

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

- **BLM Hydraulic Fracturing Analysis – California.** Ending a five-year moratorium and putting into place the Trump administration's push for greater federal land resource development, on August 7, the Bureau of Land Management (BLM) took its first step towards opening roughly 1.6 million acres of federal land in California to new oil and gas production. Despite environmental activist grumblings, the BLM has [announced](#) that its Bakersfield, California office is seeking public input on potential impacts if hydraulic fracturing is approved on federally managed land within the state of California. The planning area includes 400,000 acres of BLM-administered public land and an additional 1.2 million acres of federal mineral estate in Fresno, Kern, Kings, Madera, San Luis Obispo, Santa Barbara, Tulare, and Ventura counties. The BLM has noted that the planning effort will only affect new oil and gas leases on public lands and no decisions that are made as a result will have an impact on valid existing rights or the authority of private land owners or other surface management agencies. The deadline for public comments is September 7, 2018. [Read more.](#)
- **BLM Oil and Gas Lease Sale – Montana; North Dakota.** On August 10, the BLM [announced](#) that the agency has opened a 15-day public comment period for 119 oil and gas lease parcels located in Montana and western North Dakota to be offered at the December 11, 2018 lease sale. The parcels are located in the following counties in Montana: Beaverhead, Big Horn, Blaine, Carbon, Custer, Dawson, Fallon, Glacier, Lewis and Clark, Madison, Meagher, Musselshell, Park, Petroleum, Roosevelt, Rosebud, Sheridan, Sweet Grass, Toole, and Valley. In North Dakota, the parcels are located in Bowman County. The public comment period runs through August 24. [Read more.](#)
- **BLM National Monument Resource Management Plans – Utah.** On August 17, the BLM officially published its draft planning for increased mineral resource development in national monument areas applicable to Bears Ears National Monument and Grand Staircase-Escalante National Monument, among other areas. The notices are available at *Notice of Availability of the Grand Staircase-Escalante National Monument-Grand Staircase, Kaiparowits, and Escalante Canyon Units and Federal Lands Previously Included in the Monument That Are Excluded From the Boundaries Draft Resource Management Plans and Associated Environmental Impact Statement* ([83 Fed. Reg. 41108](#)) and *Notice of Availability of the Draft Bears Ears National Monument Indian Creek and Shash Jáa Units Monument Management Plans and Associated Environmental Impact*

Statement, Utah ([83 Fed. Reg. 41111](#)). In a promising development for the industry, the notices each identify four alternative plans, with the BLM advocating for the one which offers the most favorable planning for oil and gas development. [Read more.](#)

FEDERAL – Judicial

- **BLM Resource Management Plans – Montana District Court.** On July 31, in [Western Organization of Resource Councils, et al. v. U.S. Bureau of Land Management](#) (Case No. CV 16-21-GF-BMM), the U.S. District Court for the District of Montana directed the Bureau of Land Management (BLM) to conduct a new National Environmental Policy Act (NEPA) review of management plans for the fossil fuel-rich Powder River Basin to consider the downstream greenhouse gases that could be released if the fuel is extracted and burned. However, the judge declined to halt any leasing in the region or to vacate the 15 existing resource management plans at issue in the lawsuit. The Court separately [issued an order](#) directing the BLM to complete the remedial NEPA analyses by November 29, 2019. [Read more.](#)
- **Federal Royalties – Wyoming District Court.** On August 6, in *American Petroleum Institute v. U.S. Department of the Interior et al.* (Case No. 2:17-cv-00083; Case opinion not yet publicly available), the U.S. District Court for the District of Wyoming upheld a 2016 Obama-era rule, *Amendments to Civil Penalty Regulations* ([81 Fed. Reg. 50306](#)), issued by the Department of the Interior’s Office of Natural Resources Revenue (ONRR). The rule related to the enforcement of noncompliance and civil penalties for parties subject to the Federal Oil and Gas Royalty Management Act. The American Petroleum Institute challenged the rule as “arbitrary and capricious” and exceeding the agency’s authority. The Court disagreed, and upheld the entirety of the ONRR rule except provisions related to the agency’s ability to seek penalties for a time period during which an administrative law judge had granted a stay of a penalty pending an administrative hearing. [Read more.](#) For further ONRR background information on the final rule, implementation and enforcement, [Read more here.](#)

STATE – Legislative

- **Royalties; Production Income – Illinois.** (*Update to 4/30/18 Weekly Report*) On August 10, Governor Bruce Rauner (R) signed HB 4920 into law. Initially introduced by Rep. Barbara Wheeler (R), the Act amends the Principal and Income Act, providing that only for oil or gas from non-coal formations held in non-trust estates and by legal tenants and remaindermen (instead of “with respect only to non-trust estates, for oil or gas from non-coal formations”), proceeds from the sale of such minerals produced and received as royalty, overriding royalty, limited royalty, working interest, net profit interest, time-limited interest or term interest, or lease bonus shall be deemed income. The Act also deletes language providing that a section concerning non-trust estates does not apply to life estates and remainder interests in oil or gas from non-coal

formations, or royalties or overriding royalties created under leases of such minerals. The Act will be effective on January 1, 2019. [Read more.](#)

