

TOP STORIES:



PRESIDENT'S NOTE
Luke McCarley



FALL LUNCHEONS
Travis Beavers



CLAY SHOOT
Tony Patterson



QUARTERLY MEETING
Jason Sebastinas



MEMBERSHIP
Josh Wells



JANUARY 7, 2020 – HAPL/NHAPL/WHAPL JOINT LUNCHEON

LATE FEBRUARY 2020 – NHAPL HALF DAY SEMINAR

APRIL 20, 2019 – NHAPL SPRING GOLF TOURNAMENT

From the President's Desk

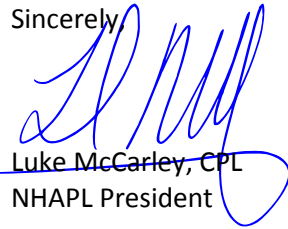


Wow, what a 2019! The year has flown by, and half of the NHAPL season is over. We have already had so many great and well-attended events. First, I want to thank all of you as members for being active and continuing to support NHAPL. We currently have 175 active members, a slight decrease from this time last year, but showing that our member base is still very strong. I am proud to be able to represent such a great organization. Our Board strives hard to provide a strong slate of networking and learning opportunities throughout the year, and I would like to thank them for all the effort they have put forth so far in making 2019 an amazing year. I would also like to thank our sponsors, because without their generous support, the NHAPL would not be able to grow and give back to our members and community. We have donated to the HAPL disaster relief fund with our proceeds from the squares board at the clays shoot, and we donated to the Montgomery County Women's Center and Children Advocates of Montgomery at our December Charity Luncheon.

At our events this fall, we have had great turnout. At the luncheons, put together by Vice President Travis Beavers, we have heard from some great speakers. The NHAPL Clays Shoot, put on by Tony Patterson and Brandon Dodds, was a great time, with lots of prizes and a great chance to see old and new friends. Brandon Dodds also organized the NHAPL Fall Social at Mahoney's Texish Bar in the Woodlands, a networking event that allowed members and non-members to socialize around our profession.

2019 was a great year for the NHAPL. As we enter the holiday season, it is a great time for me to reflect and be grateful to the landmen, from the members to the Board, that make this organization run. It is also a time to remember to be grateful that we work in an industry that is built on relationships, trust, knowledge and integrity. The NHAPL is proud to foster an organization that helps facilitate those ideals. From the NHAPL Board of Directors, we wish you a very happy holiday season.

Sincerely,



Luke McCarley, CPL
NHAPL President

FALL Monthly Luncheons – Closing the year out with a bang



This year we kicked off the NHAPL luncheon schedule in September with a presentation at Fleming's Steakhouse in the Woodlands with current AAPL President Jay Beavers. He gave our members and guest a presentation discussing the past, present and future of the Oil and Gas Industry and the AAPL. In October we had a great presentation at Pappasito's Mexican Cantina from Gary Bryan, Director of Marketing-Producer Services for V3 Commodities Group, who discussed the challenges facing oil and gas marketing and logistics. In November, we held an informative environment due diligence review at Landry's Seafood House in the Woodlands. Our December charity luncheon was held at Grotto Ristorante in The Woodlands and featured Joel Loshak, CPL, Chairman of the AAPL Ethics Committee to speak about recent ethics cases and challenges facing today's landmen. We also showed our support to two fantastic local charities that were presented with a donation from the NHAPL. Sign up now to attend our events for great networking opportunities, good food and continuing education credits!

As we move into 2020, please keep a lookout for information regarding our Spring 2020 luncheons and our upcoming events such as the half day seminar and the April NHAPL Golf Tournament. We can't wait to see everyone at these events!

