but rather to provide certain disclosures in the *sale* of a mineral or royalty interest. According to the [sponsoring statement](#), “Reports indicate incidents in which mineral and royalty interest owners, primarily the elderly and less educated, have been the target of a scam by which they are presented with a document that purports to lease those interests, but instead authorizes their sale. Concerns have been raised that existing fraud statutes do not provide adequate protection for these mineral and royalty interest owners. C.S.H.B. 3838 seeks to provide protection for these owners by requiring a specific disclosure in certain offers to purchase a mineral or royalty interest.”

To clarify:

“The bill does not apply to a conveyance of a mineral or royalty interest by an instrument that:

- is an oil, gas, or mineral lease;
- conveys a mineral or royalty interest for a term; and
- provides that the interest conveyed vests in possession after the expiration or termination of all or a portion of the interest conveyed by an existing oil, gas, or mineral lease in effect at the time of the execution of the instrument, commonly referred to as a top lease.”

If signed into law, the Act would be effective September 1, 2019.

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