

WEEKLY HIGHLIGHTS AT-A-GLANCE

FEDERAL – Regulatory

- **BLM Proposed Resource Management Plan – California.** On May 9, the Bureau of Land Management's (BLM) Central Coast Field Office released a proposed resource management plan amendment (RMPA) and final environmental impact statement (EIS) for oil and gas leasing and development affecting approximately 800,000 acres of Federal mineral estate primarily located in Fresno, Monterey and San Benito counties. The RMPA/EIS [planning document](#) analyzes six alternative approaches to oil and gas leasing and development, specifies which BLM-managed public lands or subsurface Federal mineral estate would be open to future oil and gas leasing and the stipulations or restrictions that would be applied to protect resources. Under the BLM preferred alternative, leasing with controlled surface stipulations would be allowed on roughly 683,000 acres of Federal mineral estate, and another 42,400 acres would be open to leasing with no surface occupancy. About 67,500 acres of Federal minerals would be closed to leasing in designated wilderness areas, wilderness study areas and national monuments. The public comment period will be open for 30 days from May 10, 2019. [Read more.](#)

FEDERAL – Judicial

- **BLM Leasing – Tenth Circuit Court (New Mexico).** On May 7, the U.S. Court of Appeals for the Tenth Circuit (New Mexico) struck down more than 300 applications for permits to drill in northeastern New Mexico because the Bureau of Land Management (BLM) violated the National Environmental Policy Act (NEPA). In its ruling in *Dine Citizens Against Ruining Our Environment et al. v. Bernhardt et al.* (Case No. 18-2089), the court held the BLM failed to consider the cumulative impact of water use associated with the 3,960 reasonably foreseeable horizontal hydraulic fracturing wells in the Mancos Shale area of the San Juan Basin. However, the court declined to address air pollution impacts of the BLM's NEPA analysis, finding the environmental activist litigants haven't provided a record sufficient to permit assessment. The court remanded the case back to the trial court with instructions to vacate the BLM's findings of no significant impact and applications for permits to drill. This ruling means applications for permits to drill will be vacated and drilling will have to stop, but the court denied the environmentalists' call for an injunction, since, according to the court, their order makes it unnecessary to issue an injunction. [Read more.](#)
- **Royalties; Leasing – Tenth Circuit Court (Oklahoma).** On May 3, the U.S. Court of Appeals for the Tenth Circuit (Oklahoma) addressed a case where lessors claimed that

certain gas-treatment costs were improperly deducted from their royalty payments. The appeal at issue in *Naylor Farms, et al. v. Chaparral Energy, L.L.C.* (Case No. 17-6146) involves the certification of a class action suit against the lessee. The district court had already rejected Chaparral’s argument that a jury would have to engage in an individualized well-by-well analysis to determine when the gas from each well became marketable to determine damages. Instead, that court ruled that marketability is subject to class wide proof under the specific facts of the case. The court also rejected arguments that certain lease and agreement language defeated the commonality necessary for a class action as well as an argument regarding uniform payment methodology. In conclusion, the Tenth Circuit thereby held that Chaparral “fails to demonstrate the district court’s decision to certify the class falls outside the bounds of rationally available choices given the facts and law involved in the matter at hand” and thus affirmed the lower court’s order certifying the class. [Read more.](#)

STATE – Legislative

- **Hydraulic Fracturing – Florida.** On May 3, SB 146 died in the Senate Environment and Natural Resources Committee with the adjournment of the legislative session. The bill, sponsored by Sen. Linda Stewart (D), would have banned hydraulic fracturing in the state and provided that permits for drilling or well operations do not authorize the use of hydraulic fracturing. The House version, [HB 239](#), also died in committee, as did a number of related hydraulic fracturing prohibition bills, [HB 7029](#), [SB 314](#), and [SB 7064](#). [Read more.](#)
- **Notaries Public – Illinois.** (*Update to 4/15/19 Weekly Report*) On May 8, HB 2176 passed the Senate Judiciary Committee and moved forward with a full Senate vote. The bill passed the House in April. The legislation, sponsored by Rep. Celina Villanueva (D), amends the Illinois Notary Public Act to require every notary public who is not an attorney or an accredited immigration representative to, prior to rendering notary services, provide a person seeking notary services with a written acknowledgment and the bill provides the requisite contents for such an acknowledgment as well as procedures related to retention of acknowledgments. [Read more.](#)
- **Wills; Probate – Indiana.** (*Update to 4/15/19 Weekly Report*) On May 15, SB 518 was signed into law by Gov. Eric Holcomb (R). The legislation, sponsored by Sen. Eric Koch (R), allows a person to contest two or more wills if there is prima facie evidence that: (1) the decedent suffered from an irreversible medical or psychiatric condition that predated the earliest will to be challenged; or (2) a party beneficially interested in one or more of the challenged wills had a direct and active nexus with the preparation or execution process for each will to be challenged. The Act also specifies that the issuance of a court order on any matter related to an unsupervised estate does not revoke the personal representative’s authority to continue the administration of the estate as an unsupervised estate. The measure authorizes the Indiana Supreme Court

and Office of Judicial Administration to establish and administer a statewide electronic estate planning documents registry, among other provisions. The Act is effective July 1, 2019. [Read more.](#)

