

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

- **Indian Tribal Energy Development and Self-Determination Act Amendments of 2017 – S. 245.** *(Update to 12/10/18 Weekly Report)* On December 18, 2018, President Trump signed [S. 245](#), the “Indian Tribal Energy Development and Self-Determination Act Amendments of 2017,” into law. Originally introduced by Sen. John Hoeven (R-ND), the Act has been identified as “the first major piece of Indian minerals energy legislation in over a decade” and will open up economic opportunities with private stakeholders to develop tribal energy resources. The Act allows Indian tribes to exercise greater self-determination over the development of energy resources on their lands. One central purpose of the bill is to reinvigorate the Tribal Energy Resource Agreement (TERA) program. TERA “provides tribes with the authority to issue leases, business agreements, and rights-of-way for energy projects on their lands” but reportedly never functioned properly so tribes didn’t participate. This Act addresses those concerns by creating a more favorable environment for energy development on tribal lands. For example, the Act “allows leases and business agreements that pool, unitize, or communitize a tribe’s energy resources with other energy resources.” Additionally, an “energy-related tribal lease, business agreement, or right-of-way does not require Interior’s approval if it complies with a tribal energy resource agreement or it is a lease with a tribal energy development organization that Interior has certified, and the term does not exceed specified limits.” [Read more.](#)
- **H.R. 2606 – Stigler Act Amendments of 2018.** *(Update to 12/17/18 Weekly Report)* On December 31, 2018, President Trump signed [H.R. 2606](#), known as the “Stigler Act Amendments of 2018,” into law. The Republican-sponsored Act amends the 1947 Stigler Act to revise provisions regarding the restricted fee status of land in Oklahoma allotted to members of the Five Civilized Tribes (Five Tribes). According to bill sponsor, Rep. Markwayne Mullin (R-OK), the Act allows “land held by the Five Tribes—the Cherokee, Chickasaw, Choctaw, Muskogee (Creek), and Seminole Nations—to remain restricted, even if the heir to the land has less than ½ blood quantum.” [\(Read More\)](#) “When the Stigler Act of 1947 was passed over 60 years ago, the federal government mandated a ½ blood quantum requirement for restricted land owned by members of the Five Tribes,” said Mullin. According to Oklahoma law firm, Ball Morse Lowe, PLLC, this change in the law will effect “title opinions involving restricted property interests in Five Tribes allotments” and the sale or lease of restricted mineral interests. Notably, restricted land is not subject to state taxation. [\(Read more\)](#) Prior to the new Act, the Stigler Act provided that, upon probate, if the heirs and devisees of an original allottee

from the Five Tribes have passed out of ½ degree Native American blood, the allotment lost its “restricted free” status. [Read more.](#)

FEDERAL – Judicial

- **Leasing; Bonus Payments; Arbitration – Sixth Circuit Court of Appeals (Ohio).** On December 10, 2018, in *Rogers v. SWEPI LP* (Case No. 18-3229), the U.S. Court of Appeals, Sixth Circuit (Ohio), in a lease bonus payment dispute decided the following issue on appeal: “who decides the arbitrability of the dispute and, if it is a federal court, how should it be decided? Additionally, the parties ask the Court to determine whether the lease agreement allows for class procedures in arbitration.” The court ordered compelled arbitration and remanded to the district court the issue of whether the lease allows for class-wide arbitration in a dispute over whether the lessee owed a signing bonus after confirmation of good title. [Read more.](#)

STATE – Legislative

- **Taxation – Michigan.** On December 28, 2018, outgoing Governor Rick Snyder (R) vetoed [SB 1170](#). The measure, originally introduced by Sen. Dave Hildenbrand (R), would have made certain changes to the state corporate income tax and flow-through entities. For example, the Act would have authorized a taxpayer who was either a member or indirect member of a flow-through entity that elected to file and pay the flow-through entity tax created under the bill to claim a credit against the Michigan individual income tax or Michigan corporate income tax in an amount equal to the member’s allocated share of the tax as reported to the member by the flow-through entity. Any credit claimed would have been refundable and the Act was to be retroactive and effective for tax years beginning on and after January 1, 2018. [Read more.](#)
- **Marketable Record Title – Michigan.** On December 28, 2018, outgoing Governor Rick Snyder (R) signed [SB 671](#) into law which becomes effective 90 days thereafter. The measure, originally introduced by Sen. Rick Jones (R), updates Michigan’s marketable title statute to address “concerns about a Michigan law that provides for marketable record title.” As noted in the bill summary, “there are times when an extensive investigation or litigation is necessary to determine whether there are limitations on a title or whether old restrictions remain valid. It has been suggested that this is due to a lack of clarity in the Act regarding what must be specified in a claim to preserve an interest. Evidently, it is common for deeds or purchase agreements to contain generic statements such as ‘subject to anything of record’ or ‘subject to existing use restrictions, if any’, which may or may not preserve title restrictions. Reportedly, land title companies are reluctant to issue title insurance in these situations, which can impede development. To address these issues, some have recommended that the Act should require a person who wants to preserve an interest in property to refer specifically to the document that created it, when conveying title to the property, and

