

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

- **Congressional Recess.** The U.S. House of Representatives is on recess this week, returning to Washington on May 16. The U.S. Senate will be in session. [Read more.](#)

FEDERAL – Judicial

- **Royalties – Kansas Federal Court.** On April 7, in *Love v. Devon Energy Company* (Case No. 16-2595-CM), the U.S. District Court for the District of Kansas dismissed a plaintiff's case against Devon Energy for alleged unpaid royalties. The Court concluded that it could not hear the case because Devon did not have the requisite corporate presence in the state of Kansas in order for the plaintiff to bring such a case in this jurisdiction. [Read more.](#)
- **Leasing; Property Damage – Court of Appeals, Fifth Circuit (Louisiana).** On April 18, in *Guilbeau v. Hess Corp* (Case No. 16-30971), the Fifth Circuit Court of Appeals held that a landowner who acquired property in 2007 could not assert contamination claims against an oil and gas well operator that ceased production in the early 1970s, holding that the sale to the new owner in 2007 did not give him rights to sue for pre-purchase damages and that the "subsequent purchaser" rule barred the landowner's untimely claims. [Read more.](#)
- **Wayne National Forest – Ohio Federal Court.** On May 2, several environmental groups filed a federal lawsuit in Ohio federal district court against the U.S. Forest Service and the Bureau of Land Management (BLM) to halt resource development in Ohio's Wayne National Forest. In the case, [Center for Biological Diversity et al. v. U.S. Forest Service et al.](#) (Case No. 2:17-cv-00372-MHW-KAJ), the groups argue that the federal agencies failed to sufficiently analyze risks to watersheds, public health, climate and endangered species before auctioning 670 acres of the Forest area for eventual hydraulic fracturing. The groups are seeking a court injunction to halt oil and gas leasing and development until a new assessment can be made. The BLM's environmental assessment previously found no significant impact in opening leasing to oil and gas companies, and the leases don't automatically allow companies to drill. They provide a 10-year window to apply for permits for oil and gas exploration. [Read more.](#)

STATE – Legislative

- **Federal Lands – Alaska.** On April 28, Rep. Steve Thompson (R) introduced HJR 22. The House Joint Resolution urges the Trump administration to reverse federal restrictions on resource development in the Arctic National Wildlife Refuge and National Petroleum Reserve. [Read more.](#)
- **Recording – Maryland.** On May 4, Gov. Larry Hogan (R) signed HB 595, and its Senate counterpart, SB 376, into law. The Acts provide that a deed (other than a mortgage, deed of trust, or an assignment or release of a mortgage or deed of trust) may not be recorded unless the instrument bears certain certification of preparation; and the Acts provide that a mortgage, deed of trust, or an assignment or release of a mortgage or release of deed prepared by any attorney or one of the parties named in the instrument may be recorded without certain certification. [Read more.](#)
- **Notice – Montana.** (Update to 4/10/17 Weekly Report) On May 1, SB 93, introduced by Sen. Tom Richmond (R), was transmitted to Gov. Steve Bullock (D) for signature. The bill updates current law to require oil and gas developers and operators to give notice upon completion, in addition to the existing drilling notice, of their operations to the owner of an occupied dwelling within 990 feet of a wellbore’s surface location, amended from the introduced bill’s 660 feet of a wellbore location. [Read more.](#)
- **Production Costs – Montana.** (Update to 2/27/17 Weekly Report) On April 28, HB 384, which passed the House in February, died in a Senate committee. The bill would have required an oil or gas lessee to pay costs of production from the working interest unless either the board of land commissioners found that sharing the expense of transport to the nearest market better served the state’s interest, or the parties agreed to other lease terms. [Read more](#)
- **Budget Bill – Ohio.** The Ohio 4,600 page budget bill for FY 2018-2019, [HB 49](#), which passed the House on May 2, contains a number of amendments affecting the landman industry. For example, regarding county recorders, certain fee changes have been included in the bill affecting deeds and other instruments ([See page 513 of the bill](#)). Another provision would give authority to the legislature to choose members of the state’s Oil and Gas Commission, rather than the governor ([See page 685 of the bill](#)). Many believe this could restart efforts to allow drilling in state parks. “While we did not advocate for the House of Representatives’ changes to the state-lands leasing commission included in the omnibus budget amendment, we applaud the House for taking much-needed action and starting this important discussion to remedy these long-overdue appointments,” said Shawn Bennett, Executive Vice President of the Ohio Oil & Gas Association. [Read more.](#) The budget bill, which will undergo many changes over the next several weeks, now heads to the Senate. [Read more.](#)

