



# HAPL Newsletter

November 1, 2021

"LAND IS THE BASIS OF ALL WEALTH"

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## HAPL NOVEMBER LUNCHEON



**NOVEMBER 2, 2021**  
**IN-PERSON LUNCHEON & LIVE WEBCAST**  
**11:30AM - 1:00PM**

**Speaker:** Caleb Fielder - Repsol - Team Lead for Land Operations in the Eagle Ford

**Topic:** "Pigs Get Fat, Hogs Get Slaughtered: The Perils of Title Clearance"



1 RPL/CPL credit will be available.

Petroleum Club Policy: Face masks are now optional for members and guests who are fully vaccinated. Masks are required for anyone that is not fully vaccinated.

## Register Online

### ***In-Person Luncheon:***

<https://www.hapl.org/events/907/>

### ***Live Webcast:***

<https://www.hapl.org/events/928/>

**Registration ends on November 1, 2021**

[www.hapl.org](http://www.hapl.org)

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[Register for the luncheon here](#)

[Register for the live webcast here](#)

# Upcoming Events:

## HAPL Events:

### November 2

HAPL November Luncheon, Petroleum Club  
*Speaker: Caleb Fielder of Repsol*

### November 15

HAPL 59<sup>th</sup> Annual Golf Tournament, The Clubs of Kingwood

### December 7

HAPL December Luncheon, Petroleum Club  
*Speaker: Steve Hendrickson, President of Ralph E Davis*

### January 4

HAPL January Joint Luncheon with NHAPL & WHAPL, Petroleum Club  
*Speaker: James "Jim" T. Devlin, CPL, AAPL President*

### February 1

HAPL February Luncheon, Petroleum Club  
*Speaker: Christi Craddick, Railroad Commissioner*

## Other Industry Events:

### November 11

9<sup>th</sup> Annual NHAPL Sporting Clays Shoot, Blackwood Gun Club

### November 18

AAPL Field Landman Seminar, Topgolf – Spring, TX

### December 2-3

AAPL Working Interest and Net Revenue Interest (Basic and Advanced), San Antonio, TX

### December 7-9

AAPL RPL/CPL Certification Exam Review, Houston, TX

February 8-11

NAPE Summit, Houston, TX

You can view more events and their details on the HAPL website at [www.hapl.org](http://www.hapl.org).



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# AAPL Upcoming Live Webinars

## November 8

### **Solar Lease Fundamentals - [REGISTER](#)**

SPEAKER: Phillip Guerra, CPL

CREDITS: 3.00 CEU

## November 10

### **Suspension of Payments and Escheat - [REGISTER](#)**

SPEAKER: Robert Kiefaber

CREDITS: 1.00 CEU

## November 11

### **Surface Use and Access - [REGISTER](#)**

SPEAKER: George R. Shultz, CPL

CREDITS: 5.00 CEU 1.00 CEU ETHICS

## November 22

### **Solar Lease Fundamentals - [REGISTER](#)**

SPEAKER: Phillip Guerra, CPL

CREDITS: 3.00 CEU

## December 1

### **Earth, Wind and Solar - [REGISTER](#)**

SPEAKERS: Peter Hosey & Reagan M. Marble

CREDITS: 1.00 CEU

## December 6

### **Petroleum Economics - [REGISTER](#)**

SPEAKER: Dwayne Purvis

CREDITS: 6.00 CEU 1.00 CEU ETHICS

## December 8

### **AAPL's Code of Ethics and Standards of Practice – V - [REGISTER](#)**

SPEAKER: George R. Shultz, CPL

CREDITS: 1.00 CEU ETHICS

## December 16

### **Solar Lease Fundamentals - [REGISTER](#)**

SPEAKER: Phillip Guerra, CPL

CREDITS: 3.00 CEU

*More information on these webinars and other upcoming webinars can be found online at [www.landman.org](http://www.landman.org).*



## Registering for the RPL/CPL exam just got easier!

AAPL has converted its certification exams to computer-based testing and selected Scantron to be its online testing provider. Approved RPL and CPL candidates will schedule their exams directly through Scantron Testing Centers.

Scantron has more than [100 testing centers](#) around the United States, providing candidates with more flexibility when scheduling their AAPL certification exams.

Please note that AAPL application fees and review registration fees do not include exam fees, which are a separate expense that Scantron charges for testing.

More information — including a Candidate Handbook — is available on the [Certification Testing](#) webpage.

If you have any questions, please feel free to contact me.