STATE – Regulatory

- **Property Rights Ballot Initiative – Colorado.** On August 3, signatures for [Ballot Initiative No. 108](#) were submitted to the Colorado Secretary of State for review for inclusion on the November ballot. Billed as a poison pill against anti-industry Initiative No. 97, Initiative No. 108 would amend the state Constitution to provide an equal playing field for private property owners seeking just compensation when state or local government takes action diminishing the fair market value of their properties. According to a Bloomberg Government report, Initiative No. 108 would “require that property owners be compensated for any reduction in property value caused by state laws or regulations, including those that would occur under the current language of initiative 97.” The measure is considered a direct response to [Ballot Initiative No. 97](#), submitted August 6, and which if certified for the November election and approved by voters, would expand setbacks which would mandate that new oil and gas development be a minimum distance of 2,500 feet from occupied buildings, as well as public parks, public open space, irrigation canals, lakes, rivers, perennial or intermittent streams and any additional vulnerable areas designated by the state or a local government, and which Governor Hickenlooper says [could eliminate up to 90 percent of oil and gas activity](#) in eastern Colorado alone. However, the upside is that unlike Initiative No. 108, Initiative No. 97 would not amend the state Constitution, as it is only a statutory measure, so it could be overturned by the state legislature even if certified for the ballot and approved by voters in November. (Read more [background on Initiative No. 97 here.](#)) The Secretary of State has until September 5 to approve or deny certification of both initiatives. [Read more.](#)

STATE – Judicial

- **Local Ordinances – Pennsylvania.** (*Update to 6/26/17 Weekly Report*) In a case challenging local control over oil and gas development in certain residential and agricultural districts, on August 3, in [Delaware Riverkeeper Network v. Middlesex Township Zoning Hearing Board](#) (Case No. 270 WAL 2017), the Supreme Court of Pennsylvania [vacated the June 7, 2018 opinion](#) of the Pennsylvania Commonwealth Court which had rejected a challenge by environmentalists to halt oil and gas development by challenging a local ordinance. Instead, in that case, the Court upheld Middlesex Township’s 2014 ordinance authorizing oil and gas development within mixed residential and agricultural districts based on zoning provisions already authorizing similar uses in those districts such as for public utility structures and facilities. However, the Supreme Court in vacating that opinion has now directed the Commonwealth Court to reconsider its previous decision in light of recent Pennsylvania Supreme Court decisions in [Gorsline v. Fairfield Township](#) (Case No. 67 MAP 2016)

and [Environmental Defense Foundation v. Commonwealth](#) (Case No. 10 MAP 2015), both of which indicate a willingness by the Supreme Court to limit, or even prohibit, drilling in agricultural and residential zoning districts premised in part upon the Environmental Rights Amendment to the Pennsylvania Constitution. However, “on a favorable note to exploration and production companies, the Supreme Court specifically claimed that its recent decisions ‘should not be misconstrued as an indication that oil and gas development is never permitted in residential/agricultural districts or that it is fundamentally incompatible with residential or agricultural use.’” [Read more.](#)

- **Non-Participating Royalty Interests – Texas.** On June 29, in [U.S. Shale Energy II, LLC v. Laborde Properties, L.P.](#) (Case No. 17-0111), the Texas Supreme Court was asked to determine whether the royalty interest reserved to a “grantor in a 1951 deed is fixed (set at a specific percentage of production) or floating (dependent on the royalty amount in the applicable oil and gas lease).” The trial court found the language to indicate a floating royalty, but the appellate court disagreed and held it was fixed. The Supreme Court, in agreeing with the operator’s and trial court’s interpretation, held “that the deed unambiguously reserved a floating 1/2 interest in the royalty in all oil, gas or other minerals produced from the conveyed property” and hence was a floating, not fixed, royalty. [Read more.](#)

INDUSTRY NEWS FLASH:

◆ **Domestic oil and natural gas production continues to rise; new highs projected.** The latest Energy Outlook report from the U.S. Energy Information Administration (EIA) shows that U.S. crude oil production averaged 10.8 million barrels per day (b/d) in July, up from June, with EIA forecasting an average 10.7 million b/d in 2018, up from 9.4 million b/d in 2017, and will average 11.7 million b/d in 2019, hitting new all-time records. EIA also forecasts that natural gas production will average 81.1 billion cubic feet per day (Bcf/d) in 2018, up by 7.5 Bcf/d from 2017 and establishing a new record high. EIA expects natural gas production will rise again in 2019 to 84.1 Bcf/d. [Read more.](#)

State-by-State Legislative Session Overview

California, Ohio and Pennsylvania are in regular session. **Puerto Rico** is also in regular session.

