

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

- **BLM Lease Sale – Colorado.** Last Tuesday, La Plata County commissioners approved a [letter of protest](#) to the Bureau of Land Management (BLM) regarding oil and gas development in the HD Mountains. The letter, addressed to BLM State Director Ruth Welch, says the public was not permitted sufficient involvement in the National Environmental Policy Act process conducted for the four BLM parcels in question, which are scheduled for a lease sale in May. The statement further protests that the process doesn't notify adjacent landowners and local governments about the potential impacts of development. [Read more.](#)
- **Sage Grouse; Lease Delays – Montana.** Concerns over the Greater Sage Grouse continue to delay federal oil and gas lease sales, five months after Interior Secretary Sally Jewell proclaimed that the Obama administration had found a way to balance drilling and conservation. The Interior Department said it will defer the sale of almost 60,000 acres of leases that were nominated by companies in eastern Montana as the agency works on new policies for the bird species. More than 8 million acres of leases previously were deferred in Colorado, Utah, Nevada, Montana, North Dakota, South Dakota and Wyoming. It remains unclear when those will be freed up for sales or removed from consideration. Montana Petroleum Association executive director Alan Olson said the lease deferrals represent "more excuses" to block development on public lands. [Read more.](#)

STATE – Legislative

- **Powers of Attorney; Notaries – Alaska.** HB 8, a carryover bill from the 2015 session and introduced by Rep. Shelley Hughes (R), would make changes to existing power of attorney statutes and strengthen them by clarifying the responsibilities of the person receiving the power of attorney. The bill also authorizes notaries to notarize a power of attorney document electronically. [Read more.](#)
- **Regulatory Changes – Nebraska.** (Update to 2/1/2016 Weekly Report) On March 30, Gov. Pete Ricketts signed LB 1082 into law, adopting new regulations for the state's oil and gas industry. While the bill's primary focus was on instituting new regulatory measures regarding sampling and reporting of production processes, it also reduces the promotional duties of the Nebraska Oil and Gas Commission and refocuses the agency's purpose on promoting health, safety and protection of natural resources. [Read more.](#)

- **Notaries – Oklahoma.** SB 1250, introduced by Sen. Clark Jolley (R), passed the Senate on March 9, and is currently under consideration in the House. The bill stipulates that if a law requires a signature or record to be notarized, the requirements is satisfied if the electronic signature of the notary public, together with all other information, is included, attached to or logically associated with the signature and record. [Read more.](#)
- **State Land Management; Leasing – Utah.** (Update to 2/1/2016 Weekly Report) On March 29, Gov. Gary Herbert signed SB 72 into law. The measure amends the circumstances under which state trust lands may be withdrawn from leasing and clarifies that lease applications may be submitted and processed online. [Read more.](#)

STATE – Judicial

- **Drilling Units; Pooling – Texas.** In *Samson Lone Star Ltd. P’ship v. Hooks*, Docket No. 01-09-00328-CV (Tex. App., Mar. 15, 2016), a case that highlighted a \$2 million reduction to a multi-million dollar verdict for lack of evidentiary support, the Texas Court of Appeals also denied a claim that a certain offset obligation in the landowner’s particular lease (requiring that wells be a certain distance from property lines) applied to all other properties in a unit that didn’t contain that setback provision, reasoning that a pooling provision doesn’t make all the lease covenants in one lease applicable to every lease in a unit. [Read more.](#)
- **Co-Tenants; Leasing – Texas.** In *Long v. Miken Oil, Inc.*, Case No. 12-14-00250-CV, (Tex. App., Mar. 16, 2016), the Texas Court of Appeals concluded that a non-party owner of a 4.125% interest in leases subject to a partition action is a cotenant with the parties fighting over partition of that interest and therefore indispensable to the action. [Read more.](#)

INDUSTRY NEWS FLASH:

- ◆ **“Keep It In the Ground” eco-activist movement gears up for more action.** The movement is gearing up for its biggest mobilization yet. On May 4-16, the “[Break Free](#)” event will mark ten days of global protests aimed at major fossil fuel projects around the world. Actions in the United States include planned protests against a federal lease sale in Denver and a protest in Los Angeles against oil and gas drilling in California. [Read more.](#)
- ◆ **U.S. Senator Lisa Murkowski (R-Alaska) holds oil and gas development panel.** Last Monday, Senator Murkowski convened a panel of oil and gas industry stakeholders in Fairbanks to share solutions for increased economic growth in the state. The purpose of the hearing, according to Murkowski, was to hear from industry experts about how the U.S. Senate Energy and Natural Resources Committee can impact federal policy to reduce barriers to oil and gas extraction and increase resource development. [Read more.](#)

