



Please Note: Due to the upcoming AAPL Annual Meeting there is no report next week. The next report will be published after the July 4th holiday on July 15. Hope to see you at Annual Meeting in Pittsburgh next week!

WEEKLY HIGHLIGHTS AT-A-GLANCE

FEDERAL – Regulatory

- **BLM Leasing – California.** (Update to 5/13/19 Weekly Report) On May 23, Democrat members of the California Congressional delegation [delivered a letter](#) to Interior Secretary David Bernhardt voicing their opposition to the Bureau of Land Management's (BLM) recent announcement that the [Trump administration plans](#) to expand federal land acreage in California to new oil and gas development. The group also takes specific issue with the new development approving the use of hydraulic fracturing. However, industry groups applauded the plan and affirm the BLM's thorough environmental assessments of the planning area. Kara Greene, spokesperson for the Western States Petroleum Association (WSPA), said the BLM's actions "reaffirmed that hydraulic fracturing is a safe method of production in California." She also said WSPA wants to be "part of the discussions to ensure we continue to safely produce affordable, reliable energy." [Read more.](#)

FEDERAL – Judicial

- **BLM Leasing – New Mexico.** On June 3, environmental activists filed suit against the BLM claiming the agency approved 210 area leases on nearly 70,000 acres of federal land in the Greater Carlsbad region of New Mexico without issuing environmental impact statements required by the National Environmental Policy Act or justifying its failure to do so. In [WildEarth Guardians v. Bernhardt](#) (Case No. 19-CV-00505), filed in the U.S. District Court for the District of New Mexico, the plaintiffs are seeking a declaratory judgment declaring that the leasing authorizations violate federal law, seek to vacate the leasing authorizations, and also have the court issue an injunction blocking the agency from authorizing additional energy leases or drilling permits in the area until they comply with federal environmental laws. The Interior Department has not yet filed their answer but we will report on the case again once they've done so. [Read more.](#)
- **Royalties; Statute of Frauds; Leasing – Sixth Circuit (Kentucky).** On May 29, in *Back v. Chesapeake Appalachia, L.L.C.* (Case No. 18-5975), the U.S. Court of Appeals, Sixth Circuit, a lessor claimed that the lessee "failed to pay the full amount of royalties due to him and other landowners for gas extracted from their land." In so doing, the lessee also brought

a statute of frauds claim. According to the Sixth Circuit, “[t]o satisfy Kentucky’s statute of frauds, Back must provide one or more writings which together identify the parties to the lease, the property, and the modified royalty amount. The parties agree that the original lease agreement satisfies the statute of frauds. The question is whether the statute of frauds bars Back’s claim that—at some point in the decades that followed—Chesapeake’s predecessor agreed to pay a royalty that was a percentage of the gas’s market price, rather than a flat rate.” The lower court dismissed Back’s claims for failure to satisfy Kentucky’s statute of frauds, but the Sixth Circuit reversed and remanded the case back to the trial court for further proceedings. [Read more.](#)

- **Leasing; Chain of Title; Depth Rights – Fourth Circuit (West Virginia).** On May 29, in *Mountaineer Minerals, LLC v. Antero Resources Corp.* (Case No. 17-2058), the U.S. Court of Appeals, Fourth Circuit, addressed the issue “of the rightful ownership of oil and gas leasehold rights” regarding certain depths. The dispute stemmed from a 100-year-old lease where the “record does not clearly indicate at which depths the shallow rights end and the deep rights begin.” Here, the court vacated the lower court’s summary judgment grant because “the district court did not resolve this dispute of material fact — namely, whether [operator] owned the deep rights it claims to have conveyed to Appellee — and thus summary judgment was inappropriate.” [Read more.](#)

STATE – Legislative

- **Setbacks – California.** (*Update to 5/13/19 Weekly Report*) In a win for the oil and gas industry, the well setback bill, AB 345, which AAPL has been monitoring closely for months, has died in committee. The bill, sponsored by Asm. Al Muratsuchi (D), failed to receive an Assembly vote before the May 31 deadline. The bill would have required all new oil and gas development or enhancement operations beginning January 1, 2020 to be located at least 2,500 feet from a residence, school, childcare facility, playground, hospital or health clinic but would allow cities and counties to set their own setback requirement beyond the 2,500 foot minimum. If two or more cities and counties with jurisdiction over the same geographic area set different setback requirements the larger of the two would have applied. Enhancement operations would be defined as operations intended to increase the hydrocarbon production of an oil or gas well, including well stimulation treatments, acid well stimulation treatments and restoring an abandoned or idle well into production. The bill accommodated requests for a variance but still required the State Oil and Gas Supervisor to ensure that such a variance would not “endanger public health and safety.” [Read more.](#)
- **Mineral Rights – Louisiana.** (*Update to 6/3/19 Weekly Report*) On June 4, SB 115 was transmitted to Gov. John Bel Edwards (D) after passing the legislature. The governor has 20 days to sign or veto the bill or it becomes law without his signature. The bill, sponsored by Sen. Rick Ward (R), would reduce the consent threshold from 80 percent to 75 percent to exercise mineral rights, grant a mineral lease or conduct operations in

instances of co-ownership. Recent amendments specify that the bill would only apply to contracts entered into on or after the effective date of the bill, which if enacted would be August 1, 2019. [Read more.](#)

