

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

- **BLM Lease Sale – Kansas; Oklahoma.** On May 9, the eco-activist group, Center for Biological Diversity, sent a [letter to Interior Secretary Sally Jewell](#) urging that the Bureau of Land Management (BLM) withdraw leases on 2,300 acres of federal land in Oklahoma and Kansas, alleging increased risk of human-caused earthquakes due to oil and gas operations. The leases were auctioned in the BLM lease sale on April 20 in Santa Fe, New Mexico. [Read more.](#)
- **BLM Resource Management Plan – Washington, DC.** On May 12, the U.S. House Committee on Natural Resources' Subcommittee on Oversight and Investigations held a hearing on "[Local and State Perspectives on BLM's Draft Planning 2.0 Rule.](#)" The hearing addresses the BLM's rulemaking goal of providing opportunities for state and local governments, and the public, to be involved in the development of BLM resource management planning. [Read more.](#)
- **EPA Methane Emissions Rule.** Last Thursday, Environmental Protection Agency (EPA) Administrator Gina McCarthy confirmed that federal rules requiring oil and gas drillers to seek out and repair methane leaks on existing wells won't be adopted before the end of the Obama administration. However, on May 12, the EPA finalized its controversial [new regulations](#) requiring regular inspections of wells and processing facilities in an effort to cut methane emissions from the oil and gas sector by 40 to 45 percent from 2012 levels by 2025. [Read more.](#) But the new regulations have drawn strong opposition from the oil and gas industry. "It doesn't make sense that the administration would add unreasonable and overly burdensome regulations when the industry is already leading the way in reducing emissions," said Kyle Isakower, vice president of regulatory and economic policy for the American Petroleum Institute. The final regulations are estimated to add \$530 million in additional costs per year by 2025. [Read more.](#)

FEDERAL – Judicial

- **Greater Sage Grouse.** On May 12, the Western Energy Alliance, along with the North Dakota Petroleum Council, filed suit challenging plans the U.S. Interior and Agriculture departments issued in September 2015 for the greater sage grouse in lieu of listing the bird under the Endangered Species Act. [The complaint](#), filed in the U.S. District Court for the District of North Dakota, covers four Records of Decision signed by Interior

Secretary Sally Jewell and Agriculture Secretary Tom Vilsack involving land use plans in California, Colorado, Idaho, Montana, Nevada, North Dakota and Utah. The suit claims that oil and natural gas restrictions fail to conform to state plans, as well as violating numerous federal laws, including the Administrative Procedure Act, the National Environmental Policy Act, and the Mineral Leasing Act. [Read more.](#)

STATE – Legislative

- **Mineral Rights; Prescription – Louisiana.** (Update to 3/14/16 Weekly Report). On May 10, Governor John Bel Edwards signed HB 634 into law. The measure amended existing law to include lands appropriated by an acquiring authority, such as a government or agency, to allow for prescription of nonuse and the intent to reserve or exclude mineral rights from such lands. [Read more.](#)
- **Pooling; Unit Operation – Ohio.** On May 5, Senator Troy Balderson (R) introduced SB 327, which revises provisions in the state Oil and Gas Law governing unit operation, the required percentage of owners needed for pooling, and also specifies that the discounted cash flow formula will be used to value certain producing oil and gas reserves for property tax purposes. [Read more.](#)

STATE – Judicial

- **Leasing – Texas.** On May 12, the Fourth Court of Appeals of Texas, in *Escondido Resources II, LLC v. Justapor Ranch Company, L.C.* (Case No. 2013-CV7-001396-D1), reversed a \$12.6 million judgment against an oil and gas operator that had been accused of trespass for continuing to operate after the property owner claimed the lease had been breached because of a royalty dispute. [Read more.](#)

INDUSTRY NEWS FLASH:

◆ **Interior Department Secretary’s Surprising Rebuke of Eco-Activists.** On May 6, Interior Department Secretary Sally Jewell had some sharp words for the “Keep it in the Ground” movement. At a public event in California, Jewell labeled the activists “naive” saying, “It’s going to take a very long time before we can wean ourselves from fossil fuels, so I think that to keep it in the ground is naive, to say we could shift to 100 percent renewables is naive. We really have to have a blend over time, and a transition over time, that recognizes the real complexity of what we’re dealing with.” [Read more.](#)

ELECTION ALERT:

★ The non-profit group, Securing America’s Future Energy, has released its *Energy Policy 2016: Spotlight on Donald Trump*, which outlines the presumptive Republican presidential nominee’s position on various oil and gas industry issues. [Read more.](#)

PRACTICE TIP: Avoiding unintended consequences caused by retained acreage clauses. The Houston-based law firm, Kiefaber & Oliva LLP, offers a primer on retained acreage clauses in leases. Typically, retained acreage clauses become the subject of litigation when the lease contains a continuous drilling obligation and the lessee has ceased its drilling. Recently, Texas courts interpreted retained acreage clauses and reached differing outcomes that were not contemplated by the parties. [Read more.](#)