Joanne Stoy  
Certification Manager  
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## 2021-2022 HAPL Officers, Directors & Committee Chairmen

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**Audit** – Kyle Lesak, CPL  
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### Outstanding Senior Landman Nominating Committee

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### Past Presidents Council –

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### Service – Mimi McGehee

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# HAPL Officer Forum



John Gerrish, CPL  
2021-2022 HAPL 3<sup>rd</sup> Vice President



## "The Winds of Change"

This has been an exciting time in our industry, especially in the last few months, as commodity prices and industry movement has been ramping up. It wasn't so long ago that the doom and gloom of the recessed oil and gas prices forced major industry pullbacks in activity, bankruptcies, layoffs, mergers, etc. that left many of us finding ourselves scraping for employment, lucky to find work to go around as rig activity plummeted. A few great landmen I know have shifted to other careers, though I hope many of them find their way back to this wonderful profession. HAPL President, Wade Edington, chose the theme for the year as "The Winds of Change" and it seems quite fitting. Even

since the term started in July, things have changed, and I'm certain it's not over. The coming winter months should be very telling on just how important the very oil and gas assets that we all work are to providing secure and abundant oil and gas to our nation, while others in the world sit facing a current and expected future crisis on access to energy.

Remember there is no time like the present to get back into networking. HAPL offers many ongoing opportunities via luncheons, socials, and sporting events to attend. HAPL wants to do what we can to provide these opportunities for our members to make, maintain, and keep meaningful professional relationships. We encourage you to try to get back out there and enjoys the fruits of

the social aspect of this industry and community. Its unique to the landman profession and probably my favorite aspect. So, in this ever-changing business, the "Winds of Change" will continue as they always have with the ups and downs. Not necessarily calling this a Boom Time, but compared to the last year or so, we are in a great spot to take advantage of the situation, learn from our past mistakes and misfortunes, and seize new opportunities. Much of this can come from not just being a member of HAPL, but actively including yourself in our events and activities. We are always looking for folks to raise their hand to volunteer, and there are plenty of ways to get involved to go around.

## Cheated, Mistreated, Pushed Around?

Have you been cheated, mistreated or somehow deprived of your share of a deal, working interest or royalty? If so, give me a call. I have thirty years experience as a working interest and royalty owner in the oil and gas business to go along with forty years of court room experience. A trusted team of professionals together with the necessary resources is available to work on your case. You do not pay anything unless we win.

### Proven Results



- \$6,000,000 Future payout projected for settlement to widow with ORRI recovered under husband's consulting contract after company contended no payments due after death.
- \$5,800,000 Combined cash settlement for UPRC East Texas and Central Louisiana royalty owner class action cases for underpaid royalties. Court approved fee of 1/3.
- \$4,700,000 Jury verdict, oil company violates geologist non-compete contract. Settled later on confidential terms.
- \$2,000,000 Settlement for downhole failure of casing results in loss of well bore, net to client \$1,372,411.79.
- \$1,175,000 Settlement for geologist and family where oil company drilled too close to geologist property. Case filed 18 years after well drilled. Net to client \$664,822.51.
- \$986,000 Cash settlement, net to clients \$657,207.60, plus future mineral interest valued at \$500,000.00. Dispute over mineral interest ownership from thirty year old contract.

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## HAPL 2022 Dues Renewal

### It's time to renew your HAPL dues!

Your HAPL membership dues are set to expire December 31, 2021. Be sure to renew before the end of the year.

#### 2022 Membership Dues:

By Credit Card:	Active - \$75	Associate - \$75	Student - \$25	Active Life (65+ & retired) - \$35
By Check:	Active - \$70	Associate - \$70	Student - \$20	Active Life (65+ & retired) - \$30

#### Benefits of HAPL Membership:

- Monthly newsletter
- Email blasts of upcoming events (so you never miss any!)
- Access to the HAPL Membership Directory online
- Access to job postings online
- Ability to take part in the HAPL Mentorship program
- Member pricing at HAPL events such as luncheons, seminars and sporting events
- Many networking events throughout the year
- Scholarship opportunities for members' college bound students

#### How to renew:

##### Online:

- Log on to the HAPL website site at [www.hapl.org](http://www.hapl.org)
- Press the "renew your membership here" button
- Make sure your information is correct, if not, now is the time to update
- Proceed to the payment page
- Once payment has been approved, you are renewed!

##### Mail:

- Make your check out to HAPL and include the membership renewal form found at <http://www.hapl.org/files/642/>.