- **Leases; Security Interests on Royalties – Louisiana.** (*Update to 6/3/19 Weekly Report*) On June 6, the Conference Committee Report (final bill) was adopted unanimously for SB 242. The bill is now pending delivery to Gov. John Bel Edwards (R) who will have 20 days to sign or veto the bill or it becomes law. The measure, sponsored by Sen. R.L. Bret Allain (R), would authorize the Mineral and Energy Board to include in “state, any state agency, or any political subdivision after July 31, 2019” leases a clause granting a continuing security interest in and to all as-extracted collateral attributable to, produced, or to be produced from the leased premises as security for the prompt and complete payment of royalties or other sums of money due under the lease. The bill would apply to any new lease or previously executed lease that is subsequently assigned, amended or modified by agreement of all parties after July 31. Prior to entering into any lease containing a continuing security interest clause, the board would be required to submit the clause to both the House and Senate Natural Resources committees for their approval. [Read more.](#)
- **Employee Misclassification – Nevada.** (*Update to 6/3/19 Weekly Report*) On June 3, SB 493, sponsored by Sen. Marilyn Dondero (D), passed the Assembly. The bill already passed the Senate in May. Once transmitted to the governor, it must be signed or vetoed within 10 days after session adjournment (excluding Sunday) on June 4, or the legislation becomes law without being signed. The measure creates an employee misclassification task force and require various state agencies including the attorney general, labor commissioner and the Department of Taxation to share information related to suspected employee misclassification that they have received. The bill would define employee misclassification and also specify the conditions under which a person is presumed to be an independent contractor. The bill would also create penalties for employers found to have improperly misclassified employees. [Read more.](#)

STATE – Judicial

- **Leasing; Reversionary Interests – Alaska.** On May 24, in *Kenai Landing, Inc. v. Cook Inlet Natural Gas Storage Alaska, LLC* (Case No. S-16737), the Alaska Supreme Court addressed a case regarding a public utility filing a condemnation action seeking the land use rights necessary to construct a natural gas storage facility in an underground formation of porous rock. The utility already held certain rights by assignment from an oil and gas lessee. The lower court held that because of the oil and gas lease, the utility owned the rights to whatever producible gas remained in the underground formation and did not have to compensate the landowner for its use of the gas to help pressurize the storage facility. Here, the landowner argued that it retained ownership of the producible gas in place because the oil and gas lease authorized only production, not storage. It also argued

that it had the right to compensation for gas that was discovered after the date of taking. However, in affirming the lower court's judgment, the Supreme Court held that the lower court "did not err in ruling that the landowner's only rights in the gas were reversionary rights that were unaffected by the utility's non-consumptive use of the gas during the pendency of the lease." [Read more.](#)

- **Dakota Access Pipeline; Eminent Domain – Iowa.** In the ongoing saga over the Dakota Access Pipeline, on May 31, in *Puntenney v. Iowa Utilities Board* (Case No. 17-0423), the Iowa Supreme Court ruled in favor of both the state regulatory agency approving eminent domain use and the pipeline operator. Here, the Supreme Court affirmed the judgment of the district court denying landowner and environmental activist petitions for judicial review of a decision of the Iowa Utilities Board (IUB) approving construction of an underground crude oil pipeline in Iowa that would run from western North Dakota across South Dakota and Iowa to an oil transportation hub in southern Illinois, and approving the use of eminent domain where necessary to condemn easements along the pipeline route. In denying claims to stop the pipeline, the Supreme Court held that (1) the IUB's weighing of benefits and costs supported its determination that the pipeline served the public convenience and necessity; (2) the pipeline was not barred by Iowa Code 6A.21 and 6A.22 from utilizing eminent domain because it was both a company under the jurisdiction of the IUB and a common carrier pipeline; (3) the use of eminent domain for a traditional public use such as an oil pipeline does not violate the Iowa Constitution or the United States Constitution; and (4) the IUB's determinations regarding two of the landowners' personal claims, which allowed the pipeline to traverse their properties, were supported by substantial evidence and the demands of the relevant statute were met. [Read more.](#)
- **Local Control; Well Site Zoning – Pennsylvania.** On May 31, in *EQT Production Company v. Borough of Jefferson Hills* (Case No. 4 WAP 2018), the Pennsylvania Supreme Court considered in regards to an unconventional well site "the question of whether a municipality, in addressing a natural gas extraction company's conditional use application for the construction and operation of a well site, may consider as evidence the testimony of residents of another municipality regarding the impacts to their health, quality of life, and property which they attribute to a similar facility constructed and operated by the same company in their municipality." The court held that such evidence may be received and considered by a municipality in deciding whether to approve a conditional use application and remanded the case back to the trial court "for further consideration" on that issue. [Read more.](#)
- **Working Interests; Letter Agreements – Texas.** On May 24, in *Pathfinder Oil & Gas, Inc. v. Great Western Drilling, Ltd.* (Case No. 18-0186), the Texas Supreme Court reversed the appellate court decision, which reversed a trial court judgment awarding specific performance to Pathfinder in a working interest dispute. In the case, Pathfinder claimed a 25% working interest in certain mineral leases under a letter agreement that Great Western claimed was unenforceable. Here the Texas Supreme Court held that

