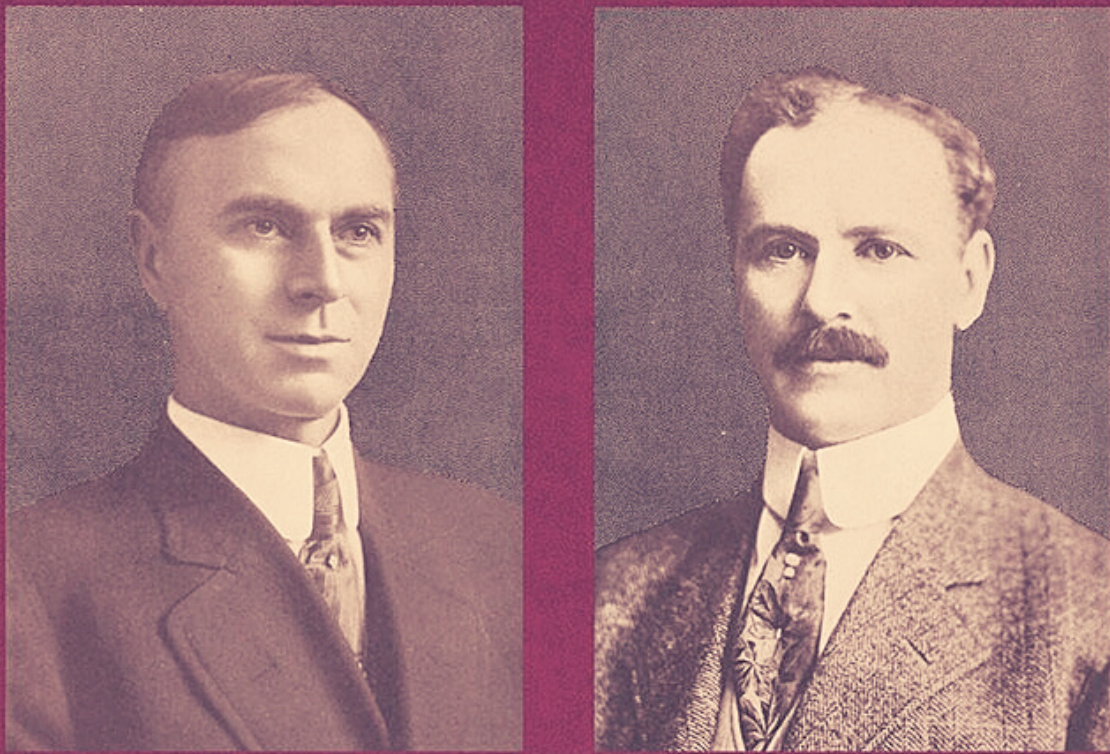


THE  WILDCATTER

MICHAEL LATE BENEDUM CHAPTER

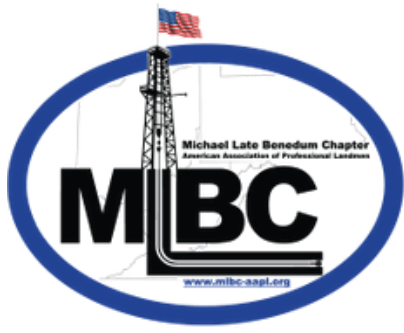
AMERICAN ASSOCIATION OF PROFESSIONAL LANDMEN



*Michael Benedum (left) and business partner Joe Clifton Trees (right)
of the Benedum-Trees Oil Company.*

Vol. 2 Issue 2 | April 2021

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MLBC AWARD NOMINATIONS



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LETTER FROM THE PRESIDENT

Change is Coming

First and foremost, I'd like to thank MLBC Education Chair- Chuck Saffer, our generous speakers, the AAPL, as well as all who attended the Appalachian Land Institute. Through your help the event was a huge success! As the COVID vaccine continues to become more widely available and the in-person restrictions begin to lighten up, we plan to offer some in person events in the coming months. As we keep our finger on the pulse of the restrictions, we'll continue to offer already scheduled virtual education opportunities at no cost to our members.

Whether you're an employee, employer, broker, or an independent, you need to check out "The Benefits of Diversity and Inclusion in the Workplace" webinar that aired on March 31st, which can still be accessed via the AAPL website. Also, I am especially looking forward to hearing some of the cold hard data points of the Appalachian Basin in April, when Dave Boyer will be presenting "Appalachia Upstream 2020: A regional review of a tumultuous year", free to members. Two in person events to keep your eye out for are the Annual Joint MLBC/NALA Spring Charity Golf Outing at Oglebay Resort which will benefit WVU Children's Hospital and UPMC Magee-Women's Hospital; and the Annual Meeting in June where we will present both 2019/2020 and 2020/2021 awards. During this meeting we'll commence the officer induction by welcoming the new slate of officers for the 2021/2022 year. We hope to see you then!

"I AM PROUD TO BE
AROUND TO SEE THE
MLBC GET NATIONAL
RECOGNITION YEAR
OVER YEAR."

MLBC PRESIDENT, ANTHONY ROMEO

Another huge accomplishment I am proud to mention is that thanks to the hard work of Danny Cooper and all who help with the newsletter committee, the AAPL has recognized the MLBC for best Newsletter by a large organization. This is big news for our association, and I am proud to be around to see the MLBC get national recognition year over year. Well done! But that's not all, congratulations to our President Emeritus, Jeremy White, for receiving recognition for Best Member Communication! These awards will be presented at the AAPL Annual Meeting in June, which has been relocated to Texas for 2021. Book your tickets now!

2021

MLBC CORPORATE SPONSORS

PLATINUM

Babst | Calland
Attorneys at Law

SJ STEPTOE
& JOHNSON
P L L C

GOLD

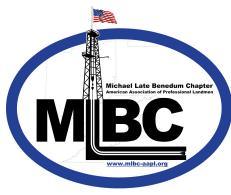

Cabot Oil & Gas

Halo
Land Management

SILVER



KIEFABER & OLIVA
L L P



2021 CORPORATE SPONSORSHIP LEVELS

PLATINUM: \$5,000 PER YEAR

Benefits of Platinum Sponsor:

- Logo on the corporate sponsor board at every meeting along with the meeting sponsor board (virtually or in person).
- Logo in every edition of The Wildcatter and the bottom of every membership email.
- Receive three meeting/dinner passes for each meeting for one year.
- Receive one free Full Page advertising ad in The Wildcatter per year.
- Receive one free Half Page advertising ad in The Wildcatter per year.
- Logo on Golf Outing sponsorship boards.

GOLD: \$2,500 PER YEAR

Benefits of Gold Sponsor:

- Logo on the corporate sponsor board at every meeting (virtually or in person).
- Logo in every edition of The Wildcatter and the bottom of every membership email.
- Receive one free Half Page advertising ad in The Wildcatter per year.
- Logo on Golf Outing sponsorship boards

SILVER: \$1,500 PER YEAR

Benefits of Silver Sponsor:

- Logo on the corporate sponsor board at six meetings (virtually or in person)
- Logo in every edition of The Wildcatter and the bottom of every membership email.
- Receive one free Half Page advertising ad in The Wildcatter per year.

BRONZE: \$750 PER YEAR

Benefits of Bronze Sponsor:

- Logo on the corporate sponsor board at three meetings (in person or virtually).
- Logo in every edition of The Wildcatter.

ADVERTISING IN THE WILDCATTER:

Full Page Ad
\$500.00/month

Half Page Ad
\$250.00/month

Dinner Meeting Sponsorship

Cost \$250.00 per meeting. Companies will receive advertising at the dinner meeting as well as your logo displayed on our website for the month of the meeting you sponsor



ELECTION OF OFFICERS & LOCAL DIRECTORS

BY JUSTIN NIXON, MLBC SECRETARY



The time has arrived for the MLBC Executive Committee and Director elections. The election process follows the arrangement outlined in the MLBC Bylaws, which relevant portions are included below for reference. The process begins with formation of a Nominating Committee consisting of three MLBC past-presidents. The Nominating Committee prepares a recommended ballot based on individual nominations from MLBC members and the ballot proceeds through several layers of vetting before being presented to the MLBC Executive Committee for confirmation by vote. Once the ballot is confirmed by the Executive Committee, the ballot is presented to the entire MLBC membership for final voting.

In accordance with MLBC Bylaws, the 2021-2022 Officer and Director ballot has been confirmed by the MLBC Executive Committee and will be broadcast to the MLBC membership for vote on May 1st, 2021. Voting will be open to all Active, Associate, and Senior MLBC members until May 31, 2021. **We urge all such members to take an active role in the leadership of the organization by giving due consideration to the ballot and by casting a vote in May.**

This year's ballot, as confirmed by the MLBC Executive Committee, is as follows:



President
Rob Greiner



Vice President
Justin Nixon



Secretary
Lhag Bowers



Treasurer
John Catsonis



Sergeant-at-arms
Kevin Pierson



Director
Stacy Tichy



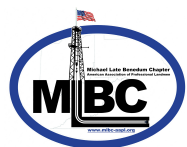
Director
Ben McKinney



Director
Danny Cooper

Respectfully Submitted,

Justin R. Nixon, Esq., CPL
Secretary, MLBC





ARTICLE X ELECTION OF OFFICERS AND LOCAL DIRECTORS

Section 1. Qualifications

A. President

1. To have been an Active member of the Association for the preceding two years
2. To have served as Vice President the preceding year.

B. Vice President, Secretary, Treasurer

1. To have been an Active member of the Association for the preceding two years
2. To have served on the Executive Committee as either an Officer or Local Director for two years

C. Sergeant-at-Arms and Local Director

1. To have been an Active member of the Association for the preceding two years
2. To have served on a Committee for two years

If no member shall qualify for the Sergeant-at-Arms and Local Director positions, the Executive Committee may waive one or more of the qualifications.

Section 2. Procedure

Each presiding officer shall be automatically nominated to the next higher office for the following year. Additional nominations for all offices, except that of the President, shall be in writing and submitted to the Nominating Committee Chairman on or before February 15 of the election year. The Nominating Committee shall review the nominations and provide to the Secretary its recommendations. The Secretary shall present the Nominating Committee's recommendations to the Executive Committee on or before March 30 of the election year. Thereafter, the Executive Committee shall recommend to the Secretary the approved list of nominees for the final ballot. The Secretary shall prepare the final ballot on or before April 20 of the election year. The final ballot shall be posted on the Association's website and emailed to the members on or before May 1 of the election year. Electronic votes shall be received by the Election Committee on or before May 31 of the election year. The election of officers shall be by a majority of the voting members.

The terms of office of the officers and local directors of the Association shall be for a period of twelve (12) calendar months beginning July 1 and ending June 30 of the following year. This term shall be contingent upon all officers and local directors serving until such time as their respective successors are duly elected.



MLBC AWARD NOMINATIONS



It's that time of year again! The MLBC is accepting nominations for our 2020-2021 Awards program. Due to COVID-19 and the inability to meet last year, we will be doing a dual celebration this year and recognizing winners from 2019/2020 as well as this year's winners on June 16th at the Erickson Alumni Center.

If you are interested in volunteering for the Awards Committee, please reach out to Patrick McQuiggan - pmcquiggan@gmcounsel.com or Daniel Cooper - daniel.cooper82@gmail.com.

MLBC AWARDS PROGRAM

The MLBC Awards Committee is calling for nominations for our 2020-2021 Awards Program. The MLBC established its awards program in order to recognize members for achieving excellence in the land profession here in the Appalachian Basin. The deadline for nominations is April 15th.

THE MLBC AWARDS CONSIST OF THE FOLLOWING:

BEST MEMBER COMMUNICATION

The award for Best Member Communication was established to recognize the best single communication by an MLBC member during the 2020 calendar year. The communication may be written or oral, but if oral, a written transcript must be submitted. The communication may be to the MLBC, to AAPL, or to the industry but must pertain to the land profession. The individual must be a member of MLBC for his or her entry to be considered.

FRIEND OF MLBC AWARD

The Friend of MLBC Award was established to recognize a company or individual that has made significant contributions to the betterment of the MLBC in any way deemed worthy of recognition.

J. W. FINDLEY LIFETIME ACHIEVEMENT AWARD

The J. W. Findley Lifetime Achievement Award was named after the organizer of the inaugural MLBC meeting held on July 17, 1959, and the organization's first President. The award is the highest and most distinguished honor of our association. The award was established to recognize an MLBC member who has demonstrated excellence and integrity in contributing to our association and our profession. Current MLBC officers are excluded from nomination.

LANDMAN OF THE YEAR AWARD

To be presented to a MLBC member who honored and distinguished the land profession through demonstrated leadership, integrity, and his/her contribution to the industry, the community, and the profession during the calendar year 2020. Current MLBC Officers are excluded from nomination.

Please submit all nominations to the MLBC Awards Committee Chair, Patrick McQuiggan. Nominations should include the name of the individual making the nomination, the name of the nominee, and a brief description in support of the nominee. Descriptions or letter of support for the nominee should be limited to one page.