- **Statement Filing – Nebraska.** (Update to 5/1/17 Weekly Report) On April 27, LB 535 was signed into law by Gov. Pete Ricketts (R). This Act, sponsored by Sen. Dan Hughes (R), exempts oil, gas or mineral lease conveyances from the requirement of filing a statement with the register of deeds. The measure becomes effective three months after the legislature’s adjournment on June 2. [Read more.](#)
- **Abstracts – Oklahoma.** (Update to 5/1/2017 Weekly Report) On May 1, HB 2303 was signed into law by Gov. Mary Fallin (R). The Act amends existing law relating to abstracts and the requirements for release and penalties for delay in releasing such documents, and retains the attorney examination provisions under the final bill version. [Read more.](#)

STATE – Judicial

- **State Regulations – Colorado.** (Update to 3/27/17 Weekly Report). On May 1, the Colorado Oil and Gas Conservation Commission (COGCC) voted unanimously to seek review of the appellate court ruling in [Martinez v. Colo. Oil and Gas Conservation Cmm’n](#) (Case No. 2017COA37) in which plaintiffs want regulators to halt new drilling permits pending a safety review of hydraulic fracturing. The COGCC says the Colorado Supreme Court needs to provide them with direction on how to proceed. In March, the Colorado Court of Appeals ruled that the COGCC erred when it declined to hold a rulemaking hearing on a petition filed by six teenagers who want to halt the issuance of new drilling permits until the state can determine that hydraulic fracturing is safe. The court sent the issue back to the COGCC for further consideration. Before the lower court, the COGCC unsuccessfully argued that it was barred from considering the teenagers’ petition by language in the state’s Oil and Gas Conservation Act that requires a balance between drilling and the protection of public health and safety, and is now seeking direction from the high court. [Click here](#) (at time marker 3:25:30) to access the COGCC’s hearing motion vote calling for the state Attorney General’s office to file a certification to the Colorado Supreme Court for review of the appellate court decision.
- **Assignments; Royalty Interests – North Dakota.** On April 25, in *Ogren v. Sandaker* (Case No. 20160279), the North Dakota Supreme Court held that a 1958 assignment designed to convey interests “so that each assignee receives an undivided one-eighth share of the total royalty” unambiguously conveyed a “fraction of” a total royalty interest to be shared seven different ways rather than a fixed percentage share of the actual oil and gas production. [Read more.](#)
- **Deeds; Mineral Rights – Pennsylvania.** On April 21, in *Murphy v. Karnek* (Case Nos. 438 and 550 WDA 2016, 2017), the Pennsylvania Superior Court upheld oil and gas rights previously reserved by a husband and wife, and rejected the argument that the wife was a “stranger” to the interests reserved by the previous grant and opted instead to construe the plain language of the deed as a whole to determine the parties’ original intent. [Read more.](#)

- **Tax Deeds – Wyoming.** (*Welborn Sullivan Meck & Tooley, P.C. law blog*, May 2, 2017)
In a recent Wyoming Supreme Court decision, [Anadarko v. Family Tree Corp.](#) (Case No. 2017 WY 24), the Court ruled on the validity of a 1911 Laramie County tax assessment against minerals owned by Anadarko’s predecessor-in-interest. At issue were two divergent chains of title, one from Anadarko’s predecessor-in-interest, and another from a Laramie County tax sale which was challenged as invalid because the County was attempting to tax minerals in place. On appeal, the Wyoming Supreme Court narrowed its focus to consider “[w]hat types of defects in a tax assessment will render a tax deed void?” In affirming the trial court’s judgment, the Wyoming Supreme Court held that the 1911 tax assessment was valid because it was not a clear jurisdictional error, but merely an “error in the manner of taxation—in the when and how of the assessment.” The dissenting opinion, however, argued that taxing minerals in place was prohibited under the Wyoming Constitution and would have deemed the tax deed void and the Court should have rather quieted title in the plaintiffs. [Read more.](#)