Mail to:  
HAPL  
Attn: Lindsey Griffith  
800 Bering Dr., Ste. 120  
Houston, TX 77057

Once your membership has expired, you will no longer be able to access the HAPL membership directory, receive HAPL email correspondence or membership pricing on HAPL events. If you have trouble renewing online, please give us a call at the HAPL Office at 713-622-6868 or send an email to Lindsey Griffith at [lindsey@hapl.org](mailto:lindsey@hapl.org).



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# Railroad Commission Rulemaking Well Underway On Senate Bill 3

By: Commissioner Christi Craddick

At the Railroad Commission of Texas (RRC), we are hard at work implementing legislation enacted during the 87<sup>th</sup> Legislative Session. As regulators, we are tasked with effectively and accurately putting bills passed by the legislature into action, which can occur through agency rulemakings, administrative updates, or staffing changes. While we process a variety of agency directives from the legislature, the most notable bill that we are currently carrying out is Senate Bill 3 by Senator Charles Schwertner.

In the aftermath of Winter Storm Uri, the Texas Legislature passed SB 3 as an omnibus response to the pitfalls uncovered during the storm. The Railroad Commission worked hard to provide real-world solutions, including submitting several recommendations that were ultimately adopted into the final version. These recommendations include:

- Mapping all critically designated natural gas infrastructure alongside the Public Utility Commission (PUC), Texas Department of Transportation (TxDOT), and other state agencies to prevent power outages at important fuel generating facilities.
- Formalizing the Texas Energy Reliability Council (TERC), a group of industry, state, and supply chain leaders to facilitate communications and operations during future events.

Now that the regular session has adjourned, we are tasked with implementation of SB 3. The provisions of the bill require us to designate critical facilities on the natural gas supply chain, map them alongside the entities under the PUC's jurisdiction, and develop weatherization requirements for the critically designated facilities that fall under the Railroad Commission's jurisdiction. The legislature provided us with funding to hire over 100 new inspectors to ensure that operators follow through with the weatherization requirements that we develop.

While we still have a long road ahead, I am proud of the steps this agency has already taken to successfully and responsibly carry out the provisions of SB 3. After releasing a first draft of our critical designation rule, we are actively collecting public feedback and look forward to incorporating those comments in our final version. Regular collaboration with our counterparts at the PUC, TxDOT, Texas Department of Emergency Management and Department of Public Safety through the mapping committee and informal meetings has allowed for streamlined communication. We formally appointed members to the Texas Energy Reliability Council. We work closely with the PUC to gather GIS data so that the natural gas facilities in our jurisdiction and the electric generation facilities in their jurisdiction can be collectively mapped and allow us to fully visualize the important energy producing areas that cannot afford to lose power. We released a Notice to Operators recommending proactive winter preparedness measures and best practices after having extensive conversations with operators in cold-weather states. We are actively hiring inspectors to help us carry out the important inspections process to ensure operator compliance with our rules. And finally, we continue to engage with stakeholders, industry groups, the legislature, and the public to ensure that we carry out the expectations of SB 3 in the best way possible.

While we cannot prevent weather emergencies in the future, we can actively prepare for whatever lies ahead to help prevent the aftermath of Winter Storm Uri from ever happening again. Alongside my fellow Commissioners and agency staff, I will continue to work diligently to provide responsible regulation and real-world solutions for all Texans.





**UP**



**MID**



**DOWN**



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# 10 Obvious (But Often Forgotten) Title Abstracting Tips for Landmen

By: Kelly O'Bryan da Mota, Esq., CEO & President, Cimmaron Land, Inc.

Before founding Cimmaron Land, I was a title review agent for many years. During that time period, I reviewed thousands of abstracts, checking for accuracy and completeness. The below tips address 10 of the biggest issues I saw during my time reviewing title. They seem obvious, but it is surprising how often these details are overlooked, even by experienced landmen:

