

WEEKLY HIGHLIGHTS AT-A-GLANCE

FEDERAL – Regulatory

- **BLM Online Sales.** On August 30, the [BLM released a formal announcement](#) that it is implementing its authority under the Mineral Leasing Act that allows the agency to conduct online oil and gas lease auction sales. The BLM's Eastern States Office will hold the first auction under this new authority on September 20, 2016, when it offers 14 parcels encompassing 4,398 acres of Federal lands in Kentucky and Mississippi. The BLM is also evaluating other opportunities to hold additional online sales. [Read more.](#)
- **BLM Sage-Grouse Guidelines.** On September 1, the BLM published its final guidelines for how it will work to protect the greater sage-grouse in areas of oil and natural gas drilling. The BLM put out seven [memoranda](#) to land managers in the West detailing how to balance protection of the bird with activities like grazing and drilling, and how it will monitor the progress of the protections. These guidelines are reportedly the last major step in the federal government's bid to conserve the sage-grouse and its habitat. [Read more.](#)
- **BLM Lease Sale – New Mexico.** Last Wednesday, nearly 200 supporters showed up for the "Support Oil and Gas in Southeastern New Mexico" rally in downtown Roswell in advance of the BLM's oil and gas lease sale the following day. The group listened to New Mexico Land Commissioner Aubrey Dunn and many others talk about how vital the oil and gas industry is to the nation, state and region and how impractical and financially harmful it would be to ban drilling on public lands and water, as some protestors at recent BLM auctions want. [Read more.](#) On an additional note, on the next day a small number of protestors in attendance failed to halt the sale and the BLM reported a record-setting auction with a high winning bid of \$35,500 an acre, and the sale of 36 leases in Eddy and Lea counties totaling \$145.58 million. [Read more.](#)

FEDERAL – JUDICIAL

- **Assignments – Louisiana.** In [Estess v. Placid Oil Co.](#) (Case No. 4:16-cv-50), the federal Western District Court in Louisiana recently endorsed a broad reading of an assignment that did not limit the interests conveyed by depth, concluding that the assignor intended to convey all its interests and that the descriptions of specific unit interests, wellbores and working interests in an exhibit to the assignment did not create (expressly or implicitly) any depth limitations. [Read more.](#)

- **Leasing – Pennsylvania.** Last month, in [Chesapeake Appalachia, L.L.C. v. Ostroski](#) (Case No. 4:16-cv-50), a federal district court in Pennsylvania sided with an oil and gas company in a bid by landowners to arbitrate claims under an oil and gas lease on a class-wide basis, concluding that consent to class arbitration can't be implied when a lease only provides for individual arbitration. [Read more.](#)

STATE – Regulatory

- **Ballot Measures – Colorado.** (Update to 8/15/ 16 Weekly Report) Activist groups have failed to get their ballot initiatives (local control over oil and gas operations and minimum setback requirements) on the ballot. According to the Colorado Secretary of State, who made the announcement on August 29, both measures came up around 20,000 valid signatures short of qualifying. Even worse for the activist groups is that the Secretary of State has asked the state Attorney General to investigate whether ballot measure supporters forged some of the signatures. Last week, Governor Hickenlooper also had predicted that the groups wouldn't have the necessary number of valid signatures to make this year's ballot. [Read more.](#)

On a side note, according to law firm, Welborn Sullivan Meck & Tooley, P.C., one measure that did make the ballot is Initiative 96, which if approved by voters this November would make it more difficult for public initiatives and referendums to qualify for ballots that could supplant or bypass the decisions of the Colorado Oil and Gas Conservation Commission, or other decisions of the General Assembly. By bolstering signature requirements, Initiative 96, as Governor Hickenlooper stated, "is going to ensure that our constitution is not held captive by the whims of the day." [Read more.](#)

STATE – Judicial

- **Leasing; Pugh Clauses; Production – North Dakota.** On August 23, in [Horob v. Zavanna, LLC](#) (Case No. 20150203), the North Dakota Supreme Court held that an oil and gas lease did not expire for temporary cessation of production on the leased premises even though the lessee did not drill or rework any wells during the cessation period on the landowner's property as required by the cessation-of-production clause, concluding that the lessee's operations on federal lands pooled with the landowner's property sufficed to maintain the lease and the lease contained no Pugh clause that would limit the effect of the pooling clause. [Read more.](#)
- **Mineral Reservations; Deeds – Texas.** Last month in [Combest v. Mustang Minerals LLC](#) (Case No. 04-15-00617), the Texas Court of Appeals for the Fourth District concluded that a deed reserving a fraction of the minerals "from the land described" reserves a fraction of the minerals under the entire tract as opposed to that portion of the tract actually "conveyed" and held that the deed at issue did not convey a mineral interest given that it reserved a fraction of the minerals from the land described. [Read more.](#)

