

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

- **Public Lands; Leasing – Texas.** No Texas parcels will be auctioned for oil and gas leases on April 20 after the Bureau of Land Management (BLM) pulled the last of them from consideration last Tuesday. The bureau's New Mexico office pulled six parcels at Lake Somerville, near Brenham, and two parcels at Choke Canyon Reservoir, near Corpus Christi, to give the bureau time to evaluate protest letters from the public. [Read more.](#)
- **Public Lands; Leasing – Wyoming.** On April 8, the U.S. Forest Service announced that oil and gas leasing will not be allowed on nearly 40,000 acres in the Bridger-Teton National Forest under a draft decision. The announcement represented a victory for environmentalists, who have long opposed drilling in the Wyoming Range, which encompasses much of the forest, and a loss for industry interests, who had argued drilling could be done in a responsible fashion. However, the decision is not final and the public will have 45 days to submit comment on the draft decision, with an ultimate determination to be made by the Forest Service in October. But the announcement signaled a potential conclusion to one of the longest running environmental disputes in the state. [Read more.](#)
- **BLM State Director – Wyoming.** Last Thursday, the BLM named Mary Jo Rugwell to head BLM's high-profile Wyoming state office, which in recent years has been on the front lines of ongoing battles over oil and gas regulation and greater sage grouse conservation. [Read more.](#)
- **Public Lands; Leasing.** The latest statistics report from the BLM apparently refutes claims that the agency is seeking to curtail production on public lands. Last Monday, the agency released statistics on oil and gas activity on federal and Indian lands, showing increased production for Fiscal Year 2015. The BLM also reports that the number of approved drilling permits on federal and tribal lands that have not yet been put to use by the oil and gas industry has reached a record high of 7,500. [Read more.](#)
- **BLM Resource Management Plan.** In response to requests from the public, the BLM announced last Thursday it has extended the comment period on a [proposed land-use planning rule](#) by 30 days, through May 24. "The proposed rule aims to improve the planning process by making it more collaborative, transparent, and effective," a BLM news release states. [Read more.](#)

- **Hearing on BLM Proposed Venting and Flaring Rule.** On April 14, Senate Republicans questioned the BLM's proposed rule clamping down on the loss of natural gas from roughly 100,000 wells on federal and tribal lands, asking why the rule is necessary and whether the agency even has the authority to regulate emissions from oil and gas operations. But Amanda Leiter, Interior deputy assistant secretary for lands and minerals management, defended the draft rule during a two-hour Senate Energy and Natural Resources Subcommittee on Public Lands, Forests and Mining oversight hearing on the proposal. [Read more.](#)

FEDERAL – Judicial

- **Surface Owners; Leasing – Oklahoma.** On March 31, in *Donelson v. United States* (Case No. 14-CV-316-JHP-FHM) the U.S. District Court for the Northern District of Oklahoma dismissed an action alleging “programmatically” violations of the National Environmental Protection Act brought by surface owners in Osage County, whose property has been subject to oil and gas leases, assignments, concession agreements, and drilling permits since 1979, concluding that the federal government has sovereign immunity from such general claims and that the Administrative Procedures Act (APA) didn’t give the plaintiffs any standing to challenge the federal government’s leasing practices if the plaintiffs couldn’t identify any “final agency action” that might give them APA standing. [Read more.](#)
- **Royalties – Pennsylvania.** On April 1, the U.S. District Court for the Middle District of Pennsylvania in *Demchak Partners v. Chesapeake Appalachia, LLC* (Case No. CV 3:13-2289) denied landowners’ late bid to intervene in a royalty class action in which the court already preliminarily approved a settlement, reasoning that many years have passed since the inception of the case, and more than two years passed since the parties reached a resolution, such that the existing parties would be prejudiced by the landowners’ late effort to join the case. [Read more.](#)
- **BLM Leases – Utah.** On March 30 in *Southern Utah Wilderness Alliance v. Department of Interior, Bureau of Land Management* (Case No. 2:15-CV00194) the U.S. District Court for Utah dismissed most of an environmental group’s challenges to oil and gas leases issued by the BLM but also granted leave to amend their complaint. In denying the claims, the Court concluded that that (1) the Federal Land Policy and Management Act claim isn’t ripe for review because the alleged increase of emissions from operations pursuant to the oil and gas leases is speculative and uncertain to occur; (2) the groups failed to state a National Environmental Policy Act violation based on conclusory statements that the BLM didn’t take a hard look at the possible effects on air quality resulting from oil and gas operations; and (3) the groups couldn’t state an APA action for alleged violations of a non-binding BLM policy as opposed to violations of specific federal statutes. [Read more.](#)

STATE – Regulatory

- **Ballot Proposals – Colorado.** A total of four ballot proposals that opponents say would, if approved by voters, scale back oil and gas operations in Colorado, have received the go-ahead to collect signatures in a bid to be on the 2016 ballot. Last Tuesday, Colorado Secretary of State Wayne Williams said supporters could start gathering signatures for the latest measures, one of which, No. 75, is a proposed constitutional amendment to allow local governments to regulate oil and gas development. [Read more.](#)

