

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

- **Onshore Oil and Gas Order No. 5.** On February 7, Rep. Kevin Cramer (R-ND) introduced [H.J. Res. 68](#) to disapprove of and nullify the BLM rule, *Onshore Oil and Gas Operations; Federal and Indian Oil and Gas Leases; Measurement of Gas* ([81 Fed. Reg. 81516](#)), published last November. The final rule, also known as the updated version of Onshore Oil and Gas Order No. 5, established “minimum standards for accurate measurement and proper reporting of all gas removed or sold from Federal and Indian (except the Osage Tribe) leases, units, unit participating areas (PAs), and areas subject to communitization agreements (CAs).” [Read more.](#)
- **Repeal of Oil & Gas Reporting Rule.** On February 16, Rep. Bruce Westerman (R-AR) introduced [H. J. Res. 82](#) to disapprove of and nullify the BLM rule, *Onshore Oil and Gas Operations; Federal and Indian Oil and Gas Leases; Measurement of Oil* ([81 Fed. Reg. 81462](#)), published last November. The final rule, also known as the updated version of Onshore Oil and Gas Order No. 4, established “minimum standards for the measurement of oil produced from Federal and Indian (except Osage Tribe) leases to ensure that production is accurately measured and properly accounted for.” [Read more.](#)

**FEDERAL – Regulatory**

- **ONRR Valuation Rule on Hold.** The Interior Department’s Office of Natural Resource Revenue (ONRR) has decided to postpone the effective date of its new valuation rule in light of pending litigation challenging the rule, *Consolidated Federal Oil & Gas and Federal & Indian Coal Valuation Reform* ([81 Fed. Reg. 43337](#)), published last July and with an original effective date of January 1, 2017. In a [public notice letter](#) dated February 22, ONRR directed however that Federal and Indian lessees should continue to value, report, and pay royalties under the rules that were in effect prior to January 1, 2017. According to the notice, the hold on implementing the new rule “applies to the January 2017 production month reports due on Feb. 28, and continues until the litigation is resolved and ONRR provides notice of the result.” [Read more.](#)

**FEDERAL – Judicial**

- **Federal Leasing – Washington, DC Federal Court.** On February 14, in *Wildearth Guardians v. Jewell* (Case No. CV 16-1724), the D.C. District Court allowed Colorado, Utah, and Wyoming to intervene in an action by environmental groups challenging oil

and gas leases on public lands in those states with the court rejecting a plea by those groups that Colorado and Utah should be precluded from briefing arguments in the Wyoming phase of the litigation. Instead, the court held that all the claims are substantially related such that the Mountain States each should have full participation rights in the case. [Read more.](#)

## **STATE – Legislative**

- **Production Units; Pooling – Alabama.** On February 16, Sen. Greg Albritton (R) introduced SB 212. The bill would clarify that although a risk compensation fee may not be charged against the interest of an owner who does not receive actual notice of the hearing on the petition requesting imposition of the fee, the fee is chargeable against the interests of other non-consenting owners in the unit who were given actual notice of the hearing in compliance with applicable laws. [Read more.](#)
- **Arctic National Wildlife Refuge – Alaska.** On February 22, the Special Committee on the Arctic introduced Senate Concurrent Resolution No. 3, urging the U.S. Congress to pass legislation to open lands on the coastal plain of the Arctic National Wildlife Refuge to oil and gas development. [Read more.](#)
- **BLM Planning 2.0 Rule – Arizona.** On February 21, both the majority and minority caucuses of the Senate expressed their support for [S.C.R. 1019](#), a resolution expressing the Legislature’s opposition to the BLM’s Planning 2.0 rule, which would impact 12.2 million acres of public land in Arizona. [Read more.](#)
- **Moratoriums – Colorado.** On February 21, Longmont City Council members voted 5-2 to state their opposition to a Colorado bill that would make local governments liable for paying oil and gas mineral rights holders who lose income resulting from local bans on hydraulic fracturing or oil and gas moratoriums. The bill, [HB 17-1124](#), was introduced by Rep. Perry Buck (R) on January 26. [Read more.](#)
- **Notary Law – Illinois.** On February 8, Rep. Al Riley (D) introduced HB 2604. The bill would make changes to the Illinois Notary Public Act, including the modification of a section concerning the notary public official seal and signature to remove references to ineffective language concerning the signature; provides references to the use of “electronic communication” concerning notice and advertisement of notary public services; modifies the maximum fees for notarial acts; and modifies the penalty for a violation of certain provisions concerning fees for notarial acts, among other provisions. [Read more.](#)
- **Notary Law – Kentucky.** On February 17, Rep. Brian Linder (R) introduced HB 539. The bill would make changes to the notary laws, including outlining requirements for certain notarial acts; requiring a personal appearance before a notarial officer; specifying the requirements of identifying an individual before a notarial officer; and allowing a

notarial officer to refuse to perform a notarial act, among other provisions. [Read more.](#)