◆ **Saudis to join oil output freeze only if joined by Iran.** On April 1, Saudi Arabia announced it will agree to freeze crude oil production levels only if Iran and other major producers do so. However, Iran has said it will not join fellow OPEC and non-OPEC members in a plan to be discussed in a Doha conference on April 17 to freeze oil production in an attempt to boost prices. [Read more.](#)

PRACTICE TIP: This week's tip focuses on unitization clauses in fee leases and how it differs from pooling. The March 29 issue of Holland & Hart's Oil & Gas Report featured a primer on the four parts of a standard unitization clause. [Read more.](#)

State-by-State Legislative Session Overview

Legislators in **Washington** adjourned a 20-day special session on March 29 after passing a supplemental budget, [The Olympian](#) reports. Upon the adjournment of the legislature's regular session on March 10, Democratic Gov. Jay Inslee vetoed 27 bills and immediately called a special session to address the supplemental budget. The final supplemental budget proposal passed the Republican controlled Senate by a vote of 27-17 and the Democratic led House by a vote of 78-17. The budget increases spending in the two-year budget adopted in 2015 by \$191 million. The major impetus of the supplemental budget was the cost incurred by the state battling wildfires last year. The budget also includes increased investment in education and the state's mental health system. Before the close of the special session, the House and Senate passed all of the 27 bills that Governor Inslee had vetoed at the close of the regular session with enough votes to override the vetoes, enacting the bills into law.

Alabama, Alaska, Arizona, California, Colorado, Connecticut, Delaware, Hawaii, Illinois, Iowa, Kentucky, Louisiana, Maine, Maryland, 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.

Arkansas is expected to convene its 2016 legislative session on April 13.

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

Washington adjourned a special session on March 29.

Idaho adjourned its 2016 legislative session on March 25. **South Dakota** adjourned on March 29.

The following states are expected to adjourn their 2016 legislative sessions on the dates provided: **Maryland** (April 11); **Kentucky** (April 12) and **Tennessee** (April 15).

West Virginia Democratic Gov. Earl Ray Tomblin has until April 1 to act on any legislation presented to him after March 10 or it becomes law without signature. **Utah** Republican Gov. Gary Herbert and **Washington** Democratic Gov. Jay Inslee have until April 2 to act on legislation or it becomes law without signature. **Virginia** Democratic Gov. Terry McAuliffe has until April 10 to act on legislation presented to him after March 4 or it becomes law without signature. **Oregon** Democratic Gov. Kate Brown has until April 14 to act on legislation or it becomes law without signature. **Georgia** Republican Gov. Nathan Deal has until May 3 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.

Indiana Republican Gov. Mike Pence had a signing deadline on March 24. **South Dakota** Republican Gov. Dennis Daugaard had [acted](#) on all legislation from the 2016 regular session as of the legislature's adjournment on March 29.

The following states are currently holding interim committee hearings: **Arkansas**, **Montana**, **Nevada**, **North Dakota** and the **Texas** [House](#) and [Senate](#).

Franchise Tax

California [AB 2807](#) was read a second time and amended on March 28. The bill was then sent back to the Assembly Revenue and Taxation Committee the following day. As amended, the bill would reduce the annual minimum franchise tax to \$800 per year. The amendment would also require corporations to pay the state the minimum franchise tax of \$150 per year on an annual basis. It would also extend an exemption to corporations and limited liability companies solely owned by deployed members of the armed forces until January 1, 2020.

Louisiana [HB 735](#) unanimously passed House Ways and Means Committee on March 29. The bill is now scheduled for a House floor debate on April 5. 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.

Landmen

Employee Misclassification

Louisiana [HB 665](#) passed the House Labor and Industrial Relations Committee as [amended](#) on March 31. This bill would remove the warning and increase the fine for employers that misclassify their employees as independent contractors. In place of a written warning for a first offence, employers would have to pay a penalty up to \$5,000 per misclassified employee. The proposed fee for a second offence would be up to \$10,000 per misclassified employee, a third offence penalty would be up to \$25,000 per employee. The proposed penalties for subsequent offences would be a fine up to \$50,000 and imprisonment of not more than 90 days per misclassified employee.