MLBC AWARD NOMINATIONS DEADLINE: APRIL 15TH, 2021.

Nominations may be mailed to:

**Patrick McQuiggan
PO Box 955, Bridgeport, WV 26330**

Nominations also will be accepted via email to pmcquiggan@gmcounsel.com or abbyveigel@mlbc-aapl.org. If you have any questions, feel free to contact abbyveigel@mlbc-aapl.org



2021 Annual MLBC/NALA Spring Charity Golf Outing

Friday, May 7, 2021
@ Oglebay Resort (Wheeling, WV)



Annual MLBC/NALA Spring Charity Golf Outing



Friday, May 7, 2021
Registration opens @ 9:00am
Shotgun start @ 10:30am
Oglebay Resort, Wheeling, West Virginia



Join us for this great event and help us as we embark on our next adventure with WVU Medicine, Children's Hospital and Magee-Womens Research Institute & Foundation! We will have some great prizes to give away and are looking forward to seeing everyone!

Registration will open soon, which will include a round of golf on either the Palmer or the Jones course at Oglebay Resort in Wheeling with lunch and a BBQ dinner after golf.

Please consider sponsoring this great event at one of the sponsorship levels below, and remember that our donations continue to enrich the lives of the children of our communities and their families through the WVU Medicine Children's Hospital and Magee-Womens Research Institute & Foundation. Let's continue to support these worthy causes!

Miracle Sponsors – \$1,500

Four (4) golf/dinner registrations, PRESENTING SPONSOR signage during registration, dinner, and awards, additional signage on tee boxes and resort grounds, and event and website recognition

General Sponsors - \$1,000

Four (4) golf/dinner registrations, signage during registration, dinner, and awards, and event and website recognition

Hole Sponsors - \$1,000

Company name and logo on one (1) tee box sign and the ability to put up a tent with drinks, music, and/or games for the players, and website recognition

Hole-in-One Sponsor - \$750

Company name and logo at the MILLION DOLLAR SHOOTOUT, as well as the hole-in-one raffle ticket table at registration, and website recognition

Prize Table Sponsor - \$750

Company name and logo at the Prize Table, as well as the registration table, and website recognition

Practice Area Sponsor - \$500

Company name and logo at the driving range and putting green, which is open to all players, and website recognition

Tee Sponsors - \$250

Company name and logo on two (2) tee box signs, one on each course, and website recognition

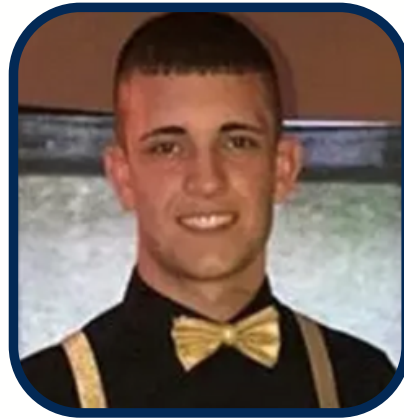
Please contact Spring Golf Chair Jim Kane to reserve your spot today!
If any sponsor would like to provide additional material, please don't hesitate to contact Jim Kane at jkane@cassidyperc.com.



Marietta College

Marietta College Landman Association Update

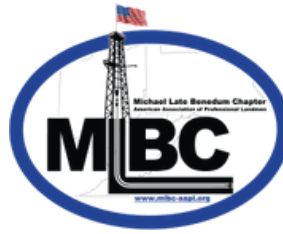
CO-WRITTEN BY DRAKE NEUBURGER AND AARON PETERMAN



Around this time last year, students from Marietta College, and many other colleges across the United States, were forced to continue their education online. This transition sounded as if it would be enjoyable at first. Being a virtual college student was much harder than we originally thought it would have been. We soon realized that we would much rather be meeting in classes face to face. Many found not being able to focus when on zoom for classes, having a hard time keeping track of assignments and their due date, and losing track of time while working on assignments. The transfer to virtual classes proved to be much harder than we expected, but we are excited to be back in person.

Now that we are here at Marietta College are back in person for classes, there are a few classes that most of us have liked. Oil and gas leasing has been a class that it seems most land and energy management majors have enjoyed. In that class, we have learned many concepts involving leasing and title abstracting. In this class, we had a project where we went to the courthouse and researched two parcels, and presented them to the class, which was a fun experience. The content taught is very interesting and will prove very beneficial in the future. Another class that is interesting is negotiations and ethics. We perform simulated negotiations while using the information taught to us in class. For us, this is a much easier way to learn different negotiating tactics, while also developing valuable skills to use in the future.

This pandemic has given some concern when looking at the future of the oil and gas industry. We begin to feel as if the industry is struggling, and many landmen are in search of work. We feel this way though because we begin to look at unemployment and how this pandemic has affected different energy-related industries. As of now there are 4 juniors that need an internship and are struggling to find work. With the pandemic hitting most of the industry many employers are not seeking any summer help which is a problem for the juniors that need experience. To graduate, we are required to have an internship that ties with our major. We are always looking for opportunities to get our foot in the door, and especially now. **If there is anyone that is currently looking for summer help please don't hesitate to email me at adp003@marietta.edu.**



Member Spotlight: Michael Rodriguez

Tell us a little about yourself.

I am a native Texan and currently live in Morgantown with my wife, Amanda, and our two children, Greyson and Ella. I attended Stephen F. Austin State University, which is located in the piney woods of East Texas. We love live music, baseball, and spending time outdoors.

Who are you currently employed or contracted with?

I am going on 4 years with Bryson Kuba, LP, a "full service" land company currently engaged in various oil and gas plays throughout the U.S.

How long have you worked in the oil and gas industry? What states do you have experience? Tell us about any other land organization you belong.

I've been in the industry almost 10 years. My first day was on May 16, 2011. I remember that day with a great sense of excitement and adventure, a feeling which still lives in me today, as I have come to appreciate and enjoy this landman life. Of those 10 years, I've spent about 6 years in Texas, primarily in the Haynesville, with a short period in the Eagle Ford and Permian, 4 years in Appalachia, primarily in West Virginia, with some experience in Ohio and Pennsylvania, and a brief stint in California's San Joaquin Basin.

In addition to the AAPL and MLBC, I am also an active member of the East Texas Association of Petroleum Landmen (ETAPL) and the Fort Worth Association of Professional Landmen (FWAPL).

Tell us about your first position in the industry.

My first assignment was as an abstractor in a small town named San Augustine, Texas, located along the Louisiana / Texas border in the Haynesville Shale.

What areas of the industry do you have experience in?

It has been fortunate and blessed to have worked with amazing project managers that have given me the opportunity to continually learn more. I have worked numerous positions within the industry which include abstracting, curative / heirship, due diligence, ROW, leasing, division of interest analyst, and project development.

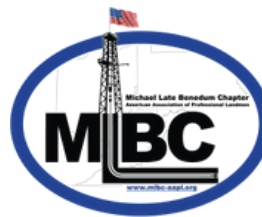
Do you have a mentor in the industry? Can you provide details?

As I mentioned, I have been fortunate and blessed to have worked, and continue to work with, amazing people, each having their own impact at various points in the progression of my experience as a landman.

My first mentors were a group of gentlemen at T.S. Dudley Land Company's Nacogdoches, TX office, namely: Chris Gideon, Jr., Bryce Winters, and Jason Harding. They gave me my first opportunity in this profession and together took me under their wings to offer the time and support necessary to build a strong foundation to my career.

After T.S. Dudley Land, I moved to Bergfeld Land and Minerals Group out of Tyler, Texas. The owner / project managers there were Talley and Robert Bergfeld. They gave me an amazing opportunity to add onto my abstracting experience with various roles including leasing, curative / heirship, due diligence, and ROW. Their belief in me led to their openness to allow me to experience all aspects of what it means to be a complete field landman.

Continued



Member Spotlight: Michael Rodriguez

Do you have a mentor in the industry? Can you provide details? (Continued)

Soon after, I met Bryson Kuba. He saw potential in me and taught (challenged) me how to fine tune all of the knowledge and experience I had acquired and turn it into something that pushed me further. His trust gave me the confidence to strive for more and pursue my full potential.

Bryson introduced me to his business partners, Kevin Pierson and Travis Edmondson, who, like him, push and teach by challenging you to further yourself. They gave me the opportunity to glance behind the curtain and see the full picture of project development, and to this day guide me as I continue to learn and experience more.

Although it is not as much as I would like, I still keep in contact with the majority of those I mentioned as they continue to provide guidance and support. I will forever be indebted to these individuals as they each played an integral part by taking an active interest in each phase of my development as a landman.

Do you serve the MLBC, AAPL, or any other organizations in an executive capacity and/or serve as a committee chair? Are you a member of any committees?

I am currently the Co-Chairman of the MLBC Scholarship Committee.

According to Article IV, Item #5 of the By-laws of the MLBC, one of the organizational purposes of the MLBC chapter is "Providing members with opportunities for community service." Have you ever initiated or participated in events or service projects within the community that achieve this purpose?

I actively participate in various industry fundraiser events throughout the year that directly impact our local communities.

NEWS

A MESSAGE FROM AAPL PRESIDENT, LESTER A. ZITKUS, CPL: TEXAS POWER OUTAGE



LESTER ZITKUS, AAPL PRESIDENT

Dear fellow AAPL member,

As if we needed another test of our perseverance. Texans across most of the state had another “once in a lifetime” experience when frigid weather and snow blanketed the state for a four- or ve-day period in mid-February. AAPL’s Governmental Affairs Manager Russell Cohen put together a white paper (fof facts and gures related to the circumstances surrounding the loss of power supply across the ERCOT managed power grid in Texas and what led to broad outages for many Texans. Please see below for related white paper.

Stating the obvious, Texans — and the nation — learned how fragile the Texas energy grid could be when faced with snow, freezing rain and extended subfreezing temperatures. It was a painful reminder of how incredibly valuable a dependable, reliable supply of natural gas is to the state and how critical it is to have an eectively designed infrastructure in place to deliver the natural gas needed to power generating plants, municipalities and residences.

As we have seen play out in the media and political arenas, there is no shortage of nger pointing, accusations of negligence and allegations of poor preparedness by multiple public and private agencies, source generation facilities, pipeline operators and power plant owners/operators. However, I do believe we can focus not only on the lessons learned but also point out some of the positives that should be highlighted from such a tragic series of events.

Undoubtedly, there were failings across the board, and those failings were not limited to just reliance — or overreliance as some have suggested — on renewable energy sources. There were plenty of challenges created by natural gas supply disruptions due to freeze-os, low line pressure and compression facility failures, in addition to natural gas power plant failures. However, learning now that the entire Texas energy grid was within minutes of a total catastrophic failure were it not for the ability to keep natural-gas-powered generation moving across the grid at the most critical periods of time needs to serve as a sobering reminder to us all — including our elected state and federal ocials, as well as environmentalists — that we must continue to develop a comprehensive strategy to meet our nation’s growing energy needs, which should include a continued emphasis on natural gas supply development and infrastructure.

Continued



One of the many important data points in the AAPL issued white paper is that during the worst periods of grid outages in Texas, power generation from some natural gas plants increased by a whopping 450%. To suggest we could meet current and future energy demand — especially during significant weather events as was the case in February — exclusively through renewable energy sources will only set us up for a repeat of the type of circumstances that Texas has had to deal with.

The backdrop to all of this is the fact that our profession, the land profession, has and will continue to play a critical role in helping not only Texas, but our nation, develop projects to serve our growing need for clean, affordable, reliable energy. The role of the land professional is often referred to as “the point of the spear” on getting projects started through preliminary title work and site assessments, and then propelling them forward through the negotiation and acquisition of the necessary rights for the location of facilities, routes of ingress and egress, surface use agreements for staging areas all the way through the actual construction and completion phases, including negotiating the necessary rights to transport the energy — regardless of source — to the interstate/intrastate or end-user markets. Other than land, few professions have the level of involvement working on projects to solve our energy needs across the spectrum of renewable and traditional sources of energy.

The employment opportunities for our profession are changing as the energy mix is changing. The skill sets that are so critical for success in the oil and gas industry are also critical to the needs of the renewable energy industry. The land profession is challenging and, in many ways, rewarding, both personally and financially, where one can leverage their skills in entrepreneurialism and problem-solving. What could be a more gratifying, noble — and secure — cause than to serve as a professional in an ever-growing energy industry without being dependent on any one segment as many of us have been in the past.

We should do all we can to educate the public, career-minded college students, and elected officials that our profession has the skills to support the development of a comprehensive energy portfolio to supply our nation with clean, reliable, and affordable energy for years to come.

