

## WEEKLY HIGHLIGHTS AT-A-GLANCE

### FEDERAL – Regulatory

- **Endangered Species – Wyoming.** On June 14, the Western Governors' Association issued a [policy statement](#) related to energy development at their 2016 annual meeting in Jackson Hole. The governors called for closer federal cooperation with state and local governments under the Endangered Species Act (ESA), among other policy initiatives affecting western states. Many of the affected states are those which have land mostly owned by the federal government and the governors seek greater partnership on land use development plans, especially on oil and gas leasing. "Given the impact ESA listing decisions have on vital state interests, states should be provided the opportunity to be full partners in administering and implementing the ESA." [Read more.](#)

### FEDERAL – Judicial

- **Leasing; Operations – Montana.** On May 31, a federal court in Montana, in *Northern Oil and Gas, Inc. v. Continental Resources, Inc.* (Case No. CV 14-90-BLG-CSO), held in favor of lessors' claim that a primary lease terminated because the lessee failed to commence operations before the expiration of the lease's primary term, concluding that (a) although the lessee timely commenced operations on a property within a unit, the Montana Board never issued a pooling designation (nor did the lessee file a pooling declaration) until after the lease already expired, and (b) a prior temporary spacing order didn't suffice to establish the unit. [Read more.](#)

### STATE – Legislative

- **Employee Classification – Colorado.** (Update to 5/31/16 Weekly Report) On June 10, Governor John Hickenlooper signed SB 179 into law. This Republican-sponsored measure is deemed as favorable to employers and business entities seeking improvements to the audit process, as administered by the state Department of Labor and Employment, which 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 Act now requires 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; and 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. [Read more.](#)

- **Rule of Capture – Kansas.** On June 1, HB 2132, originally introduced in 2015 by the House Committee on Energy and Environment, died in committee. The bill would have amended current law to abolish the rule of “capture” as it would apply to natural gas that escapes while it is in the process of being stored by a licensed or certified operator. The bill would have also given the operator the authority to conduct tests on the wells of other properties to determine if the gas that is being produced is escaped storage gas. [Read more.](#)
- **Mineral Interests; Recordation – Kansas.** On June 1, HB 2179, originally introduced in 2015 by the House Committee on Taxation, died in committee. “Under current law, reserves and leases for mineral interests are required to be listed with the register of deeds within 90 days after execution and would be voided if not listed for taxation.” The bill would have eliminated this requirement and would have retroactively validated any interests that were voided prior to July 1, 2015, but would have voided any interests that are not recorded after July 1, 2017. [Read more.](#)
- **Liens; Recordation – Michigan.** On June 14, SB 600 was transmitted to Governor Rick Snyder for signature. The bill, if signed into law, will amend Public Act 146 of 1937, which applies to the rights of contractors and other tradespeople to seek a lien for labor or material provided on oil and gas wells, so that the fees provided for recording a real estate mortgage also apply when recording a lien against oil and gas wells. Under Michigan law, the Governor has 14 days to consider the bill. If neither vetoed nor signed, the bill becomes law 14 days after reaching the Governor. [Read more.](#)
- **Plugged and Abandoned Wells – Ohio.** On June 9, Rep. Andy Thompson (R) introduced HB 582, which would amend existing law to allow a landowner to report an idle and orphaned well, or abandoned well; to require the Chief of the Division of Oil and Gas Resources Management to inspect and classify such well; and to require the Chief to begin plugging a well classified as distressed-high priority within a specified time period. [Read more.](#)
- **Severance Tax – Pennsylvania.** On June 15, HB 2165 was introduced by Rep. Steve McCarter (D) and referred to the House Environmental Resources and Energy Committee. The bill would levy a severance tax at a rate of 5 percent of the gross value of natural gas severed at the wellhead. In addition, the measure would provide that the current Unconventional Gas Well Fee established under Act 13 of 2012 remain in place regardless of the enactment of a severance tax. [Read more.](#)

- **Regulatory Review – Pennsylvania.** On June 15, the House and Senate concurred on a final version of SB 279, a bill originally introduced in 2015. The bill will establish the Pennsylvania Grade Crude Development Advisory Council, which will study existing regulations and assist the Department of Environmental Protection in making changes that better address the differences between conventional and unconventional oil and gas production. Furthermore, the Council, which will include membership by the Department of Community and Economic Development, will be charged with promoting Pennsylvania’s historic conventional oil and gas industry and advocating its future development. The bill was transmitted to the Governor on June 16, and he has [expressed support](#) for the bipartisan legislation. [Read more.](#)
- **Abandoned Wells – West Virginia.** (Update to 6/13/16 Weekly Report) On June 8, HB 117x was signed into law by Governor Earl Ray Tomblin. The Act repeals a legislative rule which authorized certain rulemaking authority by the state’s Department of Environmental Protection relating to abandoned wells. [Read more.](#)

### **STATE – Judicial**

- **Mineral Reservations; Deeds – Colorado.** Old rules providing that a mineral reservation needs to be in the granting clause, not the warranty clause, are being reinterpreted as courts look to the parties’ intent. This month, Welborn Sullivan Meck & Tooley, P.C. spotlighted a recent Colorado Court of Appeals case showing that a mineral reservation does not need to be in the granting clause to be valid. In *Owens v. Tergeson* (Case No. 2015 COA 164), the Court held that both a granting clause and a habendum clause may help define the interest conveyed. [Read more.](#)
- **Overriding Royalty Owners – West Virginia.** On June 7, a federal court in West Virginia, in *Trans Energy Inc. v. EQT Production Company* (Case No. 5:13-CV-93), concluded that a party holding a 50 percent override and an option to acquire a working and net revenue interest contingent on clear title is not an indispensable party to a dispute over who owns the underlying lease. [Read more.](#)

