



**Please Note:** Due to the upcoming Good Friday and Easter holidays, there is no report next Monday. The next report will be published on April 29, 2019.

## WEEKLY HIGHLIGHTS AT-A-GLANCE

### FEDERAL – Legislative

- **Congressional Recess.** Congress is currently out of session for the Easter holiday and Spring Recess. The legislative session will resume on April 29. [Read more.](#)

### FEDERAL – Regulatory

- **Interior Department Secretary.** *(Update to 3/25/19 Weekly Report)* On April 11, the Senate confirmed President's Trump's pick for Interior Secretary, David Bernhardt, by a 56-41 vote. Earlier this year, [Trump chose David Bernhardt](#) to serve as Secretary while he was serving in an acting capacity following Ryan Zinke's resignation. "There are few others who have the kinds of experience that he has that qualify him for Interior," said Sen. Cory Gardner (R-CO). Bernhardt has previously held several positions within the Department, including serving as Solicitor, and was also a former oil and gas lobbyist with the firm Brownstein Hyatt Farber Schreck LLP. [Read more.](#)
- **BLM Oil & Gas Lease Sale – Nevada.** On April 5, the Bureau of Land Management (BLM) announced that it has reopened the public comment period and changed the date for this summer's proposed oil and gas lease sale due to the inclusion of additional parcels in the Ely District and the issuance of the new Greater Sage-Grouse Land Use Plan Amendment on March 15, 2019. The lease sale, which was previously announced for June 11, 2019, will now be held on July 30, 2019. The BLM proposes to offer 200 parcels totaling approximately 389,334 acres located in Battle Mountain, Elko, and Ely Districts at the July sale. The reopened public comment period will end on May 6, 2019. [Read more.](#)
- **BLM Oil & Gas Lease Sale – Montana; North Dakota.** On April 4, the BLM opened a 15-day public scoping comment period for nominated oil and gas lease parcels located in Montana and North Dakota. The parcels for inclusion in the upcoming September 2019 sale are located in Musselshell and Wibaux counties in Montana and Burke, Divide, and Williams counties in North Dakota. The public comment period will be open through April 23, 2019. [Read more.](#)

## **FEDERAL – Judicial**

- **Offshore Leasing – Alaska.** On March 29, in [\*League of Conservation Voters v. Trump\*](#) (Case No. No. 3:17-CV-00101-SLG), the U.S. District Court for the District of Alaska addressed President Trump’s purported revocation of memoranda and an executive order issued by President Obama in 2015 and 2016 “withdrawing certain areas of the Outer Continental Shelf [OCS] from leasing.” The court held that President Trump did not have legal authority to rescind orders by his predecessor to withdraw roughly 95 percent of the Outer Continental Shelf from drilling. The court explained that the President is not “the exclusive judge” of “determining the OCS lands subject to leasing; that power ultimately is vested in Congress under the Property Clause.” In short, the court held that relevant federal law only authorizes a President to withdraw lands from disposition, but it does not authorize a President to revoke a prior withdrawal. [Read more.](#)
- **Federal Leasing Royalties – Washington, DC.** On March 30, in *Continental Resources, Inc. v. Gould* (Case No. CV 14-65), the U.S. District Court for the District of Columbia addressed a royalty dispute between Continental and the Interior Department’s Office of Natural Resources Revenue (ONRR) and its predecessor, the Minerals Management Service regarding certain sales of unprocessed gas to an unaffiliated entity. According to the ONRR Director, “Continental should have valued its sale of its unprocessed gas under a provision of the governing regulation that values processed gas sold pursuant to a non-arm’s length transaction.” This valuation method would impact certain reductions and allowances, and Continental challenged this method. The court, in disagreeing with the ONRR, “concludes that the Director’s decision is premised on a reading of the regulation that is ‘plainly erroneous [and] inconsistent with the regulation.’” Additionally, the court found the Director’s decision did not comply with “reasoned decisionmaking” and was “arbitrary and capricious” under relevant law. The court remanded the case back to the ONRR “to determine in the first instance how best to interpret and to apply its regulation in light of this opinion, and it would further the statutory interest in expedition.” [Read more.](#)
- **Notarization; Constructive Notice; Leasing – New Mexico.** On March 29, in *Marathon Oil Permian, LLC, v. Ozark Royalty Co.* (Case No. 1:18-cv-00548-JCH-SCY), the U.S. District Court for the District of New Mexico addressed a “dispute over a roughly 40-acre mineral estate lease which began with a notary’s error in notarizing the wrong signature on a lease conveyance.” The parties disputed whether New Mexico law imposes a chain of title requirement that a recorded deed can impart constructive notice to a bona fide purchaser only if it is a link in the purchaser’s chain of title searchable in the records. The court noted that the “answer is that the New Mexico Supreme Court has laid down such a rule: a purchaser is charged with constructive notice ‘of all recorded documents within the purchaser’s chain of title.’” Here, the court dismissed the claim against a bona fide lease purchaser, noting that the prior owner attempted to record the lease with a defective notarization, which the county recorded rejected. The subsequent purchaser