Pathfinder was entitled to specific performance of that agreement, noting that the parties agreed by stipulation prior to trial that a ruling in favor of the party seeking the claimed percentage interest would result in specific performance without condition. The court noted that the “parties’ stipulations are unequivocal, and a contrary interpretation would require disregarding language specifically delineating the ‘only’ issues reserved for the jury’s determination.” [Read more.](#)

- **Well Permitting; State Regulatory Authority – Texas.** On May 22, in *Dyer v. Texas Commission on Environmental Quality* (Case No. 03-17-00499-CV), the Texas Court of Appeals, Third District (Austin), addressed an appeal from the trial court’s final judgment that affirmed appellee Texas Commission on Environmental Quality’s (TCEQ) order granting an injection well operator’s application for permits to construct and operate underground injection control wells. The operator also received a “no-harm” letter from the Railroad Commission as provided to the TCEQ which stated that, based on staff review, the Railroad Commission “[had] concluded that the operation of the proposed wells...will not injure or endanger any known oil or gas reservoir.” Here, despite certain changes made by the TCEQ regarding findings of fact, the court upheld the injection well permit. [Read more.](#)
- **Accommodation Doctrine; Leasing – Wyoming.** On May 28, in *BTU Western Resources, Inc. v. School Creek Coal Resources, LLC* (Case No. 2019 WY 57), the Wyoming Supreme Court addressed a dispute over priority rights between mineral developers, specifically the overlap of multiple federal coal leases with federal and private oil and gas leases. According to the Supreme Court, the parties “cannot simultaneously conduct their operations.” Here the court held that the accommodation doctrine governs the parties’ rights and remanded the case back to the trial court for further determinations. The court also rejected a claim that the BLM was an indispensable party to a dispute on a specific private lease and held that the trial court may “fully resolve that dispute without its participation.” [Read more.](#)

State-by-State Legislative Session Overview

California, Delaware, Maine, Massachusetts, Michigan, New Hampshire, New Jersey, New York, North Carolina, Ohio, Oregon, Pennsylvania, Rhode Island and Wisconsin are in regular session. The **District of Columbia Council, Puerto Rico** and the **United States Congress** are also in regular session.

Alaska Republican Gov. Mike Dunleavy issued a [proclamation](#) calling for a 30-day special session beginning May 16. The special session will deal with subjects relating to appropriations for public education and transportation of students, appropriations for the operating and loan program and appropriations for mental health programs.

West Virginia has returned for a special session to deal with proposed education legislation, reports the [Charleston Gazette](#). Senate President Mitch Carmichael, R-Jackson, revealed the Student Success Act plan which would lump together the pay raises school workers want with the charter schools that many oppose within the state. According to the plan, the state and county boards of education would oversee the charter schools.

South Carolina's legislature is scheduled to return on June 25 for a veto session.

The following states adjourned their 2019 legislative sessions on the dates provided: **Alabama**, **Nebraska** and **Oklahoma** (May 31); **Illinois** (June 2); **Nevada** (June 3); **Connecticut** (June 5) and **Louisiana** (June 6).

The following states are scheduled to adjourn on the dates provided: **Maine** (June 19) and **Delaware**, **North Carolina**, **Oregon** and **Rhode Island** (June 30).

