

## WEEKLY HIGHLIGHTS AT-A-GLANCE

### FEDERAL – Regulatory

- **Federal Oil & Gas Recovery Research Funding Program.** Last week, the U.S. Department of Energy's (DOE) Office of Fossil Energy announced the availability of \$88 million in federal funding for research and development projects aimed at enhancing technologies for oil and natural gas recovery. The projects will focus on reducing technical risks associated with enhanced oil recovery and expanding the application of methods onshore, both in conventional and unconventional reservoirs. The projects will also improve the understanding of unconventional reservoirs and improve recovery factors for these plays as well as improving the recovery of oil and gas resources from unconventional reservoirs. The DOE reports that in some cases as much as 90 percent of oil remains in the ground in some areas and is not currently recoverable. "Technology and innovation gave us the shale revolution that's transformed the energy landscape here in America and around the world," said DOE Secretary Rick Perry. "This research and development will allow us to continue building on those successes and expand the advancement of both our conventional and unconventional oil and gas resources." [Read more.](#)

### STATE – Legislative

- **Well Assessments – Indiana.** On January 14, Rep. Shane Lindauer (R) introduced HB 1305. The bill would provide for the imposition of a monetary penalty against owners of oil or gas interests who fail to timely file a property schedule for gas and oil well assessments. [Read more.](#)
- **Worker Misclassification – Indiana.** On January 14, Rep. Michael Krickhoff (R) introduced HB 1401. The bill requires various state agencies to report each year for three years, beginning November 1, 2019, to the interim study committee on employment and labor for the immediately preceding state fiscal year: (1) the number of employers that each department or the board determined during the immediately preceding state fiscal year improperly classified at least one worker as an independent contractor; (2) the total number of improperly classified workers employed by those employers; (3) the department's or board's calculation of the revenue not collected or the additional costs to the state that the department or board attributes to the improperly classified workers; and (4) the amount of the penalties and interest assessed against those employers by each department or the board, and the amount of the penalties and interest assessed that has been collected. [Read more.](#)

- **Mineral/Surface Estates; Nonproduction – Mississippi.** On January 14, Rep. Randy Boyd (R) introduced HB 355. The bill provides that mineral estates separated from the surface estate shall revert to the owner of the surface estate after 20 years of nonproduction. The bill also provides a definition of “nonproduction” for the provision. A similar bill, [HB 106](#), was introduced on January 11 by Rep. Donnie Bell (R) which provides for a 10-year period of nonproduction. [Read more.](#)
- **Ad Valorem Taxes – Mississippi.** On January 11, Rep. Donnie Bell (R) introduced HB 107. The bill provides that the owner of surface rights under which oil, gas or other mineral interests are owned or held separately may be exempt from paying 25 percent of the ad valorem taxes and the owner or holder of any nonproducing oil, gas or other mineral interest owned or held separately from the rights owned in the surface estate shall pay a prorated portion of 25 percent of the ad valorem taxes due on the land. The bill also provides that if the owner or holder does not pay the percentage of ad valorem taxes owing the interest shall be sold in the same manner as lands are sold for nonpayment of taxes. In the event those interests are not purchased at sale, then such mineral interest shall revert to the owner of the surface estate under which the mineral interest is located, and the owner of the surface estate shall become liable for the amount of delinquent taxes for which the mineral interest was offered for sale and for a prorated portion of the 25 percent of ad valorem taxes due on the land that owners or holders of such separate mineral interests are required to pay. [Read more.](#)
- **Taxation on Oil Production – Montana.** On January 15, Rep. Llew Jones (R) introduced HB 213. The bill would amend current law regarding stripper well bonus production subject to taxation under the average price provision and removes “for a barrel of west Texas intermediate crude oil” and replaces it with, “reported and received by the producer for Montana oil marketed” during a calendar quarter [that] is equal to or greater than \$54. [Read more.](#)
- **Oil & Gas Production Payments – North Dakota.** On January 14, Rep. Dick Anderson (R) introduced HB 1490. The bill amends current law to include tenants of a surface owner in loss of production payments and allows for the tenant to maintain a separate action against the mineral developer for recovery of damages for loss of agricultural production and income. However, the tenant of a surface owner is not entitled to receive certain notice of operations or applicable legal fees associated with compensation from a mineral developer. [Read more.](#)
- **Unauthorized Practice of Law – Oklahoma.** Sen. Michael Brooks (D) has pre-filed SB 514 for a first reading scheduled for February 4, 2019. The bill defines the term “unauthorized practice of law”, creates a misdemeanor criminal offense, establishes punishment, and provides for an effective date of November 1, 2019, if signed into law. [Read more.](#)

