

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

- **Congressional Summer Recess – Washington, D.C.** Congress is in summer recess and no legislative action will be taken prior to their return in September. [Read more.](#)

FEDERAL – Regulatory

- **BLM Master Leasing Plan – Colorado.** The BLM's Southwest Resource Advisory Council reported on August 19 that it could not settle on a recommendation that would direct the agency as it considers new mineral leases in La Plata and Montezuma counties in the coming years. In the next 20 years, an estimated 3,000 wells are expected to be developed on federal lands in western La Plata County and eastern Montezuma County. However, the lack of direction from the Council does not preclude the BLM state office from pursuing a master leasing plan without Council consensus for the roughly 46,000 acres, and the agency is expected to make a decision this fall. [Read more.](#)
- **BLM Resource Advisory Council Meeting – Idaho.** On August 24, the BLM published formal notice of the Idaho Falls District Resource Advisory Council meeting and field tours to be held September 20-21 to discuss and receive public comments on the resource management plan and sage grouse updates. [Read more.](#)
- **BLM Lease Sale – Montana.** Environmentalists are challenging Bureau of Land Management (BLM) plans to lease more than 19,000 Montana acres for oil and gas exploration, filing a formal protest with the agency. The group, WildEarth Guardians, says federal officials have failed to consider the climate damage done by fossil fuel development on the land which is set for auction on October 18 in Billings. The 91 parcels up for lease are in the Hi-Line District, mostly in Phillips, Toole and Valley counties, with a handful of the parcels in Big Horn and Rosebud counties. [Read more.](#)
- **BLM Public Meeting – Wyoming.** The BLM announced that it will hold a public informational meeting for the Greater Crossbow Oil and Gas Exploration and Development Project's Environmental Impact Statement (EIS) on September 8, 2016. ([Direct link to BLM Announcement](#)). A Notice of Intent to prepare an EIS was published on October 26, 2015 and two public scoping meetings were held in December 2015 in Douglas and Gillette, Wyoming. The September 8 meeting will be held at the Wright Branch Library, 305 Wright Boulevard in Wright from 4 p.m. to 7 p.m. [Read more.](#)

FEDERAL – JUDICIAL

- **Federal Leasing – Washington, DC.** Last Thursday, the Western Environmental Law Center filed a federal lawsuit on behalf of WildEarth Guardians and Physicians for Social Responsibility in [WildEarth Guardians, et al v. Jewell, et al](#) (Case No. 1:16-cv-01724). The case filed in the U.S. District Court for the District of Columbia challenges the BLM's approval of 397 oil and gas leases on nearly 380,000 acres of federal lands across Colorado, Utah and Wyoming. The groups charge that the BLM has violated the National Environmental Policy Act by failing to properly analyze the direct and indirect climate impacts of oil and gas operations on those lands. [Read more.](#)

STATE – Regulatory

- **Taxation – Ohio.** The Ohio Tax Commissioner recently issued a memorandum to county auditors regarding significant changes to the taxation of oil and gas reserves starting in tax year 2016. On September 1, the Ohio Department of Natural Resources will release the final iteration of these new valuation rules which will reportedly make significant changes to how the ad valorem tax is collected. [Read more.](#)
- **Employee Misclassification – Pennsylvania.** As reported last Monday by the law firm, Proskauer Rose LLP, on August 4, the U.S. Department of Labor (DOL) and Pennsylvania Department of Labor and Industry signed a [Memorandum of Understanding](#) (MOU) to share information and conduct joint investigations regarding independent contractor misclassification. The agreement is part of the DOL's Misclassification Initiative, the stated goal of which is to "combat employee misclassification and to ensure that workers get the wages, benefits, and protections to which they are entitled." Pennsylvania is the 32nd state to sign such an MOU with the DOL. Under the new information-sharing agreement, Pennsylvania will now share this information with the DOL, which may opt to cooperate in an underlying state investigation or conduct a separate investigation. [Read more.](#)