- **Corporation Franchise Tax – Louisiana.** *(Update to 5/6/19 Weekly Report)* On May 7, SB 125 was referred to the Senate Committee on Finance after moving from the Senate Committee on Revenue and Fiscal Affairs with amendments which make technical changes and amends the effective date. The legislation, sponsored by Sen. Rick Ward (R), would provide for a single rate of corporation franchise tax. The bill would apply to taxable periods beginning on or after January 1, 2021. [Read more.](#)
- **Mineral Rights; Leasing – Louisiana.** *(Update to 5/6/19 Weekly Report)* On May 6, SB 115 was referred to the House Committee on Civil Law and Procedure after passing the Senate on May 1. The bill, sponsored by Sen. Rick Ward (R), would amend current law to provide that one who acquires a mineral servitude from a co-owner of land may not exercise his right without the consent of co-owners owning at least an undivided 75 percent interest in the land, down from the present 80 percent. The bill also provides that a co-owner of land may grant a valid mineral lease or a valid lease or permit for geological surveys as to his undivided interest in the land, but the lessee or permittee may not exercise his rights without consent of co-owners owning at least an undivided 75 percent interest in the land, down from the present 80 percent. The bill also provides that a co-owner of a mineral servitude may not conduct operations on the property subject to the servitude without the consent of co-owners owning at least an undivided 75 percent interest in the servitude, down from the current 80 percent. [Read more.](#)
- **Mineral Rights – North Dakota.** *(Update to 3/11/19 Weekly Report)* On May 2, SB 2211 was signed into law by Gov. Doug Burgum (R). The Act, introduced by Sen. Brad Bekkedahl (R), relates to the ownership of mineral rights of land inundated by Pick-Sloan Missouri basin project dams and directs the North Dakota Industrial Commission (NDIC) to determine the delineation of the ordinary high water mark of the U.S. Army Corp of Engineers survey segments from the northern boundary of the Fort Berthold Indian reservation to the southern border of Sections 33 and 34, Township 153 North, Range 102 West, McKenzie, Mountrail, and Williams Counties, North Dakota. An engineering firm will be able to provide NDIC with the necessary data to implement any acreage adjustments, lease bonus and royalty refunds, and payment demands as may be necessary relating to state-issued oil and gas leases. [Read more.](#)
- **Employee Classification – Oklahoma.** *(Update to 4/15/19 Weekly Report)* On May 7, HB 1095 was transmitted to Gov. Kevin Sitt (R). The governor must sign or veto legislation within five days after transmittal (excluding Sunday), or it becomes law without his signature. The legislation, sponsored by Rep. Mike Osburn (R), utilizes the [IRS 20-factor test](#) to determine whether or not an employer-employee relationship

exists but would give the Oklahoma Employment Security Commission the authority to make the determination. If enacted, the bill will take effect January 1, 2020. [Read more.](#)