- **Railroad Commission – Texas.** Last week, a suite of bills relating to the Railroad Commission of Texas were introduced by Rep. Rafael Anchia (D). [HB 857](#) would rename the Railroad Commission as the Texas Energy Resources Commission and sets governance procedures for commissioner vacancies and terms. [HB 858](#) would enact new enforcement information requirements related to the commission’s website. [HB 859](#) would impose certain restrictions on a member of the commission related to political contributions. [HB 860](#) would amend certain provisions related to administrative, civil, and criminal penalties for violating certain statutes under the jurisdiction of rules or orders adopted by, or licenses, permits, or certificates issued by the Commission as well as increasing certain penalties.
- **Tax; Interest Deductions – Utah.** On January 12, SB 41 was introduced by Sen. Daniel McCay (R). The bill would modify the Corporate and Franchise Income Tax Act and the Individual Income Tax Act by amending provisions relating to additions and deductions for certain business interests. Specifically, the measure would enact a subtraction to unadjusted income of a corporate taxpayer, adjusted gross income of an individual income taxpayer, and unadjusted income of a resident or nonresident estate or trust for the amount of any business interest to the extent the amount is not allowed as a deduction on a federal income tax return for the taxable year. The bill would also enact an addition to unadjusted income of a corporate taxpayer, adjusted gross income of an individual income taxpayer, and unadjusted income of a resident or nonresident estate or trust for the amount of any business interest that has been deducted on a Utah tax return to the extent the amount is carried forward to a succeeding taxable year as a deduction on a federal income tax return. [Read more.](#)
- **Abandoned Mineral Interests – West Virginia.** On January 14, Del. Pat McGeehan (R) introduced HB 2373. The bill creates a procedure to streamline the process to claim abandoned mineral interests and details the notice requirements as well as the procedures for perfecting a claim to those mineral interests. [Read more.](#)

## **STATE – Judicial**

- **Permitting; Rulemaking – Colorado.** *(Update to 10/29/18 Weekly Report)* On January 14, the Colorado Supreme Court finally issued its opinion in [Martinez v. Colo. Oil & Gas Conservation Cmm'n](#) (Case No. 2019 CO 3). AAPL has been reporting on this case throughout 2018, and we are pleased to deliver this opinion holding that the Colorado Oil and Gas Conservation Commission (COGCC) properly declined to engage in a rulemaking proposed by a group of environmentalist-supported teenagers which, “among other things, would have precluded the Commission from issuing any permits for the drilling of an oil and gas well ‘unless the best available science demonstrates, and an independent, third-party organization confirms, that drilling can occur in a manner that does not cumulatively, with other actions, impair Colorado’s atmosphere, water, wildlife, and land resources, does not adversely impact human health, and does