STATE – Judicial

- **Royalties – Texas.** On August 17, in [Foster, et al v. Marathon Oil Co.](#) (Karnes County Texas 2016), royalty owners sued Marathon to determine if royalties are being properly paid. The suit seeks details about how its royalty payments were calculated and accurate measurements of oil and gas production were made on 613 acres in the Eagle Ford. Historically, Texas courts have made clear that mineral owners have the burden of discovering any problems with calculations and taking legal action. [Read more.](#)
- **Nuisance – Texas.** In [Crosstex North Texas Pipeline, LP v. Gardiner](#) (Case No. 15-0049), the Texas Supreme Court has attempted to clarify long-standing private nuisance law, in this case involving private landowners and claims against the operator of a natural

gas pipeline. In short, the Court held that whether a defendant may be held liable for causing a nuisance depends on the culpability of its conduct, in addition to proof that the interference is a nuisance. The mere fact that the defendant's use of its land is "abnormal and out of place in its surroundings" will not support a claim alleging a nuisance. [Read more.](#)

INDUSTRY NEWS FLASH:

◆ According to a [new report](#) released on August 24 by the Institute for 21st Century Energy at the U.S. Chamber of Commerce, it would cost the U.S. an estimated \$11.3 billion per year of royalties, 380,000 jobs, and \$70 billion per year of gross domestic product if the "Keep It in the Ground" proposals to stop oil, natural gas, as well as coal extraction, from federal lands and offshore water were adopted. As reported in the Oil & Gas Journal, certain states and regions would be disproportionately affected by a cessation of federal-lands energy development, the report noted. For instance, Wyoming would lose \$900 million in annual royalty collections, which represents 20 percent of the state's annual expenditures. New Mexico could lose \$500 million, 8 percent of its total General Fund revenues. Colorado would lose 50,000 jobs, while the Gulf states — Texas, Louisiana, Mississippi, and Alabama — would lose 110,000 jobs. [Read more.](#)

◆ According to an updated assessment by the U.S. Geological Survey (USGS), the Mancos Shale in the Piceance Basin of Colorado contains an estimated 66 trillion cubic feet of shale natural gas, 74 million barrels of shale oil, and 45 million barrels of natural gas liquids. This estimate is for undiscovered, technically recoverable resources. The previous USGS assessment was completed in 2003 as part of a comprehensive assessment of the greater Uinta-Piceance Province and estimated just 1.6 trillion cubic feet of shale natural gas. [Read more.](#)

State-by-State Legislative Session Overview

Virginia Democratic Gov. Terry McAuliffe announced on August 22 that his office has restored the civil rights of 13,000 ex-felons, [Stateline](#) reports. A press release from Governor McAuliffe's office regarding the action can be found [here](#). McAuliffe had originally sought to restore the civil rights of 200,000 felons before the November election en masse with an executive order, the text of which can be found [here](#). The rights restored by McAuliffe's action include the rights to vote, to hold public office, to serve on a jury and to act as a notary public. A court challenge to the order resulted in a Virginia Supreme Court [ruling](#) on July 22 which held that McAuliffe's blanket restoration of civil rights was impermissible under Virginia law, and that any such restoration must occur on an individual basis. McAuliffe has since been using an autopen to affix his signature to individual restoration orders. A memo outlining the restoration procedure adopted by McAuliffe's office following the July 22 ruling can be found [here](#). Virginia is one of

48 states that have laws restricting the voting rights of citizens who are incarcerated, and an estimated 5.9 million Americans will be unable to vote in the 2016 presidential election due to a felony criminal record.

California and **Massachusetts** are in regular session.

Michigan and the **U.S.** Congress are in recess until September 6. **New Jersey** is in recess until September 8. **Pennsylvania** is in recess until September 19. The **District of Columbia** Council is in recess until September 20. **Ohio** is in recess until September 27. **Illinois** is in recess until November 15 and is expected to convene a veto session on that day.