Travis Beavers, CPL
NHAPL Vice President

7th Annual Clay Shoot | Blackwood Gun Club

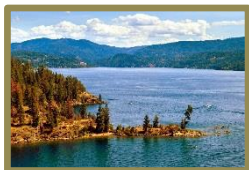
The 7th Annual NHAPL Sporting Clays Shoot was another giant success this year with a stellar turnout! 65 total participants and 61 shooters attended the event on Friday, October 4th at Blackwood Gun Club, who graciously agreed to host again. We had the Astros game playing on the big screen TVs, fried chicken and catfish catered by Clint's Kuntry Katfish, and ice-cold adult beverages were available after everyone was done shooting. The best solo shooter for the tournament was Brent Broussard, and the team with the highest score was of course of Dudley Land Company... Five guns total were raffled off, one being a Super Black Eagle Benelli Shotgun, numerous door prizes given away, and most importantly the event raised \$1,580 for the AAPL Disaster Relief Fund!

Special shout-out to the following Sponsors for making this event possible: [Repsol](#), [Kirby](#), [Mathews & Walrath](#), [The Holliday Energy Law Group](#), [Mazurek, Belden & Burke](#), [Kearney, McWilliams & Davis](#), [Genesis Land & Mineral Resources](#), [Dudley Land Company](#), [Southwestern Energy](#), [National Landworks](#), [Freeman Mills](#), [Babst Calland](#), and [Roger A. Soape Energy Land Services](#).

We hope to see everyone out there again next year!

Tony Patterson, CPL

Board of Directors, Sporting Clays Shoot Chair

AAPL September Quarterly Board Meeting | Coeur d'Alene, Idaho

This past September I was fortunate to represent NHAPL as its Director to AAPL in beautiful Coeur d'Alene for the AAPL quarterly Director's meeting. Tucked away in the hills of northern Idaho, Coeur d'Alene offered the perfect venue to host our Director's meeting. The weather was great with Fall knocking on the door which was a nice break from the Summer heat we were still experiencing here in north Houston. After a nice cocktail hour on the lake catching up with fellow Directors and committee chairs, we got to work spending the day discussing various topics such as the budget, Winter NAPE and next year's AAPL Annual Meeting which will be held in Huntington Beach, California. Further details will be rolled out in the months ahead. Our big action item was voting in a new AAPL EVP, Dr. Greta P. Zeimetz, CAE, who will office at the AAPL office in Ft. Worth, TX.

I look forward to sharing additional AAPL updates in the coming months!

Jason Sebastinas, RPL

NHAPL AAPL Director

Membership Update



Our membership remains strong with 154 active and 175 total members. We continue see healthy participation in the continuing education and social events throughout this year. Thank you to all of the land professionals who renewed their membership for 2019-2020. Please join me in welcoming the following new members who have joined since July 1, 2019:

Janet Aceves (BP Exploration & Production, Inc.)

Bailey Booher (C. H. Fenstermaker & Associates, Inc.)

Blair Brummell (XTO Energy, Inc.)

William Burke (Mazurek, Belden & Burke)

Mike Hammond (Bellatorum)

Brett McDanald (Pete Dailey & Associates, Inc.)

Jeremy McKee (SilverBow Resources Operating, LLC)

Damaris Quijano (P&P Oil & Gas Solutions)

C.R. Salinas (XTO Energy, Inc.)

Michael Sankey (Kean Miller, LLP)

Mary Ann Wells (MAW Land Services, LLC)

EDUCATIONAL DEVELOPMENT

The logo for Holliday Energy Law Group consists of a dark blue circle with the words 'HOLLIDAY ENERGY LAW GROUP' in white, sans-serif capital letters. The words are arranged horizontally across the circle.
HOLLIDAY ENERGY LAW GROUP**Benjamin Holliday – President, Holliday Energy Law Group****Production in Paying Quantities**

A question that often arises is whether a particular oil and gas well is producing enough hydrocarbons to maintain the lease and its acreage beyond the primary term. Fortunately, in Texas we enjoy a fairly well-developed set of case law that provides a general framework and specific factors to answer this question.

Let's begin by addressing this issue from its most basic elements, and then work into the specifics. First, we will review the nature of an oil and gas lease. Second, we will look at how the Texas courts construe production in paying quantities – an important term of art – using a two-part test. Third, I'm going to finish on what parties can expect when those two parts are applied in Texas courts.