Respectfully,

Lester A. Zitkus, CPL President, American Association of Professional Landmen

GOVERNMENTAL AFFAIRS WHITE PAPER

LIGHTS OUT: HOW A HISTORIC TEXAS WINTER STORM EXPOSED FAULTS IN THE STATE'S ELECTRIC GRID RELIABILITY AND THE IMPORTANCE OF TRADITIONAL ENERGY SOURCES

Executive Summary

A rare cold weather event swept through Texas in mid-February 2021, and brought with it cascading power failures that exacted catastrophic strains on the state's electrical grid. When demand began exceeding supply, state regulators were forced to impose controlled, rolling power outages to keep the grid from experiencing a total failure, that if had materialized could have left Texans without electricity for several months. At its peak, the Electric Reliability Council of Texas (ERCOT) – the state's primary grid operator – reported more than 4 million Texans were without power over several days of unprecedented cold. Even when electricity was restored as temperatures rose, millions remained without safe drinking water after power outages hit treatment plants and water pumps used to pressurize lines. In the wake of this catastrophic grid failure, governmental officials, industry stakeholders and the public want to know what went wrong, and how to avoid a similar event from occurring again in the country's most energy-rich state. In the aftermath, evidence has already emerged that traditional energy sources like natural gas and coal outperformed renewable energy such as wind and solar and actually lessened the burdens of a failing grid. ERCOT's own data bears this out, showing that even though the extreme cold had frozen cooling systems on coal plants and natural gas pipelines, the state's coal plants still upped their output by 47% in response to increasing demand and natural gas plants increased their output by an amazing 450%, showing that fossil fuels have done yeoman's work to make up for solar and wind's diminished reliability.

What Happened: How Extreme Cold Strained the State's Electrical Grid

In mid-February 2021, Texas experienced a rare winter storm that brought record-breaking snowfall to some areas and frigid, sub-zero temperatures rarely experienced in the state. The Electric Reliability Council of Texas (ERCOT) was forced to take emergency measures to keep the entire state's electrical grid from collapsing, which according to its CEO, Bill Magnuss, was only minutes away from a complete failure that may have led to outages lasting "several months." ERCOT, which manages power

for about 90 percent of the state's electric load, was forced to call upon regional state power operators to institute controlled, rolling power outages just to maintain the grid under an overwhelming demand surge which greatly exceeded capacity – and even ERCOT's projections – as power generating facilities failed under low temperature strains. ERCOT reported that more than 180 state power plants, a majority, were unable to withstand the wintery conditions. Immediately thereafter, Texas Governor Greg Abbot (R) announced he was “taking responsibility for the current status of ERCOT.”¹ Days later, as temperatures warmed up to more seasonal levels, ERCOT finally lifted emergency conditions and was able to bring the lights back on for most Texans.²

Energy demand reached a record high on February 14, 2021 and did not taper off as electricity usage typically does during overnight hours. “The issue became critical when several of the grid's energy generation units began to go offline in rapid progression, affecting more than half of the grid's winter generating capacity,” according to Dan Woodfin, ERCOT Senior Director of System Operations. “These failing sources largely included nuclear plants, coal plants and thermal energy generators. Frozen wind turbines were a factor, too, but Woodfin said wind shutdowns accounted for less than 13% of the outages.”³

According to the *Washington Examiner*, “The reality is every energy resource failed, and the grid was ill-equipped to deal with the unusually cold temperatures that caused energy demand in the state to spike to levels rarely, if ever, seen during the winter months.”⁴ And post-storm analyses are already refuting erroneous media reports claiming fossil fuels, specifically natural gas utilized for power generation, caused, or exacerbated the rolling power outages. In fact, natural gas proved to be more resilient and reliable during the storm than other energy generating sources.

Just days prior to the Texas storm, the Electric Power Research Institute (EPRI) published its own report, *Exploring the Impacts of Extreme Events, Natural Gas Fuel and Other Contingencies on Resource Adequacy*, which noted that the “electric industry systematically understates the probability and depth of many high impact common mode events” such as extreme weather events which “are rising in frequency, intensity, geographic scope, and duration.”⁵ As to renewables and traditional fossil fuel power generation, the report finds that the “availability and output of renewable sources being correlated with weather

¹ As Texas deep freeze subsides, some households now face electricity bills as high as \$10,000 (NBC News, February 19, 2021); <https://www.nbcnews.com/business/business-news/deep-freeze-subsides-texans-now-face-electricity-bills-10-000-n1258362>

² Texas crisis a wake-up call for the power grid (Washington Examiner, February 2021); <https://www.washingtonexaminer.com/policy/texas-freeze-power-grid-resilience-lacking>

³ What percentage of Texas energy is renewable? Breaking down the state's power sources from gas to wind (Austin American-Statesman, February 19, 2021); <https://www.statesman.com/story/news/2021/02/17/texas-energy-wind-power-outage-natural-gas-renewable-green-new-deal/6780546002/>

⁴ *Id.*

⁵ *Exploring the Impacts of Extreme Events, Natural Gas Fuel and Other Contingencies on Resource Adequacy* (EPRI, January 28, 2021); <https://www.epri.com/research/products/000000003002019300>

requires other resources and/or demand to rapidly respond to significant changes in renewable energy production.” Further, “It is acknowledged that natural gas-based generation is a critical supply technology needed to maintain reliable service to consumers; it is generally assumed to be an ‘available resource’ even though both operational and regulatory issues can and do lead to that capacity being unavailable.”⁶

Vistra Corporation – one of the largest power generators in Texas – said it warned state agencies days before cascading blackouts plunged millions into darkness that internal forecasts showed electricity demand was expected to exceed supply. Despite the warning, “the coordination and planning by authorities across the broader energy sector were seemingly disproportionate to the severity of the situation. Days ahead of this event, Vistra and others forecasted insufficient generation would be available, and “we began winter emergency preparations. The warning signs were there, but the public was unaware of the gravity of the situation, which led to people being unable to respond and make the necessary adjustments for their families.”⁷

While the general consensus is that the immediate cause for the Texas power outages was extreme cold and insufficient winterization of the state’s energy systems, “there’s still no escaping the fact that, for years, Texas regulators have favored the construction of heavily subsidized renewable energy sources over more reliable electricity generation. These policies have pushed the state away from nuclear and coal and now millions in Texas and the Great Plains states are learning just how badly exposed they are when extreme weather hits,” writes Jason Hayes, director of environmental policy at the Mackinac Center for Public Policy.⁸ For example, Texas “spent tens of billions of dollars on wind turbines that don’t work when millions of people desperately need electricity. As the cold weather has gotten worse, half the state’s wind generation has sat frozen and immobile. Where wind provided 42% of the state’s electricity on February 7, it fell to 8% on February 11.”⁹ Moreover, “the failure of wind has sparked a competing narrative that fossil fuel plants were the real cause of power outages. This claim can be quickly dispelled with a look at data from ERCOT, the state’s electricity regulator. Even though the extreme cold had frozen cooling systems on coal plants and natural gas pipelines, the state’s coal plants still upped their output by 47% in response to increasing demand. Natural gas plants across the state increased their output by an amazing 450%. Fossil fuels have done yeoman’s work to make up for wind’s reliable unreliability.”¹⁰

⁶ *Id.*

⁷ *Days Before Blackouts, One Texas Power Giant Sounded the Alarm* (Bloomberg, February 20, 2021); <https://news.yahoo.com/days-blackouts-one-texas-power-014130098.html>

⁸ *Texas blackouts warning to Biden and all of us: Renewables do play a role in grid problems* (USA Today, Opinion, February 22, 2021); <https://www.usatoday.com/story/opinion/2021/02/22/renewable-energy-part-cause-texas-blackouts-column/6772677002/>

⁹ *Id.*

¹⁰ *Id.*

Texas Power Generation Mix – The Importance of Fossil Fuels

“Early power plants produced electricity primarily from coal, steam or hydroelectric energy. Today, Texas still generates electricity from some of these traditional sources but increasingly relies on natural gas as well as renewable resources, primarily wind,” according to the Texas Comptroller of Public Accounts.¹¹ Today, ERCOT reports that nearly half of Texas’ electricity is generated by natural gas-fired power plants at 51%, with wind at nearly 25%, coal at 13%, nuclear at nearly 5%, solar at nearly 4%, and Hydro, biomass-fired units at just 2%.¹²

According to an October 2020 ERCOT report, “Wind power has been the fastest-growing source of energy in Texas’ power grid. In 2015, wind power generation supplied just 11% of Texas’ energy grid, more than doubling in the past few years, and finally surpassing coal as the second-largest source of energy, but reliable and abundant natural gas still leads the way in Texas.

Regarding infrastructure, Texas is the only one of the contiguous 48 states with its own stand-alone electricity grid – one of the three main grids in the United States: the Eastern Interconnection, Western Interconnection, and Texas Interconnection. The Texas Interconnection, which covers 213 of the 254 Texas counties, is managed by ERCOT. Portions of Texas near the state’s borders are covered by the eastern and western grids. Because Texas maintains its own isolated grid it is not subject to federal oversight and is, for the most part, dependent on its own resources to meet the state’s electricity needs. As the independent system operator for the Texas grid, ERCOT connects more than 46,500 miles of transmission lines and more than 650 power generation facilities, providing electricity to more than 26 million customers. ERCOT’s primary responsibilities include maintaining power reliability, ensuring open access to transmission lines, and facilitating competitive electricity markets. It’s overseen by the Texas Public Utility Commission, which also enforces compliance with the state’s utility laws and regulates Texas’ electric utility rates. In the state, several types of entities are involved in providing electricity to end users. The current structure dates from 1999, when the Texas Legislature introduced retail competition in much of ERCOT’s service area. According to ERCOT, about 75 percent of its total power load represents customers in these “competitive” areas.

In competitive areas, power generators produce electricity from fuel and sell it on the wholesale market, where it’s purchased by private companies called investor-owned utilities or retail electricity providers (REPs). Texas has about 300 REPs; customers can choose among them based on pricing and various options such as an emphasis on renewable power. Electricity purchased from REPs is distributed

¹¹ *Id.*

¹² Texas’ Electricity Resources: WHERE POWER COMES FROM — AND HOW IT GETS TO YOU (Texas Comptroller of Public Accounts, August 2020); <https://comptroller.texas.gov/economy/fiscal-notes/2020/august/ercot.php#:~:text=Generation%2C%20Demand%20and%20Capacity,as%20renewable%20resources%2C%20primarily%20wind.>

to homes, businesses and other facilities by transmission and distribution utilities, which own the actual poles, power lines, and meters.

Texans living in areas outside the ERCOT grid or in areas served by municipally owned utilities (such as Austin Energy), electricity co-ops and river authorities rely on a single service provider. According to the state Legislative Budget Board, as of September 2019, six of Texas' 20 largest cities maintained their own utilities, the largest being San Antonio.

Texas' power mix has changed considerably in the past decade. In 2009, coal-fired plants generated nearly 37 percent of the state's electricity while wind provided about 6 percent. Since then, three Texas coal-fired plants have closed and the use of wind power has more than quadrupled, as more transmission lines bringing electricity from remote wind farms to urban market centers came online. In the same period, state energy consumption rose by 20 percent. According to ERCOT, much of this growth can be attributed to new industrial facilities along the coast near Houston, as well as oil and gas activities in the Permian Basin. ERCOT's most recent forecasts indicate that Texas' electricity demands will continue to rise, although the pandemic and any recessions may alter consumption projections.

Through it all, ERCOT's grid has been remarkably resilient – providing enough power for Texans during even the most challenging and prolonged triple-digit summer heat. According to ERCOT, the grid's electrical demand reached a record high of 74,820 MW in August 2019, at a time when the state's reserve margin — the amount of extra energy on hand beyond peak demand — fell to a historically low 8.6 percent. To protect the grid's reliability and prevent uncontrolled outages during tight conditions such as this, ERCOT can declare an Energy Emergency Alert, which triggers certain procedures, such as rotating outages and public advisories to conserve energy, when operating reserves drop below specific levels, as we saw during the winter storm. Weather conditions — particularly those blistering summer temperatures — are a huge factor in predicting demand, since about half of Texas' peak electricity use comes from air conditioning. But as Texans now know, the grid was unprepared for the arctic cold that hit the state.

Energy Sources

Renewable energy sources — mainly wind — contribute more than a fifth of Texas' net electricity. Texas is the nation's leader in wind-powered electricity generation, producing almost 30 percent of the U.S. total. In fact, according to the U.S. Energy Information Administration (EIA), Texas is “first in the nation in wind-generated electricity.”¹³ The state produces so much wind energy that the American Wind Energy Association says only four nations outside ours have more wind capacity than

¹³ *Texas State Profile and Energy Estimates* (U.S. Energy Information Administration; March 19, 2020); <https://www.eia.gov/state/analysis.php?sid=TX>

Texas. Regarding solar, in the first quarter of 2020, the Solar Energy Industries Association (SEIA) ranked Texas fifth among states in installed solar capacity, with 4,606 MW in place and an estimated 10,261 jobs tied to this renewable source. “Renewable energy sources contribute nearly one-fifth of the net electricity generated in Texas and account for one-fifth of the total U.S. utility-scale electricity generation from all nonhydroelectric renewable source.”¹⁴ Sunny West Texas in particular offers excellent potential for solar energy and, as costs for photovoltaic panels fall and transmission access improves, the state’s solar capacity can be expected to increase. The SEIA ranks Texas second nationally for projected growth during the next five years.

