

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

- **BLM Environmental Impact Statement – Alaska.** On May 4, the Bureau of Land Management (BLM) announced it is extending the public scoping period for the Greater Mooses Tooth 2 draft supplemental [Environmental Impact Statement](#) (EIS) from May 7 to May 17, 2018. The EIS analyzes an application for “authorization to construct, operate, and maintain a drill site, access road, pipelines and ancillary facilities to support development of petroleum resources at the Greater Mooses Tooth 2 drilling location.” [Read more.](#)
- **BLM Lease Sale – Wyoming.** On May 4, the BLM announced that its Wyoming State Office will offer 162 whole or partial parcels totaling 198,588.57 acres at the June 2018 quarterly oil and gas lease sale. The competitive lease sale will occur over two days. Bidding starts on Wednesday, June 20, 2018 at 7:30 a.m. Mountain Time. All bidding will conclude on Thursday, June 21, 2018. The lease sale’s environmental assessments, lists and maps of the parcels, and the attached stipulations are [available here.](#) [Read more.](#)

FEDERAL – Judicial

- **BLM Methane Venting and Flaring Rule – Wyoming Federal Court.** (*Update to 4/9/18 Weekly Report*) In another win for the oil and gas industry, on April 30, the U.S. District Court for the District of Wyoming refused to grant a motion filed by intervening parties, which included California and New Mexico as well as environmental groups, to lift its stay of the Obama-era BLM Waste Prevention Rule phase-in provisions while the BLM is working to rescind or revise those provisions. (See [Waste Prevention, Production Subject to Royalties, and Resource Conservation: Rescission or Revision of Certain Requirements](#)). In denying the motion in the case [Wyoming et al. v. U.S. Department of the Interior et al.](#) (Case No. 2:16-cv-00285-SWS), the Court held that the “Intervenor-Respondents have not met their burden of showing the circumstances here warrant a stay pending their appeal of this Court’s order.” The Court also explained that its April 4 order staying the Obama-era rule “is necessary to preserve the status quo and to prevent irreparable injury [to parties having to comply with a rule that is going to change] while the BLM reconsiders that rule.” [Read more.](#)
- **Leasing; Overriding Royalties – Eighth Circuit Court of Appeals (North Dakota).** On May 7, in *Lonesome Dove Petroleum, Inc. v. Holt* (Case No. 16-3467), the U.S. Court of Appeals for the Eighth Circuit, on appeal from the U.S. District Court for the District of North

Dakota, affirmed the lower court decision on claims involving breach of a joint venture contract; breach of the implied covenant of good faith and fair dealing; breach of fiduciary duty; civil conspiracy; negligent misrepresentation; and unjust enrichment as they related to an oral agreement on a purported joint venture between the parties to acquire oil and gas leases in Montrail County. The jury in the lower court found that a joint venture had been formed and that Holt had not breached the agreement in his lease-buying venture with Lonesome Dove. [Read more.](#)

STATE – Legislative

- **Hydraulic Fracturing – Georgia.** (*Update to 4/19/18 Weekly Report*) On May 8, Governor Nathan Deal (R) signed [HB 205](#) into law. The bipartisan law, which garnered nearly unanimous support from both Republicans and Democrats, requires the state’s environmental agency to draft rules to govern hydraulic fracturing by July 1, 2019. According to *Bloomberg Government*, the “state has no history of oil or natural gas production, but its northwest corner sits on a known natural gas reserve—the Conasauga Shale—where companies have drilled a few test wells and talked to landowners about buying mineral rights” and the law comes “in advance of potential natural gas drilling ... that requires groundwater monitoring and disclosure of chemicals used in drilling.” In addition to the hydraulic fracturing rules, the new law revises the permitting process for all oil and gas drilling, creating a 30-day public comment period. With this law, the state also establishes a severance tax of 3 cents per barrel of oil and 1 cent per thousand cubic feet of gas. Cities and counties can impose a local tax up to 9 cents per barrel of oil or 2 cents per thousand cubic feet of gas. The law also preserved local governments’ ability to regulate oil and gas drilling through zoning and land-use ordinances. [Read more.](#)
- **Permitting; Disclosures – Illinois** (*Update to 4/23/18 Weekly Report*) On May 7, SB 3174 was referred to the House Agriculture & Conservation Committee after passing the Senate on April 26. The bill would require certain information be included on a well permit, such as the GPS surface and bottom hole locations for all wells drilled utilizing directional or horizontal drilling techniques and a list of chemicals and additives intended to be used in the drilling or completion operations. The bill would also prohibit horizontal wells or directionally drilled wells from being classified as confidential. The bill would require the Department of Natural Resources to make specified information available on its website including drilling permits issued and also drilling and completion reports. The bill would protect furnished trade secret information from further disclosure if the department determines that the information has not been published, disseminated or otherwise become a matter of general public knowledge and the information has competitive value. The bill would take effect January 1, 2019 if passed prior to May 31. However, if the bill is passed after May 31 then it would take effect June 1, 2019. [Read more.](#)