In Texas, an oil and gas lease is considered a fee simple determinable grant. That means that the courts consider an oil and gas lease not as a traditional 'lease,' but rather as a mineral grant from the mineral owner (lessor) to the oil company (lessee) for a term of years – known as the primary term – and for so long thereafter – known as the secondary term – as certain conditions exist. The typical condition defining most secondary terms is "so long as production is occurring." The lessor's benefit from this uncertain bargain is enjoying a cost-free royalty interest known as the participating royalty, along with the right of reverter in the mineral estate. The right of reverter means that when the negotiated condition is no longer present – i.e. when there is no production beyond the primary term – then the mineral estate reverts back to the mineral owner. The lessee is the recipient of what is known as a defeasible (i.e. conditional) mineral grant, subject only to the lessor's participating royalty interest. This means that the lessee receives the mineral estate subject to the conditions in the grant (i.e. the oil and gas lease), and typically has the right to develop and then benefit from same for so long as production is obtained.

But how much production is enough to maintain an oil and gas lease? To answer that, Texas law starts with two key points:

- 1) Parties can contract as they see fit and completely change the general rules we are about to discuss. That means read your lease.
- 2) Unless otherwise defined by the parties, courts will interpret the word *production* to mean *production in paying quantities* ("PPQ"). It is a term of art defined by a long history of litigation.

So assuming that the lessee drills a well and obtains production in a timely manner, how much production is required to maintain that lease into the secondary term? How do we determine if a well is producing in paying quantities?

The Texas Supreme Court addressed this issue in *Clifton v. Koontz*, where they promulgated a succinct two-part test, which I refer to as the *Koontz* test:

1. **Accounting Test:** Do operating revenues exceed operating expenses? If yes, then the well is producing in paying quantities and the question is answered. But if no, then we move to part two...
2. **Reasonably Prudent Operator Test:** Would a reasonably prudent operator under the same conditions, for the purposes of making a profit and not for mere speculation, continue to operate the well in the same manner? We'll come back to this in a moment.

The first part of the *Koontz* Test, known also as the **Accounting Test**, is a binary look-back n-time, and asks: **are we making more money than we are spending to operate the well?** This analysis depends heavily on our definition of revenue and costs. For revenue, it is fairly simple – this is the net revenue interest of the operator. How much income is received from production? That is your revenue.

Cost is a little less straight-forward, as we must consider operating expenses separately from capital expenses. Essentially, operating costs are our lifting costs; those repetitive and recurring expenses that must be incurred to keep the well going. Some operating costs include pumping, labor, taxes, and routine maintenance.

These are distinguished from capital expenditures, which are large one-time expenses incurred in the life of the well. Some capital expenditures include acquisition, drilling, completion, and re-work. Capital expenditures will not be subtracted from revenue to determine whether a well is producing in paying quantities.

The classification of capital v. operating cost is a major distinction in a production in paying quantities analysis, and greatly lowers the economic hurdle that a well must meet. A second related and equally important point, is that it has no legal bearing whether a well will ever reach 'payout' or ultimately make a profit. Ultimate profit is not the legal standard, as odd as that may seem from an initial glance. This seemingly low standard, however, is aligned with the general Texas public policy that favors exploration. This policy of encouraging and supporting exploration is the 'why' of allowing operators to recoup as much of their costs as possible through production, even with a sub-par well. By allowing operators to disregard major historical sunk costs and focus on operating profitability on a go-forward basis, an exponential number of wells are allowed to continue production that might otherwise be shut-in.

Now let's talk about the second part of the *Koontz* Test, called the **Reasonably Prudent Operator Test**. If we cannot prove that we are earning more in revenue than we are spending in operating costs, i.e. if we fail the Accounting Test, then we ask **whether a reasonably prudent operator, for the purpose of making a profit and not mere speculation, would continue to operate the well in the same manner under the same circumstances.**

Unlike the Accounting Test, this is a forward-looking test. It is also rooted in what a jury determines is reasonable for an operator to do. If you've listened to any of my presentations, you know that this can be a dicey proposition. Essentially, we are asking the finder-of-fact (judge or jury) to determine whether it is reasonable under the circumstances to continue operating this well, which is usually one that is now or would be losing money.