Regarding traditional energy sources, such as natural gas, according to the EIA, Texas “leads the nation in natural gas production, accounting for one-fourth of U.S. gross withdrawals in 2019.” As to power generation, “The industrial and electric power sectors accounted for nearly four-fifths of Texas natural gas use” and natural gas-fired power plants supplied more than half of the state’s electricity net generation in 2019. About 5,000 megawatts of Texas coal-fired generating capacity have been retired since 2016. As a result, coal-fired power plants supplied less than one-fifth of state generation in 2019, down from about one-third as recently as 2014. The state’s two operating nuclear power plants typically supply almost one-tenth of the state’s electricity net generation. Most of the capacity added in Texas since 2010 is fueled by natural gas or wind.¹⁵

Solutions: The Path Forward

Although Texas is not regulated by the U.S. Federal Energy Regulatory Commission (FERC), the agency announced plans to conduct an exhaustive investigation into the winter power outages. The review will “get to the bottom of what happened” and determine how power outages could be avoided when extreme weather happens again, said FERC Chairman Richard Glick. While FERC lacks jurisdiction over the Texas grid it can offer advice and adopt rules for power markets covering much of the United States. “People are literally dying, it is simply unacceptable,” said Glick during the storm. “The short-term focus must be on restoring power to the grid. We also have a responsibility to ensure this does not happen again.” FERC is preparing its probe alongside its grid reliability counterpart, the North American Electric Reliability Corporation (NERC), on a timetable that will be decided in part on how quickly officials can gather adequate information. The two agencies are hoping to avoid a repeat of a report they wrote on winter power outages in Texas and New Mexico in 2011, which Glick said sat on a shelf gathering dust after its voluntary recommendations were mostly ignored.¹⁶

¹⁴ *Texas Power Crisis: No Energy Source Alone Is to Blame and There Is No One Answer* (SEIA, February 17, 2021); <https://www.seia.org/blog/texaspowercrisis>

¹⁵ *Id.* at 13.

¹⁶ *FERC to review Texas power outages* (Argus Media; February 18, 2021);

In 2011, FERC and NERC released their joint report, *Report on Outages and Curtailments During the Southwest Cold Weather Event of February 1-5, 2011*, detailing the need for Texas and other Southwestern states to weatherize their electrical grid infrastructure following then extreme cold and windy weather that hit the southwestern United States and knocked out 210 individual generating units within ERCOT's jurisdiction. Regarding winterization in 2011, "Generators and natural gas producers suffered severe losses of capacity despite having received accurate forecasts of the storm. Entities in both categories report having winterization procedures in place. However, the poor performance of many of these generating units and wells suggests that these procedures were either inadequate or were not adequately followed."¹⁷

Proving the benefits of natural gas, the report detailed how the Southwest "relies heavily on gas-fired generation to meet its peak capacity needs. In ERCOT, approximately 57 percent of the available on-peak summer and winter capability is from gas-fired generation (with 40 percent solely gas-fired and 17 percent having dual-fuel capability with gas as the primary fuel). The task force's analysis therefore indicates there would have been adequate gas to supply the generators in ERCOT that failed for other reasons. This conclusion was confirmed by knowledgeable industry observers, who were of the opinion that the Texas supply of gas would have been adequate had the generators not experienced weatherization problems."¹⁸

The FERC/NERC report found a number of inadequacies in generating units' preparations for winter performance where "many generating units tripped, were derated, or failed to start as a result of problems associated with a failure to install and maintain adequate freeze protection systems and equipment." The report recommended that generator owner/operators "should take steps to ensure that winterization supplies and equipment are in place before the winter season, that adequate staffing is in place for cold weather events, and that preventative action in anticipation of such events is taken in a timely manner." Finally, the report recommended that transmission operators ensure that transmission facilities are capable of performing during cold weather conditions. But, again, the failures were structural to the grid production and delivery systems rather than the source of energy, such as natural gas and coal.

In 2016, the U.S. Department of Energy also issued its own report on the Texas power grid, known as the *Energy Sector Risk Profile*, which noted that, "According to the non-profit North American Electric Reliability Corporation (NERC) assessment, "the leading cause of electric transmission outages

<https://www.angusmedia.com/news/2188374-ferc-to-review-texas-power-outages>

¹⁷ *Report on Outages and Curtailments During the Southwest Cold Weather Event of February 1-5, 2011* (FERC/ NERC, August 2011); <https://www.ferc.gov/sites/default/files/2020-04/08-16-11-report.pdf>

¹⁸ *Id.*

in Texas is Faulty Equipment/Human Error.”¹⁹ Further, “the greatest number of electric outages in Texas has occurred during the month of June” rather than winter months.

As the *Washington Examiner* noted in its survey of the recent winter storm, “Many of Texas’s power plants faltered because they weren’t mechanically prepared to handle freezing temperatures like power equipment in the Northeast and the Midwest is. Texas energy providers, though, have little financial incentive to make potentially costly upgrades to winterize their power plants because cold-weather events are rare in the state. Redesigned power markets could reward efforts power providers take to bolster resilience to extreme weather or offer incentives for plants to make those upgrades without losing competitive edge.”²⁰

Further, the drawbacks of wind and solar were certainly on display as those infrastructures were not weatherized and did fail at a greater rate than natural gas, even while they do encompass a smaller percentage of the energy mix. The images of frozen wind turbines or solar panels cover in snow and ice have become all too common. Engineering experts say that integrating more renewable energy into the system can pose its own challenges to keeping the lights on because grid operators must make sure there is enough easily dispatchable backup power for when the wind isn’t blowing and the sun isn’t shining. “Without storage, in my opinion, there’s no way we can have that high level of generation from wind and solar,” said Chanan Singh, a grid reliability expert and electrical and computer engineering professor at Texas A&M University. Nonetheless, without long-duration battery storage available, grid operators will be looking to natural gas or, potentially in the future, small modular nuclear reactors to balance out that load because they’ll need something that can last if resources fail for days as they did in Texas, said Ken Medlock, senior director of Rice University’s Baker Institute for Public Policy’s Center for Energy Studies. “I know there’s a big movement that we can do all renewables, electrify everything, no gas, and maybe someday, we can, but technically, right now, we can’t.”

Immediately following the outages, Texas Governor Greg Abbott (R) told viewers during a Fox News interview that renewable energy plants in the state had failed to generate power under the bitterly cold weather, adding that “fossil fuel is necessary for the state of Texas.” However, ERCOT said the shutdowns at natural gas and thermal power plants during a surge in demand were also a contributing factor and a particular source of power generation was not at fault. According to ERCOT, as of February 17, 2021, “46,000 megawatts of generation were offline, with 185 generating plants tripped. ERCOT officials said 28,000 megawatts came from coal, gas and nuclear plants, and 18,000 megawatts were from

¹⁹ *State of Texas Energy Risk Profile* (U.S. Dept. of Energy, September 2016); https://www.energy.gov/sites/prod/files/2016/09/133/TX_Energy%20Sector%20Risk%20Profile.pdf

²⁰ *Id.* at 2.

solar and wind.”²¹ And the following Monday, the governor corrected his earlier statement, tweeting that “The ability of some companies that generate the power has been frozen. This includes the natural gas & coal generators.” Governor Abbott noted that, “Many power generation companies facilities froze overnight and shut down their ability to generate power.”²² While ultimately walking back a focus on specific sources of electricity generation, Abbott began focusing on holding ERCOT accountable, saying the process has begun to reform ERCOT especially in light of meeting records that show that five days before the storm hit, the ERCOT CEO told the group’s board of directors, “We’re ready for the frigid temps to come our way.”²³ This prompted ERCOT to direct electric transmission companies to institute rolling, controlled outages to protect the state’s power grid from uncontrolled, prolonged blackouts. But this wasn’t enough because 40 percent of the state’s generators had been knocked offline due to the extreme low temperatures.

Holding ERCOT accountable began almost immediately with statewide hearings, but just one day prior four board members, including the chairwoman and vice chairman, abruptly submitted their resignations. In response, Governor Abbott released a statement lambasting ERCOT, saying, “When Texans were in desperate need of electricity, ERCOT failed to do its job and Texans were left shivering in their homes without power. ERCOT leadership made assurances that Texas’ power infrastructure was prepared for the winter storm, but those assurances proved to be devastatingly false. The lack of preparedness and transparency at ERCOT is unacceptable, and I welcome these resignations. The State of Texas will continue to investigate ERCOT and uncover the full picture of what went wrong, and we will ensure that the disastrous events of last week are never repeated.”²⁴

Texas Lieutenant Governor Dan Patrick (R) also said he will hold ERCOT accountable, vowing to subpoena top energy officials if they won’t willingly testify before the legislature. Patrick “insisted that top officials from the Public Utility Commission, the Electric Reliability Council of Texas, and generators and transmission companies would have to come testify themselves as hearings began [...] We don’t need middle management people coming in making excuses. We want the people who made decisions and who

²¹ *What percentage of Texas energy is renewable? Breaking down the state’s power sources from gas to wind* (Austin American-Statesman, February 19, 2021); <https://www.statesman.com/story/news/2021/02/17/texas-energy-wind-power-outage-natural-gas-renewable-green-new-deal/6780546002/>

²² *Id.*

²³ *Gov. Abbott: Remaining Power Outages in Texas Not Due to Lack of Generation* (NBC DFW, February 18, 2021); <https://www.nbcdfw.com/weather/weather-connection/watch-gov-abbott-update-on-power-outages-winter-weather/2556715/>

²⁴ *Four ERCOT Board Members Resign in Wake of Winter Storm, Statewide Power Outages* (NBC DFW, February 23, 2021); <https://www.nbcdfw.com/news/local/texas-news/four-ercot-board-members-resign-in-wake-of-winter-storm-statewide-power-outages/2551332/>

are in charge of these companies. And if we must, and we seldom use this power, but if we must subpoena people to come and testify, we will do that.”²⁵

“As for the cause of the outages, Patrick initially seemed reluctant to cast blame before the investigations began. But he then pointed to frozen wind turbines, if not for causing the disaster, then at least for being the first domino in the chain of failures. More to the point, Patrick argued that adding to the state’s renewable energy capacity could not and should not be part of the solution to the problem, arguing that ‘reliable’ forms of energy like natural gas, coal, and nuclear power are the answer.”²⁶

This sentiment was echoed by the Texas Oil & Gas Association (TXOGA) which pointed out that at “the height of last week’s extreme cold weather event, natural gas was providing 67% of all power generation in Texas. Without natural gas, millions more Texans would have been without heat and power.”²⁷ Moreover, “natural gas increased its percentage of the Texas power generation mix, supplying more than 60% of electricity generation every single day last week.”²⁸ TXOGA also noted that during “the peak electricity demand of last week’s extreme cold weather, no other energy source delivered as quickly and reliably as natural gas.”²⁹

Daniel Cohan, an associate professor of civil and environmental engineering at Rice University, also said that some power plants may not have been operational due to the cold or had been undergoing routine maintenance. “Peak demand typically occurs in the summer, so it’s not unexpected for a coal or natural gas plant to be offline in an effort to tune up for the warmer months,” noted Cohan. “This is far beyond what the power system operators expected, a far deeper freeze and a far worse performance from our natural gas power plants than anyone anticipated.”³⁰

By some estimates, nearly half of the state’s natural gas production had screeched to a halt due to the extremely low temperatures, while freezing components at natural gas-fired power plants had forced some operators to shut down. Production of natural gas in the state plunged, making it difficult for power plants to get the fuel necessary to run the plants. Natural gas power plants usually do not have very much fuel storage on site, experts said. Instead, the plants rely on the constant flow of natural gas from pipelines that run across the state from areas like the Permian Basin in West Texas to major demand centers like Houston and Dallas. In early February, Texas operators were producing about 24 billion cubic feet per day, according to an estimate by S&P Global Platts. But during the storm, Texas production plummeted

²⁵ Lt. Gov. Dan Patrick Vows To Subpoena Top Energy Officials if They Won’t Testify At Hearings (Houston Public Media, February 22, 2021); <https://www.houstonpublicmedia.org/articles/news/politics/2021/02/22/392005/patrick-commits-to-major-electric-power-reforms/>

²⁶ *Id.*

²⁷ Winter Storm Natural Gas Facts (TXOGA, February 24, 2021); <https://www.txoga.org/natgasfacts/>

²⁸ *Id.*

²⁹ *Id.*

³⁰ *Id.* at 3.

to a fraction of that. “Gathering lines freeze, and the wells get so cold that they can’t produce,” said Parker Fawcett, a natural gas analyst for S&P Global Platts. “And pumps use electricity, so they’re not even able to lift that gas and liquid, because there’s no power to produce.”