INDUSTRY NEWS FLASH:

◆ **Oil & Gas Environmental Regulatory Seminar.** On May 18, the Petroleum Professional Development Center at Midland College will host its annual environmental regulatory seminar. Joining keynote speaker, Todd Abbott, Vice President of Permian infrastructure development and operations at Pioneer Natural Resources, will be representatives from the BLM, the Texas Railroad Commission, University Lands – University of Texas System, and New Mexico’s Oil Conservation Division, and others. “Representatives of regulatory agencies and the oil and gas industry alike will gather together to discuss regulatory and policy changes and their impact on oil and gas operations.” [Read more.](#) For more information call 432-683-2832 or [click here.](#)

◆ **Independent Contractors under the Trump Administration.** (*Holland & Hart*, May 1, 2017)
Independent landmen and brokers have been awaiting whether the Trump Administration will treat independent contractors differently than the Obama administration. According to Holland & Hart, “[a]s its first 100 days comes to a close, the Trump Administration has not, as yet, reigned in the Obama Administration’s targeting of the independent contractor model.” [See full article here at page 5.](#) However, with a new Department of Labor secretary only just confirmed by the Senate on April 27, it will take more time before new policy directives are rolled out. [Read more.](#)

State-by-State Legislative Session Overview

Arkansas adjourned a special session on May 3, [OzarksFirst.com](#) reports. The session had been convened on May 1 immediately following the end of the regular legislative session. Republican Gov. Asa Hutchinson had called the session for lawmakers to consider his proposal to move

60,000 people off of the Arkansas Works program, which uses Medicaid funds to purchase private insurance for low-income residents, and to impose new work requirements on some recipients. The changes were passed in the form of [SB 2x](#), which is on Governor Hutchinson's desk. He is expected to sign the bill, but the state would need federal approval to implement the changes. Hutchinson had originally proposed the Arkansas Works program, which was passed as [HB 1001/Act 1](#), in the second special session in April 2016. Other legislation passed and on Hutchinson's desk include two revisor's bills for medical marijuana, a bill related to the Arkansas Health Insurance Marketplace and a bill that would authorize a funds transfer to the state's reserve fund. A complete list of legislation passed during the special session can be found [here](#).

Alaska, Alabama, Arizona, California, Colorado, Connecticut, Delaware, Florida, Illinois, Kansas, Louisiana, Maine, Massachusetts, Michigan, Minnesota, Missouri, Nebraska, Nevada, New Hampshire, New York, North Carolina, Ohio, Oklahoma, Oregon, Pennsylvania, Rhode Island, South Carolina, Tennessee, Texas, Vermont and Wisconsin are in regular session. The **District of Columbia Council, United States Congress and Puerto Rico** are also in regular session.

Wisconsin convened a special session on January 5 that will run concurrently with the regular session.

Washington convened a 30-day special session on April 24. [SCR 8404](#), adopted the same day, reintroduced and retained in present status all legislation that had been pending prior to adjournment of the regular session. A list of bills that passed both chambers prior to the end of the regular session can be found [here](#). **West Virginia** convened a special session related to budget issues on May 4.

New Jersey is in recess until May 11.

The following states adjourned on the dates provided: **Indiana** (April 22), **Montana** (April 28) and **Hawaii** (May 4). **Arkansas** adjourned on May 1 and adjourned a special session on May 3.

The following states are expected to adjourn their legislative sessions on the dates provided: **Florida** and **Tennessee** (May 5), **Colorado** (May 10) and **Kansas** and **South Carolina** (May 11). **Alaska** did not adjourn as anticipated on April 27, but must adjourn before May 17. **Arizona** is expected to adjourn as soon as budget negotiations are complete, according to legislative staff. **Vermont** is expected to adjourn May 6, pending the conclusion of budget negotiations.