California is expected to adjourn its legislative session on August 31.

Alabama convened a special session to address Republican Gov. Robert Bentley's proposal for a state lottery on August 15.

Alaska Independent Gov. Bill Walker has 20 days from presentment, Sundays excluded, to act on legislation or it becomes law without signature. **Delaware** Democratic Gov. Jack Markell, **New York** Democratic Gov. Andrew Cuomo and **Rhode Island** Democratic Gov. Gina Raimondo have 10 days from presentment to act on legislation or it becomes law without signature.

The following states are currently holding interim committee hearings: [Alabama](#), [Alaska](#), [Arizona](#), [Arkansas](#), [Colorado](#), [Connecticut](#), [Georgia House](#) and [Senate](#), [Hawaii](#), [Idaho](#), [Indiana](#), [Iowa](#), [Louisiana](#), [Kansas](#), [Kentucky](#), [Maine](#), [Maryland](#), [Minnesota](#), [Mississippi House](#) and [Senate](#), [Missouri House](#) and [Senate](#), [Montana](#), [Nebraska](#), [Nevada](#), [New Hampshire House](#) and [Senate](#) (committee hearings published in calendar), [New York Assembly](#) and [Senate](#), [North Carolina](#), [North Dakota](#), [Oregon](#), [South Carolina](#), [Tennessee](#), the [Texas House](#), [Senate](#) and [Joint](#), [Utah](#), [Vermont](#), [Virginia](#), [Washington](#), [West Virginia](#) and [Wyoming](#).

The following states are currently posting bill draft requests/prefiles for the 2017 session: [Alabama House](#) and [Senate](#), [Colorado](#), [Florida Senate](#), [Kentucky](#), [Montana](#), [Nevada](#), [North Dakota](#), [Oklahoma House](#) and [Senate](#), [Utah](#), [Virginia](#) and [Wyoming](#) (draft requests appear on individual committee pages).

Endangered Species

California [AB 2087](#) was amended on August 19 and read for a second time on August 23, it is now awaiting third reading. This bill would authorize the Department of Fish and Wildlife to propose a regional conservation investment strategy targeted at informing science based conservation and habitat enhancement actions. The goal would be to advance the conservation of keys species and to provide nonbinding guidance for various conservation activities. AB 2087 is not intended to regulate the use of land, but rather to promote the importance of voluntary, non-regulatory approach to regional conservation.

The Senate concurred in the Assembly's amendments to **California SB 1089** on August 24, the bill is now awaiting engrossment and enrollment. This bill would add four public members to the Wildlife Conservation Board. The Assembly Speaker would be responsible for one appointment, the Senate Rules Committee would be responsible for one appointment, and the Governor would appoint the other two members. The members would be voting members and would serve four-year terms. The qualifications would be that each public member has a demonstrated interest and expertise in land acquisition for conservation purposes. If enacted, this bill would take effect 90 days past adjournment.

Oil and Gas

General Oil and Gas

California AB 2756 was delivered to Democratic Gov. Jerry Brown on August 23. He has until September 6 to act on the bill or it becomes law. 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.

Mineral Rights

The Assembly concurred in the Senate's amendments to **California AB 2729** on August 24. The bill is currently awaiting engrossment and enrollment. 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. 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.

Current law requires operators to file a specified annual fee or plan for elimination of all long-term idle wells by January 1, 1999. The most recent amendments would remove the current requirement that plans must be filed by January 1, 1999 until January 1, 2018 and require the plan cover a period of no more than one year, revise the requirements and remove the exemption from increased well bond or fee requirements for operators who comply with the plan.

As amended, this bill would require the supervisor to prepare and submit a comprehensive report on the status of idle and long-term idle wells for the preceding calendar year.

If enacted, this bill would take effect on January 1, 2018.

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