require a person who wants to claim an interest to include particular information in the notice that must be recorded.” To that end, the Act amends current law “to specify that a conveyance or other title transaction in the chain of title would purport to divest an interest in the property only if it created the divestment or specifically referred to a previously recorded conveyance or other title transaction that created the divestment. The bill also specifies information that a notice of claim would have to contain and, if a notice of claim were based on a recorded instrument, would require the notice to contain particular information about that instrument. In addition, the bill would allow claims against a marketable record title to be recorded within two years after the bill's effective date.” [Read more.](#)

- **Taxation; Expenses Deductions – Michigan.** (*Update to 12/17/18 Weekly Report*) On December 28, 2018, HB 6485 was vetoed by outgoing Governor Rick Snyder (R). The bill, sponsored by Rep. Triston Cole (R), would have amended the state Income Tax Act to exclude certain costs and allowances related to oil and gas production from exemption from certain categories of taxable income and from the corporate income tax. The bill, which also had been publicly supported by the Michigan Oil and Gas Association, would have expanded the deduction related to oil and gas production that was eliminated in a [2011 revision](#) to the Income Tax Act. [Read more.](#)
- **Lease Sale Bidding – Montana.** On December 21, 2018, SB 41 was referred to the Senate Natural Resources Committee after its introduction earlier that month. The bill, introduced by Senator Tom Richmond (R), would eliminate the current requirement that bids on oil and gas lease sales be made orally. [Read more.](#)
- **Drilling Units; Pooling Orders – Wyoming.** On December 26, 2018, SF 26 was pre-filed by Sen. Michael Von Flatern (R) for the general legislative session beginning January 8, 2019. The bill would amend the calculation of owners’ shares for drilling units in cases of nonconsenting owners where an owner does not agree with the pooling order or order settling a dispute, specifically lowering the portion of costs and expenses from 300 percent to 125 percent, and lowering from 200 percent to 110 percent “of that portion of the cost of newly acquired equipment in the well, to and including the wellhead connections, which would have been chargeable to the nonconsenting owner if he had participated therein.” [Read more.](#)

STATE – Regulatory

- **Greater Sage-Grouse – Colorado.** On December 19, 2018, outgoing Governor John Hickenlooper (D) issued [Executive Order D 2018 036](#), which asserts the state’s authority to require oil and gas producers and other developers to pay for the damage they do to the greater sage-grouse and their habitat. The Order directs state agencies to “use their full authority” to compel energy companies and other developers to avoid, minimize and mitigate harm from their activities. The state recently got the Bureau of Land

Management (BLM) to agree to enforce compensatory mitigation requirements on companies when states mandate them as a condition of receiving permits for drilling, mining, grazing, or other development on federal public lands in Colorado. This agreement is detailed in a [Memorandum of Understanding](#) between the BLM, the Colorado Department of Natural Resources and the Colorado Habitat Exchange, “a non-profit corporation established to develop, implement, and manage a state-wide voluntary habitat exchange for the benefit of important wildlife, particularly the greater sage-grouse and its habitat.” [Read more.](#)

- **Oil and Gas Emissions Rulemaking – Pennsylvania.** On December 13, 2018, the state Department of Environmental Protection’s (DEP) Air Quality Technical Advisory Committee met to discuss the released draft regulations of air emissions from existing oil and gas sources. (See [DEP Draft Regulations here](#)) This comes as DEP is “rolling out draft rules for controlling air pollution from the state’s thousands of existing oil and gas wells.” The new state proposal is “designed to curb direct emissions and leaks of volatile organic compounds from older well sites, storage tanks and other oil and gas facilities that aren’t covered by air pollution rules that DEP adopted earlier this year. The proposed rules would not directly control emissions of methane, but they are expected to cut down on leaks of the powerful greenhouse gas as a side benefit because volatile organic compounds and methane commingle in natural gas.” [Read more.](#)