### **INDUSTRY NEWS FLASH:**

- ◆ On June 15, Devon Energy announced that it will sell Texas acreage to Pioneer Natural Resources (and an undisclosed buyer) for \$858 million. The portion sold to Pioneer amounts to 28,000 acres and is mostly undeveloped. Pioneer said it would add five drilling rigs in Texas starting in September, bringing its total rig count to 17 since oil prices have begun to recover. [Read more.](#)

## State-by-State Legislative Session Overview

**California, Delaware, Illinois, Massachusetts, New Hampshire, New Jersey, New York, North Carolina, Ohio, Pennsylvania** and **Rhode Island** are in regular session. The **District of Columbia** Council and the **U.S. Congress** are also in regular session.

**Michigan** is in recess until July 13.

The following states convened special sessions on the dates provided: **Connecticut** (May 12), **West Virginia** (May 16), **Alaska** (May 23) and **Louisiana** (June 6).

**Kansas** is expected to convene a special session on education on June 23.

**Louisiana** is expected to adjourn a special session on June 23.

The following states adjourned their legislative sessions on the dates provided: **Louisiana** (June 6) and **South Carolina** (June 15).

**New York** did not adjourn as expected on June 16, but is expected to adjourn on June 17. **Delaware** is expected to adjourn on June 30. **New Hampshire** is expected to adjourn on July 1.

**Missouri** Democratic Gov. Jay Nixon has until July 9 to act on legislation 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. **Alaska** Independent Gov. Bill Walker has 20 days from presentment, Sundays excluded, to act on legislation 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. **Louisiana** Democratic Gov. John Bel Edwards has 20 days from presentment to act on legislation or it becomes law without signature. **Minnesota** Democratic Gov. Mark Dayton has 14 days from presentment to act on legislation or it is pocket vetoed. **South Carolina** Republican Gov. Nikki Haley has until two days after the legislature's next meeting to act on legislation presented after June 10 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.

**Colorado** Democratic Gov. John Hickenlooper had a signing deadline on June 10. **Oklahoma** Republican Gov. Mary Fallin had a signing deadline on June 11.

**Utah** Republican Gov. Gary Herbert had a signing deadline for legislation passed during the second special session on June 7.

The following states are currently holding interim committee hearings: [Alabama](#), [Arizona](#), [Arkansas](#), [Colorado](#), [Idaho](#), [Indiana](#), [Iowa](#), [Kansas](#), [Kentucky](#), [Maine](#), [Maryland](#), [Minnesota](#), [Mississippi House](#) and [Senate](#), [Missouri House](#) and [Senate](#), [Montana](#), [Nebraska](#), [Nevada](#), [North Dakota](#), [Oregon](#), [Tennessee](#), the **Texas** [House](#), [Senate](#) and [Joint](#), [Utah](#), [Vermont](#), [Virginia](#), [Washington](#) and [Wyoming](#).

The following states are currently posting bill draft requests for the 2017 session: [Colorado](#), [Montana](#), [North Dakota](#), [Oklahoma](#), [Utah](#) and [Wyoming](#) (draft requests appear on individual committee pages).

The following states are currently posting pre-filed legislation for the 2017 session: [Alabama House](#) and [Senate](#) and [Kentucky](#).

## Franchise Tax

**Delaware** [HB 371](#) was signed into law on June 16 by Democratic Gov. Jack Markell. Effective August 1, this law will 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.

## Landmen

### Independent Contractors

**North Carolina** [HB 1069](#) passed the House Regulatory Reform Committee on June 8 and was referred 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.

## Lands

### Land Permits

**Louisiana** [HB 632](#) was sent to Democratic Gov. John Bel Edwards on June 6, he has until June 26 to act on the bill or it becomes law. This bill relates to the financial security needed for oil and gas drilling activities. It says that an applicant would have to provide financial security for a permit to drill within 30 days of the completion date or from the date the operator is notified that the financial security is required. The financial security that is required is contingent on the type and depth of the well. This legislation would exempt an owner in good standing from the financial security requirements needed to drill new wells.

# Oil and Gas

## General Oil and Gas

**California** [AB 2756](#) passed the Senate Natural Resources and Water Committee on June 14 and was referred to the Senate Judiciary Committee. 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 and no greater than \$25,000 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.

**Ohio** [HB 582](#) was introduced on June 9 and is awaiting committee assignment. This bill would allow a landlord who discovers an idle, orphaned, or abandoned well to report it to the Chief of the Division of Oil and Gas Resources Management. The chief would be required to inspect the well within 30 days, and provide the land owner with a report on the status of the well within 60 days. If the well is classified as a distressed-high priority, the chief would need to begin plugging the well no later than six months after the report is issued. The owner of the well would be required to pay for the corrective action concerning the abandoned well. This bill is sponsored by Rep. Andy Thompson, R-Marietta.

## Bundling & Pooling

**Michigan** [SB 903](#) passed the Senate on June 9 and was referred to the House Energy Policy Committee. 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](#).

## Mineral Rights

**California** [AB 2729](#) is scheduled to be heard in the Senate Natural Resources and Water Committee on June 28. 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 bill 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.

**Michigan** [HB 5571](#) passed the Senate Appropriations Committee on June 9 and was referred to the Senate Committee of the Whole. This bill would authorize the state administrative board to purchase land in Calhoun County. The state would not receive the mineral rights; however, if a lessee of the property derives any revenue from the development of minerals found on the property, half the revenue must be paid to the state.

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