- **Production Costs – Montana.** On February 22, HB 384, introduced earlier in the month by Rep. Austin Knudsen (R), passed in the House and was sent to the Senate for consideration. The bill would require an oil or gas lessee to pay all costs of production unless parties agree to other terms. [Read more.](#)
- **Permitting – Montana.** On February 13, Sen. Mark Blasdel (R) introduced SB 248. The bill would provide that an exempt well permit is not required for use on a lot or parcel created by a family transfer division of land. [Read more.](#)
- **Reporting – New Mexico.** On February 16, Sen. Howie Morales (D) introduced SM 88. The measure would require that the Oil Conservation Division of the Energy, Minerals and Natural Resources Department post certain information regarding the oil and gas industry on the division's website, such as the number of wells by county and violations of the Oil and Gas Act. [Read more.](#)
- **Venting and Flaring – New Mexico.** On February 21, Sen. Benny Shendo (D) introduced SM 102. The measure would request that the Energy, Minerals and Natural Resources Department produce a report on the amount of natural gas being vented and flared in the state and on gas capture plans submitted by oil and gas operators, and would require reporting to legislative committees on the amount of natural gas leaked from oil and gas operations. [Read more.](#)
- **Reclamation – North Dakota.** On February 22, Sen. David Rust (R) introduced SB 2333. The bill provides requirements for reclamation of land disturbed by oil and gas activity and allows for certain reclamation waivers and requires any actions brought under the measure to first exhaust all administrative remedies. [Read more.](#)
- **Royalties – Pennsylvania.** On February 17, Rep. Garth Everett (R) introduced HB 557. The bill would amend the Oil and Gas Lease Act to provide for minimum royalties for unconventional oil or gas well production and for a remedy for failure to pay the minimum royalty on unconventional oil or gas wells. [Read more.](#)
- **Railroad Commission – Texas.** (Update to 2/20.2017 Weekly Report) On February 22, Sen. Van Taylor introduced SB 300, the companion bill to previously reported [HB 1818](#), which was introduced February 13. The bill authorizes the continuation of the Texas Railroad Commission. Additionally, the bill sets requirements for strategic planning, development of a policy to encourage the use of alternative dispute resolution, and sets requirements for reporting of oil and gas monitoring and enforcement activities, among other provisions. [Read more.](#)
- **Partition Actions – West Virginia.** On February 21, Sen. David Sypolt (R) introduced

SB 370. The bill provides that funds due in partition suits of oil and gas interests to persons whose names or locations are unknown, and who do not claim the funds for five years, would be paid into the Oil and Gas Reclamation Fund. [Read more.](#)

### **STATE – Judicial**

- **Mineral Servitudes; Prescription – Louisiana.** On February 15, in *Smith v. Andrews* (Case No. 51,186–CA), a Louisiana appellate court denied a surface owner’s attempt to terminate a mineral servitude held by heirs of the original owner, reasoning that evidence of production and operations during the prescription period sufficed to maintain the rights despite periods of nonuse. [Read more.](#)
- **Royalties; Taxes – North Dakota.** On February 16, in *Burk v. North Dakota* (Case No. 20160108), the North Dakota Supreme Court held that a landowner’s settlement agreement with the state in which he acquired a portion of the mineral interest and corresponding rights to royalty payments never gave him a right to a tax-free royalty (even though the state itself would be entitled to royalties tax free) despite claims that the parties agreed that the landowner would get 50 percent “of what the State is entitled to” get (i.e., a tax-free royalty). [Read more.](#)
- **Bonus Payments – Pennsylvania.** On February 13, in *Pennsylvania General Energy Company, L.L.C. v. Hershey* (Case No. 908 WDA 2016), the Superior Court held that a landowner had to pay back \$238,500 in bonus payments following a determination that he had bad title to the oil and gas he leased to a production company despite the landowner’s claims that the lessee “voluntarily” paid him that money before checking title, and claiming it was the lessee’s fault for paying without checking title, and thus, the landowner should be entitled to keep the bonus cash. [Read more.](#)

## **State-by-State Legislative Session Overview**

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

**Wisconsin** convened a special session on January 5 that will run concurrently with the regular legislative session.

**Louisiana** adjourned a special session related to fiscal issues on February 22, [The Advocate](#) reports. The legislature passed a plan to close a \$304 million mid-year budget deficit. The deficit reduction plan is contained in [HB 3x](#), sponsored by House Appropriations Committee Chair Cameron Henry, R-Metaire, which was presented to Democratic Gov. John Bel Edwards on February 23. Governor Edwards has until March 5 to act on the bill or it becomes law.

**New York** is in recess until February 28.

**Florida** is scheduled to convene its 2017 legislative session on March 7 and **Louisiana** is scheduled to convene on April 10.