STATE – Judicial

- **Marketable Title Act – Ohio.** On December 13, 2018, in [Blackstone v. Moore](#) (Case No. 2017-1639), the Ohio Supreme Court addressed landowners seeking to extinguish an oil-and-gas royalty interest created in 1915 although a deed in their chain of title referenced the royalty interest as well as the original holder of the interest. The landowners argued that “this reference is not sufficient to preserve the interest because it does not include either the volume and page number of the record in which the interest is recorded or the date on which the interest was recorded.” The court, however, concluded “that the plain language of the act does not require such specificity” and in so doing affirmed the appellate court’s holding that the landowners’ title remained subject to the royalty interest. [Read more.](#)
- **State Regulations – Ohio.** On December 11, 2018, in *Wood v. Division of Oil and Gas Resources Management et al.* (Case No. 18AP-470), an oil and gas operator challenged the jurisdiction of the matter in the Court of Claims regarding an administrative appeal on proof of financial responsibility submitted to the Division. Here, the Court of Appeals of Ohio, Tenth District, agreed holding that the well operator’s declaratory judgment claim against the regulatory agency belongs in trial court rather than the state’s Court of Claims to recover damages from the government. [Read more.](#)

- Impact Fees; Marginal/Stripper Wells – Pennsylvania.** On December 28, 2018, the Pennsylvania Supreme Court issued its opinion in [Snyder Bros. Inc. v. Pa. Pub. Util. Comm’n, Pa. Indep. Oil and Gas Ass’n v. Pa. Pub. Util Comm’n](#) (Case No. 47 WAP 2017). At issue in this case was whether producers of natural gas from certain vertical wells are subject to assessment of the yearly impact fee established by the Oil and Gas Act (“Act 13”). According to the opinion, “At the heart of this dispute is whether an impact fee will be assessed whenever a vertical well’s production exceeds an average of 90,000 cubic feet of natural gas per day for even one month of the year, or whether the well must exceed this production threshold in every month of the year, for the fee to be imposed. The court concluded that, “under the relevant provisions of Act 13, the impact fee will be imposed on such wells if their production exceeds 90,000 cubic feet of natural gas per day for even one month of the year, as found by the Pennsylvania Public Utility Commission (PUC).” In so doing, the Supreme Court reversed the Commonwealth Court’s order and reinstated the PUC order that drillers must pay an annual fee for vertical wells that produce an average of more than 90,000 cubic feet of natural gas per day, even if production levels are that high for only one month during the year. In the case, Snyder Brothers Inc., a private oil and gas producer, and the Pennsylvania Independent Oil and Gas Association, sued the PUC over unconventional gas well fees, or impact fees, for calendar years 2011 and 2012. They argued, unsuccessfully, that a well needed to exceed the production threshold every month of the year for the fee to be imposed. [Read more.](#)
- Deeds; Strip-and-Gore Doctrine – Texas.** On December 13, 2018, in *Green v. Chesapeake Exploration, L.L.C.* (Case No. 02-17-00405-CV), the Court of Appeals for the Second Appellate District of Texas (Fort Worth) addressed “a single question of law: whether a 1972 deed conveyed—in addition to the described land—title to an adjoining 30.591-acre mineral estate under the strip-and-gore doctrine or whether the grantor of the adjoining land intended to retain the mineral estate.” The court agreed with the trial court holding “that as a matter of law, title to the mineral estate vested in the adjoining land’s grantee.” [Read more.](#)

INDUSTRY NEWS FLASH:

◆ **Domestic oil and natural gas production breaks record.** On December 28, 2018, the U.S. Energy Information Administration (EIA) reported that domestic oil and natural gas production broke records last year as reported through November. The EIA reports total U.S. crude production averaged nearly 11.7 million b/d, 15.7 percent higher than a year earlier, and natural gas production climbed 11.2 percent to an average of almost 4.6 million b/d during the same period. [Read more](#)

State-by-State Legislative Session Overview

Colorado, Indiana, Maine, Massachusetts, New Hampshire, North Dakota, Ohio, Pennsylvania and Rhode Island are in regular session. The **District of Columbia, Puerto Rico** and the **United States Congress** are also in regular session.