INDUSTRY NEWS FLASH:

◆ According to Rystad Energy, the Permian basin will serve as the primary catalyst in restoring U.S. onshore oil production growth. The oil and gas consulting service bases the projection in part on its own data showing U.S. Lower 48 oil production was 120,000 b/d higher in August compared with the U.S. Energy Information Administration's estimates in its Short-Term Energy Outlook for the month. The higher production number coincides with increased drilling activity in the Permian, where 62 more rigs have started operations since May, with the West Texas and southeastern New Mexico basin accounting for more than two thirds of the entire U.S. rig count increase during the recent rebound. [Read more.](#)

PRACTICE TIP: Top Leases. In the oil and gas industry, you often hear landmen and attorneys frame the question as whether or not the top lease will be deemed a "novation" of the prior existing lease. But what is the standard to prove a novation? How likely is it that the mineral owner above could successfully argue that the top lease is a novation of the prior lease, even though the well was drilled in time to hold the prior existing lease? The August 29 issue of Holland & Hart's Oil & Gas Report provides a brief overview of the elements and burden of proof to establish a novation and how landmen can avoid the pitfalls of top leases. [Read more.](#)

State-by-State Legislative Session Overview

California concluded its legislative session on August 31 and stands in final recess until November 30 when it is scheduled to adjourn sine die, [The Los Angeles Times](#) reports. Wednesday marked the end of the state's two-year session, during which more than 5,000 items of proposed legislation were introduced. The Democratic Party, which presently holds a 52-28 majority in the Assembly, a 26-13 majority in the Senate and control of the governor's office, won key legislative battles over climate change and environmental legislation. The [Times](#) reports that Democratic Gov. Jerry Brown plans to sign [SB 32](#), which requires that statewide greenhouse gas emissions be reduced below 40 percent of 1990 levels by 2030, and [AB 197](#), which directs the Air Resources Board to prepare and approve a plan to reach the new targets while considering the social costs of emissions of greenhouse gasses and impacts of the plan on disadvantaged communities. SB 32 and AB 197 were presented to Governor Brown on August 26 and August 24, respectively. Brown has until September 7 to act on SB 32 and September 6 to act on AB 197 or the bills become law without signature. Other legislative victories included the timely passage of budget bills for [2015](#) and [2016](#), which included new cash reserve rules and put off tuition increases at the University of California and California State University, a landmark plan to increase the minimum wage, and new gun-control measures.

Massachusetts is 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 in final recess until November 30 and is scheduled to adjourn sine die on that day.

Alabama convened a special session to address Republican Gov. Robert Bentley's proposal for a state lottery on August 15. The session is in recess until September 6.

California Democratic Gov. Jerry Brown has 12 days from presentment to act on legislation presented before September 1 unless the 12th day falls on a Saturday, Sunday or holiday in which case he will have until the next day that is not a Saturday, Sunday or holiday. Governor Brown will have until September 30 to act on legislation presented on or after September 1.

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

The Assembly agreed with the Senate amendments to **California AB 2087** on August 31 and the bill was enrolled. AB 2087 is now awaiting delivery to Democratic Gov. Jerry Brown. 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. As amended, the bill would give the department the authorization to approve a regional conservation investment strategy only if one or more state agencies request approval of the strategy through a letter sent to the Director of Fish and Wildlife. 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.

California [AB 2549/Chapter 201](#) was signed by Democratic Gov. Jerry Brown on August 26. This law removes the sunset provision on the public hearing process of the California Endangered Species Act. The act requires the Fish and Game Commission to establish a list of endangered species and a list of threatened species. The law allows anyone to continue to petition the commission past January 1, 2017 to add a species to, or remove a species from the list of endangered or threatened species.

California [SB 1089](#) was delivered to Democratic Gov. Jerry Brown on August 30, he has until September 12 to act on the bill or it becomes law. 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 [AJR 42/Res. Chapter 152](#) was chaptered by the Secretary of State on August 30. This resolution urges the U.S. Department of Transportation, the Department of Energy, and the Office of Management and Budget to expedite federal safety regulations that would govern the transportation of flammable and combustible liquids, including crude oil, by rail. It also urges the President and U.S. Congress to pass federal legislation mandating public safety measures to regulate the transportation of such liquids.

Mineral Rights

California [AB 2729](#) was enrolled on August 25 and is now awaiting delivery to Democratic Gov. Jerry Brown. 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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