Michigan is in recess until September 4. The **District of Columbia** Council is in recess until September 15. **Illinois, Massachusetts, New Jersey, New York, Rhode Island,** the **United States** Congress and **Wisconsin** are in recess to the call of the chair.

California is expected to adjourn on August 31.

West Virginia Republican Gov. Jim Justice issued a [proclamation](#) calling for a special session to begin June 26 to address possible removal of one or more Justices of the Supreme Court of Appeals. The House Judiciary Committee passed 14 of the 16 articles of impeachment on August 7 and the [Charleston Gazette-Mail](#) reports that the House of Delegates adopted articles of impeachment against the four sitting justices on August 13. On August 14, Justice Robin Jean Davis resigned her seat, effective immediately. The Senate is expected to vote on August 20 to impeach the remaining three justices, reports [KomoNews](#).

Mississippi Republican Gov. Phil Bryant is expected to announce on August 17 a special session related to funding for transportation infrastructure, the [Jackson Clarion Ledger](#) reports. The session is expected to last two days and will convene on August 23. **South Dakota** Republican Gov. Dennis Daugaard has called for a [special session](#) to begin on September 12 in order to speed up implementation of the U.S. Supreme Court ruling allowing states to force online shoppers to pay sales tax, reports the [AP](#). On August 15, Governor Daugaard updated the special session proclamation to include changes to the timing of the inauguration of the new governor in 2019.

Maine and **Virginia's** special sessions are in recess to the call of the chair.

Alaska Independent Gov. Bill Walker has 20 days from presentment, Sundays excepted, to act on legislation or it becomes law without signature. **Illinois** Republican Gov. Bruce Rauner has 60 days from presentment to act on all legislation passed during the veto session or it becomes law. **Minnesota** Democratic Gov. Mark Dayton has 14 days from presentment to act on legislation presented on or after May 17 or it is pocket vetoed. **Missouri** Republican Gov. Mike Parson has 45 days from presentment to act on legislation or it becomes law without signature. **New York** Democratic Gov. Andrew Cuomo has 10 days from presentment, Sundays excepted, to sign or veto legislation or it becomes law without signature. **North Carolina** Democratic Gov. Roy Cooper has 10 days from presentment to act on special session legislation or it becomes law without signature. **Rhode Island** Democratic Gov. Gina Raimondo has six days from presentment, Sundays excepted, to act on legislation or it becomes law without signature. **West Virginia** Republican Gov. Jim Justice has 15 days from adjournment of the special session, Sundays excepted, to act on legislation or it becomes law without signature.

The following states are currently holding 2019 interim committee hearings: [Alabama](#), [Alaska](#), [Arizona](#), [Arkansas](#), [Colorado](#), [Connecticut](#), [Florida House](#), [Hawaii](#), [Idaho](#), [Illinois Senate](#), [Indiana](#), [Iowa](#), [Kansas](#), [Kentucky](#), [Maine](#), [Maryland](#), [Minnesota](#), [Mississippi Senate](#), [Missouri House](#) and [Senate](#), [Montana](#), [Nevada](#), [New Hampshire House](#) and [Senate](#), [New Mexico](#), [New York Assembly](#) and [Senate](#), [North Carolina](#), [North Dakota](#), [Oklahoma House](#), [Oregon](#), [Rhode Island](#), [South Carolina](#), [South Dakota](#), [Tennessee](#), [Texas House](#) and [Senate](#), [Utah](#), [Virginia](#), [Washington](#), [West Virginia](#) and [Wyoming](#).

The following states are currently posting 2019 bill drafts, prefiles and interim studies: [Florida Senate](#), [Kentucky](#), [Montana](#), [Nevada](#), [North Dakota](#), [Oklahoma House](#) and [Senate](#), [Utah](#) and [Virginia](#).

Hydraulic Fracturing

General

California [SB 1370](#) passed the Assembly Appropriations Committee on August 15 and the bill is now pending a second reading on the Assembly floor. The bill would remove a provision of existing law that exempted well stimulation treatments that are used for routine maintenance of wells from permitting requirements. The bill would take effect the January 1 following a 90-day period from the date of enactment if passed.

Interim Hearings

The **Arkansas** Red Tape Reduction Working Group will be meeting on August 20 at 9:00 AM. The agenda was not immediately available but a February [press release](#) from Republican Gov. Asa Hutchinson notes the group will examine occupations and trades that require a license and identify the occupations the state could eliminate from licensing requirements without compromising the safety of consumers. The task force will present its recommendations to the governor in the fall.

The **Texas** Senate Business and Commerce Committee will be meeting on August 28 at 9:00 AM to consider the implementation of legislation to deregulate occupational licensing, review licensing requirements and fees imposed and make recommendations for state licenses and fees that should be reduced, repealed or transitioned to private sector enforcement. The full agenda for the meeting can be found [here](#).

Reminder: *With the bi-weekly August Weekly Report schedule, the next report will be published following the Labor Day holiday week, on Monday, September 10, 2018. Enjoy the rest of your summer!*

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