Virginia Democratic Gov. Terry McAuliffe has until May 5 to consider legislation returned after the veto session on April 5 or it becomes law. **Georgia** Republican Gov. Nathan Deal has until May 9 to act on legislation presented after March 24 or it becomes law. **Washington** Democratic Gov. Jay Inslee has until May 16 to act on legislation from the regular session or it becomes law. **Iowa** Republican Gov. Terry Branstad has until May 22 to act on legislation presented after April 19 or it is pocket vetoed. **Maryland** Republican Gov. Larry Hogan has until May 30 to act on legislation or it becomes law. **Hawaii** Democratic Gov. David Ige has until July 3 to act on

legislation presented after April 25 or it becomes law. **Mississippi** Republican Gov. Phil Bryant has 15 days from presentment, Sundays excepted, to act on legislation presented after March 24 or it becomes law without signature. **Montana** Democratic Gov. Steve Bullock has 10 days after delivery to act on legislation or it becomes law. **North Dakota** Republican Gov. Doug Burgum has 15 days, Saturdays and Sundays excepted, to act on legislation or it becomes law.

Arkansas Republican Gov. Asa Hutchinson has 20 days from presentment to act on legislation from the first special session or it becomes law.

Indiana Republican Gov. Eric Holcomb had a signing deadline on April 29.

Franchise Tax

California [AB 1256](#) is scheduled for a hearing in the Assembly Revenue and Taxation Committee on May 8. This bill would reduce that minimum franchise tax in the second taxable year for a new corporation, and that annual tax in the first taxable year for a new limited partnership, new limited liability partnership, and new limited liability company that is a small business, which is defined as a business entity with gross receipts of \$5,000 or less. The franchise tax would be \$100 if the company is doing less than \$5,000 per year in gross receipts.

If this bill becomes law, it would take effect for taxable years beginning on or after January 1, 2018.

Louisiana [HB 80](#) is scheduled for a hearing in the House Ways and Means Committee on May 9. This bill, which is sponsored by Rep. Stephanie Hilferty, R-New Orleans, would reduce the franchise tax levied under current law by 10 percent each year beginning on January 1, 2018, until the franchise tax is eliminated. Under the bill, no corporate franchise tax would be assessed or paid on or after January 1, 2027.

This bill would take effect immediately if enacted.

Louisiana [HB 355](#) is scheduled for a hearing in the House Ways and Means Committee on May 9. Existing law levies a franchise tax law on every domestic and foreign company doing business in the state at a rate of \$1.50 per \$1,000 of taxable capital up to \$300,000, and then \$3 per \$1,000 of taxable capital above \$300,001. HB 355 contains a provision that would repeal the franchise tax.

This bill is sponsored by Rep. Barry Ivey, R-Baton Rouge.

Louisiana [HB 361](#) is scheduled for a hearing in the House Ways and Means Committee on May 9. Sponsored by Rep. Barry Ivey, R-Baton Rouge, the bill would repeal the franchise tax on January 1, 2018.

New York [SB 138](#) passed the Senate Finance Committee on May 2 and then passed second reading the next day. This bill would offer taxpayers a personal income or business franchise tax

credit of 25 percent of their property taxes if their land is committed to forestry stewardship or habitat conservation, or both. If this bill becomes law it will take effect immediately.

The Assembly companion, [AB 1874](#), is pending in the Assembly Ways and Means Committee.

Tennessee [HB 65](#) is scheduled to be heard in the House Finance, Ways and Means Subcommittee on May 8. This bill would exempt certain new companies from paying franchise tax or excise tax for their first two years in business if they employ no more than 25 people and revenue is below \$1.5 million. This bill is sponsored by Rep. Eddie Smith, R-Knoxville, and would become effective on July 1, 2017 if enacted.

The Senate companion, [SB 901](#), is scheduled to be heard in the Senate Finance, Ways and Means Committee on May 8. The bill is sponsored by Sen. Mike Bell, R-Riceville, and would take effect on July 1 if enacted.

Texas [HB 28](#) was received in the Senate on May 1, where the bill was read for the first time and referred to the Senate Finance Committee. This bill would adjust the franchise tax rate in a manner that would begin phasing it out until it would be ultimately repealed.

Rep. Hugh Shine, R-Temple, is the sponsor and the bill would take effect on September 1, 2019, if it becomes law.

Oil and Gas

Oil and Gas General

After a May 1 hearing in the Senate Appropriations Committee, **California** [SB 44](#) was placed on the Senate Appropriations Committee suspense file because it has a fiscal impact of over \$150,000. The bill can be voted off the suspense file at any time to continue the legislative process. If the bill is not taken up again, it will die when the session ends. This bill would require the State Lands Commission in the Natural Resources Agency to administer a legacy oil and gas well removal, plugging and remediation program. Carrying out this program is contingent on appropriation of funds by the legislature.