State-by-State Legislative Session Overview

Lawmakers in **Arkansas** adjourned a month-long fiscal session on May 9, ahead of an expected special session on highway funding scheduled to begin on May 19, [Arkansasnews.com](#) reports. Republican Gov. Asa Hutchinson has said that he intends to ask lawmakers to consider his plan to use a combination of general revenue and surplus funds to increase highway funding by \$750 million over the next 10 years. Legislators have proposed funding the spending increase by raising taxes on gasoline and diesel fuels and by removing certain tax exemptions. Prior to the legislature's adjournment, House Speaker Jeremy Gillam, R-Judsonia, was elected to another two year term as speaker. Gillam told reporters on Monday that it was too early to say whether the proposed funding plans had enough support to be passed during the upcoming special session. During the fiscal session, which began on April 13, lawmakers passed a \$5.3 billion budget for fiscal year 2017. Governor Hutchinson's proposal to continue and modify the state's Medicaid expansion plan, known as Arkansas Works, was also approved and funded.

Alaska, California, Delaware, Illinois, Louisiana, Massachusetts, Michigan, Minnesota, Missouri, New Hampshire, New Jersey, New York, North Carolina, Ohio, Oklahoma, Pennsylvania, Rhode Island, South Carolina and Wisconsin are in regular session. The **District of Columbia** and the **U.S. Congress** are also in regular session.

Connecticut convened a special session on May 12.

West Virginia is expected to convene a special session related to the fiscal year 2017 budget on May 16. **Utah** is expected to convene a special session related to education funding on May 18. **Arkansas** is expected to convene a special session on May 19.

Kansas is in recess until June 1 and is expected to adjourn its 2016 legislative session on that day.

The following states adjourned their 2016 legislative sessions on the dates provided: **Arizona** and **Vermont** (May 7), **Arkansas** (May 9) and **Colorado** (May 11).

Alaska did not adjourn as scheduled on April 17 due in part to an unresolved budget, [Alaskacommons.com](#) reports. The state constitution allows for an extension of the regular session until May 18, with an option to add an additional 10 days by a two-thirds vote of each chamber.

The following states are expected to adjourn their 2016 legislative sessions on the dates provided: **Wisconsin** (May 18), **Minnesota** (May 23), **Oklahoma** (May 27) and **Missouri** (May 30).

Alabama Republican Gov. Robert Bentley has until May 15 to act on legislation presented after April 30 or it is pocket vetoed. **Arizona** Republican Gov. Doug Ducey has until May 17 to act on legislation presented after May 2 or it becomes law without signature. **Iowa** Republican Gov. Terry Branstad has until May 30 to act on legislation presented after April 26 or it is pocket vetoed. **Maryland** Republican Gov. Larry Hogan has until May 31 to act on legislation or it becomes law without signature. **Colorado** Democratic Gov. John Hickenlooper has until June 10 to act on legislation presented after May 1 or it becomes law without signature. **Hawaii** Republican Gov. David Ige has until July 11 to act on legislation presented after April 21 or it becomes law without signature. **Connecticut** Democratic Gov. Dannel Malloy has 15 days from presentment, Sundays and legal holidays 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 or it becomes law without signature. **Tennessee** Republican Gov. Bill Haslam has 10 days from presentment, excluding Sundays, to act on legislation or it becomes law without signature. **Vermont** Democratic Gov. Peter Shumlin has five days from presentment, Sundays excepted, to act on legislation or it is pocket vetoed.

Arkansas Republican Gov. Asa Hutchinson had acted on all legislation as of May 9.

The following states are currently holding interim committee hearings: **Arkansas, Idaho, Indiana, Kentucky, Maine, Maryland, Mississippi** House and Senate, **Montana, Nevada, North Dakota, Oregon, Tennessee**, the **Texas** House, Senate and Joint, **Utah, Vermont, Virginia, Washington** and **Wyoming**.

Franchise Tax

The May 9 hearing for **California** [AB 2807](#) was postponed and has not been rescheduled at this time. The most recent amendment to the bill removed the language that would reduce the annual minimum franchise tax to \$800 per year. The amendment would also remove the proposal to have corporations pay the state the minimum franchise tax of \$150 per year on an annual basis as well as the goal to extend an exemption to corporations and limited liability companies solely owned by deployed members of the armed forces until January 1, 2020.

Delaware [HB 371](#) unanimously passed the House on May 12. This bill would require any corporation that revokes its dissolution, or restores its certificate of incorporation to file all annual franchise tax reports and pay all franchise taxes as it would have if it had not dissolved or expired. If enacted, this section would take effect on August 1, 2016.