ERCOT said, “It appeared that the winterization we were doing was working, but this weather was more extreme than [past storms],” according to Dan Woodfin, a senior ERCOT director. “The loss of generation during the morning of Monday, after midnight, was really the part that made this a more extreme event than we had planned.” Upgrading equipment to withstand extremely low temperatures and other changes, such as providing incentives for customers to conserve power or upgrade to smart appliances, could help avoid disasters like this one, said Le Xie, a professor of electrical and computer engineering at Texas A&M University and assistant director of energy digitization at A&M’s Energy Institute. “We used to not worry too much about such extreme cold weather in places like Texas, but we probably need to get ready for more in the future,” said Xie.³¹

The joint FERC/NERC inquiry into the February winter storm grid reliability failures “will work with other federal agencies, states, regional entities and utilities to identify problems with the performance of the bulk-power system and, where appropriate, solutions for addressing those issues.” The announcement came one day after FERC Chairman Richard Glick issued a statement reflecting the ongoing public safety threats associated with power outages during these extreme weather conditions, confirming that FERC will be “examining the root causes of . . . reliability events” that have occurred throughout the country, “in particular in the regions served by the Electric Reliability Council of Texas.”³² According to Steptoe & Johnson LLP, “At this early stage, it is difficult to predict how the current joint FERC/NERC inquiry will proceed. Nevertheless, recent statements by Chairman Glick suggest that FERC’s Office of Enforcement may take an active role. For instance, when FERC’s annual enforcement report was released during the Commission’s November 2020 open meeting, then-Commissioner Glick stated his concern that the Commission had ‘gone AWOL’ on enforcement, opining that it was ‘worth asking whether the Commission remains committed to its enforcement responsibilities,’ and adding that ‘I’ve had my doubts.’”³³

Steptoe & Johnson LLP reports that, “It also appears that Congress may jump into the fray in some form. On February 16, 2021, Rep. Joaquin Castro (D-TX) delivered a letter – in which he was joined by other Democratic members of the Texas congressional delegation – demanding answers from

³¹ Texas largely relies on natural gas for power. It wasn’t ready for the extreme cold (The Texas Tribune, February 16, 2021); <https://www.texastribune.org/2021/02/16/natural-gas-power-storm/>

³² FERC/NERC Open Joint Inquiry Amidst Plunging Temperatures (Steptoe & Johnson LLP, February 19, 2021); <https://www.steptoe.com/en/news-publications/ferc-nerc-open-joint-inquiry-amidst-plunging-temperatures.html>

³³ *Id.*

ERCOT and the Public Utility Commission of Texas “as to the cause, duration, and equitable distribution of power outages across Texas.”³⁴ The letter requires regulators to answer a series of questions regarding the outages, grid reliability, and planning processes that led to the systemic failures.³⁵

On February 17, the Texas Republican congressional delegation also delivered its own letter to ERCOT demanding answers to critical questions such as how did ERCOT prepare for this weather event and anticipate energy demand prior to when the controlled blackouts began; how this will affect customer rates; how were the various types of energy generation impacted by the extreme cold weather; what is the likelihood of similar weather events impacting Texas’s electric grid again; and what measures can be taken to improve grid resiliency in Texas in the future?³⁶

In the end, the historic winter storm event exposed vulnerabilities in Texas’ electric grid reliability but also bolstered the argument that natural gas remains a clean, efficient, and vital source of power generation for years to come. An energy mix study conducted by utility provider CenterPoint Energy – which serves some of the country’s coldest regions – found that natural gas is 90% more efficient than other power sources and offers lower greenhouse gas, sulfur dioxide, and nitrogen oxide emissions while burning more cleanly than other fossil fuels, such as coal.³⁷ According to Shell, natural gas is also versatile. “A gas-fired power station takes much less time to start and stop than a coal-fired plant. This flexibility makes it a good partner to renewable sources of energy such as solar and wind, which are only available when the sun shines and the wind blows.”³⁸ And according to XTO Energy, natural gas “can help meet the demand for cleaner energy in many sectors, including the growing demand for power generation. As a result of the growing role played by natural gas in generating electricity, our air is getting cleaner and the country has lowered greenhouse gas emissions to levels not seen in two decades.”³⁹ Moreover, the American Petroleum Institute (API) has projected that American consumers “could save \$100 Billion or \$655 per household by 2040 from the increased use of natural gas for

³⁴ U.S. Rep. Joaquín Castro demands Texas regulators explain power outages (San Antonio Current, February 17, 2021); <https://www.sacurrent.com/the-daily/archives/2021/02/17/us-rep-joaquin-castro-demands-texas-regulators-explain-power-outages>

³⁵ Congressional letter to the Electric Reliability Council of Texas and Public Utility Commission of Texas (February 16, 2021); https://castro.house.gov/imo/media/doc/2_16_21%20Letter%20Texas%20Power%20Outages%20.pdf

³⁶ Republican congressional delegation letter to the Electric Reliability Council of Texas (February 17, 2021); https://pfluger.house.gov/sites/evo-subsites/pfluger.house.gov/files/evo-media-document/02_17_2021%20Letter%20to%20ERCOT%20-%20Winter%20Power%20Crisis_0.pdf

³⁷ *Natural Gas and Electricity: Natural gas is your best energy value* (CenterPoint Energy); <https://www.centerpointenergy.com/en-us/Services/Pages/natural-gas-electricity-cost-comparison.aspx?sa=mn&au=bus#sthash.oLxTGmRM.dpuf>

³⁸ *Natural gas and its advantages* (Royal Dutch Shell plc); <https://www.shell.com/energy-and-innovation/natural-gas/natural-gas-and-its-advantages.html>

³⁹ *Benefits of natural gas and oil* (XTO Energy, June 30, 2019); <https://www.xtoenergy.com/Energy-and-environment/Unconventional-resource-development/Benefits-of-natural-gas-and-oil>

manufacturing electricity generation.⁴⁰ API also notes that while “dramatically increasing production the industry has significantly reduced emissions. Thanks to natural gas, our air is cleaner than it’s been in decades and CO₂ emissions are at 25-year lows. As we continue to rely on electrical power for our homes and businesses, natural gas is the essential component to powering a cleaner tomorrow, today.”⁴¹

While it may be many months before a complete analysis is provided by government officials, engineering experts, and industry stakeholders, there is no doubt that the debilitating impacts of the Texas winter storm will require a new approach to electric grid resiliency and demand structural changes to ensure the lights stay on in Texas. As Rep. August Pfluger (R-TX) – who represents Midland, Odessa, and the Permian Basin in Congress – notes, the storm was “an example of just how dire the circumstances can be without power and energy. Texas must have a reliable base load for our energy grid and a level playing field for all forms of energy production – and affirms the importance of the oil and gas industry.”⁴²

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⁴⁰ *Natural Gas Solutions* (American Petroleum Institute); <https://www.api.org/news-policy-and-issues/natural-gas-solutions>

⁴¹ *Id.*

⁴² *Interview with Rep. August Pfluger (R-TX)* (Fox News, February 20, 2021); https://video.foxnews.com/v/6233963153001?fbclid=IwAR1NEU0bGXNXWEU_-0-BLYKkNCdJB85gsuotU1q34hHg-SnjDlbad6WYs6Y#sp=show-clips



The AAPL Board of Directors met on Sunday, March 14, at its quarterly meeting, and voted to approve a revised definition of "Landwork" as contained in Article II, sections 1, 2 and 3 of the AAPL Bylaws. The board also approved a nominated slate of officers to serve for the 2021-22 term in accordance with the AAPL Bylaws.

AAPL is utilizing an electronic ballot for the election of the proposed bylaws changes* and officer slate.

To access your official ballot, including biographical information of the officer nominees and proposed bylaws changes, please click the following link:

[CLICK HERE TO CAST YOUR VOTE](#)

Please take the time to review the election materials and cast your vote. The deadline to complete your ballot is May 24, 2021, at 11:59:59 PM CT. Once you click on the submit button, you will not be able to vote again.

Thank you for your participation in this election.

C. Andrew Cooper, CPL

AAPL Secretary and Election Officer

*Pursuant to Article XIX, Section 2 of the Bylaws, the proposed amendment must receive an affirmative vote of two-thirds (2/3) of the voting members present either in person or by proxy and voting at the regular annual membership meeting or by mail ballot if the Board of Directors so determines.

In lieu of voting on the proposed bylaws changes during the in-person Annual Meeting Membership & Business Meeting in Arlington, Texas, AAPL leadership has elected to utilize an electronic ballot for this year's bylaws voting measure by the AAPL Active membership.



THE MOST COMPREHENSIVE EDUCATION CONFERENCE GEARED SPECIFICALLY FOR THE LAND PROFESSIONAL

We are excited to announce our lineup of respected industry experts presenting at AAPL's 67th Annual Meeting. CLE credits are in the approval process and 16 CEUs are available for the in-person event. Please stay tuned for more information and continue to check the website for the latest updates.

Education Sessions & Speakers

Horizon Breakfast

Speaker: Monika U. Ehrman

Opening Session: Awards Ceremony & Keynote

Speaker: Jimmie Cho

Buying Companies Instead of Assets (or Pros and Cons of Buying the Cow)

Speaker: Jasper Mason

Common Ethics Pitfalls Faced by the Professional Landman

Speaker: Andrew Graham

So You Drilled a Well — Now What?

Speaker: Gerald Walrath

Comparative Law Review Panel

Speakers: George Snell | Greg Nibert | Jeffrey D. Lieberman | Timothy C. Dowd

Luncheon Panel Discussion

Speakers: David Cape, CPL | Mike Curry, CPL | Pam Feist, CPL

Jim Perkins, CPL | Scott Stone, CPL | Steve Wentworth, CPL

Moderator: Carl Campbell, CPL

New Opportunities: Maximizing Your Acreage With Solar

Speaker: Phillip Guerra, CPL

California Carbon Negative Energy

Speaker: Rebecca Hollis

The Allocation Problem — Allocating Production in the Permian Basin and Other Basins

Speaker: Robert E. Kiefaber

Evolve or Die — Innovate Your Land Options

Speakers: Jerris Johnson, CPL | Blake Susman, CPL

Hurdles to Net-Zero Carbon Emissions: An Analysis of Clean Energy Objectives

Speaker: Douglas Sandridge

The Devil Is in the Details: Avoiding Common Pitfalls in the Drafting and Negotiation of Purchase and Sale Agreements

Speaker: Stephen Newton

Early bird pricing ends on April 30, so register today and save! This year, the capacity for the in-person registration option will be limited in accordance with local regulations to allow for social distancing.

AAPL is actively monitoring the COVID-19 situation closely and taking the fullest precautions to prevent the spread of the virus. We are following guidance from local and national authorities as it relates to the travel and participation in this event. The health and safety of our attendees, instructors and staff is our highest priority.

[REGISTER NOW - ANNUAL MEETING \(IN PERSON + CONFERENCE RECORDINGS\)](#)

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*The conference recordings bundle contains all education sessions as well as the Horizon Breakfast, Opening Session, Membership Luncheon and Luncheon Discussion events. Twelve continuing education credits are available for all recorded education sessions. Four additional credits for the Horizon Breakfast, Opening Session, Membership Luncheon and Luncheon Panel Discussion are only available to in-person registrants.

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AAPL DIRECTOR'S REPORT

By: Jeremy Preston, National Director



Director's Report 3/27/2021

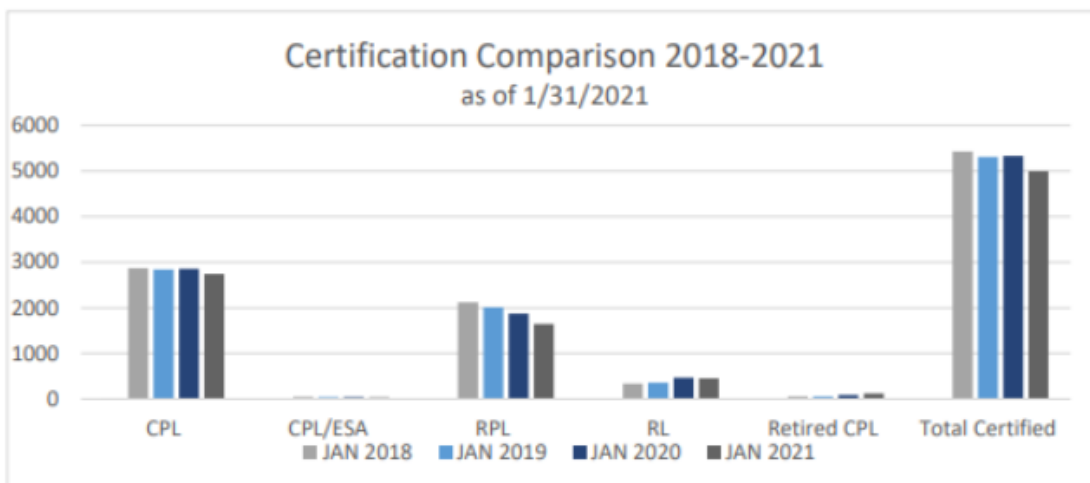
The AAPL Quarterly Board Meeting was held virtually and in person at the Omni Fort Worth on March 13-14, 2021.