then acquired the lease months later but without actual or constructive notice of the prior owner's acquisition because the lease was not recorded in the chain of title.

[Read more.](#)

- **Employee Misclassification – Pennsylvania.** On April 2, in *Conley v. Cabot Oil and Gas Corp.* (Case No. 2:17-CV-01391-CB), the U.S. District Court for the Western District of Pennsylvania approved a settlement of \$3,564,250 in an overtime class action suit which alleged that workers of an oil and gas operator were misclassified as independent contractors rather than employees. [Read more.](#) For background on the original case, filed in 2017, [click here.](#)
- **Bonus Payments; Leasing – Pennsylvania.** On March 31, in *Walney v. SWEPI LP* (Case No. 1:13-CV-00102-SPB), the U.S. District Court for the Western District of Pennsylvania addressed a class action dispute claiming the defendants breached the terms of the class members' oil and gas leases by failing to pay bonus monies that were allegedly owed under the terms of the subject leases. The court granted one of the defendant's motions to decertify the class given the differences among the leases that could not adequately be resolved on a plaintiff-class basis. According to the court, "Allowing class members to pursue their claims on an individualized basis therefore seems to be the most, and perhaps only, feasible alternative." [Read more.](#)
- **Royalties; Leasing – Texas.** On March 29, in *Verde Minerals LLC v. Koerner* (Case No. 2:16-CV-199), the U.S. District Court for the Southern District of Texas (Corpus Christi) addressed allegations of nonpayment of oil and gas proceeds. The facts established a dispute over title which, according to the court, allowed the lessee to withhold payments until the issue of ownership interests were resolved. As such, the court dismissed the claim finding facts were not plead that would lead to a reasonable inference that the payment requirements were violated. [Read more.](#)

## **STATE – Legislative**

- **Notaries Public – Illinois.** On April 10, HB 2176 passed the House. The bill, sponsored by Rep. Celina Villanueva (D), amends the Illinois Notary Public Act to require every notary public who is not an attorney or an accredited immigration representative to, prior to rendering notary services, provide any person seeking notary services with a written acknowledgment and the bill provides the requisite contents for such an acknowledgment as well as procedures for retention of those forms. The bill also provides for certain disavowal of legal services as offered by a notary and sets certain penalties for violations. [Read more.](#)
- **Well Assessment – Indiana.** (*Update to 4/1/19 Weekly Report*) On April 10, HB 1305 passed the House, concurring in the Senate version passed in March. The measure, sponsored by Rep. Shane Lindauer (R), provides 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. The bill would impose a \$25 penalty against those failing to file the property schedule by the May 15 deadline each year. If an additional 30 days elapses, a 10 percent penalty would be added. If signed into law, the bill will take effect July 1, 2019. [Read more.](#)