This bill is sponsored by Rep. Melanie George Smith, D-Bear, chair of the House Appropriations Committee.

Landmen

Colorado [SB 179](#) passed the House without amendments on May 10, and will now be returned to the Senate. The state Department of Labor and Employment 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.

The amendment would appropriate additional money to the Department of Labor and Employment to be used by the Division of Unemployment.

If enacted, this law would take effect on the day following the expiration of the 90-day period after the legislature adjourns in 2016. The Colorado legislature is scheduled to adjourn on May 11.

Independent Contractors

North Carolina [HB 1069](#) was introduced on May 10 and referred to the House Regulatory Reform Committee the following day. If the committee approves HB 1069, it will then move to the House Appropriations Committee. Referred to as the North Carolina Employee Protection Act, this bill would change the definition of an independent contractor to, “any individual or entity who carries on independent business, contracts to do a piece of work according to the individual’s or entities own means and methods, and is subject to control only as to results. Whether an individual or entity is an independent contractor, regardless of what the individual or entity calls itself, shall be determined on a case-by-case basis. Factors to be considered in that determination include, but are not limited to, whether the individual or entity supplies the tools or materials; makes services available to the general public, works for a number of clients at the same time, has an opportunity for profit or loss as a result of labor or services provided, invests in the facilities for work, directs the order or sequence in which the work is to be done, and determines the hours during which the work is to be done.” If enacted, this section would become effective on October 1, 2016.

This bill is sponsored by Rep. George Cleveland, R-Jacksonville, chair of the House Homeland Security, Military and Veterans Affairs Committee.

Lands

Land Permits

Louisiana [HB 313](#) was delivered to Democratic Gov. John Bel Edwards on May 12, he has 10 days to act on the bill or it will become law. 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.

The Assembly Environmental Conservation Committee will be holding **New York** [AB 2746](#) for consideration. It is unlikely the bill will move again this session. The bill would authorize a board of supervisors or other county legislative body to lease county land for the purposes of the exploration, development and production of natural gas and liquefied natural gas for up to five years, or as long as natural gas or liquefied natural gas is produced in paying quantities. If enacted, the bill would take effect immediately.

Oil and Gas

General Oil and Gas

California [AB 2756](#) is scheduled to be heard in the Assembly Appropriations Committee on May 18. As amended, 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 remediate wells, and other areas that may pose a danger to health, water quality, wildlife or natural resources.

Bundling & Pooling

Michigan [SB 903](#) passed the Senate Natural Resources Committee on May 12 without amendments and was referred to the Senate Committee of the Whole. This bill would require that the unit operator of a pool or pools would be required to pay at least 51 percent of the cost of all operations, a decrease from 75 percent. The operators will be entitled to at least 51 percent of the production from the unit area, a decrease from 75 percent, or the proceeds of that production that will be credited to interests that are free of cost, including royalties and production payments. The committee's fiscal analysis can be [reviewed here](#).

Leasing

Kansas [SB 280](#) was delivered to Republican Gov. Sam Brownback on May 9, he has until May 19 to act on the bill or it becomes law. The bill would require that the production information used to establish the fair market value of producing oil and gas leases that have finished production in the preceding year must be limited to production occurring prior to April 1 of the calendar in which the property is assessed. Information used to establish the fair market value of a lease for the first time after October 1 of the preceding calendar year would be limited to production occurring prior to July 1 of the calendar year for which the property is being assessed.

This bill would take effect immediately upon passage.

Mineral Rights

California [AB 2729](#) was amended on May 11, read for a second time, and returned to the Assembly Appropriations Committee where it is scheduled to be heard on May 18. 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. As amended, the bill would provide that the abandoned underground personal property, including a well, of an operator becomes the property of the mineral interested owner when the operator loses the right to remove it under common law or lease or any other agreement that initially gave the operator the right to conduct activity on the well.

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.

Democratic Gov. John Bel Edwards signed **Louisiana [HB 323/Act No. 46](#)** into law on May 10. Effective immediately, this law authorizes the transfer or lease of state property in Morehouse Parish from the Department of Wildlife and Fisheries to Kenneth Cook, Jr. and Annie Cook. The state retains the mineral rights.

Democratic Gov. John Bel Edwards signed **Louisiana [HB 634/Act No. 60](#)** into law on May 10. 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. Effective August 1, this law will add property appropriation to the list of ways in which an acquiring authority can gain property.

Louisiana [HB 911](#) was sent to Democratic Gov. John Bel Edwards on May 11, he has 10 days to act on the bill or it becomes law. 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.

Louisiana [SB 404](#) was enrolled on May 12 and is now awaiting delivery to Democratic Gov. John Bel Edwards. Once he receives the bill, he will have 10 days to act on it, or SB 404 will become law. 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. This bill would become effective immediately if enacted.

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