California and **Illinois** are in recess until January 7. **Michigan** and **New York** are in recess until January 9.

The following states adjourned their 2018 legislative sessions on the dates provided: The **District of Columbia, Michigan, Ohio and Rhode Island** (December 31); **Massachusetts** (January 1); the **United States Congress** (January 3).

The following states are scheduled to adjourn their 2018 legislative sessions on the dates provided: **Wisconsin** (January 7); **Illinois** (January 8) and **New Jersey and New York** (January 9).

The following states are scheduled to convene their 2019 legislative sessions on the dates provided: **Idaho, Montana and Ohio** (January 7); **Delaware, Kentucky, Minnesota, Mississippi, South Carolina, South Dakota, Tennessee, Texas and Wyoming** (January 8); **Connecticut, Illinois, Maryland, Michigan, Missouri, Nebraska, New Jersey, New York, North Carolina, Vermont, Virginia and West Virginia** (January 9); **Arizona, Arkansas, Georgia, Iowa, Kansas and Washington** (January 14) and **Alaska, New Mexico and Wisconsin** (January 15).

Ohio Republican Gov. John Kasich has until January 10 act on legislation presented on or after December 21 or it becomes law without signature. **California**'s Democratic Gov. Jerry Brown has 12 days from presentment to act on legislation or it becomes law without signature. **District of Columbia** Democratic Mayor Muriel Bowser has 10 days from presentment, not including Saturdays, Sundays or holidays to sign or veto legislation or it becomes law without signature. **Illinois** Republican Gov. Bruce Rauner 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 from presentment to sign or veto legislation or it becomes law without signature. **Michigan** Democratic Gov. Gretchen Whitmer has 14 days from presentment to sign or veto legislation or it is 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. **North Carolina** Democratic Gov. Roy Cooper has 10 days from presentment to act on special session legislation or it becomes law without signature. **Rhode Island** Democratic Gov. Gina Raimondo has six days from presentment, Sundays excepted, to act on 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.

The following states are currently holding 2019 interim committee hearings: [Alabama](#), [Alaska](#), [Arizona](#), [Arkansas](#), [California Assembly](#) and [Senate](#), [Colorado](#), [Connecticut](#), [Florida House](#) and [Senate](#), [Hawaii](#), [Idaho](#), [Illinois Senate](#), [Iowa](#), [Kansas](#), [Kentucky](#), [Maryland](#), [Minnesota](#), [Mississippi Senate](#), [Missouri House](#) and [Senate](#), [Montana](#), [Nevada](#), [New Mexico](#), [New York](#)

[Assembly](#) and [Senate](#), [North Carolina](#), [Oklahoma House](#), [Oregon](#), [South Carolina](#), [South Dakota](#), [Tennessee](#), [Texas House](#) and [Senate](#), [Utah](#), [Vermont](#), [Virginia](#), [Washington](#), [West Virginia](#), [Wisconsin](#) and [Wyoming](#).

The following states are currently posting 2019 bill drafts, pre-files and interim studies: [Arizona](#), [Arkansas](#), [Delaware](#), [Florida House](#) and [Senate](#), [Georgia](#), [Iowa](#), [Kansas House](#) and [Senate](#), [Kentucky](#), [Maryland](#), [Missouri House](#) and [Senate](#), [Montana](#), [Nevada](#), [Oklahoma House](#) and [Senate](#), [South Dakota](#), [Tennessee](#), [Texas](#), [Utah](#), [Virginia](#), [Washington](#) and [Wyoming](#).

Lands

Public Lands

Wyoming [HB 50](#), sponsored by the Joint Agriculture, State and Public Lands and Water Resources Interim Committee, was pre-filed on December 28. The legislature is scheduled to convene its 2019 session on January 8. The bill would allow the state to exchange land with the federal government for lands of equal value in either surface or mineral rights rather than the equal land area which is specified under current law. This bill would take effect effective July 1, 2019.

Oil and Gas

General

Montana [SB 28](#), sponsored by Sen. Tom Richmond, R-Billings, is scheduled for a hearing in the Senate Taxation Committee on January 11 at 8:00 AM. The bill would remove the price trigger for new or expanded tertiary production.

Leasing

Montana [SB 41](#), sponsored by Sen. Tom Richmond, R-Billings, is scheduled for a hearing in the Senate Natural Resources Committee on January 14 at 3:00 PM. The bill would eliminate the requirement that bids for oil and gas lease sales must be made orally.

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