

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

- **BLM Venting and Flaring Rule Hearing – Washington, DC.** Opponents and supporters of the Bureau of Land Management's (BLM) proposed venting and flaring rule for oil and gas producers quickly defined their main differences at an April 27 House Natural Resources subcommittee hearing. One side called it a case of classic federal regulatory overreach where an agency is trying to exceed its authority. The other said that BLM simply wants to reduce waste of a public resource that it is supposed to manage. [Read more.](#)
- **BLM Leasing – Ohio.** The BLM is seeking public comments on a draft environmental assessment of proposed oil and gas leasing in Wayne National Forest in southeastern Ohio. The agency has opened a comment period that will be [available for review](#) until May 29. The BLM says it is assessing a broader area than would be opened to drilling to avoid having to do a separate report on each individual lease request. [Read more.](#)
- **BLM Leasing – Ohio.** Although the comment period is still open, last week, the BLM, which has been deliberating whether to offer 40,000 acres of minerals located in Monroe, Noble, and Washington Counties in Ohio for competitive lease sale for oil and natural gas development under the surface of the Wayne National Forest (as noted above), released its long-awaited draft [Environmental Assessment](#) (EA), announcing that it found "no significant impact" that would result from a decision to move forward with these lease sales. The public has 30 days (until May 29) to review and comment on the draft EA. Then pertinent federal officials will have to review that input before finalizing the EA and the related finding of no significant impact. [Read more.](#)
- **BLM Sale Activist Protest – Wyoming.** Protestors staged a climate rally last Tuesday outside the BLM's Cheyenne oil and gas lease sale. The "[Keep it in the Ground](#)" activists failed to halt the 30-parcel auction, which generated \$5 million for leasing rights with nearly 97 percent of the parcels sold. [Read more.](#)

STATE – Legislative

- **Surface Damage; Liability – Colorado.** (Update to 3/7/16 Weekly Report). In a win for the oil and gas industry, [HB 1310](#) has been postponed indefinitely by the Senate Committee on Agriculture, Natural Resources, & Energy. Originally introduced in the House on March 2 by Rep. Joseph Salazar (D), and passing that chamber, the bill would

have lowered the liability standard surface owners could have used against operators. The bill sought to amend surface damage liability law to allow proof that the operator's oil and gas operations harmed the surface owner's use of the surface, caused injury to the surface owner, or damaged the surface owner's property, rather than requiring a material interference with surface owner's use of the land. [Read more.](#)

- **Development Plans – Colorado.** (Update to 4/11/16 Weekly Report) In a win for the oil and gas industry, [HB 1430](#) has been postponed indefinitely by the Senate Committee on Agriculture, Natural Resources, & Energy. Originally introduced in the House on April 1, by Rep. Steve Lebsack (D), and passing that chamber, the bill would have implemented a recommendation of the state Oil and Gas Task Force regarding the sharing of oil and gas operators' development plans with affected local governments. [Read more.](#)
- **Tax Exemptions; Economically At-Risk Leases – Oklahoma.** On May 2, SB 1577 was introduced by Senator Brian Bingman (R). The bill would amend current law to provide that gross production tax exemptions claimed would be limited to production from calendar year 2014, provides a definition of an "economically at-risk oil or gas lease", and sets formulas for tax determinations. [Read more.](#)
- **Energy Producing States Coalition – Wyoming.** On March 4, Governor Matt Mead signed HB 0011 into law, which extended authorization to participate in the [Energy Producing States Coalition](#) (EPSC). The EPSC is a group of like-minded state legislators working together to develop positions and areas of common interest on policies and issues that affect domestic energy production and transmission. The group was founded in 2011 and currently includes legislators representing Alaska, Arizona, Arkansas, Colorado, Florida, Idaho, Indiana, Kentucky, Mississippi, Nevada, North Dakota, Ohio, Oklahoma, Pennsylvania, Texas, Utah, Wisconsin and Wyoming. These legislators work together to develop and advocate for sound public policy in areas of shared interests between energy producing states. The law also requires that a report be submitted each October which shall include any suggested legislation. [Read more.](#)
- **Electronic Recording – Wyoming.** On March 4, Governor Matt Mead signed into law HB 0107, the Uniform Electronic Recording Act. The measure authorizes the recordation of instruments signed and notarized electronically and electronic scans of previously authorized instruments. [Read more.](#)

STATE – Regulatory

- **Local Ordinances – Michigan.** On April 25, The Southfield City Council unanimously approved an ordinance to allow oil and gas wells, and oil and gas development activities, only as a special use in the industrial zoning district in an effort to limit operations in or around residential areas. [Read more.](#)