2021 NAPE Summit Moves to August

The new NAPE Summit dates are In-Person: Aug. 18-20, 2021 and Virtual: Aug. 9 - Sept. 3, 2021

Our dedication to providing the place for oil and gas professionals to gather together to learn, connect and do business safely is the driver for this decision. Postponing to August offers the best opportunity for a successful event for all parties involved. We're working to maintain the current speaker lineup and hybrid event schedule and will communicate finalized details. Early bird registration has been extended. Get the best deal on your attendee registration by registering early at the lowest rate! Even though we have to wait a little longer, we look forward to seeing you in Houston and virtually on the NAPE Network in August. In the meantime, stay safe!

- Features of the 2021 NAPE Summit will include:
- NEW hybrid event including in-person and virtual registration opportunities on the NAPE Network.
- Lowered NAPE Hotel(s) block room rates for attendees!
- Global Business Conference featuring an outstanding lineup of topics and speakers including several panel discussions and Tom Jorden, CEO, of Cimarex Energy Co. as our keynote.
- NAPE Expo Charities Fund event featuring General Mattis as keynote speaker.
- Collaboration with the OTC conference also in August - NEW opportunity!
- Energy Innovation MBA Case Study competition featuring top universities across the country.
- Partner seminars including AAPL, IPAA, SEG and AAPG.
- OCS Committee Workshop/Seminar.
- Prospect Preview Presentations in theaters onsite and live streamed on the NAPE Network.
- Governmental Affairs Presentation on the show floor and live streamed on the NAPE Network.
- Connections & Conversations: Women in Energy Presentation on the show floor & live streamed on the NAPE Network.
- Job Fair.
- NAPE Sweepstakes Cash Prize Drawing for both in-person and virtual attendees.
- Working with and meeting weekly with the City of Houston (Houston First reps) and the GRB staff to ensure we will have the most up-to-date and effective safety protocols in place for our hybrid event in August.



AAPL DIRECTOR'S REPORT (CONTINUED)

By: Jeremy Preston, National Director

Education

The AAPL is continuing to offer streaming educational programming to its members and has resumed holding in-person events. There are several upcoming educational events via webinar and in-person including:

- 3/31/2021 - Fast Closings and Delayed Due Diligence: Doing Oil and Gas Deals With Limited Access to County Records - Virtual
- 4/7/2021 & 4/14/2021 - AAPL's Code of Ethics and Standards of Practice - II - Virtual
- 4/21/2021 - Royalty Deductions Seminar - Coraopolis, PA
- 4/28/2021 - Relinquishment Act Lands - Virtual
- 5/11/2021 - AAPL RPL/CPL Certification Exam Review - Coraopolis, PA
- 5/12/2021 - Power Hour: Making Cash Flow - Virtual
- 5/19/2021 - Power Hour: Leasing Under Roadways - Virtual

Additional educational offerings from AAPL can be found online at www.landman.org/professional-development/education

Membership

Total AAPL membership is down 19.63% compared to this same time in 2020 and is down 21.22% when compared to 2018. As of December 2020, the AAPL has 12,357 total members. Of those, membership status is as follows:

- Active 10,655
- Associate 947
- Retired 121
- Senior 270
- Student 364

AAPL Statement of Financial Position

As compared to December 31, 2019, total assets have increased from \$39,140,968 to \$42,753,477; a change of \$3,612,509 or 9.2%. This is due to market activity related to the investment account offset by the utilization of cash from the investment (\$1,000,000) and money market (\$1,482,596) accounts for operating purposes. Total liabilities compared to December 31, 2019 have decreased from \$1,795,943 to \$1,390,906; a change of \$405,037 or 22.6%. This is due to decreases in unearned revenue, accrued expenses and accounts payable in response to COVID-19. Unearned membership dues decreased 19.7%, or a total of \$261,031 which is the result of a decrease in renewals from the prior year of approximately 2,900. Total membership count at the end of December 2020 was 12,152 versus 15,101 at the end of December 2019. Accrued expenses decreased 51.9% or a total of \$92,065 which is primarily due to a decrease in prepaid advertising of \$72,200 and accrued company credit card expense of \$22,275. Accounts payable decreased 33.4% or a total of \$66,953 primarily due to the cancellation of the in-person board meeting, the decrease of in-person educational seminars, a decrease in contract labor and the elimination of IR/PR campaign costs.

AAPL Quarterly Board Meeting

The next AAPL Quarterly Board Meeting is scheduled to be held June 22-23, 2021 at Live! By Loews in Arlington, TX. Please do not hesitate to reach out if there are particular topics you would like for me to address at the next meeting. I can be reached at jpreston@eqt.com or 304.410.7105.

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LEGISLATIVE & REGULATORY UPDATE

By Nikolas Tysiak, Legislative and Regulatory Chairman



Hello from the MLBC Legislative and Regulatory Committee! There has been a lot of activity to report on since President Biden was inaugurated, so we will start with federal activity this time around.

Since taking office, President Joe Biden (D) has issued a raft of executive orders to overturn policies of the prior Trump administration. One in particular specifically affects the oil and gas industry, and by extension, the landman profession. In particular, Biden's *Executive Order on Protecting Public Health and the Environment and Restoring Science to Tackle the Climate Crisis* (January 20, 2021), addresses multiple administrative and regulatory policies detailed as follows. The Order first requires the "Immediate Review of Agency Actions Taken Between January 20, 2017, and January 20, 2021." This will invariably include many oil and gas related agency actions to be reviewed and once the agency reviews are completed they may result in the "suspending, revising, or rescinding the agency actions." The Order also details specific actions, as follows:

1. Review of the Environmental Protection Agency (EPA) "Inspection Rule" (*Oil and Natural Gas Sector: Emission Standards for New, Reconstructed, and Modified Sources Reconsideration*; 85 Fed. Reg. 57398, dated September 15, 2020) by September 2021. That rule amended the Obama-era New Source Performance Standards unfavorable to the oil and gas industry, relaxing requirements for oil and gas operators to monitor emissions leaks.
2. Review of the EPA science rule just published on January 6 by the outgoing administration. That final rule, *Strengthening Transparency in Pivotal Science Underlying Significant Regulatory Actions and Influential Scientific Information* (86 Fed. Reg. 469) requires science researchers to disclose the raw data involved in their public health studies before the EPA can rely upon their conclusions to allow for scrutiny over scientific conclusions that could negatively impact rulemaking affecting industries such as oil and gas. No timetable has been provided by the Biden administration for this review.
3. Announces a Federal Implementation Plan in accordance with the EPA's *Findings of Failure to Submit State Implementation Plan Revisions in Response to the 2016 Oil and Natural Gas Industry Control Techniques Guidelines for the 2008 Ozone National Ambient Air Quality Standards (NAAQS) and for States in the Ozone Transport Region* (85 Fed. Reg. 72963 dated November 16, 2020), for California, Connecticut, New York, Pennsylvania, and Texas by January 2022. This EPA Final Action related to Clean Air Act emissions reductions, controls and attainment requirements from the oil and gas industry.
4. The Order specifies a 60-day review of Trump's proclamations related to national monument "boundaries and conditions" and could affect oil and gas development in those areas. This affects *Modifying the Bears Ears National Monument* (82 Fed. Reg. 58081 dated December 8, 2017) and *Modifying the Grand Staircase-Escalante National Monument* (82 Fed. Reg. 58089 date December 8, 2017).
5. The Order places "a temporary moratorium on all activities of the Federal Government relating to the implementation of the Coastal Plain Oil and Gas Leasing Program, as established by the Record of Decision signed August 17, 2020, in the Arctic National Wildlife Refuge." The Order also restores "the original withdrawal of certain offshore areas in Arctic waters and the Bering Sea from oil and gas drilling" as implemented by the Obama administration and then rescinded by the Trump administration under Executive Order, *Implementing an America-First Offshore Energy Strategy* (82 Fed. Reg. 20815 dated May 3, 2017). Although existing leases are legally binding and cannot be canceled unilaterally through a presidential executive order, at least not without buying out lease holders, the Biden administration will still have discretion over issuing drilling permits and conducting environmental impact reviews, which could halt any future oil and gas drilling.

LEGISLATIVE & REGULATORY UPDATE (CONTINUED)

By Nikolas Tysiak, Legislative and Regulatory Chairman

6. Revokes the permit for the Keystone XL pipeline granted by President Trump on March 29, 2019. The 1,700-mile pipeline would have carried roughly 800,000 barrels of oil a day from Alberta, Canada to the Texas Gulf Coast, passing through Montana, South Dakota, Nebraska, Kansas, and Oklahoma. "As a result of the expected revocation of the Presidential Permit, advancement of the project will be suspended," said the Keystone XL operator in a statement.
7. Revokes President Trump's Executive Order, *Expediting Environmental Reviews and Approvals For High Priority Infrastructure Projects* (82 Fed. Reg. 8657 dated January 30, 2017), which affected oil and gas projects such as pipelines.
8. Revokes President Trump's Executive Order, *Promoting Energy Independence and Economic Growth* (82 Fed. Reg. 16093 dated March 31, 2017) which promoted and supported American energy exploration and production.
9. Revokes President Trump's Executive Order, *Review of Designations Under the Antiquities Act* (82 Fed. Reg. 20429 dated May 1, 2017) which provided for broadening oil and gas drilling near national monument areas.
10. Revokes President Trump's Executive Order, *Implementing an America-First Offshore Energy Strategy* (82 Fed. Reg. 20815 dated May 3, 2017) which promoted offshore energy exploration and production.
11. Revokes President Trump's Executive Order, *Promoting Energy Infrastructure and Economic Growth* (84 Fed. Reg. 15495 dated April 15, 2019) which promoted energy independence and the ability of the United States to become a net energy exporter.
12. Revokes President Trump's Executive Order, *Establishing Discipline and Accountability in the Environmental Review and Permitting Process for Infrastructure Projects* (82 Fed. Reg. 40463 dated August 24, 2017), which sought to create efficiencies and predictability in infrastructure projects, including those related to oil and gas.
13. Revokes President Trump's Memorandum, *Promoting Domestic Manufacturing and Job Creation Policies and Procedures Relating to Implementation of Air Quality Standards* (83 Fed. Reg. 16761 dated April 6, 2018) which called for a more predictable, streamlined and industry-friendly procedure for review and implementation of air quality standards and requirements.
14. Revokes President Trump's Memorandum, *Promoting the Reliable Supply and Delivery of Water in the West* (83 Fed. Reg. 53961 dated October 25, 2018), to improve Western states water availability and resource management to benefit various industries, including those involved in oil and gas exploration and production.
15. Revokes President Trump's Memorandum, *Developing and Delivering More Water Supplies in California* (85 Fed. Reg. 11273 dated February 26, 2020), which would have provided greater water availability in the Central Valley, including to oil and gas fields.
16. Orders the Council on Environmental Quality (CEQ) to rescind its draft guidance, *Draft National Environmental Policy Act Guidance on Consideration of Greenhouse Gas Emissions* (84 Fed. Reg. 30097 dated June 26, 2019), which related to the process of assisting Federal agencies in their consideration of greenhouse gas emissions when evaluating proposed major Federal actions in accordance with the National Environmental Policy Act and would have been considerably more relaxed under the Trump administration.
17. Orders the CEQ to review, revise, and update its final guidance entitled, *Final Guidance for Federal Departments and Agencies on Consideration of Greenhouse Gas Emissions and the Effects of Climate Change in National Environmental Policy Act Reviews* (81 Fed. Reg. 51866 dated August 5, 2016), which affects resource management related to greenhouse gas emissions or the consideration of mitigation measures that reduce climate change impacts that would have been more relaxed under the Trump administration.