- **Wills; Probate – Indiana.** (*Update to 1/28/19 Weekly Report*) On April 9, SB 518 passed the House. The bill passed the Senate in February. The legislation, sponsored by Sen. Eric Koch (R), allows a person to contest two or more wills if there is prima facie evidence that: (1) the decedent suffered from an irreversible medical or psychiatric condition that predated the earliest will to be challenged; or (2) a party beneficially interested in one or more of the challenged wills had a direct and active nexus with the preparation or execution process for each will to be challenged. The bill also specifies that the issuance of a court order on any matter related to an unsupervised estate does not revoke the personal representative's authority to continue the administration of the estate as an unsupervised estate. The measure authorizes the Indiana Supreme Court and Office of Judicial Administration to establish and administer a statewide electronic estate planning documents registry, among other provisions. If signed into law, the bill will be effective July 1, 2019. [Read more.](#)
- **Notaries Public – Maryland.** (*Update to 3/25/19 Weekly Report*) On April 8, SB 678 passed the House. The bill passed the Senate in March. Since the legislative session has ended, Gov. Larry Hogan (R) has until May 28 to sign or veto bills. Legislation passed by the General Assembly that he fails to address becomes law without his signature. The bill, sponsored by Sen. J.B. Jennings (R), alters the qualifications to become a notary public, increases the maximum fee that may be charged for individual notarial acts, authorizes a notary to perform electronic notarization and remote notarization under specified conditions, specifies restrictions on allowable acts by a notary public, and generally updates provisions related to performing, and maintaining records of, notarial acts. If enacted, the bill only applies to notarial acts performed on or after October 1, 2020. [Read more.](#)
- **Leasing – Montana.** (*Update to 3/25/19 Weekly Report*) On April 8, SB 41 was enrolled after passing the House. The bill passed the Senate in January. Once transmitted, Gov. Steve Bullock (D) must sign or veto legislation within 10 days after transmittal, or the legislation becomes law without his signature. The bill, sponsored by Sen. Tom Richmond (R), would eliminate the requirement that bids for state trust land oil and gas lease sales must be made orally. [Read more.](#)
- **Permits to Drill; Fees – New Mexico.** (*Update to 3/18/19 Weekly Report*) On March 15, SB 553 was signed into law by Gov. Michelle Lujan Grisham (D). The Act, sponsored by Sen. Joseph Cervantes (D), amends the Oil and Gas Act to set new fees for permits to drill and other applications to be paid to the Oil Conservation Division of the Energy,

Minerals and Natural Resources Department under certain circumstances. The Act will be effective July 1, 2019. [Read more.](#)

- **Women in Oil and Gas – New Mexico.** (*Update to 3/25/19 Weekly Report*) On March 16, HB 610 was vetoed by Gov. Michelle Lujan Grisham (D). The bill had unanimously passed both the Senate and House. The measure, sponsored by Rep. Candy Spence Ezzell (R), added a new section to the Workforce Solutions Department Act entitled, “Career Development—Women in the Oil and Gas Industry,” which establishes and promotes programs to create opportunities for women in the oil and gas industry. [Read more.](#)
- **Tax Funds Appropriations – New Mexico.** (*Update to 3/18/19 Weekly Report*) On March 11, SB 401 was vetoed by Gov. Michelle Lujan Grisham (D). The bill had unanimously passed both the Senate and House. The measure, introduced by Sen. Carlos Cisneros (D), would have amended current law regarding the distribution of Federal Mineral Leasing Act revenue to the Tax Stabilization Reserve, which, among other provisions, allocates an annual appropriation to the Bureau of Geology and Mineral Resources of the New Mexico Institute of Mining and Technology. [Read more.](#)
- **Records Disclosure – North Dakota.** (*Update to 4/8/19 Weekly Report*) On April 11, SB 2212 was signed into law by Gov. Doug Burgum (R). The Act, sponsored by Sen. Brad Bekkedahl (R), relates to the inspection of production and royalty payment records by the Board of University and School Lands and provides that if the person obligated to pay royalties does not make the records available to the board within thirty days of receiving notice, the board may impose a civil penalty of \$2,000 per day. [Read more.](#)
- **Employee Classification – Oklahoma.** (*Update to 4/8/19 Weekly Report*) On April 11, HB 1095 passed the Senate. The bill passed the House in March. The legislation, sponsored by Rep. Mike Osburn (R), utilizes the [IRS 20-factor test](#) to determine whether or not an employer-employee relationship exists but would give the Oklahoma Employment Security Commission the authority to make the determination. If signed into law, the bill would take effect January 1, 2020. [Read more.](#)
- **Permitting; Public Hearings – Texas.** (*Update to 3/11/19 Weekly Report*) On April 8, HB 2920 was left pending in committee. The bill, sponsored Rep. Chris Turner (D), relates to the requirement of a public hearing on certain applications for a permit to drill an oil or gas well and would require an applicant for a permit to drill a new oil or gas well to indicate on the application whether the proposed well site is located within 1,500 feet of the property line of a child-care facility, private school, or primary or secondary public school. The Railroad Commission would also determine whether such an application would be approved as well as hold hearings related to such applications. [Read more.](#) The identical Senate version, SB 1156, sponsored by Sen. Judith Zaffirini (D), has not moved since March 7 where it remains in committee. [Read more.](#)