STATE – Legislative

- **Tax Credits – Alaska.** On April 13, [SB 130](#), which is sponsored by the Senate Rules Committee, was referred to the Senate Finance Committee for consideration. This legislation is a comprehensive attempt to reform and reduce the cost of Alaska’s current program of providing direct tax credit rebates and other advantages to oil and gas companies. There are several themes, or goals, of this legislation which include: Reduce the state’s annual cash outlay; Protect Net Operating Loss credits especially for exploration activity; Limit repurchases to companies who need the support; Strengthen the minimum tax and prevent abuses to the system; Be more open and transparent; and Honor and pay credits earned to date and through any transition period. [Read more.](#)
- **Employee Misclassification – Louisiana.** (Update to 3/14/16 Weekly Report) On April 14, the Democrat-sponsored HB 665 died in committee by failing to receive two-thirds of the vote needed. The bill would have increased the administrative penalties imposed on employers for the misclassification of employees. The Republican-controlled House roundly defeated the measure by a 58-34 vote. [Read more.](#)

STATE – Judicial

- **Royalties – Pennsylvania.** On April 7, the Pennsylvania Superior Court ruled in *Hall v. CNX Gas Company, LLC* (Case No. 1703 WDA 2014). In a royalty dispute that raised the question of whether royalties should be payable on lost or used gas, the Court affirmed a lower court decision in favor of the lessee that a royalty clause in an oil and gas lease calling for royalties based on net proceeds from the “sale” of gas foreclosed the lessors’ claims that royalties should be paid on actual volumes at the wellhead that account for the lessors’ proportionate share of lost and used gas. [Read more.](#)
- **Warranty Deed Reservation – Texas.** On March 31, the Texas Court of Appeals in *Alford v. McKeithen* (Case No. 12-14-00262-CV) concluded that a warranty deed incorporated a reservation of a one-half mineral interest identified in an exhibit attached to the deed such that the grantor and its successors (including the lessee of the oil and gas) had rights to one half of the mineral estate. [Read more.](#)

- **Mineral Interest Reservation – Texas.** On March 31, the Texas Court of Appeals in *Bounds v. Prud’Homme* (Case No. 12-15-00177-CV) held that a grantor failed to reserve mineral interests by identifying prior reservations in a warranty provision, concluding that the warranty provision contained exceptions to the covenant of granting good title and did not reserve the grantor’s interest. Rather, the deed conveyed the interests to the grantee such that the trial court on remand should remove the cloud on the grantee’s title, including oil and gas leases that the grantor executed for those mineral interests left unreserved. [Read more.](#)

INDUSTRY NEWS FLASH:

◆ **API issues policy recommendations for next U.S. President.** “Our goal is to make clear that with the right energy policies in place, we can continue to help grow our economy and maintain our nation’s role as a global energy leader, even as the oil and gas industry [responds] to current market difficulties,” said API President Jack N. Gerard at an April 12 event where the recommendations were formally released. The recommendations, which API is distributing to both major political parties’ presidential candidates and platform committees, also said policymakers should recognize that the best way to achieve domestic energy and environmental goals is through private investment and innovation, and through cooperation with government at all levels. [Read more.](#)

State-by-State Legislative Session Overview

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

North Carolina is expected to convene its 2016 legislative session on April 25.

Kansas is currently in recess and is expected to reconvene on April 27.

Arkansas adjourned a special session on April 8.

Maryland adjourned its 2016 legislative session on April 11.

The following states are expected to adjourn their 2016 legislative sessions on the dates provided: **Kentucky** (April 15), **Alaska** (April 17), **Iowa** and **Tennessee** (April 19), **Maine** and **Nebraska** (April 20), **Arizona** (April 23), **Mississippi** (April 24) and **Kansas** (April 27).

Georgia Republican Gov. Nathan Deal has until May 3 to act on legislation presented after March 18 or it becomes law without signature. **Maryland** Republican Gov. Larry Hogan has until May 31 to act on legislation or it becomes law without signature. **Florida** Republican Gov. Rick Scott has 15 days from presentment to act on legislation or it becomes law without signature.

Virginia Democratic Gov. Terry McAuliffe had a signing deadline on April 10. **Oregon** Democratic Gov. Kate Brown had a signing deadline on April 14.

The following states are currently holding interim committee hearings: **Montana**, **Nevada**, **North Dakota** and the **Texas** House and Senate.

Endangered Species

New York [AB 9764](#) passed the Assembly Environmental Conservation Committee on April 11 and was referred to the Assembly Ways and Means Committee. In order to protect freshwater wetlands, which provide habitat for endangered or threatened species, this bill would give the Department of Environmental Conservation the regulatory authority over freshwater wetlands of one acre or more in size and other wetlands of significant local importance. If enacted, this bill would take effect immediately.