- 1. Familiarize yourself with the broker's and client's requirements and best practices.** Title is title, but often companies differ on what they want included and the way they prefer that information be displayed. Familiarize yourself with the needs of the company you are working with.
- 2. Don't leave unexplained gaps in your chain of title.** If there is a gap in your chain of title, double and triple-check that you did not miss a document when you were adversing at the courthouse. If you are sure that the document doesn't exist, note the gap, explain where you looked to try to resolve it, and if applicable, offer a probable explanation.
- 3. Include probates for anyone who died owning an interest in the property.** Specific requirements may vary depending on the company you work for, but in general, if your chain of title contains a deed conveying interest from the estate of a deceased individual, the probate case should be included in the abstract. It helps paint a complete picture and you never know if you might find something out of the ordinary that would affect your chain of title.
- 4. Note the correct information in the runsheet.** This one is basic, and again, specific requirements may vary by company, but in general, you should list the instrument type, grantor, grantee, effective date, and file date as they are listed on the document. There is no need to get creative about those columns so just keep it accurate and simple. Precisely note the interest that was conveyed, assigned or reserved. Was only a certain percentage conveyed? A specific depth assigned? Don't summarize if the overgeneralization results in an inaccurate representation of the interest conveyed.
- 5. Adverse anyone who owns an interest in the subject property during the entire time they owned interest in the property.** Anyone who received an interest in the subject property (fee, lease, royalty, lien, etc.) should be adversed (at a minimum) from the date they received interest until they conveyed or assigned the entirety of their interest.
- 6. Understand the laws of intestate succession in your state.** The laws of intestate succession vary by state and often also by time period. If you need to apply the laws of intestate succession to your title chain, make sure you understand what law was relevant at the time of the decedent's death. Always refer to the applicable statute when making heirship determinations.
- 7. Identify the shape of the subject property.** Whether you are dealing with S-T-R descriptions, bounded-by descriptions, or metes and bounds descriptions, you need to understand the shape of your property versus the shape of the property conveyed or assigned in the documents in your chain of title. Was the entire property conveyed? Was only a specific portion of the leasehold assigned?
- 8. Check to see whether there are any wells drilled under unreleased leases.** If you did not find a release of record for any lease affecting the subject parcel, verify that it is not held by production (HBP). Understand the area covered by each unreleased lease and check to see if any wells were drilled on those lands, or whether they were incorporated into a unit during the primary term (or extended term, if applicable) of the lease.
- 9. Use spell check.** Make sure you use correct spelling and grammar in your abstracts. It might not seem like a big deal, but if you don't know how to spell words that are common in the industry, others may question whether you really know what you are doing. Keep your presentation professional.
- 10. Explain any assumptions.** Sometimes a document that could provide an explanation or close a gap simply doesn't exist of record at the courthouse. If it doesn't exist, it doesn't exist, but any assumptions need to be explained.

By paying attention to the details during your title examination and preparation of your abstracts, you can greatly improve your work and become more competitive in the market. As we all know, this industry is cyclical, but during both good times and bad, those at the top of their game will always have the most options. Make sure that you are among the best.



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# HAPL Mentorship Program Participant Spotlight

## GRACE WATSON – Southwestern Energy



Grace Watson is a Rotational Landman at Southwestern Energy in their Southwest Appalachia Division. Grace grew up in Lubbock, Texas and attended the University of Oklahoma where she graduated in 2020 with dual degrees in Energy Management and Finance. During her time at OU, she was a tour guide for the Price College of Business as well as an ambassador for the Fred Jones Jr. Museum of Art. While at the University of Oklahoma, Grace was an active participant in the Energy Management Student Association and helped manage the Michael F. Price Student Investment Fund. While pursuing her degrees, Grace worked as a student intern with Southwestern Energy in 2017 & 2019 and with Chesapeake Energy in 2018. Grace moved to Houston in 2020 when she accepted her role at Southwestern Energy, and she hopes to get more involved with the HAPL & AAPL. In her free time, Grace likes to go to local museums and explore the Houston food scene. When she is not downtown, Grace enjoys traveling across the country, making the most out of her airline points. Grace is passionate about giving back to the community and volunteers with Meals on Wheels and C.A.S.A. Her mentor in the program is Evan Welborn, CPL.

**“Almost always someone knows the answer. That is why mentorship is truly invaluable.” – Grace Watson**

## TIERCE WEAVER, RPL- M&S Engineering



Tierce Weaver is a Right of Way Agent with M&S Engineering in The Woodlands, TX. Tierce graduated from Western Colorado University in 2015, earning his bachelor's degree with a concentration in Energy Management & Economics. During his time at WCU, Tierce was the Treasurer for the Western Association of Petroleum Landmen. As a student, Tierce spent his free time playing club soccer, tutoring at the local elementary school, and skiing on Crested Butte mountain.