This bill is sponsored by Sen. Hannah-Beth Jackson, D-Santa Barbara, chair of the Senate Judiciary Committee.

Montana [SB 93](#) was delivered to Democratic Gov. Steve Bullock on May 1; he has until May 11 to sign the bill or it becomes law. This bill would require oil and gas developers and operators to give notice upon completion of their operation to the owner of an occupied dwelling within 990 feet of a borehole, amended from 660 feet of a borehole.

This bill is sponsored by Sen. Tom Richmond, R-Billings.

Texas [HB 3025](#) passed the House on May 3 and was delivered to the Senate. Sponsored by Rep. Tracy King, D-Uvalde, this bill would change the number of days after a landowner or other

person who possess an abandoned well has to plug or cap the well from 180 days to 30 days after discovering it. The bill would add a new section to the existing law that says no later than 10 days after a landowner who possesses a deteriorated well learns of its condition the landowner would have to have the well plugged. Districts would require that owners or a lessee of land with deteriorated wells plug or repair the well sufficiently to prevent pollution of any water, including ground water.

If this bill becomes law, it will take effect immediately.

Mineral Rights

Louisiana [HB 495](#) was read for the second time in the House on May 2 and was referred to the House Natural Resources Committee. Sponsored by Rep. Jim Morris, R-Oil City, this bill would authorize the transfer of state property in Bossier Parish from the Department of Health to the Arc of Acadiana, and the state would reserve the mineral rights. If enacted, this bill will take effect immediately.

Pooling

Alabama [HB 169](#) was delivered to Republican Gov. Kay Ivey on May 3; she has until May 10 to act on the bill or it will become law. Under current law, risk compensation fees cannot be imposed unless all affected parties have been given notice and a public hearing is held by the State Oil and Gas Board and the board determines all necessary requirements for imposing the fee have been met. This bill, which is sponsored by Rep. Victor Gaston, R-Mobile, would clarify that although risk compensation fees cannot be charged against the interest of an owner in a production pool who did not receive a notice of the hearing on the petition requesting the imposition of the fee, the fee is chargeable against the interests of the other nonconsenting owners in the unit who were given the notice. Under current law, if a productive well is drilled on a pool, those owners who did not pay their share of the drilling costs may have what they owed deducted from production proceeds. They would have to also pay a risk compensation fee of equal to 150 percent of that owner's share of the costs but that in all events a 3/16th share of production from the well must be treated as royalty and is free from any drilling costs or risk compensation fees.

The Senate State, Veterans and Military Affairs Committee voted to suspend **Colorado [HB 1336](#)** indefinitely during a May 3 hearing, and may not come to a vote. Existing law allows for forced pooling in which an interested party, usually an oil and gas operator, can apply to the oil and gas conservation commission for an order to pool oil and gas resources located within an identified drilling unit. After giving notice to interested parties and holding a hearing, the commission can adopt an order to force owners who have not consented to the appliance, to allow operators without their consent. This bill would bring protections for those non-consenting owners. The bill specifies that:

- At least a majority of the royalty interest owners must join in the application before the commission can enter a forced pooling order.
- The hearing notice must be given at least 90 days before the hearing.

- The prospective drilling unit operator must give the affected interest owners a clearly stated explanation of the laws that allow forced pooling, and this must be done before entering into the pooling order.
- The operators of drilling units would be required to file an electronic report before drilling with the commission that states the number and location of non-consenting owners and that order must be posted in a searchable data base on the commission's website.

Sponsored by Rep. Dave Young, D-Greeley, if enacted, this bill would take effect 90 days after the legislature adjourns, which would be August 9 if adjournment is on May 10 as scheduled.

Royalty Payments

Public testimony was given on **Alaska [HB 238](#)** during a May 5 hearing in the House Resources Committee. It is also pending in the House Finance Committee. This bill would amend current law by removing the Oil and Gas Commissioners ability to waive royalty payments and rental costs during the first five years of a lease.

This bill is sponsored Rep. David Guttenberg, D-Fairbanks.

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