This bill is sponsored by Asm. Steve Englebright, D-Setauket, chair of the Assembly Environmental Conservation Committee.

Franchise Tax

Louisiana [HB 735](#) unanimously passed the House as [amended](#) on April 13 and was sent to the Senate for consideration. This bill would change the date corporate franchise taxes are due from the 15th day of the third month following the month the tax is due, to the 15th day of the fourth month following the month the tax is due.

An effort to lower the franchise tax in **Wisconsin** failed to pass the Assembly due to time constraints. [AB 1020](#) was introduced on April 7, the last day of the general-business floor period, and was only read for the first time and referred to the Assembly Rules Committee. The bill would reduce the corporate franchise tax from 7.9 percent to 7.65 percent.

Landmen

Employee Misclassification

Colorado [SB 179](#) passed the Senate Business, Labor and Technology Committee without amendments on April 13 and was referred to the Senate Appropriations Committee. This measure, deemed favorable to employers and hiring business entities regarding improvements to the audit process, makes changes regarding the state Department of Labor and Employment, which 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.

If enacted, this law would take effect on the day following the expiration of the 90-day period after the legislature adjourns in 2016. This bill is sponsored by Sen. Ellen Roberts, R-Durango, vice-chair of the Senate Agriculture, Natural Resources and Energy Committee. The Colorado legislature is scheduled to adjourn on May 11.

Lands

Land Permits

Louisiana [HB 313](#) was amended and passed the House Civil Law and Procedure Committee on April 13 and is now scheduled for a debate on the House floor on April 19. 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

California [AB 1882](#) is scheduled to be heard in the Assembly Appropriations Committee on April 20. The bill would allow the State Water Resources Control Board and regional water quality control boards to review, comment on, and propose additional requirements for Class II underground injection well projects starting January 1, 2017. The Oil, Gas, and Geothermal Division would not be able to approve a new project suggested by the review without written concurrence from the state or regional board that the injection of fluids would not affect the quality of water.

California [AB 2756](#) passed the Assembly Judiciary Committee on April 12 and was re-referred to the Assembly Appropriations Committee. The bill would give the Oil and Gas Supervisor the authorization to treat each day a violation is not cured as a separate violation, and would set the penalty at no less than \$10,000 per violation. The bill would also authorize the supervisor to allow for a supplemental environmental project in lieu of a portion of the penalty, but not to exceed 50 percent of the amount of the fee. It would change the penalty limit to allow for an appeal from \$10,000 to \$25,000. As amended, the bill would also give the division the ability to manage the Oil and Gas Environment Remediation Account in which money can be used to plug abandoned wells, and other areas that may pose a danger to health, water quality, wildlife or natural resources.

Colorado [HB 1430](#) passed House Transportation and Energy Committee on April 13 with [amendments](#). 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.

Leasing

After being amended on November 9 by the House Rules Committee, **Illinois** [SB 1562](#) was placed on the House calendar on April 12 and is awaiting second reading. As introduced and passed the Senate, the bill would establish criteria by which the Department of Natural Resources could determine whether oil and gas leases submitted with an application for a permit or transfer of a permit for a well are operative, and whether prior oil and gas leases covering the same lands have terminated due to non-development or non-production, as specified. As amended by [House Amendment 1](#), everything after the enacting clause would be struck and replaced with a technical amendment to the Illinois Oil and Gas Act, as well as a provision that relates to the licensing of Freestanding Emergency Centers.

Mineral Rights

California [AB 2729](#) passed the Assembly Environmental Safety and Toxic Materials Committee with amendments on April 13. As amended, this bill would make changes to the definitions of active observation well, idle well and long-term idle well. An idle well would be defined as a well that had six months of not producing or being used for injection. An idle well would

continue to be an idle well until the well has been properly abandoned in accordance with existing law. For active observation wells, the bill would require the user to report their data once every month, instead of every three years. The bill would define a long-term idle well as a well that has been idle for five or more years. The bill would also provide that the abandoned underground personal property of an operator becomes the property of the mineral interest owner.

The amendment would require that the division review, evaluate, and update all regulations pertaining to idle wells until January 1, 2020 unless additional statutes are enacted to delete or extend that date.

If enacted, this bill would take effect on January 1, 2018.

Louisiana [HCR 66](#) was enacted on April 13. This resolution urges the U.S. Congress to take action to treat mineral and gas production in the Gulf Coast states with the same federal energy policies as the interior states to rectify revenue sharing inequities between regions.

Louisiana [HB 911](#) unanimously passed the House on April 14. 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 bills [HB 214](#) and [HB 323](#) are pending in the House Natural Resources and Environment Committee.

Louisiana [SB 404](#) passed the Senate Judiciary Committee on April 12 and is awaiting a third reading. 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.

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