not contribute to climate change.” The case specifically targeted hydraulic fracturing which the litigants claimed adversely impacts human health. According to the holding, pertinent statutory provisions do not allow the COGCC “to condition all new oil and gas development on a finding of no cumulative adverse impacts to public health and the environment. Rather, the provisions make clear that the Commission is required (1) to foster the development of oil and gas resources, protecting and enforcing the rights of owners and producers, and (2) in doing so, to prevent and mitigate significant adverse environmental impacts to the extent necessary to protect public health, safety, and welfare, but only after taking into consideration cost-effectiveness and technical feasibility.” This ruling overturns a 2018 decision by the Colorado Court of Appeals which found in favor of the teen litigants. “Today’s outcome is positive for all Coloradans,” said Tracee Bentley, Executive Director of the Colorado Petroleum Council. “The court was right to deny a single out-of-state interest group—one that advocates for ending all energy development across the country—the ability to rewrite our state’s laws.” [Read more.](#) (For a deeper review of the case also see the *Welborn Sullivan Meck & Tooley, P.C. law firm* post [here.](#))

- **Nuisance; Horizontal Drilling – West Virginia.** On January 15, the West Virginia Supreme Court of Appeals held oral argument in [Robert Andrews, et al. v. Antero Resources Corp.](#) (Case No. 17-0126). In this case, petitioner-surface owners appeal the West Virginia Mass Litigation Panel’s dismissal of their nuisance claims against respondent lessees and operators. According to the case docket, the “petitioners contend the Panel failed to recognize public policy and erred in holding that a mineral severance deed grants mineral owners unrestricted rights to extract natural gas regardless of the burden of such extraction upon surface owners.” In the [Panel’s Final Order Granting Summary Judgment](#), entered October 11, 2016, the Circuit Court Panel concluded “there are no disputed issues of material fact and Defendants Antero and Hall are entitled to summary judgment as a matter of law. Antero, as the owner of the mineral estate, and its contractors have the right to use the Plaintiffs’ surface estates for the production of its mineral rights. The Court further concludes that Antero and its contractors have the legal right to develop the mineral estate. The Court finds that the activities complained of were reasonably necessary to the production of the mineral estate and did not exceed the fairly necessary use thereof or invade the rights of the surface owner under the standards.” AAPL will continue to monitor and report on any new case developments as they arise. [Read more.](#)

## State-by-State Legislative Session Overview

**Alaska, Arizona, Arkansas, California, Colorado, Connecticut, Delaware, Georgia, Hawaii, Idaho, Illinois, Indiana, Iowa, Kansas, Kentucky, Maine, Maryland, Massachusetts, Michigan, Minnesota, Mississippi, Missouri, Montana, Nebraska, New Hampshire, New Jersey, New Mexico, New York, North Carolina, North Dakota, Ohio, Oregon, Pennsylvania, Rhode Island, South Carolina, South Dakota, Tennessee, Texas, Vermont, Virginia, Washington, West Virginia, Wisconsin and Wyoming** are in regular session. The **District of Columbia, Puerto Rico** and the **United States Congress** are also in regular session.

The following states are scheduled to convene their 2019 legislative sessions on the dates provided: **Utah** (January 28); **Nevada** and **Oklahoma** (February 4); **Alabama** and **Florida** (March 5) and **Louisiana** (April 8).

**District of Columbia** Democratic Mayor Muriel Bowser has 10 days from presentment, not including weekends or holidays, to sign or veto a bill or it becomes law without signature. **Illinois** Democratic Gov. Jay Robert Pritzker has 60 calendar days while the legislature is in session to act on legislation or it becomes law without signature. **Massachusetts** Republican Gov. Charlie Baker has 10 days after a bill has been presented to either sign or veto the measure or it becomes pocket vetoed. **New York** Democratic Gov. Andrew Cuomo has 10 days from presentment, Sundays excepted, to sign or veto legislation or it becomes law without signature. **U.S.** Republican President Donald Trump has 10 days from presentment to act on legislation, Sundays excepted, or the bill is pocket vetoed.

Former **Ohio** Republican Gov. John Kasich had a signing deadline on January 10.

The following states are currently holding 2019 interim committee hearings: [Alabama](#), [Florida House](#) and [Senate](#), [Nevada](#), [Oklahoma House](#), and [Utah](#).