LEGISLATIVE & REGULATORY UPDATE (CONTINUED)

By Nikolas Tysiak, Legislative and Regulatory Chairman

Indefinite Federal Oil and Gas Moratorium. On January 27, President Biden signed an executive order Executive Order on Tackling the Climate Crisis at Home and Abroad, which mandates a "pause" on new onshore and offshore oil and gas leasing on federal lands, "to the extent consistent with applicable law," while a comprehensive review of oil and gas permitting and leasing is conducted. According to the Oil & Gas Journal, "There is no time limit on the review, which means the president's moratorium on new leasing is indefinite. The order does not restrict energy activities on lands the government holds in trust for Native American tribes, the White House said. Existing leases, unaffected by the moratorium, can provide oil and gas for decades to come, but in diminishing amounts as fields are drained down. The length of the 'pause' may determine whether U.S. production is significantly reduced at some point in the future." The order also details other actions such as setting a goal to conserve 30 percent of federal lands and oceans by 2030; creates a cabinet-level agency task force to develop and facilitate the deployment of a government-wide approach to address climate change; creates new executive positions, such as a National Climate Advisor, led by former Obama Environmental Protection Agency Administrator Gina McCarthy; addresses oil and gas well plugging; and creates an "environmental justice" program, among other provisions. This hastily issued order came on the heels of the Acting Secretary of Interior's Order No. 3395 issued on Biden's first day in office, and as reported in the last AAPL Governmental Affairs Report, imposed a 60-day moratorium on federal oil and gas leasing and permitting, for which numerous lawmakers objected. For example, on January 25, newly-elected New Mexico congresswoman, Rep. Yvette Herrell (R-NM) delivered a letter to New Mexico Gov. Michelle Lujan Grisham (D) regarding the recent move and its catastrophic impact on state revenues and energy independence. "The oil and gas industry is the lifeblood of our state's economy," wrote Herrell. "If banned today, New Mexico stands to lose more than 60,000 jobs by 2022. The loss of these good-paying, family supporting jobs would devastate entire communities and have grave longterm consequences for our state." Herrell noted that "Royalty payments and taxes on the oil and gas industry account for more than a third of the state's annual budget. The state's K-12 public education system alone received more than \$1 billion in funding from the oil and gas industry last year, which equates to \$60,062 per teacher and \$3,788 per student." Biden's broad-based January 27 order also addresses the "climate crisis" by stating, "We have a narrow moment to pursue action at home and abroad in order to avoid the most catastrophic impacts of that crisis and to seize the opportunity that tackling climate change presents. Domestic action must go hand in hand with United States international leadership, aimed at significantly enhancing global action." Apart from the leasing pause, the order would "identify steps through which the United States can promote ending international financing of carbon-intensive fossil fuel-based energy while simultaneously advancing sustainable development and a green recovery." The order also states "heads of agencies shall identify for the Director of the Office of Management and Budget and the National Climate Advisor any fossil fuel subsidies provided by their respective agencies, and then take steps to ensure that, to the extent consistent with applicable law, Federal funding is not directly subsidizing fossil fuels. The Director of the Office of Management and Budget shall seek, in coordination with the heads of agencies and the National Climate Advisor, to eliminate fossil fuel subsidies from the budget request for Fiscal Year 2022 and thereafter." However, any attempts to reign in supposed subsidies would have to be effectuated through an Act of Congress and Biden publicly stated that his administration will soon be sending legislation to Congress on this issue. In response to the above-noted drastic and misguided policy actions by the new administration, AAPL immediately delivered a letter to the Biden administration on behalf of our members clearly stating our opposition.

Energy Department Confirmation Hearing. In light of Biden's sweeping executive actions, on January 27, Republican lawmakers grilled Energy Secretary nominee, former Gov. Jennifer Granholm (D-MI), on Biden's climate agenda. Sen. John Barrasso (R-WY) called out the new administration's moves, saying Obama "went on a regulatory rampage" to slow energy production and there were worries the Biden administration would do the same. In her testimony, Granholm took a more conciliatory tone regarding the oil and gas industry. "If we are going to get to net carbon zero emissions by 2050, we cannot do it without coal, oil, gas being part of the mix," said Granholm. The nominee also said she did not believe fossil fuels should be completely taken out of the country's energy portfolio. The Senate confirmed Granholm as Secretary of Energy on February 25.

LEGISLATIVE & REGULATORY UPDATE (CONTINUED)

Republican Senators Oppose Biden's Attack on Oil and Gas Industry. On January 28, 26 Republican Senators sent a letter to President Biden to "express their opposition to his recent actions on fossil fuels, including revoking a permit for the Keystone XL pipeline and pausing the issuance of new oil and gas leases on public lands and waters." The lawmakers also requested a meeting with the new president to discuss his recent executive orders targeting the oil and gas industry.

Dakota Access Pipeline — Washington, DC. On January 6, the U.S. Court of Appeals for the District of Columbia upheld a lower court's decision regarding the Dakota Access Pipeline (DAPL) in that the U.S. Army Corps of Engineers violated federal environmental laws and will now require a full environmental impact statement (EIS) to study the risks the controversial oil infrastructure poses to the Standing Rock Sioux Tribe. The EIS will examine risks of an oil spill and evaluate alternative routes that do not impose risks on the Tribe. The latest order, while vacating easements granted for the pipeline construction to cross federally owned land, does not immediately shut down the pipeline. For background, on August 5, 2020, the same court gave a reprieve to the court-ordered shutdown of the DAPL. Despite a lower district court calling for its immediate shutdown by August 5, 2020, the appellate court, however, ruled that the lower court did not have the "findings necessary" for such a move. As reported by [The Hill](#) "It's now up to the Army Corps of Engineers to decide whether to shut down the pipeline and if it doesn't do so, the matter will return to the lower court." In the original case, *Standing Rock Sioux Tribe v. U.S. Army Corps of Engineers* (Case No. 16-1534), the U.S. District Court for the District of Columbia held that the U.S. Army Corps of Engineers violated the National Environmental Policy Act (NEPA) when it granted the easement to construct the pipeline under Lake Oahe (which is a large reservoir lying behind a dam on the Missouri River and stretching between North and South Dakota). The Court held that NEPA required the Army Corps of Engineers to produce an Environmental Impact Statement (EIS) for the easement application, rather than only the Environmental Assessment that was completed. Judge James Boasberg ruled that the pipeline, which has been in operation since 2017, should be turned off until the Corps completes an EIS. This process is expected to take 13 months. In sum, the Court held that "given the seriousness of the Corps' NEPA error, the impossibility of a simple fix, the fact that Dakota Access did assume much of its economic risk knowingly, and the potential harm each day the pipeline operates, the Court is forced to conclude that the flow of oil must cease. Not wishing to micromanage the shutdown, it will not prescribe the method by which DAPL must achieve this. The Court will nonetheless require the oil to stop flowing and the pipeline to be emptied within 30 days from the date of this Opinion and accompanying Order." Industry players and analysts also weighed in on the July decision. "This court ruling will create major obstacles for producers in North Dakota, who've been struggling to rebound," said Sandy Fielden, director of research for Morningstar, Inc. The buyers of Bakken crude, he said, will simply turn elsewhere for supplies once the pipeline dries up. Phillips 66, which owns a stake in the pipeline, said it was disappointed in the court ruling. "The negative impacts resulting from this court's decision to markets, customers, and jobs up and down the energy value chain will inflict more damage on an already struggling economy and jeopardize our national security," said spokesman Dennis Nuss.

U.S. Rejoins Paris Climate Accord. Last week, the United States officially rejoined the Paris Agreement on climate change. As we reported previously, on his first day in office President Biden signed an executive order that put our country on track to rejoin the agreement, but the action required 30 days to finalize. For background, the President overturned his predecessor's actions by informing the United Nations in January that the U.S. would be rejoining the climate accord, which follows through on Biden's campaign pledge to recommit to the Obama-era agreement on his first day in office. "A cry of survival comes from the planet itself, a cry that can't be any more desperate or any more clear," said Biden in his inaugural address, listing "a climate in crisis" as one of the many challenges facing the country. Biden has called for putting the U.S. on a path to net-zero emissions by 2050. The global initiative seeks to lower emissions, reign in fossil fuels, and promote sustainable and renewable energy projects which each country is expected to do under its own regulatory and legislative regimes.

Keystone XL Pipeline Construction and Jobs Preservation Act. On February 25, official bill text was made available for H.R. 684 known as the *Keystone XL Pipeline Construction and Jobs Preservation Act*. Sponsored by Rep. Kelly Armstrong (R-ND), the bill would authorize construction and operation of the Keystone XL pipeline by an Act of Congress and override any attempt by President Biden to stop it through executive action. "President Biden's decision to revoke the Keystone XL Pipeline permit is an attack on the way of life for thousands of people who rely on energy production to feed their families," said Rep. Armstrong. "The Keystone XL Pipeline would transport safe and reliable energy across our Nation, providing thousands of American jobs in the process and increasing our national security. We must do everything we can to see this terrible decision reversed and fight for energy policies that help move North Dakota and our Nation forward."

LEGISLATIVE & REGULATORY UPDATE (CONTINUED)

WEST VIRGINIA

The West Virginia Legislature is now in session, and there has been a dearth of proposed legislation offered that affects the oil and gas industry. Below is a summary of the various bills put forward.

Independent Contractors. On February 10, Sen. Charles Trump (R) introduced SB 6. The "purpose of this bill is to simplify the criteria used to define independent contractors and to impose objective standards on the differentiation of independent contractors from employees."

Independent Contractors. On February 15, House Speaker Robert Hanshaw (R) introduced HB 2020. The "purpose of this bill is to simplify criteria used to define independent contractors and to impose objective standards on the differentiation of independent contractors from employees." Senate companion bill, SB 272 was introduced on February 13 by Senate President Craig Blair (R).

Employee Classification. On February 15, Del. Geoff Foster (R) introduced HB 2530. The "purpose of this bill is to clarify the definition of an employee for the purposes of unemployment compensation and workers' compensation to match conform with Internal Revenue Code provisions."

Setbacks; Emissions. On February 10, Del. Terri Syplot (R) introduced HB 2074. The "purpose of this bill is to implement the recommendations arising out of the studies required by the Natural Gas Horizontal Well Control Act passed by the Legislature December 14, 2011. The bill requires continuous monitoring of air, noise, dust and particulates. The bill requires the operator to undertake the best available control technology if standards for air, noise, dust or particulates are exceeded. The bill changes the set back from horizontal well work activity to a residence to 1,500 feet from the limit of well work disturbance."

Setbacks; Notice. On February 10, Del. Barbara Fleischauer (D) introduced HB 2132. The "purpose of this bill is to change an elective obligation to a mandatory one. The bill requires notice in certain instances to the occupants of residential property. The bill prohibits the disturbance of a well site be no closer than 1,500 feet of an occupied dwelling. The bill provides notices include certain information. The bill establishes standards relating to air, noise, light and dust. The bill permits landowners be compensated for any decrease in the values of the land for its highest and best use. The bill requires the notice of a claim be also provided to an occupant of residential structure on the property. The bill establishes a statute of limitations for claims being filed."

Tax Valuation. On February 10, Sen. Eric Tarr (R) introduced SB 32. The purpose of this bill is "to clarify the types of operating expenses that must be used for purposes of valuing producing oil and natural gas wells, the methodology that shall be used by the Tax Commissioner in calculating operating expenses, the confidentiality of information submitted by natural resource producers to the Tax Commissioner, reports that must be submitted by the Tax Commissioner to the Joint Committee on Government and Finance, and to provide for alternate appeal of proposed valuation of natural resources property for ad valorem property tax purposes."

Abandoned Mineral Interests. On February 10, Del. Pat McGeehan (R) introduced HB 2205. The "purpose of this bill is to create a procedure to streamline the process to claim abandoned mineral interests."

Surface Mine Blasting Distance. On February 10, Del. Barbara Fleischauer (D) introduced HB 2227. The "purpose of this bill is to extend the distance from occupied dwellings or certain other structures in which surface mine production blasting may not occur, from 300 feet to 625 feet, to be consistent with the distance a gas well drilling pad must be from an occupied dwelling."

Production Tax. On February 10, Del. Mick Bates (D) introduced HB 2282. The "purpose of this bill is to provide for a new fee on each MFC of natural gas produced to fully fund [Public Employees Insurance Agency] benefits at current levels; allow a tax credit for value-added jobs in West Virginia for persons paying this fee; and creating a special reserve account to assume that sufficient moneys are collected to preserve the existing insurance program for a 5-year period, then allowing excess proceeds to be directed to general revenue."

LEGISLATIVE & REGULATORY UPDATE (CONTINUED)

Royalty Payments. On February 10, Del. Lisa Zukoff (D) introduced HB 2081. The "purpose of this bill is to require lessees of West Virginia real estate who make natural resources royalty payments for in-state property to any nonresident lessor, to withhold West Virginia personal income tax on natural resources royalty payments. The bill provides exceptions, penalties, defines terms and grants rule-making authority."

Tax Sales. On February 10, Sen. Patricia Rucker (R) introduced SB 72. The "purpose of this bill is to require the sheriff to send notices to the owners of record and to each resident or occupant of real property prior to selling the property for which property taxes have not been paid."

Tax Valuation. On February 17, HB 2581 was introduced by Del. Dianna Graves (R). The bill provides, among other tax change provisions, revised methodology to value oil and natural gas properties by the Tax Commissioner.

Orphaned Wells. On February 17, HB 2589 was introduced by Del. Evan Hansen (D). "The purpose of this bill is to prevent oil and gas wells from being orphaned on surface owner's land with no responsible driller or operator with the resources to plug the well."

Severance Tax. On March 2, HB 2810 was introduced by Del. Bill Anderson (R). The purpose of this bill is to remove the severance tax on oil and gas produced from low producing wells.