- **Oil Well Lien Act – Louisiana** (*Update to 4/30/18 Weekly Report*) On May 11, SB 456 was sent to Governor John Bel Edwards (D) after passing the legislature May 9. Originally introduced by Sen. Ronnie Johns (R), the bill makes changes to the Louisiana Oil Well Lien Act. Prior to passage, the law defined what is and is not operations for purposes of the Louisiana Oil Well Lien Act, and included salt water or another waste substance after placed in a means of transportation for disposal, as an activity that is not included in operations. The bill would remove the disposal of salt water or another waste substance from the list of activities that is not included in the definition of operations. The governor has until May 21 to sign or veto the bill or it will become law. The bill will take effect August 1 once it becomes law. [Read more](#).

STATE – Judicial

- **Landman Licensing – Ohio.** (*Update from 1/22/18 Weekly Report*) On May 8, the Ohio Supreme Court held oral argument in the ongoing landman real estate licensing case, [Dundics v. Eric Petroleum Corp.](#) (Case No. 2017-0448). You may access the full Ohio Supreme Court [oral argument video here](#). As our members know, AAPL has been actively engaged in this case, filing both an amicus brief and reply brief with the Court in our efforts to protect landmen in the challenge to a misguided appellate court decision holding that landmen are subject to the requirements of state law, R.C. Chapter 4735, which requires a real estate broker’s license to be entitled to compensation for brokering deals with landowners on behalf of oil and gas companies. The appellate court had held that “real estate,” for purposes of the statute, was broadly defined to include “leaseholds as well as any and every interest or estate in land” – which, under Ohio law, includes oil and gas rights. To access the AAPL amicus and reply briefs filed with the Court as well as the full case docket, [click here](#). For more background information and a summary of the case, [Read more](#).
- **Rule of Capture – Pennsylvania.** (*Update to 4/9/18 Weekly Report*) On April 16, Southwestern Energy petitioned the Superior Court of Pennsylvania to rehear the case with more judges after a two-judge panel rule April 2 that hydraulic fracturing could create liability when fluids released from the hydraulic fracturing process flow onto adjoining properties. In [Briggs v. Southwestern Energy Production Company](#) (Case No. 2018 PA Super 79), the Pennsylvania Superior Court recognized claims for subsurface trespass from hydraulic fracturing and rejected the argument that the rule of capture precludes such claims as a matter of law. The Court, in drawing a distinction between hydraulic fracturing and conventional drilling, held that the long-established “[Rule of Capture](#)” principle did not apply to prohibit a trespass claim by an adjoining unleased landowner against a producer when that producer utilizes hydraulic fracturing for a horizontal well. “The panel’s decision disrupts longstanding rules of law on which property owners, production companies, and many other stakeholders in Pennsylvania have relied to conduct their affairs,” said the Marcellus Shale Coalition. The current case status is that the Superior Court reversed the summary judgment and remanded

the case back to the trial court for further proceedings. According to *Bloomberg Government*, “it isn’t known when the court will rule on the April 30 application for re-argument”, but we will continue to monitor this critical case for any developments. [Read more.](#)

State-by-State Legislative Session Overview

Alaska, California, Delaware, Illinois, Louisiana, Massachusetts, Michigan, Minnesota, Missouri, New Hampshire, New Jersey, New York, Ohio, Oklahoma, Pennsylvania, Rhode Island and Vermont are in regular session. The **District of Columbia** Council, **Puerto Rico** and the **United States** Congress are also in regular session.

North Carolina is expected to convene on May 16.

South Carolina is in recess until May 23. The House and Senate have agreed on a resolution allowing lawmakers to return on May 23 and 24 to deal with the state’s budget and bills in conference committees. The resolution also allows lawmakers to return on June 27 and 28 to address the governor’s budget vetoes, reports [The State](#). **Wisconsin** is in recess to the call of the chair.