**Virginia** is scheduled to adjourn its 2017 legislative session on February 25.

**Illinois** Republican Gov. Bruce Rauner has acted on all 2016 legislation as of February 23.

The following states are currently posting bill draft requests/prefiles for the 2017 session: [Florida](#) and [Louisiana](#).

## Endangered Species

**Arizona** [SCM 1001](#) is scheduled to be heard in the House Energy, Environment and Natural Resources Committee on February 28. This resolution urges the U.S. Congress to take action to repeal final rules expanding the definition of critical habitat and would require the Arizona secretary of state to bring this resolution to the president, the Senate president, the House speaker and every member of congress from Arizona.

**Arizona** [SCM 1009](#) passed the Senate on February 23 and was delivered to the House for consideration. This resolution urges the director of the U.S. Fish and Wildlife Service to delist the gray wolf from the endangered species act and would require the Arizona secretary of state to bring this resolution to the president, the Senate president, the House speaker and every member of congress from Arizona.

**New Mexico** [SB 481](#), sponsored by Sen. William Burt, R-Alamgordo, was introduced on February 16 and referred to the Senate Conservation Committee and the Senate Judiciary Committee. This bill would have the director of the Department of Game and Fish conduct research on the economic impact in New Mexico of having a species being listed, or potentially listed, as being threatened or endangered. The director would also, if requested by local or regional government, residents, property owners or other stakeholders in the state, be required to provide assistance in evaluating and implementing cost effective strategies for mitigating impacts to and recovery of endangered species that are consistent with economic development and growth in the state. The director would also be required to conduct research on species of interest, which are species that are being considered as a candidate for endangered species. If this bill becomes law, it will take effect on July 1, 2017.

## Franchise Tax

**Arkansas** [HB 1644](#) passed the House Revenue and Taxation Committee on February 23. This bill would change the filing date for corporate franchise tax from December 31 to the end of the last day of the corporation's fiscal year.

If this bill is enacted, it would go into effect for tax years beginning on or after January 1, 2017. The bill is sponsored by Rep. Dwight Tosh, R-Jonesboro.

**California** [AB 1256](#) was introduced on February 17 and may be heard in committee on or after March 21. This bill would reduce that minimum franchise tax in the second taxable year for a new corporation, and that annual tax in the first taxable year for a new limited partnership, new limited liability partnership, and new limited liability company that is a small business, which is defined as a business entity with gross receipts of \$5,000 or less. The franchise tax would be \$100 if the company is doing less than \$5,000 per year in gross receipts.

If this bill becomes law, it would take effect for taxable years beginning on or after January 1, 2018.

Action on **Tennessee** [SB 8](#) in the Senate Finance, Ways and Means Committee's Revenue Subcommittee was deferred from February 28 to March 1. This bill would change the apportionment formula used to calculate franchise tax from a three-factor formula to a single-sales-factor formula.

This bill is sponsored by Sen. Mark Green, R-Clarksville, and would become law immediately if enacted.

The House companion bill, [HB 714](#), is pending in the House Finance, Ways and Means Subcommittee.

**Texas** [HB 538](#), sponsored by Rep. Will Metcalf, R-Conroe, was read for the first time and referred to the House Appropriation Committee on February 20. If approved by voters, this proposed constitutional amendment would allow the comptroller to provide franchise tax rebates using additional positive balance from general revenue at the end of a biennium.

**Texas** [HB 599](#), sponsored by Rep. Mike Schofield, R-Katy was read for the first time and referred to the House Appropriation Committee on February 20. Beginning in 2018, this bill decrease the franchise tax rate by .25 percent on even numbered years if certain circumstances are met until the franchise tax ultimately expires. If enacted, this bill would take effect on September 1, 2017.

**Texas** [HB 1052](#) was referred to the House Ways and Means Committee on February 21. This bill would repeal the franchise tax by May 15, 2018. Rep. Leighton Schubert, R-Caldwell, is the sponsor.

**Texas** [HB 1095](#) was referred to the House Ways and Means Committee on February 21. This bill would phase out the franchise tax year by year until it would ultimately be eliminated by January 1, 2020. This bill is sponsored by Rep. Matt Shaheen, R-Plano.

**Texas** [HB 1196](#), which would also repeal the franchise tax, was referred to the House Ways and Means Committee on February 21. Rep. Angie Button, R-Richardson, is the sponsor.

**Texas** [SB 17](#) is scheduled to be heard in the Senate Finance Committee on February 28. This bill would decrease the franchise tax rate until it is eliminated. If enacted, the bill would become effective on September 1, 2017. This bill is sponsored by Sen. Jane Nelson, R-Flower Mound.