- **Production Tax Credits – Texas.** (*Update to 4/15/19 Weekly Report*) On May 8, SB 925 was sent to Gov. Greg Abbott. The governor must sign or veto legislation within 10 days of transmittal (excluding Sunday), or it becomes law without his signature. The bill, sponsored by Sen. Pete Flores (R), amends the qualifications for low-producing oil and gas well production tax credits to specify that the production per day would be calculated based on the greater of monthly production from the well as reported in the well production reports made to the Railroad Commission or the monthly production in the producer's reports made to the comptroller including any amendments. If enacted, the bill would take effect September 1, 2019. The House companion bill, [HB 3865](#), was set aside in favor of this version of the bill. [Read more.](#)
- **Pooled Units – Texas.** (*Update to 5/6/19 Weekly Report*) On May 6, HB 3226 was transmitted to Gov. Greg Abbott (R). The governor must sign or veto legislation within 10 days of transmittal (excluding Sunday), or it becomes law without his signature. The bill, sponsored by Rep. Charlie Geren (R), updates a statutory provision relating to automatic dissolution to ensure that an oil or gas pooled unit is not dissolved for lack of drilling operations on the unit when drilling operations are taking place on an adjacent surface location that benefits the unit. The bill specifies that a pooled unit is automatically dissolved two years after its effective date if no production or drilling operations have been had on the unit or surface location for the unit. Current law requires dissolution after just one year. If enacted, the bill would take effect September 1, 2019. [Read more.](#)
- **Leasing; Minerals and Royalty Interests – Texas.** (*Update to 5/6/19 Weekly Report*) On May 10, HB 3838 was referred to the Senate Committee on Natural Resources & Economic Development after passing the House. The bill, sponsored by Rep. Ernest Bailes (R), was amended on May 2 to clarify certain provisions which may have had the effect of purporting to affect oil, gas or mineral *leasing* and was not intended to do so but rather to provide certain disclosures in the *sale* of a mineral or royalty interest. According to the legislature's [bill analysis](#), "Reports indicate incidents in which mineral and royalty interest owners, primarily the elderly and less educated, have been the target of a scam by which they are presented with a document that purports to lease those interests, but instead authorizes their sale. Concerns have been raised that existing fraud statutes do not provide adequate protection for these mineral and royalty interest owners. C.S.H.B. 3838 seeks to provide protection for these owners by requiring a specific disclosure in certain offers to purchase a mineral or royalty interest." Thus, "The bill does not apply to a conveyance of a mineral or royalty interest by an instrument that: is an oil, gas, or mineral lease; conveys a mineral or royalty interest for a term; and provides that the interest conveyed vests in possession after the expiration or termination of all or a portion of the interest conveyed by

an existing oil, gas, or mineral lease in effect at the time of the execution of the instrument, commonly referred to as a top lease.” If signed into law, the Act would be effective September 1, 2019. [Read more.](#)

- **Technical Defects in Real Property Instruments – Texas.** On May 10, HB 1176 was reported favorably without amendment in the Senate. The bill passed the House on April 25. The legislation, authored by Rep. Drew Darby (R) and sponsored by Rep. José Menéndez (D), amends current law relating to technical defects in instruments affecting real property. According to the Author/Sponsor’s Statement: “It has been suggested that the current two-year statute of repose for a technical defect in the notarial acknowledgment of an instrument conveying real property may be too long, considering the high volume of property transactions that depend on conveyance documents. H.B. 1176 seeks to alleviate this problem by amending the law relating to technical defects in instruments affecting real property.” The bill would change the two-year statutory period to six months. [Read more.](#)

STATE – Judicial

- **Royalties; Assignments; Leasing – Pennsylvania.** On May 1, in *Kelly v. Repsol Oil & Gas USA, LLC* (Case No. 420 MDA 2018; 421 MDA 2018), in a non-precedential decision, the Superior Court of Pennsylvania affirmed a trial court order that required lessees to pay \$50,000 in counsel fees to the oil and gas company appellee. The case arises over a disputed assignment and royalty payments held in suspense (See [37 MDA 2018](#); [38 MDA 2018](#)). In that ruling, the assignment was declared void as against the lessee, among other rulings against the lessee. [Read more.](#)
- **Leasing – Pennsylvania.** On April 26, in a non-precedential decision, the Superior Court of Pennsylvania addressed whether a lessor is entitled to payment in lieu of free gas because a well was drilled underneath the leased premises (*i.e.*, horizontal portion of a well that is drilled beneath the surface of the property). The lessor argued that the horizontal portion of the well drilled beneath the surface of his property is a well drilled on the lease premises pursuant to the lease agreement. In this case, *Mitch v. XTO Energy, Inc.* (Case No. 1096 WDA 2018), the court disagreed and held that the lessor was not entitled to payment in lieu of free gas unless a vertical well originated on the surface of the leased premises as stated in the lease. The court stated that “It is unreasonable to find that the parties intended to compensate a surface owner (who may be different from the lessor) where a well, situated on the surface of another’s property, has a horizontally-drilled portion that traverses the surface owner’s land thousands of feet beneath the surface. This interpretation is furthered by the fact that payment is to a surface owner, intending to compensate for operations on the surface of the property.” [Read more.](#)

INDUSTRY NEWS FLASH:

◆ **BLM posts record year from oil and gas lease sales.** According to the BLM, thanks in part to streamlined permitting processes, the U.S. produced more than 214 million barrels of oil on federally managed public lands while utilizing the smallest acreage footprint of leases since 1985. “Demonstrating the marvel of technology and innovation, our production numbers are unprecedented, even though we have the fewest acres under lease in almost four decades,” said Interior Secretary David Bernhardt. “President Trump has ensured that America’s great energy renaissance includes federal lands while delivering high paying jobs and low cost fuel.” For example, “Along with reduced drilling times and an increase in the total number of APDs approved, FY 2018 saw an increase in the number of wells spudded or started. In 2018, 1,919 wells were spudded, an increase of over 1,000 wells and a 127 percent increase compared to 2016 (847 spudded wells),” according to a BLM statement. [Read more.](#)

State-by-State Legislative Session Overview

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

According to a **South Carolina** [concurrent resolution](#), the legislature will return for a three-day special session on May 22 to deal with the state budget and other contested issues not resolved during conference committees, reports [WACH](#).