Vermont [HB 867](#) is scheduled to be heard in the House Commerce and Economic Development committee on April 1.

Three amendments to the bill were filed on March 30:

- [Amendment draft No. 4.1](#) would shift the enforcement from the commissioner to the attorney general.
- [Amendment draft No. 1.2](#) would amend the definition of an independent contractor.
- [Amendment draft No. 3.1](#) would add additional criteria to the definition of a worker.

As it relates to workers' compensation and unemployment compensation statutes, independent contractors are not considered "employees."

The bill defines an "independent contractor" as a person who meets the following criteria:

- Is free from the direction and control of the employing unit.
- Controls the means and manner of the work performed.
- Operates a separate and distinct business from that of the person that it contracts with.
- Holds itself out as in business for itself.
- Offers its services to the general public.
- Is not treated as an employee for the purposes of income or employment taxation with regard to the work performed.

This bill also would create the Vermont Employee Classification Task Force with the goal of reducing the frequency of employee misclassification. The task force would do this through increased education, improved coordination of state resources and increased collaboration among state government, business, labor and stakeholders.

The bill would require that every employer post a document in plain sight to explain the difference between an "employee" and an "independent contractor." If enacted, this bill would take effect on July 1, 2016.

Oil and Gas

General Oil and Gas

California [AB 1882](#) is scheduled to be heard in the Assembly Natural Resources Committee on April 4. 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. The bill is sponsored by Asm. Das Williams, D-Santa Barbara, chair of the Assembly Natural Resources Committee.

California [AB 2756](#) is scheduled to be heard in the Assembly Natural Resources Committee on April 4. This 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. This bill is sponsored by Asm. Tony Thurmond, D-Richmond.

Oklahoma [HB 2651](#) passed the Senate Energy Committee on March 31 with a [committee substitute](#). The bill has been sent to the Senate floor. The bill would create a policy that would reduce and recycle oil and gas waste whenever feasible, and to treat waste that cannot be recycled. Oil and gas waste includes saltwater, mineral brines, waste oil and other substances produced or obtained during the drilling, development, producing and operation of wells.

The committee substitute adds a section to encourage the commissioner to work in conjunction with the Secretary of Energy and Environment, the Oklahoma Water Resources Board and the Department of Environmental Quality to encourage industrial use of water produced in oil and natural gas operations.

Pennsylvania [HB 1327](#) was vetoed by Democratic Gov. Tom Wolf on March 25, sending the bill back to the House. The Governor's veto message can be [found here](#). The bill, which would provide for the Environmental Stewardship Fund for oil and gas wells, would prohibit the Environmental Quality Board from adopting or promulgating any revision of current regulations relating to oil and gas wells or any regulations applicable to the operation of oil and gas wells that were formulated or proposed in any form before the effective date of this bill. It would further state that any rulemaking procedure concerning conventional oil and gas wells which was published for the board or the Department of Environmental Protection after November 30, 2013 and before the effective date of this bill would be invalid as not in compliance with certain rulemaking standards, as specified. The board would only be permitted to initiate future formulation, adoption or promulgation of regulations for the operation of conventional oil and gas wells in accordance with law, as specified. The bill would take effect immediately upon enactment. You can view the fiscal note [here](#).

Democratic Gov. Earl Ray Tomblin has until the end of the day on April 1 to act on **West Virginia** [HB 4323](#) or it will become law without signature. This bill would require that all pipeline and well operators report incidents to the Division of Homeland Security and Emergency Management at the Mine and Industrial Accident Call Center. The bill would require that the incidents be reported within 15 minutes. The director could impose civil administrative penalties of between \$2,500 and \$50,000 if the operator fails to give a timely notice of the incident.

Mineral Rights

California [AB 2729](#) is scheduled for a hearing in the Assembly Natural Resources Committee on April 4. The 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. This bill is sponsored by Asm. Das Williams, D-Santa Barbara, chair of the Assembly Natural Resources Committee.

Louisiana [HB 634](#) passed the House on March 30 and was received in the Senate the following day. HB 634 is still awaiting Senate committee referral. Current law provides that when land is acquired from any person by an acquiring authority through sale, exchange, donation or other contract, condemnation or expropriation, and a mineral right is reserved, prescription of the mineral right is interrupted. This bill would add property appropriation to the list of ways in which an acquiring authority can gain property.

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