The following states are expected to adjourn on the dates provided: **Missouri** (May 18), **Minnesota** (May 21) and **Oklahoma** (May 25).

The following states adjourned on the dates provided: **Kansas** (May 4), **Iowa** (May 5) and **Colorado** and **Connecticut** (May 9). **Alaska** did not adjourn on the April 15 constitutional regular session deadline and must adjourn before May 16, [KTVA](#) reports. **Vermont** did not adjourn as expected on May 4, and Republican Gov. Phil Scott has urged lawmakers not to adjourn before considering an education finance proposal.

Virginia convened a special session on April 11 and held a one-day veto session on April 18. The House voted to pass the \$115 billion, two year spending plan on April 17, [The Washington Post](#) reports. The session is in recess until May 14, [WCAV](#) reports.

Indiana Republican Gov. Eric Holcomb has issued a [proclamation](#) calling for a one-day special session on May 14 to address school safety and federal tax conformity, the [Goshen News](#) reports. **Missouri** state lawmakers called for a special session, set to begin on May 18, to consider impeaching Republican Gov. Eric Greitens, the [Washington Post](#) reports. **Oregon** Democrat Gov. Kate Brown released a [statement](#) announcing a one-day special session on May 21 to address the state’s tax code in order to expand the list of small businesses eligible for state tax breaks, reports the [Statesman Journal](#).

Maryland Republican Gov. Larry Hogan has until May 29 to act on legislation presented by April 29 or it becomes law without signature. **Iowa** Republican Gov. Kim Reynolds has until June 4 to act on legislation or it is pocket vetoed. **Colorado** Democratic Gov. John Hickenlooper

has until June 8 to act on legislation presented after April 29 or it becomes law without signature. **Hawaii** Democratic Gov. David Ige has until July 10 to act on legislation presented after April 19 or it becomes law without signature. **Arizona** Republican Gov. Doug Ducey has 10 days, Sundays excepted, to act on legislation presented after April 29 or it becomes law without signature. **Connecticut** Democratic Gov. Dannel Malloy has 15 days from presentment to act on legislation or it becomes law without signature. **Illinois** Republican Gov. Bruce Rauner has 60 days from presentment to act on all legislation passed during the veto session or it becomes law. **Kansas** Republican Gov. Jeff Coyle has 10 days, not including the day of presentment to act on legislation or it becomes law without signature. **Louisiana** Democratic Gov. John Bel Edwards has 20 days from presentment to act on special session legislation or it becomes law. **Oklahoma** Republican Gov. Mary Fallin has five days from presentment, Sundays excepted, to act on special session legislation or it becomes law. **Wisconsin** Republican Gov. Scott Walker has six days, Sundays excepted, to act on special session legislation or it becomes law.

Georgia Republican Gov. Nathan Deal had a signing deadline on May 8.

The following states are currently holding 2019 interim committee hearings: [Alabama](#), [Arkansas](#), [Idaho](#), [Indiana](#), [Kentucky](#), [Maryland](#), [Mississippi Senate](#), [Montana](#), [Nevada](#), [New Mexico](#), [North Carolina](#) (2018 interim hearings), [North Dakota](#), [Oregon](#), [South Dakota](#), [Texas House](#) and [Senate](#), [Utah](#), [Virginia](#), [Washington](#), [West Virginia](#) and [Wyoming](#).

The following states are currently posting 2019 bill drafts, profiles and interim studies: [Montana](#) and [North Dakota](#).

Franchise Tax

California [AB 2410](#) was heard in the Assembly Appropriations Committee on May 9 where the bill was referred to the suspense file. The suspense file is a holding place for bills that carry a fiscal impact of \$150,000 or more and may be voted out eventually to continue the legislative process. The bill had been scheduled for a hearing in that committee on May 9 at an unspecified time. Existing law imposes an annual tax equal to the minimum franchise tax on every limited liability company doing business in the state. The bill would reduce the annual tax, for taxable years beginning January 1, 2020 and before January 1, 2025, to \$400 for a limited liability company that is a small business. The bill defines a small business as a business entity with gross receipts of \$250,000 or less during the first two years after the articles of organization have been accepted or a certificate of registration has been issued. The bill would take effect immediately.