- **Updated Regulations – Pennsylvania.** (Update to 4/25/16 Weekly Report) Last Tuesday, a House committee moved to block new state rules for oil and gas operations, with opponents of the regulations saying the process of drafting the updates was so flawed that it has to be restarted. Last month, Pennsylvania’s Independent Regulatory Review Commission approved a wide-ranging update to the state’s oil and gas production rules that were roundly criticized by the oil and gas industry. This recent move by the state legislature seeks to halt the regulations before they take effect. [Read more.](#)
- **Railroad Commission – Texas.** The Sunset Advisory Commission, the group that periodically reviews state agencies, issued its latest report on the Railroad Commission of Texas (RRC). The report calls for a name change for the RRC along with improvements in enforcement and monitoring. The suggested new name is Texas Energy Resources Commission. [Read more.](#)

STATE – Judicial

- **State/Local Regulations – Colorado.** In a big win for the Colorado oil and gas industry, on May 2, the Colorado Supreme Court struck down limitations on hydraulic fracturing by localities. The industry group, Colorado Oil and Gas Association, challenged the cities of Longmont and Fort Collins after voters passed rules suspending or outlawing that method of extracting natural gas and oil. In two separate rulings ([City of Longmont v. Colo. Oil and Gas Ass’n](#), Case No. 15SC667, and [City of Fort Collins v. Colo. Oil and Gas Ass’n](#), Case No. 15SC668), the Supreme Court called the cities’ limits “invalid and unenforceable” because state law trumps local ordinances. In the *Longmont* ruling, the Supreme Court held that “The Oil and Gas Conservation Act and the Commission’s pervasive rules and regulations ... convince us that the state’s interest in the efficient and responsible development of oil and gas resources includes a strong interest in the uniform regulation of fracking.” In the Fort Collins ruling, the Supreme Court held that “the moratorium materially impedes the effectuation of the state’s interest in the efficient and responsible development of oil and gas resources.” [Read more.](#)
- **Royalty Payments – Texas.** Tarrant County Commissioners voted last Tuesday to hire an outside law firm to sue Chesapeake Energy over underpayments stemming from their natural gas leases. In similar cases, Chesapeake has been charged with fraudulently subtracting post-production costs from its royalty payments. But Chesapeake has argued that the royalties it paid were allowed under the lease terms. [Read more.](#)

INDUSTRY NEWS FLASH:

- **Devon Ready to Boost Drilling and Spending If Oil Prices Keep Climbing.** Last week, Devon Energy Corp. announced it will ramp up drilling and spending if oil prices continue to recover, executives told reporters during an investor quarterly earnings conference

call. Devon is joining a growing list of companies expecting an increase in activity as the commodity price picture improves. The Oklahoma City-based oil and gas driller could start adding incremental activity if oil prices hit \$50 a barrel and could double capital spending if prices reach \$60, says CEO Dave Hager. [Read more.](#)

ELECTION ALERT:

🗳️ Presumptive Republican presidential nominee, Donald Trump, will deliver the keynote address at the North Dakota Petroleum Council's (NDPC) annual Williston Basin Petroleum Conference on May 26 in Bismarck, North Dakota. The 24th annual event features dozens of speakers, from politicians to top oil company executives, and industry-specific seminars. According to NDPC President, Ron Ness, "Trump's appearance 'obviously will be a big boost to our conference.'" [Read more.](#)

State-by-State Legislative Session Overview

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

Kansas is in recess until June 1, and is expected to adjourn its 2016 legislative session on that day.

Iowa adjourned its 2016 legislative session on April 29. **Alabama** adjourned on May 4. **Hawaii** adjourned on May 5.

Maine adjourned a veto session on April 29. **Kansas** adjourned a veto session on May 2.

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. **Arizona** did not adjourn as expected on April 23.

The following states are expected to adjourn their 2016 legislative sessions on the dates provided: **Vermont** (May 7), **Colorado** (May 11), **Arkansas** (May 13), **Wisconsin** (May 18) and **Minnesota** (May 23).

Alabama Republican Gov. Robert Bentley has until May 15 to act on legislation presented after April 30 or it is pocket vetoed. **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. **Hawaii** Republican Gov. David Ige has until July 11 to act on legislation presented after April 21 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.

Florida Republican Gov. Rick Scott acted on all legislation as of May 2. **Georgia** Republican Gov. Nathan Deal had a signing deadline on May 3.

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

Franchise Tax

California [AB 2807](#) was [amended](#) to remove the language adjusting the franchise tax rate and re-referred to the Assembly Revenue and Taxation Committee on May 3. The amendments remove the language that would reduce the annual minimum franchise tax to \$800 per year. The amendment would also remove the proposal to have corporations pay the state the minimum franchise tax of \$150 per year on an annual basis as well as the goal to extend an exemption to corporations and limited liability companies solely owned by deployed members of the armed forces until January 1, 2020.

