

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

- **BLM Greater Sage-Grouse Plan.** On May 3, the Trump administration proposed easing restrictions on oil and gas leasing and other activities across a huge swath of the American West. Bureau of Land Management (BLM) officials have since released multiple draft Environmental Impact Statements for their proposed changes to resource management plans for the Greater Sage-Grouse in seven states. The notices open a public comment period as part of the process to amend and relax the planning put in place by the Obama administration in 2015. Federal BLM notices have been issued for Colorado ([83 Fed. Reg. 19808](#)), Idaho ([83 Fed. Reg. 19801](#)), Utah ([83 Fed. Reg. 19803](#)), and Nevada/Northeastern California ([83 Fed. Reg. 19800](#)), and Wyoming ([83 Fed. Reg. 19810](#)). [Read more.](#)

FEDERAL – Judicial

- **BLM Lease Sales – Idaho Federal Court.** Last Monday, environmentalists filed a lawsuit against the Interior Department seeking to reverse BLM oil and gas lease sales across 475 square miles in Montana, Wyoming, Utah and Nevada, as well as blocking upcoming sales covering 1,800 square miles in those four states and Idaho. In [Western Watersheds Project v. Zinke](#) (Case No. 01:18-cv-187), plaintiffs challenge “Trump administration policies that gut protections for imperiled Greater Sage-Grouse and allow oil and gas leases on nearly 2 million acres of the birds’ prime habitat.” [Read more.](#)

STATE – Legislative

- **Drilling Units; Pooling Orders – Colorado.** (*Update to 4/16/18 Weekly Report*). On May 3, the House passed Republican-sponsored [SB18-230](#), following the Senate’s passage of the bill on April 24. The Colorado Petroleum Council has applauded the bill’s passage which modifies laws governing establishment of oil and gas well drilling units. The bill clarifies that a drilling unit may include more than one well, provides limited immunity to nonconsenting owners subject to pooling orders, adjusts cost recovery from those owners, and modifies the conditions under which a pooling order may be entered. Some of the key bill components include: (1) Requiring that an offer must be provided to mineral owners at least 60 days prior to the hearing on the pooling order; (2) Changing the penalty recovery rate for an operator to 300% from 200% for wells deeper than 5,000 feet; and (3) Requiring that every offer letter sent to mineral owners includes clear and concise language, provided through a link or brochure created by the Colorado Oil & Gas Conservation Commission of the pooling procedures and the mineral owner’s

options pursuant to those procedures. Governor John Hickenlooper (D) has 10 days from transmittal of the bill to either sign or veto the measure. [Read more.](#)

- **Corporate Franchise Taxes – Louisiana.** (*Update to 4/16/18 Weekly Report*) On May 1, HB 341 was sent to Governor John Bel Edwards (D) after passing the legislature. 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. Under Louisiana law, the governor must sign or veto legislation within 10 days of transmittal or it becomes law without his signature. [Read more.](#)
- **Permitting – Louisiana.** (*Update to 4/30/18 Weekly Report*) On May 1, HB 860 was sent to Governor John Bel Edwards (D) after passing the legislature. Present law authorizes the Conservation Commissioner to develop and implement a program to expedite the processing of permits, modifications, licenses, registrations and variances. The bill would retain present law but would allow the commissioner to expedite the review of plans, proposals and exceptions of related correspondence. The bill would also specify that the minimum fee for administrative costs associated with expedited processing would be \$500. The bill would require that public notice be given once the expedited permit review is granted rather than when it is requested. The bill would take effect August 1. Under Louisiana law, the governor must sign or veto legislation within 10 days of transmittal, or it becomes law without his signature. [Read more.](#)
- **Severance Tax – Pennsylvania.** On May 1, a bipartisan severance tax bill, [HB 2253](#), was introduced in the House. In the bill’s sponsoring statement, prime sponsors, Rep. Jake Wheatley, Jr. (D) and Rep. Bernie O’Neill (R), note that “Pennsylvania is now the 2nd largest producer of natural gas in the United States, yet we are the only producing state without a severance tax. This means Pennsylvanians are paying other states’ severance taxes while sending our natural gas out of state and receiving nothing in return.” The bill provides for a “progressive tax structure” based on the price of gas from the preceding calendar year per thousand cubic feet. The bill has received heavy pushback from industry leaders. The Associated Petroleum Industries of Pennsylvania “characterized a severance tax as ‘duplicative’ and alleged it would effectively double the existing impact fee.” Marcellus Shale Coalition president David Spigelmeyer also contended that Pennsylvania already has a natural gas tax in the form of the impact fee which generates nearly \$1.5 billion in revenue to the state. There is considerable doubt that the bill will move towards passage, but AAPL will continue to actively engage on this legislation and keep you apprised of any developments. [Read more.](#)
- **Well Permits – Pennsylvania.** On April 30, a bipartisan bill, HB 2304, sponsored by Rep. Jonathan Fritz (R), was introduced in the House. The bill implements a series of reforms regarding how the Department of Environmental Protection regulates oil and gas operations. Specifically, the bill focuses on three specific items, “each of which has bipartisan support”: (1) allowing for multi-year well permits; (2) allowing for multi-well