Importantly, no specific timeline of profitability may be considered in the reasonableness inquiry. The Texas Supreme Court has been adamant that a well's profitability may not be determined by looking at a specific accounting period. That is, while it is the parties' job to convince the jury of what is reasonable, the fact-finder may not be limited to considering only a specific time period. But the fact-finder can consider circumstances (factors) during whatever time period it chooses, including:

1. the depletion of the producing reservoir,
2. the spot price for the commodity produced,
3. the relative profitableness of other nearby wells,
4. the current operating and marketing cost trends, and
5. the reasonable expectations about commodity prices.

A final and important note is that the burden of proof lies with the party alleging that the lease has terminated. That is, in order to prove that well has failed to produce in paying quantities during the secondary term, the plaintiff (presumably the lessor or one standing in his/her shoes) must plead and prove both of the required elements of PPQ: that the well has failed both (A) the accounting and (B) the reasonably prudent operator tests. Assuming that there is limited but actual production, then the defendant need not plead or prove anything; though I wouldn't recommend this as a litigation strategy. To properly terminate the fee-simple determinable grant, the plaintiff must carry the burden of proof on all elements to prevail in a suit for lease termination based on failure to produce in paying quantities during the secondary term.

So let's recap? First, in Texas the word *production* is a litigated term of art that courts will read as *production in paying quantities*. Second, PPQ means that we earn more revenue than it costs to keep the well going. Third, There is no specific time period for determining profitability. Fourth, parties are free to define PPQ differently in their lease, and that definition will control.

NATIONAL & LOCAL INDUSTRY COVERAGE***ANNUAL MEETING
2020 AAPL ANNUAL MEETING
June 17-20, 2020 | Huntington Beach***

Sandy beaches, ocean breezes, breathtaking views, inspiring sunsets, an iconic pier, oceanfront shopping and delectable dining — Huntington Beach, California, has it all — including AAPL's 66th Annual Meeting June 17-20 at the Hyatt Regency Hotel. The 2020 event promises to be a professional development and land conference unlike any other packed with opportunities for networking, education and adventure in beautiful Surf City USA. With a record number of education credits — 35 — and a lineup of respected experts covering a variety of topics, the 66th Annual Meeting offers something for professionals at every stage of their career. Make plans now to attend the most comprehensive education conference geared specifically for the land professional.

Please see the AAPL's website for more information and pricing info. Registration opens soon!

NAPE – WHERE DEALS HAPPEN



ONE SHOW. ONE LOCATION.

NAPE SUMMIT WEEK
3 – 7 FEB 2020
GEORGE R. BROWN CONVENTION CENTER
HOUSTON, TX

NAPE is the oil and gas industry's marketplace for the buying, selling and trading of prospects and producing properties. NAPE is unique in that it brings together all industry disciplines; draws in decision-makers; focuses its participation on prospect generators; and hosts companies of all sizes, from small independents to majors. If you compete in the upstream oil and gas business, NAPE offers you an unparalleled opportunity to meet decision makers in an environment that is fun, energetic and, most of all, serious about getting business done.

NHAPL/HAPL/WHAPL Joint Luncheon

- When

January 07, 2020
11:30 AM - 1:00 PM

- Location

Petroleum Club of Houston



Join us for our January joint luncheon with HAPL & WHAPL at the Petroleum Club of Houston. Check-in starts at 11:30 and lunch will be served at 12:00 followed by a presentation by AAPL President Jay W. Beavers III, CPL. We hope to see you there!



AUGUSTA PINES COUNTRY CLUB

MONDAY, APRIL 20, 2020 @ 11:00AM

Prizes For 1st, 2nd & 3rd Place
Door Prizes Following Dinner & Awards
Drinks, Lunch, Golf, & Dinner Provided

Registration at 11:00, Lunch at 11:30, Shotgun Start at 1:00 PM