Landmen

(Update to 4/18/16 Weekly Report) - Colorado [SB 179](#) passed the Senate on April 29. SB 179 passed the House Business Affairs and Labor Committee without amendments on May 3, then passed the House Appropriations Committee on May 5 and is currently awaiting second reading in the House. The state Department of Labor and Employment has the authority to audit businesses to gather information to determine whether individuals are independent contractors or employees for the purpose of unemployment insurance. In order to improve this process, this bill would require the department to:

- Develop specific guidance for employers to help them determine the proper classification for their employees.
- Clarify the process by which an employer or individual may submit additional information in response to a request from the department.
- Establish an individual within the department to serve as a resource for employers to provide guidance.
- Establish internal methods to improve the consistency among auditors.

- Establish an independent review of a portion of the audit and appeal results at least twice a year to monitor trends and make improvements to the audit process.

The amendment would appropriate additional money to the Department of Labor and Employment to be used by the Division of Unemployment.

If enacted, this law would take effect on the day following the expiration of the 90-day period after the legislature adjourns in 2016. The Colorado legislature is scheduled to adjourn on May 11.

Lands

Land Permits

Louisiana [HB 313](#) passed the Senate Judiciary Committee on May 3 and then passed the Legislative Bureau without amendments on May 5. HB 313 is now awaiting third reading in the Senate. The bill would amend current law requiring certain disclosures before exercising the right of expropriation by entities including those engaged in marketing, transportation and supply of natural gas. This bill would require the entity to provide the property owner with a notice including a statement within 30 days of making an offer that:

- The property owner is entitled to receive just compensation for the property to be acquired to the fullest extent allowed by law.
- The property may be acquired only by an authority authorized by law to do so.
- The property owner is entitled to receive from the expropriating authority a written appraisal or evaluation of the amount of compensation due.
- Identifies the website of the expropriating authority where the property owner can read the expropriation statutes upon which the expropriating authority relies.
- Offers to provide upon request of the property owner a copy of the expropriation statutes upon which the expropriating authority relies.
- Identifies each agency responsible for regulating the expropriating authority, including the name, website and telephone number of each agency.
- The property owner may hire an agent or attorney to negotiate with the expropriating authority and an attorney to represent the property owner in any legal proceedings involving the expropriation.

If enacted, this bill would take effect January 1, 2017.

Oil and Gas

General Oil and Gas

As their session winds down and is set to adjourn on May 11, the Senate Agriculture, Natural Resources and Energy Committee voted to postpone **Colorado [HB 1430](#)** indefinitely on April 28. 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 600](#) passed the House Local Government Committee on May 4 with a recommendation of a [substitute](#). The bill would clarify the fee for recording and indexing a statement claiming a lien for labor on an oil or gas well. If enacted, the bill would take effect 90 days after final passage and approval.

Bundling & Pooling

Michigan [SB 903](#) was discussed in the Senate Natural Resources Committee again on May 4, but the committee did not take action. 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. The committee's fiscal analysis can be [reviewed here](#).

Leasing

The [conference committee report](#) for **Kansas** [SB 280](#) was adopted on May 1 by the House and Senate. The bill is now awaiting enrollment and delivery to Republican Gov. Sam Brownback. Once he receives the bill, he will have 10 days to act on it or it will become law without his signature. 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

Louisiana [HB 634](#) passed the Senate on May 2 and was enrolled the following day. HB 634 is now awaiting delivery to Democratic Gov. John Bel Edwards. Once he receives the bill, he will have 10 days to act on the bill or it becomes law. Current law provides that when land is acquired from any person by an acquiring authority through sale, exchange, donation or other contract, condemnation or expropriation, and a mineral right is reserved, prescription of the mineral right is interrupted. This bill would add property appropriation to the list of ways in which an acquiring authority can gain property.

Louisiana [HB 911](#) passed the Senate on May 5 and was enrolled. HB 911 is now awaiting delivery to Democratic Gov. John Bel Edwards. Once he receives the bill, he will have 10 days to act on the bill or it becomes law. This bill would authorize the transfer or lease of state

property in Grant Parish from the Department of Transportation and Development to the Grant Parish Police Jury. The state would retain the mineral rights.

Similar legislation, [HB 323](#), was sent to Democratic Gov. John Bel Edwards on May 5, he has 10 days to act on the bill or it becomes law. This bill would authorize the transfer or lease of state property in Morehouse Parish from the Department of Wildlife and Fisheries to Kenneth Cook, Jr. and Annie Cook. The state would retain the mineral rights.

Louisiana [SB 404](#) passed the House Civil Law and Procedure Committee on May 2, and is now scheduled for a House floor debate on May 10. 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 party 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.

DISCLAIMER: Links and/or information from non-governmental sources provided in this report may be among the many sources available to you. This report does not endorse nor advocate for any particular attorney or law firm, or other private entity, unless expressly stated. Any legal information contained herein is not legal advice. Links are provided for reference only and any cited outside source information is derived solely from material published by its author for public use.