- **Pooled Units – Texas.** *(Update to 4/1/19 Weekly Report)* On April 11, [HB 3226](#) was received in the Senate after passing the House on April 9. The bill, sponsored by Rep. Charlie Geren (R), seeks to update a statutory provision relating to automatic dissolution to ensure that an oil or gas pooled unit is not dissolved for lack of drilling operations on the unit when drilling operations are taking place on an adjacent surface location that benefits the unit. The bill would amend the Natural Resources Code to change one of the terms for automatic dissolution of an oil or gas pooled unit under the Mineral Interest Pooling Act from one year after its effective date if no production or drilling operations have been had on the unit to two years after that date if no production or drilling operations have been had on the unit or surface location for the unit. [Read more.](#)
- **Production Proceeds – Texas.** *(Update to 4/8/19 Weekly Report)* On April 10, [HB 3372](#) was reported favorably out of committee. The measure, sponsored by Rep. Tom Craddick (R), relates to causes of action for withholding payments of oil and gas production proceeds and disallows a payee from bringing an action for breach of contract against a payor pursuant to existing [Section 91.402\(b\)](#) of the state code. The Senate version, [SB 1988](#), introduced by Sen. Pat Fallon (R) on March 7, is still pending in committee. [Read more.](#)
- **Production Taxes – Texas.** *(Update to 3/11/19 Weekly Report)* On April 10, [HB 3865](#) was reported favorably out of committee. The bill, sponsored by Rep. Ernest Bailes (R), relates to calculation of daily production for purposes of the oil and gas production tax credits for low-producing wells and leases. [Read more.](#)
- **Property Records – Texas.** *(Update to 2/11/19 Weekly Report)* On April 11, [SB 73](#) passed the Senate and has been transmitted to the House. The bill, sponsored by Sen. Jane Nelson (R), adds to existing law additional records commonly recorded by a county clerk related to real property to the list of documents that a judge or judge’s spouse may request be withheld from online posting, including a mineral lease, mechanic’s lien, and the release of a mechanic’s lien. [Read more.](#)
- **Production Tax Credits – Texas.** *(Update to 4/1/19 Weekly Report)* On April 8, SB 925 was considered in House committee after passing the Senate on April 4. The bill, sponsored by Sen. Pete Flores (R), would amend the qualifications for low-producing oil and gas well production tax credits to specify that the production per day would be calculated based on the greater of monthly production from the well as reported in the well production reports made to the Railroad Commission or the monthly production in the producer’s reports made to the comptroller including any amendments. [Read more.](#)

## **STATE – Judicial**

- **Marketable Title Act; Dormant Mineral Act – Ohio.** On March 13, in [Stalder v. Bucher](#) (Case No. 2019-Ohio-936), the Ohio Court of Appeals, Seventh District, addressed Ohio’s



Marketable Title Act (MTA). In the case, mineral owners advanced two arguments against extinguishment. “First, they claimed that the MTA no longer applies to mineral interests. In their view, Ohio’s Dormant Mineral Act (DMA) supersedes the MTA because it is the more specific statute as to terminating mineral interests. The Court rejected this argument. According to the Court, oil and gas interests are subject to both the MTA and DMA. Second, they maintained that an exception to extinguishment applied. The Court agreed and thus preserved the oil and gas interest in the mineral owners’ favor.” [Read more.](#)