**Texas** [SB 142](#) is scheduled to be heard in the Senate Finance Committee on February 28. This bill offers amendments to the way cost of goods is calculated for the purpose of determining a corporation's franchise tax. This bill would take effect on January 1, 2018 and is sponsored by Sen. Van Taylor, R-Plano.

## Lands

### Leasing

**Montana** [HB 384](#) passed the House on February 22 and was read for the first time in the Senate on February 23 and referred to the Senate Energy and Technology Committee. This bill would require a lessee to pay all costs of production from a working interest unless the Board of Land Commissioners finds that sharing the expense of transporting the oil to the nearest market better serves the interest of the state or a lessor and a lessee agree to other terms. This bill would take effect immediately if enacted.

**Nebraska** [LB 535](#) was heard in the Senate Revenue Committee on February 22, but the committee did not vote on the bill. This bill would exempt oil, gas or mineral lease conveyance from the requirement of filing a statement with the register of deeds. This bill would become effective three months after adjournment if enacted.

This bill is sponsored by Sen. Dan Hughes, R-Venango.

### Pooling

**Alabama** [SB 212](#) was introduced on February 16, read for the first time and referred to the Senate Transportation and Energy Committee. Under current law, risk compensation fees cannot be imposed unless all affected parties have been given notice and a public hearing is held by the State Oil and Gas Board and the board determines all necessary requirements for imposing the fee have been met. This bill, which is sponsored by Rep. Victor Gaston, R-Mobile, would clarify that although risk compensation fees cannot be charged against the interest of an owner in a production pool who did not receive a notice of the hearing on the petition requesting the imposition of the fee, the fee is chargeable against the interests of the other nonconsenting owners in the unit who were given the notice. Under current law, if a productive well is drilled on a pool, those owners who did not pay their share of the drilling costs may have what they

owed deducted from production proceeds. They would have to also pay a risk compensation fee of equal to 150 percent of that owner's share of the costs but that in all events a 3/16<sup>th</sup> share of production from the well must be treated as royalty and is free from any drilling costs or risk compensation fees.

Sen. Greg Albritton, R-Bay Minette, is the sponsor. The House companion, [HB 169](#), passed the House Ways and Means Committee on February 16 and is now awaiting third reading on the House floor.

**North Dakota** [HB 1257](#) passed the House on February 20 and was referred to the Senate Energy and Natural Resources Committee the following day. When filing for a petition for a proposed plan of unitization, in order for the plan to be approved, it will have to be signed by the person who will be required to pay more than 55 percent of the cost of the unit operation, and by the owners of more than 55 percent of the royalty interests, a proposed decrease from 60 percent in both cases.

## Oil and Gas

### Mineral Rights

**New Mexico** [HB 382](#), sponsored by Rep. Candy Ezzell, R-Roswell, was heard in the House Energy, Environment and Natural Resources Committee on February 21, but no vote was taken. This bill would allow countries to establish mineral lease districts and to create the form and function of the board of directors for these districts. The main purpose of these districts would be to receive and distribute funds received from federal mineral leases.

### Oil and Gas General

**California** [SB 773](#) was introduced on February 17 and is in the Senate Rules Committee awaiting assignment. The bill will be eligible to be heard in committee on or after March 23. Under existing law, the Division of Oil, Gas and Geothermal Resources requires that each owner or operator of a well keep up to date accurate logs, core records and history of drilling of the well. This bill would require that the state maintain information to completely characterize each well, including after being plugged. It would also require the State Oil and Gas Supervisor to ensure that this policy is fully carried out and the state is in compliance. A violation of this order would be a crime.

This bill is sponsored by Sen. Henry Stern, D-Canoga Park.

## Royalty Payments

**Nevada** [AB 82](#) is scheduled for a February 28 hearing in the Assembly Taxation Committee. This bill would require every person who is extracting minerals to include the royalties paid, and name and address of each recipient of a royalty payment in their annual statement showing gross yield and claimed net proceeds. The bill would also require the Department of Taxation to send the amount of taxes due to the person who is extracting the mineral along with a statement of the



amount of net proceeds and royalties paid. The taxes are due by the person who is extracting the mineral on or before May 10 of the year in which the certificate is received. If enacted, this bill would take effect on July 1.

This bill is sponsored by the Assembly Taxation Committee on behalf of the Department of Taxation.

**Pennsylvania** [HB 557](#) was introduced on February 17 and referred to the House Environmental Resources and Energy Committee. The bill, sponsored by Rep. Garth Everett, R-Muncy, would require that the minimum royalty be paid to a lessor for an unconventional well cannot be lower than one eighth (12.5 percent) of the gross proceeds received by the lessee for the production. The bill would prohibit deductions or allocation of costs, expense or any other adjustments that may result in a royalty being less than one eighth of gross proceeds. The bill would allow lessors who are paid less than the minimum royalty to bring action against the lessee. If this bill becomes law, it will take effect 60 days after being enacted.

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