Unitization. On March 2, HB 2853 was introduced by Del. Brandon Steele (R). The purpose of this bill is to provide for the unitization of interests in drilling units in connection with shallow horizontal oil or gas wells. The bill sets forth application requirements, establishes the standard of review, provides for unitization orders, requires notice and timeliness, provides for hearings, addresses oil and gas produced from shallow horizontal wells, and adds or modifies definitions. Senate companion bill, SB 538 was introduced on March 3 by Sen. Eric Nelson.

Independent Contractors. On February 19, SB 272 passed the Senate and has been transmitted to the House. The measure is sponsored by Sen. Craig Blair (R). The "purpose of this bill is to simplify criteria used to define independent contractors and to impose objective standards on the differentiation of independent contractors from employees." House companion bill, HB 2590 was introduced on February 25 by Del. Ben Queen (R).

Orphaned Wells. On February 19, SB 362 was introduced by Sen. Randy Smith (R). "The purpose of this bill is to create the Orphan Oil and Gas Well Prevention Act; providing for a short title; providing for legislative findings and declarations; providing for restrictions to permit oil and natural gas wells, certain prohibitions, and requiring plugging assurance requirements; providing for limitations on the transfer of wells; providing for responsibility of previous operators to plug transferred wells; providing for different methods for operators to provide plugging assurance of wells including for wells not producing in paying quantities; providing administrative and management responsibilities for the chief of the Office of Oil and Gas and the State Treasurer regarding plugging assurance funds; providing clarifications regarding the duties of mineral and surface owners; providing for rule-making authority and severability."

Well Compliance. On February 24, Del. Evan Hansen (D) introduced HB 2725. "The purpose of this bill is to provide stable and adequate funding to the Office of Oil and Gas of the Department of Environmental Protection in order to oversee oil and gas wells' compliance with the law for the life of the wells."

Permitting. On February 23, Sen. Randy Smith (R) introduced SB 404. "The purpose of this bill is to create a statutory fee for the modifications to permits issued by the Department of Environmental Protection's Office of Oil and Gas."

Notarial Acts. On February 26, SB 469 was introduced by Sen. Mark Maynard (R). For the purpose of notarial acts, the bill would permit personal appearance by video technology. Pennsylvania and Ohio have been less active legislatively, but there is still some material to report.

LEGISLATIVE & REGULATORY UPDATE (CONTINUED)

PENNSYLVANIA

On December 8, 2020, the Pennsylvania Superior Court addressed the remaining issue on remand from the Pennsylvania Supreme Court regarding whether there had been physical intrusion "because the pleadings in the trial court did not clearly allege there had been a physical intrusion," so the Supreme Court remanded the case back to the Superior Court for additional proceedings on that issue. According to law firm Gordon Rees Scully Mansukhani, LLP, "[f]ollowing remand, the Superior Court granted each party permission to file a supplemental brief in support of their respective positions. On December 8, 2020, following careful review, the Superior Court affirmed the trial court's Order granting summary judgment in favor of Southwestern." For background, on January 22, 2020, the Pennsylvania Supreme Court delivered a victory for producers with the Court overturning a lower court ruling that could have opened a floodgate of trespass claims about hydraulic fracturing in the state's gas-rich Marcellus Shale. In *Briggs*, the Pennsylvania Supreme Court held that the "rule of capture" applies to hydraulic fracturing in the state, meaning oil and gas companies cannot be held liable for underground trespass when their production technique drains hydrocarbons from adjacent land. In this case, a Pennsylvania family claimed a producer trespassed on their property by extracting gas from an 11-acre parcel of family-owned land by drilling and hydraulically fracturing a well sited on a neighboring property. The issue before the Supreme Court was whether the rule of capture applied to oil and gas produced from wells that were completed using hydraulic fracturing and preclude trespass liability for allegedly draining oil or gas from under nearby property, where the well is drilled solely on and beneath the driller's own property and the hydraulic fracturing fluids are injected solely on or beneath the driller's own property. At trial, the Superior Court drew a distinction between hydraulic fracturing and conventional drilling, holding the rule did not apply to prohibit a trespass claim by an adjoining unleased landowner against a producer when that producer utilizes hydraulic fracturing for a horizontal well. The appellate Superior Court overturned that ruling, and the Pennsylvania Supreme Court affirmed in favor of the producer. The state Supreme Court held "that the rule of capture remains extant in Pennsylvania, and developers who use hydraulic fracturing may rely on pressure differentials to drain oil and gas from under another's property, at least in the absence of a physical invasion." Further, the Court concluded that "insofar as the panel's decision may be construed to suggest that a natural-versus-artificially-induced-flow litmus should be employed to determine whether the rule of capture applies in a given situation, that standard rests on a false distinction and is disapproved."

Hydraulic Fracturing. On January 29, Rep. Mary Louise Isaacson (D) introduced HB 353. The bill would require that well operators add tracer substances directly to fracking fluids before the fluids are used in hydraulic fracturing operations. "The addition of tracer substances would allow for the identification of fluids used by natural gas well operators which, in turn, would help regulators identify the party responsible for related water quality impairment."

OHIO

Leasing; Arbitration. On December 22, 2020, the Ohio Court of Appeals, Seventh District, rejected a landowner's attempt to circumvent mandatory arbitration in a lease dispute regarding whether leases had terminated for a lack of production. In the present appeal in *French v. Ascent Resources-Utica, L.L.C.* (Case No. 2020-Ohio-6828), the Court held that the exception to mandatory arbitration under state code (O.R.C. 2711.01(B)(1)) "did not apply to the oil and gas lease provisions and the matter was subject to arbitration." The Court "determined that in this case even though oil and gas leases create an interest in real estate, they are not issues concerning title to or possession of real estate." The lessors argued that "an oil and gas lease is more than a license because it creates a vested estate in the lands for the purposes named in the lease. They further argued that an oil and gas lease[s] creates an interest in real estate." The Court rejected these arguments.

As always, feel free to let us know if you have any questions, comments or concerns.

Nik Tysiak
Chair - MLBC Legislative and Regulatory Committee

UPCOMING EVENTS



ANNUAL MLBC/NALA SPRING CHARITY GOLF OUTING



FRIDAY, MAY 7, 2021
REGISTRATION OPENS @ 9:00AM
SHOTGUN START @ 10:30AM
OGLEBAY RESORT, WHEELING, WEST VIRGINIA

Join us for this great event and help us as we embark on our next adventure with WVU Medicine Children's Hospital and UPMC Magee-Women's Hospital! We will have some great prizes to give away and are looking forward to seeing everyone!

Registration will open soon, which will include not only a round of golf on either the Palmer or the Jones course at Oglebay Resort in Wheeling, but also lunch and a BBQ dinner after golf.

Please consider sponsoring this great event at one of the sponsorship levels below, and remember that our donations continue to enrich the lives of the children of our communities and their families during their stay at WVU Medicine Children's Hospital and UPMC Magee-Women's Hospital. Let's continue to support these great causes!



2021 ANNUAL AWARDS/ SCHOLARSHIP DINNER

EVENT DATE: 6/16/2021
EVENT TIME: 5:00 PM - 9:00 PM EASTERN
LOCATION: THE ERICKSON ALUMNI CENTER
ONE ALUMNI DRIVE, MORGANTOWN, WV 26504

Join us at our first "In-person" meeting since early 2020 as we celebrate our 2019/2020 Award Winners and our 2020/2021 winners as well. We are excited to see all of you!

We will also be inducting the 2021/2022 Executive Board and recognizing our current board members for their effort and dedication to the association. We hope you can join us.



KIEFABER & OLIVA
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In today's rapidly changing world, you need more than efficient, pragmatic legal advice. You need a strategic partner.

Kiefaber & Oliva LLP provides legal services to help oil and gas companies manage risk, address critical challenges, and strengthen business objectives – whether they are event-driven or part of a long-term strategy.

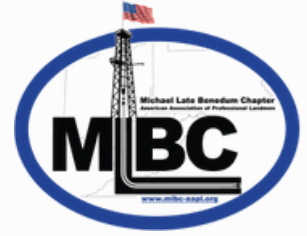
[Learn more at kolawllp.com.](http://kolawllp.com)

CONTACT

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Licensed to practice in OH, WV and PA

NEW MEMBERS

and CERTIFICATIONS



APRIL 2021

First Name	Last Name	Employer	Member Type	Sponsoring Member
Morgan	Krasa	EQT Corporation	Active	Michael Hopkins

New members are approved on a monthly basis. If the need arises to move along membership approval (ex. Ohio Landman Registration), please email Abby Veigel - abbyveigel@mlbc-aapl.org

SHOUT OUT!

Congratulations to the following members recently gaining their Certification through the AAPL :

- Nicholas A. Eddy, CPL
- Anthony J. Romino III, CPL
- Brian Even Stull, RPL
- Tyler Lajko, RL



Total Members: 714	
Active:	470
Active PP:	29
Honorary:	10

Total Active:	499
% Active:	69.89%
Associate :	122
Student:	83

STAY CONNECTED!

Follow us on our social media channels for news & updates!



[@mlbc-aapl](#)



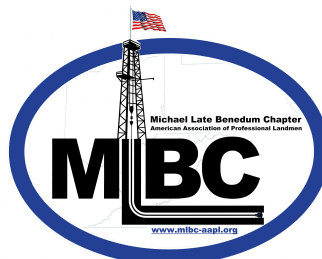
Michael Late Benedum
Chapter of AAPL



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2020-2021
**Executive
Committee**



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Vice President
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Treasurer
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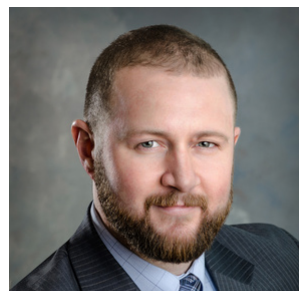
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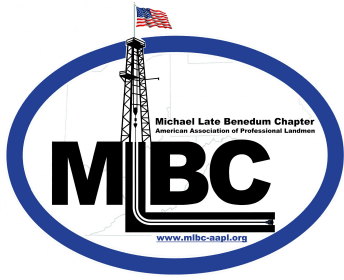
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President Emeritus
Jeremy White, RPL
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Executive Assistant
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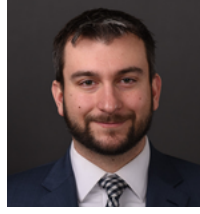
2021 Committee Chairs



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JPRESTON@EQT.COM



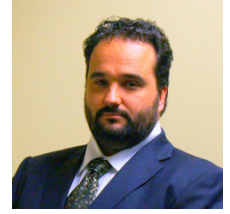
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MEMBERSHIP INFORMATION



The MLBC membership application is located on the website at www.mlbc-aapl.org. Please check your information on the website prior to submitting your renewal. The MLBC website has an updated version of the membership listing. Please use this resource if you cannot find yours or others information in the directory. Please report any errors or omissions to Abby Veigel at abbyveigel@mlbc-aapl.org.

Application for membership in the Association shall be subject to the approval by a majority vote of the Executive Committee at a regularly scheduled meeting and shall require the signed approval by the acting President of the Executive Committee, as evidence of the Committee's approval.

Notice of the approved application(s) of all potential Association member(s) shall be printed in the next regularly scheduled publication of the Association. Members shall have the opportunity for a period of thirty (30) days following the publication to object to the potential member's application.

LAND PROFESSIONALS RENEWAL UPDATE MESSAGE FROM THE OHIO DIVISION OF REAL ESTATE & PROFESSIONAL LICENSING:



All oil and gas land professional registrations expire annually on April 30th. The Division mails out individual renewal forms and instructions to the business address you have on file. This year we mailed your renewal information on February 24th. Be on the lookout for your paperwork! This year we will have two groups of registrations:

2021 renewal due: Those who completed their 2020 renewal and have a registration expiration date of 2021. *This group will be required to file with the Division no later than April 30th:*

1. their 2021 renewal form;
2. a \$100 renewal fee; and
3. a copy of a certificate of good standing from your national, state, or local professional organization.

2020 and 2021 renewal due: Those who have not yet filed a 2020 renewal and have a registration expiration date of 2020. Ohio House Bill 404 provided an extension for the 2020 renewal only. There is no extension for the 2021 renewal. *Therefore, this group will be required to file with the Division no later than July 1st:*

1. their 2020/2021 renewal form;
2. a renewal fee of \$200 (\$100 renewal fee for 2020 & \$100 renewal fee for 2021);
3. a copy of a certificate of good standing from your national, state, or local professional organization.

You can look-up your registration expiration date at our Division License Look-up [here](#). After searching your name or registration number, a new window will open with a contact search. Click on the blue "detail" box, and you will see your credential information, including the expiration date.

A new wallet card will be issued via email once you are properly renewed. **If you have any questions, you can contact the Division at 614-466-4100 or Laura.Monick@com.state.oh.us.**