pad permits; and (3) allowing well deviation for the final location of a well to be within 50 feet of the specific location identified in a well permit application. [Read more.](#)

- **Cotenancy; Royalty Information Reporting – West Virginia.** Attorneys at law firm Spilman Thomas & Battle, PLLC is offering a free webinar replay with an overview and explanation of H.B. 4268, the “Cotenancy Modernization and Majority Protection Act”, and H.B. 4270, the “Information Reporting” bill related to royalty payments and production volumes. Both bills were signed into law in March 2018. “This webinar also provided energy companies with information helpful toward preparing for the implementation of these new laws.” [Read more.](#)

STATE – Judicial

- **Independent Contractors; Employee Misclassification – California.** On April 30, in [Dynamex Operations West v. Superior Court](#) (Case No. S222732), the California Supreme Court created a new independent contractor test that is modeled after the so-called “ABC” test used in Massachusetts, widely viewed as the toughest test in the country for independent contractors. In its 82-page opinion, the Court rejected the continued use of its existing independent contractor test, derived from a 1989 case. That case had established a multi-factor test where no one factor was determinative of independent contractor status. Instead, the California Supreme Court adopted a more rigid standard. According to the Court, the “ABC test presumptively considers all workers to be employees, and permits workers to be classified as independent contractors only if the hiring business demonstrates that the worker in question satisfies each of three conditions: (a) that the worker is free from the control and direction of the hirer in connection with the performance of the work, both under the contract for the performance of the work and in fact; (b) that the worker performs work that is outside the usual course of the hiring entity’s business; and (c) that the worker is customarily engaged in an independently established trade, occupation, or business of the same nature as that involved in the work performed.” Although this case addressed the employment status of delivery drivers, and not landmen, according to the *Independent Contractor Misclassification and Compliance Legal Blog*, “other businesses operating in that state will need to reevaluate their use of workers classified as [independent contractors] in California and, where necessary, restructure their businesses to comply with this new judicial decision. [Read more.](#)

INDUSTRY NEWS FLASH:

- **American Petroleum Institute selects new president with Jack Gerard’s departure.** On May 2, Mike Sommers, who was chief of staff for U.S. House Speaker John A. Boehner and had other House leadership roles for more than a decade before becoming president of the American Investment Council in 2016, was elected president of the American Petroleum Institute, succeeding a retiring Jack Gerard. [Read more.](#)

State-by-State Legislative Session Overview

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

Wisconsin is in recess to the call of the chair. **Maine** concluded legislative business on April 19 and was in recess to the call of the chair. The legislature held a veto session on May 2 and adjourned sine die, the [Wichita Eagle](#) reports.

