

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

- **BLM Lease Sale Breaks Record – New Mexico.** Last week, the Bureau of Land Management (BLM) set an all-time record when its latest New Mexico quarterly oil and gas lease sale grossed nearly [\\$1 billion in bonus bids](#) for 142 parcels. On the first day alone, 71 parcels (28,036 acres) were sold which generated more revenue – at nearly \$386 million – than all BLM lease sales combined in 2017 at \$358 million and double the 2008 record. In addition to the record total bonus bids, the first day of the sale also resulted in a national record for the highest bid for a single parcel, and the highest per-acre bid ever placed. The winning bid for a 1,240-acre parcel in Eddy County was \$81,889 per acre, bringing in more than \$101.5 million. “The results of this sale show the success that comes with sound energy policy that seeks to use working public lands to ensure reliable energy sources and job growth opportunities,” said Brian Steed, BLM Deputy Director for Policy and Programs. [Read More.](#)
- **BLM Resource Management Plan – New Mexico.** The BLM Carlsbad Field Office will host nine public meetings, beginning September 17, to provide information and answer questions related to the Carlsbad Draft Resource Management Plan (RMP) and Environmental Impact Statement (EIS). This is part of the ongoing 90-day public comment period that began August 3, 2018 with the publication of a [Notice of Availability](#). The planning area under the proposed framework consists of about 6.2 million acres of land within Eddy and Lea counties, and a portion of Chaves County in southeastern New Mexico. This includes roughly 2.1 million acres of public surface lands and nearly three million acres of federal minerals estate, managed by the BLM Carlsbad Field Office. The Draft RMP and its associated Draft EIS will analyze and guide the management of these public lands for energy development and other public land use and access. [Read more.](#)
- **Federal Royalties Reporting.** On August 31, the Interior Department’s Office of Natural Resource Revenue (ONRR) published a formal request for comment regarding federal and Indian royalty information collection regulations. The ONRR notice, *Agency Information Collection Activities: Royalty and Production Reporting* ([83 Fed. Reg. 44662](#)), as it relates to royalty reporting requirements, is seeking public input regarding: “(1) Is the collection necessary to the proper functions of ONRR; (2) will this information be processed and used in a timely manner; (3) is the estimate of burden accurate; (4) how might ONRR enhance the quality, utility, and clarity of the information to be collected; and (5) how might ONRR minimize the burden of this collection on the respondents,

including through the use of information technology.” The public comment period is open through October 30, 2018. [Read more.](#)

FEDERAL – Judicial

- **Migratory Bird Takings – New York District Court.** On September 5, eight Democrat state attorneys general filed suit against the Interior Department in an attempt to overturn a December 2017 policy ([U.S. Department of the Interior Memorandum M-37050](#)) that repealed certain protections for migratory birds. In that memo, Daniel H. Jorjani, the Interior Department’s principal deputy solicitor, said “the agency would no longer punish people or companies for harming or killing birds under the Migratory Bird Treaty Act in ‘incidental’ ways,” which includes those “takings” resulting from oil and gas operations. The Trump administration’s policy change repealed a January 2017 memo issued in the final days of the Obama administration which reiterated that incidental, not only intentional, harms would be prosecuted. In their lawsuit, [State of New York, et al. v. U.S. Dept. of the Interior, et al.](#) (Case No. 1:18-cv-08084), the attorneys general argue that the new memo contradicts the plain meaning of the Migratory Bird Treaty Act by “eliminating longstanding prohibitions on injuring or killing over 300 species of migratory birds” and the action taken is both “reckless and illegal” as well as “arbitrary and capricious and contrary to law.” [Read more.](#)