The following states are currently posting 2019 bill drafts, pre-files and interim studies: [Florida House](#) and [Senate](#), [Nevada](#), [Oklahoma House](#) and [Senate](#) and [Utah](#).

## Hydraulic Fracturing

**Florida** [HB 239](#), sponsored by Rep. Heather Fitzenhagen, R-Fort Meyers, was pre-filed on January 10. The legislature is scheduled to convene its 2019 session on March 5. The bill would prohibit the performance of advanced well stimulation in the state. The bill would take effect immediately. Similar bill [SB 314](#), sponsored by Senate Minority Leader Bill Montford, D-Tallahassee, was pre-filed on January 14.

**Illinois** [HB 282](#), sponsored by Rep. Emanuel Welch, D-Westchester, was referred to the House Rules Committee on January 10. The bill would require the following information to be included on a well permit:

- The GPS surface and bottom hole locations for all wells drilled utilizing directional or horizontal drilling techniques.
- A list of chemicals and additives intended to be used in the drilling or completion operations.

The bill would also prohibit horizontal wells or directionally drilled wells from being classified as confidential. The bill would require the Department of Natural Resources to make specified information available on its website including drilling permits issued, as well as well drilling and completion reports. The bill would protect furnished trade secret information from further disclosure if the department determines that the information has not been published, disseminated or otherwise become a matter of general public knowledge and the information has competitive value. The bill would take effect January 1, 2019 if passed prior to May 31; however, if the bill is passed after May 31 then it would take effect June 1, 2019.

**Oregon** [HB 2623](#), sponsored by Rep. Julie Fahey, D-Eugene, was referred to the House Energy and Environment Committee on January 15. The bill would impose a moratorium on hydraulic fracturing until January 2, 2030. The bill would take effect immediately.

## Oil and Gas

### Bundling and Pooling

**Oklahoma** [SB 503](#), sponsored by Sen. Roland Pederson, R-Burlington, was pre-filed on January 16. The legislature is scheduled to convene its 2019 session on February 4. The bill would provide that no oil or gas leasehold interest outside the spacing unit could be held by production from the spacing unit more than 90 days beyond the expiration of the primary term of the lease. This provision of existing law previously applied only to spacing units of 160 acres or more but would apply to all producing wells, leases and pooling orders regardless of the date pooled, drilled or the date of the underlying leases or pooling orders beginning November 1. It would also specify that the Corporation Commission could only require separate owners to pool their interests in a spacing unit as to the proposed well or wells, which would be known as “wellbore pooling” and not the entire spacing unit for the common source of supply. The bill would take effect November 1. The companion bill, [HB 1378](#), sponsored by Rep. Zack Taylor, R-Seminole, was also pre-filed.

### General

**Mississippi** Rep. Donnie Bell, R-Fulton introduced [HB 107](#), which was referred to the House Ways and Means Committee, on January 11. If the surface estate is owned separately and apart from the nonproducing mineral interest, the bill would exempt the owner of the surface estate from 25 percent of the ad valorem taxes. A similar bill, [HB 532](#), which was also sponsored by Representative Boyd, was referred to the House Ways and Means Committee on January 15. These bills would take effect July 1.

**Oklahoma [HB 1219](#)**, sponsored by Rep. Tommy Hardin, R-Madill, was pre-filed on January 16. The legislature is scheduled to convene its 2019 session on February 4. The bill would require the Corporation Commission to promulgate rules necessary to facilitate the investigation of damage claims occurring to existing vertical or lateral wells caused by drilling or other operations. It would also require that claimants request an investigation and seek a report from the commission prior to filing a damage claim in district court. The bill would take effect November 1.

## **Leasing**

**Montana [SB 41](#)**, sponsored by Sen. Tom Richmond, R-Billings, was heard in the Senate Natural Resources Committee on January 16. The committee heard from the bill sponsor, a representative of the state Mineral Management Bureau and the Montana Petroleum Association who all testified in support of the bill. The bill would eliminate the requirement that bids for oil and gas lease sales must be made orally.

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