### **INDUSTRY NEWS FLASH:**

◆ **Chevron to purchase Anadarko in \$33 billion deal.** Last Friday, Chevron announced it is acquiring Anadarko in a \$33 billion deal that will make Chevron the world’s third largest oil and gas producer, just behind Exxon and Royal Dutch Shell. “We will now see Chevron emerging as the clear leader among all Permian players, both in terms of production growth and as a cost leader,” said Per Magnus Nysveen, head of research at consultancy, Rystad Energy. The deal will include the sale of \$15 to \$20 billion of assets from 2020 to 2022 to reduce debt and return cash to investors. Analysts expect the acquisition to close in the second half of 2019. [Read more.](#)

◆ **President Trump signs executive orders to boost energy industry.** On April 10, President Trump signed two Executive Orders to eliminate hurdles to pipeline construction. The first, [\*Executive Order on Promoting Energy Infrastructure and Economic Growth\*](#), makes it tougher for states to block pipeline construction and impose environmental roadblocks. The second, [\*Order on the Issuance of Permits with Respect to Facilities and Land Transportation Crossings at the International Boundaries of the United States\*](#), transfers authority for approving the construction of international pipelines from the Secretary of State to the President, which eliminates a lengthy State Department review process to speed up projects like the Keystone XL pipeline from Canada to refineries in the Gulf of Mexico. “In a few moments I will sign two groundbreaking executive orders to continue the revival of the American energy industry and will cut through destructive permitting delays and denials,” said Trump at the signing event. “Where it will take you 20 years to get a permit, those days are gone.” [Read more.](#)

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

**Alabama, Alaska, Arizona, California, Colorado, Connecticut, Delaware, Florida, Hawaii, Illinois, Indiana, Iowa, Kansas, Louisiana, Maine, Massachusetts, Michigan, Minnesota, Missouri, Montana, Nebraska, Nevada, New Hampshire, New Jersey, New York, North Carolina, North Dakota, Ohio, Oklahoma, Oregon, Pennsylvania, Rhode Island, South**

**Carolina, Tennessee, Texas, Vermont, Washington and Wisconsin** are in regular session. The **District of Columbia, Puerto Rico** and the **United States Congress** are also in regular session.

**Arkansas** is in recess until April 24 when they are scheduled to adjourn.

**West Virginia** Republican Gov. Jim Justice signed a [proclamation](#) on March 7 authorizing a special session to act on education matters, the [Charleston Gazette-Mail](#) reports. The proclamation outlines a broad special session scope, authorizing consideration of general improvements to the state's public education system and employee compensation. Education officials kicked off a series of public hearings on March 18 as part of preparations for their upcoming special session. Additional forums are scheduled to take place in early April, reports the [Register Herald](#). The special session is currently in recess to the call of the House speaker and the Senate president.

The following states adjourned their 2019 legislative sessions on the dates provided: **Maryland** (April 8) and **Idaho** (April 11).

The following states are scheduled to adjourn on the dates provided: **Alaska** (April 14) and **Arkansas** (April 24).

The following states have crossover deadlines on the dates provided: **Illinois** and **Iowa** (April 12).

The following states had crossover deadlines on the dates provided: **New Hampshire** (April 4) and **South Carolina** (April 10).

**Idaho** Republican Gov. Brad Little has until April 23 to sign or veto legislation or it becomes law without signature. **Georgia** Republican Gov. Brian Kemp has until May 12 to sign or veto legislation or it becomes law without signature. **Maryland** Republican Gov. Larry Hogan has until May 28 to act on legislation or it becomes law without signature. **Kentucky** Republican Gov. Matt Bevin has 10 days from presentment, Sundays 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 presented on or after March 24 or it becomes law without signature.

**South Dakota** Republican Gov. Kristi Noem has acted upon all legislation as of March 29. **Utah** Republican Gov. Gary Herbert had a signing deadline on April 3. **New Mexico** Democratic Gov. Michelle Grisham had a signing deadline on April 5. **Illinois** Democratic Gov. Jay Pritzker had a signing deadline on April 8 for 2018 legislation.

The following state is currently posting 2019 bill drafts and pre-files: [Louisiana](#).

The following states are currently holding 2019 interim committee hearings: [Kentucky](#), [South Dakota](#), [Utah](#), [Virginia](#), [West Virginia](#) and [Wyoming](#).