California [SB 1417](#) passed the Senate Governance and Finance Committee on May 9 and is now pending in the Senate Appropriations Committee. Existing law imposes a minimum franchise tax of \$800 and an annual tax equal to minimum franchise tax. The bill would reduce the minimum franchise tax for taxable years on or after January 1, 2019 to:

- \$200 if the corporation has gross receipts that are less than \$2.5 million.
- \$400 if the corporation has gross receipts that are less than \$7.5 million but equal to or greater than \$2.5 million.

- \$600 if the corporation has gross receipts that are less than \$15 million but equal to or greater than \$7.5 million.
- \$800 if the corporation has gross receipts that are equal to or greater than \$15 million.

The bill would take effect immediately.

General Oil and Gas

General

Illinois [SB 3174](#) has been scheduled for a hearing in the House Agriculture and Conservation Committee on May 15 at 2:00 p.m. The bill would require the following information to be included on a well permit:

- The GPS surface and bottom hole locations for all wells drilled utilizing directional or horizontal drilling techniques.
- A list of chemicals and additives intended to be used in the drilling or completion operations.

The bill would also prohibit horizontal wells or directionally drilled wells from being classified as confidential. The bill would require the Department of Natural Resources to make specified information available on its website including drilling permits issued as well as well drilling and completion reports. The bill would protect furnished trade secret information from further disclosure if the department determines that the information has not been published, disseminated or otherwise become a matter of general public knowledge and the information has competitive value. The bill would take effect January 1, 2019 if passed prior to May 31; however, if the bill is passed after May 31 then it would take effect June 1, 2019.

Louisiana [SB 377](#) was heard in the House Natural Resources Committee on May 8. During the hearing the committee adopted [amendment 3934](#), [amendment 4134](#) and [amendment 4029](#) but the bill was voluntarily deferred by the sponsor Sen. R. L. Brett Allain, R-Adeline, who opposed the nature of one of the amendments. As passed the Senate the bill would provide that if an inactive well has been designated as being inactive with future utility by the operator for a period of 10 years or more and that well is neither scheduled to be plugged and abandoned on a plan approved by the commissioner nor covered under a site specific trust account in accordance with present law, then the owner may request in writing that the Office of Conservation determine whether the inactive well has future utility. The bill would also establish the following procedure to determine whether a bill should be plugged:

- That the commissioner notifies the operator of the request within 30 days of receipt.
- The operator submits written justification to the office to prove that the well has future utility within 90 days of receipt of the notice.
- The office reviews the written justification and determines whether or not the well has future utility.
- The office shall submit the operator's written justification and the offices final determination to the owner with 10 days. The owner would have 10 days from the receipt of the justification to request in writing that the well be plugged. If the owner requests

that the well be plugged, then the operator would be required to submit a plan to the office to plug the well within 90 days of a final determination by the office that the well does not have future utility.

- The commissioner could approve the plan submitted by the operator along with any revisions the commissioner deems necessary.
- The operator plugs the well in accordance with the approved plan.

The bill would provide that the operator could appeal the office's determination in accordance with existing law and would allow an operator to pursue a contractual claim for reimbursement of the costs of plugging and abandonment. The bill would provide a definition of an inactive well and would permit owners to donate an amount determined by the Conservation Commissioner to defray the cost of an expedited determination. Amendment 4029 would provide that if the office or, in the case of appeal, a judge determines that a well does have future utility the owner must reimburse the operator for all costs incurred with complying with and making any authorized appeal. The bill would take effect on August 1.

Hydraulic Fracturing

New York [AB 4134](#) was reported favorably from the Assembly Judiciary Committee on May 8 and is now pending in the Assembly Codes Committee. The bill would prohibit the inclusion of non-disclosure agreements in settlements of hydraulic fracturing actions when there is evidence of threats to public health or safety. The bill would take effect immediately.

Landmen

General

Louisiana [HB 748](#) passed the Senate Commerce, Consumer Protection and International Affairs Committee with [amendments](#) on May 9. The bill is now pending a third reading in the Senate. As passed in the House, the bill would establish the "Occupational Licensing Review Act," which would prohibit a professional from referring to themselves as certified unless the certification is required for licensure at the state level. This bill does not address non-governmental certifications, such as associations like AAPL, but those that relate to state agencies. The Senate amendment removes the certification provisions from the bill and would now grant the governor the authority to request certain information from state agencies engaged in the licensing and regulatory activities. The bill would take effect July 1.

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