The following states are expected to adjourn on the dates provided: **Kansas** (May 4), **Colorado** and **Connecticut** (May 9), **South Carolina** (May 10) and **Missouri** (May 18).

Vermont is scheduled to adjourn on May 4 but will likely remain in session longer.

The following states adjourned on the dates provided: **Hawaii** (May 3) and **Arizona** (May 4). **Alaska** did not adjourn on the April 15 constitutional regular session deadline and must adjourn before May 16, [KTVA](#) reports. **Iowa** did not adjourn on April 21 as expected but is expected to adjourn this weekend, [The Courier](#) reports.

Virginia convened a special session on April 11 and held a one-day veto session on April 18. The House voted to pass the \$115 billion, two year spending plan on April 17, [The Washington Post](#) reports. The session is in recess until May 14, [WCAV](#) reports.

Indiana Republican Gov. Eric Holcomb has issued a [proclamation](#) calling for a one-day special session on May 14 to address school safety and federal tax conformity, the [Goshen News](#) reports. **Oregon** Democrat Gov. Kate Brown released a [statement](#) announcing a one-day special session on May 21 to address the state's tax code in order to expand the list of small businesses eligible for state tax breaks, reports the [Statesman Journal](#).

Georgia Republican Gov. Nathan Deal has until May 8 to act on legislation presented after March 23 or it becomes law without signature. **Maryland** Republican Gov. Larry Hogan has until May 29 to act on legislation presented by April 29 or it becomes law without signature. **Hawaii** Democratic Gov. David Ige has until July 10 to act on legislation presented after April 19 or it becomes law without signature. **Arizona** Republican Gov. Doug Ducey has 10 days, Sundays excepted, to act on legislation presented after April 29 or it becomes law without signature. **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. **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.

Tennessee Republican Gov. Bill Haslam had a signing deadline on May 1. **Maine** Republican Gov. Paul LePage has acted on all legislation as of May 3.

The following states are currently holding 2019 interim committee hearings: [Alabama](#), [Arkansas](#), [Idaho](#), [Indiana](#), [Maryland](#), [Mississippi Senate](#), [Montana](#), [Nevada](#), [New Mexico](#), [North Carolina](#) (2018 interim hearings), [North Dakota](#), [Oregon](#), [South Dakota](#), [Texas House](#) and [Senate](#), [Virginia](#), [Washington](#), [West Virginia](#) and [Wyoming](#).

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

Franchise Tax

California [AB 2410](#) passed the Assembly Revenue and Tax Committee on April 23 with amendments and is now pending in the Assembly Appropriations Committee. The bill has been scheduled for a hearing in that committee on May 9 at an unspecified time. Existing law imposes an annual tax equal to the minimum franchise tax on every limited liability company doing business in the state. The bill would reduce the annual tax, for taxable years beginning January 1, 2020 and before January 1, 2025, to \$400 for a limited liability company that is a small business. The bill defines a small business as a business entity with gross receipts of \$250,000 or less during the first two years after the articles of organization have been accepted or a certificate of registration has been issued. The bill would take effect immediately.

California [SB 1417](#) was amended and re-referred to the Senate Governance and Finance Committee on May 2. The bill has been scheduled for a hearing in that committee on May 9 at 9:30 AM. Existing law imposes a minimum franchise tax of \$800 and an annual tax equal to minimum franchise tax. The bill would reduce the minimum franchise tax for taxable years on or after January 1, 2019 to:

- \$200 if the corporation has gross receipts that are less than \$2.5 million.
- \$400 if the corporation has gross receipts that are less than \$7.5 million but equal to or greater than \$2.5 million.
- \$600 if the corporation has gross receipts that are less than \$15 million but equal to or greater than \$7.5 million.
- \$800 if the corporation has gross receipts that are equal to or greater than \$15 million.

The bill would take effect immediately.