STATE – Legislative

- **Independent Contractors – Alaska.** On August 27, HB 79 was signed into law by Governor Bill Walker (Independent). The Act, which was sponsored by the House Rules Committee at the request of the governor, amends current law by providing a definition of “independent contractor” and specifically excludes independent contractors from workers’ compensation coverage. The Act is effective as of August 27, 2018. [Read more.](#)
- **Hydraulic Fracturing; Exemption Certificates – Illinois.** (*Update to 7/2/18 Weekly Report*) On August 21, Governor Bruce Rauner (R) signed HB 4724 into law. The Act amends the Illinois Hydraulic Fracturing Tax Act to provide that first purchasers shall not be required to obtain exemption certificates from the producer until the first high volume horizontal hydraulic fracturing permit has been approved by the Department of Natural Resources. The Act will take effect on January 1, 2019. [Read more.](#)
- **Injection Well Permits – Ohio.** On August 29, Rep. Glenn Holmes (D) introduced HB 723. The bill would amend current law to limit the number of injection well permits that the Chief of the Division of Oil and Gas Resources Management may issue in any one county to 23 permits. [Read more.](#)

STATE – Regulatory

- **Ballot Initiatives – Colorado.** *(Update to 8/20/18 Weekly Report)* On August 28 and 29, the Colorado Secretary of State certified both [Ballot Initiative No. 97](#) (*Setback Requirement for Oil and Gas Development*) and [Ballot Initiative No. 108](#) (*Just Compensation for Reduction in Fair Market Value by Government Law or Regulation*). (Also see Colorado Secretary of State verification press releases [here](#) and [here](#).) Initiative No. 97 would expand setbacks, mandating 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. If passed by voters, “85 percent of non-federal land in Colorado would become off-limits to future oil and gas exploration, drilling and production.” 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 upside is that Coloradans have seen similar anti-oil and gas ballot measures in the past and as Simon Lomax, Research Fellow with Vital for Colorado, points out, state voters rejected those in 2008, 2014 and 2016. “You can already see a wall of opposition to Initiative 97,” says Lomax. “During this year’s primaries, every Democrat and every Republican running for governor shunned the proposed ballot measure ... To be sure, Initiative 97 is an extreme measure with severe economic impacts. But that is why it’s so beatable, like all the others before it. Simply stated, energy producing states like Colorado ... don’t vote against their own economies.” [Read more](#). We will continue to keep members informed of AAPL’s ongoing efforts to battle Initiative No. 97 in the November general election. [Read more](#).
- **Gas Well Inspections – Pennsylvania.** On August 31, the Pennsylvania’s Department of Environmental Protection (PDEP) reported that inspections of both conventional and unconventional natural gas wells broke records during 2017. According to the report, “program efficiencies including faster form submissions for operators and progress on improved e-permitting options helped raise compliance inspections to more than 36,000” and other upgrades to its well drilling online permitting boosted PDEP unconventional well permits up to 2,028 last year, 707 more than in 2016. [Read more](#).
- **Employee Misclassification – Virginia.** On August 10, Governor Ralph Northam (D) signed [Executive Order EO 16](#) to establish a task force to develop a plan to prevent worker misclassification. According to the governor’s office, each year Virginia loses as much as \$28 million in tax collections resulting from employees being misclassified as independent contractors. According to the Executive Order, “the purpose of the Taskforce is to develop and implement a comprehensive plan with measurable goals

to reduce worker misclassification and payroll fraud in Virginia.” By November 1, 2018, the taskforce “shall develop a work plan” and then report its progress to the governor by August 1, 2019. [Read more.](#)

- **Methane Emissions – Wyoming.** The state’s Department of Environmental Quality (DEQ) is proposing greater reductions of methane and other air pollutants from oil and gas production. The proposed changes, [Oil and Gas Production Facilities, Chapter 6, Section 2, Permitting Guidance](#), are supported by the oil and gas industry as well as environmental groups. In fact, the Petroleum Association of Wyoming “welcomes the new proposal, [noting that a vast number of producers are already in compliance](#) with federal Environmental Protection Agency standards.” The changes include “semi-annual new leak detection and repair requirements for fugitive emissions of methane, ethane, volatile organic compounds, and other air pollutants from oil and gas facilities.” The public comment period is open September 11. You may submit comments directly on the DEQ website [here](#). The changes will only affect those wells and facilities with a first date of production, or modification, of November 1, 2018. [Read more.](#)