## Hydraulic Fracturing

**North Carolina** [HB 631](#), sponsored by Rep. Joe Sam Queen, D-Waynesville, was introduced on April 9 and has not yet been referred to a committee. The bill would prohibit hydraulic fracturing in the state. The bill would take effect immediately and would apply to all applications received by the state on or after that date.

## Landmen

### Employee Classification

**Nevada** [SB 493](#), sponsored by Sen. Marilyn Dondero Loop, D-Las Vegas, passed the Senate Commerce and Labor Committee on April 11. The bill would create an employee misclassification task force and require various state agencies including the attorney general, labor commissioner and the Department of Taxation to share information related to suspected employee misclassification that they have received. The bill would define employee misclassification as the practice of an employer of improperly classifying employees as independent contractors to avoid any legal obligation under state labor, employment and tax laws.

### Independent Contractors

**Tennessee** [SB 466](#), sponsored by Sen. Kerry Roberts, R-Springfield, was scheduled for a hearing in the Senate Commerce and Labor Committee on April 9 but the bill was deferred to a hearing on April 16 at 3:00 PM. As introduced the bill would require the consideration of the IRS 20-factor test to determine whether an employer-employee relationship exists for the purposes of various state laws. A recently adopted amendment removes references to workers compensation. The bill's companion, [HB 539](#), sponsored by Rep. Dan Howell, R-Cleveland, passed the House on March 28 and is now pending in the Senate.

## Oil and Gas

**California** [AB 345](#), sponsored by Asm. Al Muratsuchi, D-Rolling Hills Estates, was amended and re-referred to the Assembly Natural Resources Committee on April 4. The bill would require all new oil and gas development beginning January 1, 2020 to be located at least 2,500 feet from a residence, school, childcare facility, playground, hospital or health clinic but would allow cities and counties to set their own setback requirement beyond the 2,500 foot minimum. If two or more cities and counties with jurisdiction over the same geographic area set different setback requirements the larger of the two would apply. An operator would be able to file a written request for a variance to reduce the setback requirement to the maximum achievable distance.

**Oklahoma** [HB 2150](#), sponsored by Rep. John Pfeiffer, R-Orlando, passed the Senate Judiciary Committee with an [amendment](#) on April 9. The amendment strikes the title and emergency clause from the bill. The bill would specify that it would be considered "taking of property rights" as defined in the state constitution whenever a municipality, county or other political

subdivision adopts or implements an ordinance resolution, rule, regulation or other form of official policy concerning oil and gas operations that has the effect of:

- Substantially interfering with the use and enjoyment of the mineral estate.
- Imposing or enforcing a limitation that adversely impacts the use and development of minerals.
- Prohibiting access to develop the mineral estate. The amendment deletes language in this section relating to a substantial increase in the cost of oil and gas operations.

The bill would not apply to any ordinances or regulations adopted prior to December 31, 2014.

**Texas [HB 1558](#)**, sponsored by Rep. Chris Paddle, R-Marshall, was deferred on the House General State Calendar for consideration until April 15. The bill would revive and modify a severance tax exemption for inactive oil and gas wells. The bill would provide severance tax relief for wells that have been returned to activity after a two-year period of inactivity. The bill would define a two-year inactive well to exclude wells that are part of an enhanced oil recovery project or wells that have been drilled but not completed and do not have record of production. The companion bill, [SB 533](#), sponsored by Sen. Brian Birdwell, R-Granbury, passed the House Ways and Means Committee on April 10.

**Texas [HB 3838](#)**, sponsored by Rep. Ernest Bailes, R-Shepard, passed the House Energy Resources Committee with a substitute on April 8; the text of the substitute was not immediately available. As introduced, the bill would provide that an offer to lease a mineral interest in oil and gas in a property is considered an offer to purchase a mineral or royalty interest and must include specified statements if the property is subject to an existing oil and gas lease and the lease being offered has the effect of conveying all or a portion of the mineral or royalty owner's interest in production. If the required notice is not provided then the person would be allowed to bring a lawsuit if the matter is not adequately resolved and if they prevail, would be entitled to exemplary damages if the conduct constituted fraud.

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