Louisiana [HB 341](#) was delivered to Democratic Gov. John Bel Edwards on May 1 who will have until May 11 to sign or veto the bill or it becomes law. 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

Bundling and Pooling

Colorado [SB 230](#) passed the House on May 3 and the Senate concurred with House amendments on that same day. The bill is now pending delivery to Democratic Gov. John Hickenlooper. The bill would clarify that a pooling order entered into by the Colorado Oil and Gas Conservation Commission could authorize more than one well. The bill would require the order specify that a nonconsenting owner is immune from liability for costs arriving from spills, releases, damage or injury resulting from oil or gas operations on the drilling unit. Current law specifies that a nonconsenting owner must pay the consenting owners 200 percent of their proportionate share of the costs of drilling; the bill would limit the 200 percent cost recovery to wells that are 5,000 feet or less in depth and increase the cost recovery to 300 percent for wells greater than that depth or for horizontal wells. 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 would require that the offer be given at least 60 days before the hearing on the order and must include a copy of or link to a commission brochure that clearly and concisely explains the pooling procedures.

Colorado [HB 1289](#) passed the House on May 1 but was postponed indefinitely in the Senate State, Veterans and Military Affairs Committee on May 2. The bill would have exempted local governments and school districts that own mineral rights from being force pooled if they acquired the mineral rights before the pooling order was filed.

General

Louisiana [HB 331](#) was delivered to Democratic Gov. John Bel Edwards on May 1 who will have until May 11 to sign or veto the bill or it becomes law. 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.

Louisiana [HB 860](#) was delivered to Democratic Gov. John Bel Edwards on May 1 who will have until May 11 to sign or veto the bill or it becomes law. Present law authorizes the Conservation Commissioner to develop and implement a program to expedite the processing of permits, modifications, licenses, registrations and variances. The bill would retain present law but would allow the commissioner to expedite the review of plans, proposals and exceptions of related correspondence. The bill would also specify that the minimum fee for administrative costs associated with expedited processing would be \$500. The bill would require that public notice be given once the expedited permit review is granted rather than when it is requested. The bill would take effect August 1.

Louisiana [SB 456](#) has been scheduled for third reading and final passage in the House on May 8. The bill would remove the disposal of salt water or another waste substance from the list of activities that is not included in the definition of operations. The bill would take effect August 1.

Pennsylvania [HB 2154](#) passed the House Environmental Resources and Energy Committee on April 30, was [amended](#) and re-committed to the House Appropriations Committee on May 1 and passed that committee on May 2. The bill is now pending final consideration in the House. This omnibus bill would roll back existing environmental standards for conventional oil and gas operators allowing operators to spill up to 210 gallons of oil or 630 gallons of production brine at a well site, rather than the current five gallon requirement, without needing to notify the department. The bill would also narrow the state Department of Environmental Protection's oversight of wastewater disposal wells to just surface features and provide that conventional drilling permits would be good for three years instead of one. The bill would also create a process by which a person who voluntarily plugs an orphan well could apply for a \$5,000 payment or receive a credit to offset future well permit fees. The bill would take effect immediately.

Hydraulic Fracturing

California [SB 1370](#) was reported favorably from the Senate Appropriations Committee on April 30 and is now pending a third reading. 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](#) passed the House on May 1 but was postponed indefinitely in the Senate State, Veterans and Military Affairs Committee on May 2. The bill would have required newly permitted production facilities to be located at least 1,000 feet from any school. The bill wouldn't have applied to production facilities that are actively in use or permitted at the time the school commences operations. The bill would have defined 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.

Colorado [HB 1419](#) passed the House on May 1 but was postponed indefinitely in the Senate State, Veterans and Military Affairs Committee on May 2. The bill would have required the Colorado Oil and Gas Conservation Commission to promulgate rules as soon as practicable to ensure proper wellhead integrity of all oil and gas production wells. The bill would have also required oil and gas operators to give electronic notice of the location of each flow line and gathering pipeline installed, owned or operated by the operator to the commission director and each local government where the subsurface facility is located.

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