STATE – Judicial

- **State Regulations – Pennsylvania.** In a partial victory for the oil and gas industry, on August 23, in *The Marcellus Shale Coalition v. Penn. Department of Environmental Protection, et al.* (Case No. 573 M.D. 2016), the Commonwealth Court of Pennsylvania invalidated a portion of state regulations regarding hydraulic fracturing relating to playgrounds, common areas of a school’s property and certain other critical communities. The slate of regulations, which took effect October 6, 2016, were the state’s first oil and gas regulations that specifically targeted hydraulic fracturing and this decision affects just one of the seven provisions that were challenged by the Marcellus Shale Coalition, with the others remaining intact. On June 1, the [Pennsylvania Supreme Court upheld the other regulatory provisions](#) related to unconventional oil and gas wells, but sent the portions regarding playgrounds, schools, and other areas back to the lower court for further review, which with this August 23 decision have been deemed “void and unenforceable.” [Read more.](#)

INDUSTRY NEWS FLASH:

- ◆ **Ohio reports increased Utica shale production.** On August 28, Ohio’s Oil and Gas Division in the state’s Department of Natural Resources reported that oil and gas production from the state’s Utica shale grew year-over-year compared to the same period in 2017. In fact, crude oil production was up 10.98 percent while gas production jumped by 42.25 percent. [Read more.](#)

State-by-State Legislative Session Overview

Michigan is in regular session. **Ohio** is in skeleton session. The **United States** Congress and **Puerto Rico** are in regular session.

Pennsylvania is in recess until September 12. The **District of Columbia** Council is in recess until September 15. **Illinois, Massachusetts, New Jersey, New York, Rhode Island** and **Wisconsin** are in recess to the call of the chair.

New Hampshire is scheduled to hold a veto session on September 13.

California adjourned 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 House of Delegates adopted articles of impeachment against the four sitting justices on August 13. The House met on August 29 to elect an interim speaker, and [The Journal](#) reports that the Senate is expected to return on September 11 to commence service as the court of impeachment for the remaining justices.

Maine lawmakers adjourned their second special session on August 30 that addressed the state's child welfare system and tax code, reports [Maine Public Radio](#). **Virginia** adjourned their special session on August 30 that addressed redrawing the House districts, reports [CBS](#).

Missouri Republican Gov. Mike Parson announced a [special session](#) to begin on September 10 that will address expanding the states treatment courts and STEM education, reports [The Kansas City Star](#). **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.

California Democratic Gov. Jerry Brown has until September 30 to act on legislation that was passed by the legislature prior to September 1 but delivered after September 1 or it becomes law without signature. **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. **Maine** Republican Gov. Paul LePage has three days after the next meeting of the legislature to act on special session legislation or it becomes law without signature. **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. **Mississippi** Republican Gov. Phil Bryant has 15 days from presentment to act on special session legislation or it becomes law. **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](#), [California Assembly](#) and [Senate](#), [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, profiles and interim studies: **Florida Senate**, [Iowa](#), [Kentucky](#), [Montana](#), [Nevada](#), [North Dakota](#), [Oklahoma House](#) and [Senate](#), [Utah](#) and [Virginia](#).

Hydraulic Fracturing

General

California SB 1370 was amended on August 24 and was re-referred to the Assembly Utilities and Energy Committee. As amended, the bill relates to Aliso Canyon gas storage facility recovery account. The previous version of the bill would have removed 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.

DISCLAIMER: Links and/or information from non-governmental sources provided in this report may be among the many sources available to you. This report does not endorse nor advocate for any particular attorney or law firm, or other private entity, unless expressly stated. Any legal information contained herein is not legal advice. Links are provided for reference only and any cited outside source information is derived solely from material published by its author for public use.