West Virginia Republican Gov. Jim Justice signed a [proclamation](#) on March 7 authorizing a special session to act on education matters, the [Charleston Gazette-Mail](#) reports. The proclamation outlines a broad special session scope, authorizing consideration of general improvements to the state’s public education system and employee compensation. Education officials kicked off a series of public hearings on March 18 as part of preparations for their upcoming special session. The special session is currently in recess to the call of the House speaker and the Senate president, but is anticipated to overlap with the May 20-21 interim meetings, reports the [Herald Dispatch](#).

The following states adjourned their 2019 legislative sessions on the dates provided: **Tennessee** (May 2); **Colorado** and **Hawaii** (May 3); **Florida** (May 4); **Kansas** (May 5) and **South Carolina** (May 9).

The following states are scheduled to adjourn on the dates provided: **Arizona** (May 13); **Alaska** (May 15) and **Vermont** (May 17).

Georgia Republican Gov. Brian Kemp has until May 12 to act on legislation or it becomes law without signature. **Washington** Democratic Gov. Jay Inslee has until May 21 to act on legislation presented on or after April 23 or it becomes law without signature. **Iowa** Republican Gov. Kim Reynolds has until May 27 to act on legislation presented on or after April 24 or it is pocket vetoed. **Maryland** Republican Gov. Larry Hogan has until May 28 to act on legislation or it becomes law without signature. **Colorado** Democratic Gov. Jared Polis has until June 2 to act on legislation presented on or after April 23 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. **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. **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. **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. **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. **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.

Indiana Republican Gov. Eric Holcomb had a signing deadline on May 8.

The following states are currently holding 2019 interim committee hearings: [Kansas](#), [Kentucky](#), [Maryland](#), [New Mexico](#), [South Dakota](#), [Utah](#), [Virginia](#), [Washington](#), [West Virginia](#) and [Wyoming](#).

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

Oil and Gas

General

California [AB 345](#), sponsored by Asm. Al Muratsuchi, D-Rolling Hills Estates, was heard in the Assembly Appropriations Committee on May 8. The committee has scheduled the bill for further consideration on May 16 at 9:00 AM. The bill would require 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 apply. 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. An operator would be able to file a written request for a variance to reduce the setback requirement to the maximum achievable distance.

Another California bill, [AB 1440](#), sponsored by Asm. Marc Levine, D-Greenbrae, is also up for consideration in the Assembly Appropriations Committee during the same hearing. The bill would remove a provision of existing law that requires the Oil and Gas Supervisor to encourage wise development of oil and gas resources. The bill would also remove a finding “that the people of the state of California have a direct and primary interest in assuring the production of the optimum quantities of oil and gas from lands owned by the state and that a minimum of oil and gas be left wasted and unrecovered in such lands.

Louisiana [HB 188](#), sponsored by House Ways and Means Committee Vice Chair Jim Morris, R- Belcher, has been scheduled for a hearing in the Senate Revenue and Fiscal Affairs Committee on May 13 at 1:00 PM. The bill would exempt stripper wells and wells in stripper fields from the severance tax when the average value of oil is less than \$75 per barrel. The bill would require the Department of Revenue to determine the value of oil on a quarterly basis that would qualify for the exemption. In order to qualify, the producer must submit all required reports in a timely manner verifying that the well did not produce an average of more than 10 barrels per day. The exemption would be in effect from July 1, 2019 through June 30, 2029. Similar bill [HB 256](#), also sponsored by Representative Morris, is also scheduled for consideration during the same hearing. The bill provides that in order to qualify for the exemption, the producer must submit all required reports in a timely manner verifying that the well did not produce an average of more than 25 barrels per day rather than 10 as noted in the previous bill.

Royalty Payments

Alaska [SB 122](#), sponsored by Sen. Chris Birch, R-Anchorage, was referred to the Senate Resources Committee on May 8. The bill would authorize the Commissioner of Natural Resources to enter into a contract with a lessee that provides that the lessee could not claim a transportation deduction related to a pipeline that is exempt from rate regulation under existing law for the purposes of calculating a royalty payment obligation. The bill would take effect 90 days after enactment.

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