Arizona Republican Gov. Doug Ducey has until June 7 to act on legislation presented on or after May 22 or it becomes law without signature. **Alabama** Republican Gov. Kay Ivey has until June 10 to act on legislation or it is pocket vetoed. **Nevada** Democratic Gov. Steve Sisolak has until June 14 to act on legislation presented on or after May 29 or it becomes law without signature. **Oklahoma** Republican Gov. Kevin Stitt has until June 15 to act on legislation or it is pocket vetoed. **Texas** Republican Gov. Greg Abbott has until June 16 to act on legislation or it becomes law without signature. **Hawaii** Democratic Gov. David Ige has until July 9 to act on legislation presented on or after April 19 or it becomes law without signature. **Missouri** Republican Gov. Mike Parson has until July 14 to act on legislation or it becomes law without signature. **Alaska** Republican Gov. Mike Dunleavy has 20 days from delivery, Sundays excepted, to act on legislation or it becomes law without signature. **Arkansas** Republican Gov. Asa Hutchinson has 20 days from presentment to act on legislation presented on or after April 18 or it becomes law without signature. **Connecticut** Democratic Gov. Ned Lamont has 15 days from presentment to act on legislation or it becomes law without signature. **Florida** Republican Gov. Ron DeSantis has 15 days from presentment to act on legislation presented on or after April 27 or it becomes law without signature. **Illinois** Democratic Gov. J.B. Pritzker has 60 days from presentment to act on legislation or it becomes law without signature. **Kansas** Democratic Gov. Laura Kelly has 10 days from presentment to act on legislation or it becomes law without signature. **Kentucky** Republican Gov. Matt Bevin has 10 days from presentment, Sundays excepted, to act on legislation or it becomes law without signature. **Louisiana** Democratic Gov. John Bel Edwards has 20 days from presentment to act on legislation presented on or after May 27 or it becomes law without signature. **Minnesota** DFL Gov. Tim Walz has three days from presentment, Sundays 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 presented on or after March 24 or it becomes law without signature. **Montana** Democratic Gov. Steve Bullock has 10 days from presentment to act on legislation or it becomes law without signature. **Nebraska** Republican Gov. Pete Ricketts has five days, Sundays excepted, to act on legislation or it becomes law without signature. **North Dakota** Republican Gov. Doug Burgum has 15 days from presentment, Saturdays and Sundays excepted, to act on legislation or it becomes law without signature. **South Carolina** Republican Gov. Henry

McMaster has until two days after the next meeting of the legislature to act on legislation presented on or after May 3 or it becomes law without signature. **Tennessee** Republican Gov. Bill Lee has 10 days starting the day after presentment, Sundays excepted, to act on legislation or it becomes law without signature. **Vermont** Republican Gov. Phil Scott has five days from presentment, Sundays excepted, to act on legislation or it becomes law without signature.

Colorado Democratic Gov. Jared Polis had a signing deadline on June 2.

The following states are currently holding 2019 interim committee hearings: [Colorado](#), [Georgia House](#) and [Senate](#), [Idaho](#), [Indiana](#), [Kansas](#), [Kentucky](#), [Maryland](#), [New Mexico](#), [North Dakota](#), [South Carolina House](#) and [Senate](#), [South Dakota](#), [Utah](#), [Virginia](#), [Washington](#), [West Virginia](#) and [Wyoming](#).

The following states are currently posting 2019 bill drafts, pre-files and interim studies: [Arkansas](#) and [Kentucky](#).

Oil and Gas

General

Pennsylvania [SB 694](#), sponsored by Senate Environmental Resources and Energy Committee Chair Gene Yaw, R-Montoursville, was referred to that committee on May 31. The bill would authorize an operator to conduct cross unit drilling when they have the right to drill on separate leases or units, provided an operator reasonably allocates production from the well among leases or units. The bill would take effect 60 days after enactment. A similar bill [HB 247](#), sponsored by Rep. Donna Oberlander, R-Clarion, passed the House Natural Resources and Energy Committee on March 19.

Leasing

Pennsylvania [SB 716](#), sponsored by Sen. Camera Bartolotta, R- Monongahela, was referred to the Senate Environmental Resources and Energy Committee on June 5. The bill would end Democratic Gov. Tom Wolf's moratorium on non-surface disturbance natural gas drilling on state-forest land and prohibit any future moratoriums. Any funds received by the state would be deposited into the Green Infrastructure Fund established under [SB 717](#), sponsored by Sen. Patrick Stefano, R-Bullskin Township, which was referred to the same committee on June 5.

DISCLAIMER: Information and/or website links provided by sources in this report may be among the many resources available to you. This report does not endorse nor advocate for any particular attorney or law firm, or other private entity, unless expressly stated. Any legal and/or tax information contained herein is neither legal nor tax advice. Links are provided for reference only and any cited outside source is derived solely from material published by its author for public use. Any copyrighted material remains the property of its respective owner and no use or distribution authorization is granted herein.