Tierce began his career as a Landman with Taxhoma Land Consultants working in the Marcellus/Utica play of West Virginia. With the capacity to expand his experience, Tierce spent time acquiring water rights, minerals, and O&G leases in various plays of Texas and Oklahoma. In 2019, Tierce moved back to his hometown of Dallas, Texas to working for a small start-up brokerage. When his position was discontinued, Tierce adapted. In early 2020, Tierce moved to Houston to begin working with M&S Engineering in his current role as a distribution Right of Way Agent. He looks forward to building his network and continuing his career in E&P land work.

Growing up in the Dallas metroplex, Tierce is a lifelong Dallas Cowboys fan. His morning coffee sipped from his lucky Cowboys mug, Tierce is hopeful that this is the year his team wins the Superbowl. When he's not dreaming of a Cowboys Superbowl victory, Tierce enjoys golfing, skiing, target shooting, hog hunting and coaching youth sports. Tierce and his fiancée are also enjoying the fun of wedding planning and the new chapter of life ahead. Tierce's mentor in the program is Gregory P LaBove, CPL.

More information about the HAPL Mentorship Program can be found online at <https://www.hapl.org/mentorship-program/>.



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# THIS IS NOT YOUR FATHER'S PRODUCERS 88: A Practical Guide to Navigating Retained Acreage, Continuous Development and Other Pitfalls In the Modern Oil and Gas Lease (Part III)

By: D. Bradley Gibbs, Kiefaber & Oliva, LLC

## I. Recent Cases Examining Retained Acreage Provisions

Several recent cases provide excellent examples of the types of controversies and sometimes harsh results that can arise in the context of retained acreage provisions. These examples illustrate the importance of carefully reading and complying with retained acreage and continuous development provisions. They also stand for the proposition that incorporating by reference the regulations of the Railroad Commission of Texas may not always lead to the intended or most advantageous results. Thus, in some instances it may be advisable to forego this approach and instead utilize "self-contained" retained acreage provisions that do not incorporate outside rules.

### a. **Knowing the Applicable Field Rules**

It would seem axiomatic that when drafting a retained acreage provision that incorporates by reference applicable field rules, a draftsman would familiarize himself with those applicable field rules. However, as demonstrated in *ConocoPhillips Co. v. Vaquillas Unproven Minerals*, this is not always the case.<sup>1</sup>

In *Vaquillas*, the issue on appeal was whether ConocoPhillips was entitled to keep 40 or 640 acres around each of its wells.<sup>2</sup> The lease language provided that after ConocoPhillips's continuous development program ended:

[L]essee covenants and agrees to execute and deliver to Lessor a written release of any and all portions of this lease which have not been drilled to a density of at least 40 acres for each producing oil well and 640 acres for each producing or shut-in gas well, except that in case any rule adopted by the Railroad Commission of Texas or other regulating authority for any field on this lease provides for a spacing or proration establishing different units of acreage per well, then such established different units shall be held under this lease by such production, in lieu of the 40 and 640 acre units mentioned above...<sup>3</sup>

The applicable field rules provided for between-well *spacing* but did not provide acreage-based proration units for *density* purposes.<sup>4</sup> However, the court held that because Statewide Rule 38 is expressly applicable to "special" spacing rules, it establishes default acreages when field rules only provide for spacing.<sup>5</sup> This default standard acreage differed from the initial acreage set forth in the retained acreage clause above, and was thus found to control.<sup>6</sup>

In finding that ConocoPhillips must release its leases as to all but 40 acres surrounding each well, the court noted that ConocoPhillips may not have "fully anticipated the consequences" of tying the retained acreage clause to a field rule that provided for spacing that established different units of acreage per well.<sup>7</sup> However, the court "could not rewrite the parties'

lease," and the exception as written automatically applied when *any* special field rules had been adopted, whether comprehensive or not.<sup>8</sup> Again, this case illustrates the importance of understanding the effect of tying in special field rules and regulations and the strict, mechanical method in which courts will interpret retained acreage provisions.

### b. **Effect of Referencing the Acreage "Prescribed" by the Field Rules**

In *XOG Operating, LLC v. Chesapeake Expl. Ltd. P'Ship*, XOG conveyed certain rights to Chesapeake under a term assignment.<sup>9</sup> Under its retained acreage provision, the assignment provided that the assigned interest would revert:

[S]ave and except that portion . . . included within the proration . . . unit of each well . . . The term "proration unit" . . . shall mean the area within the surface boundaries of the proration unit then established or prescribed by field rules . . . In the absence of such field rules[,] each proration unit shall be deemed to be 320 acres . . .<sup>10</sup>

The applicable Allison-Britt Field Rules provided that the "acreage assigned to the individual gas well for the purpose of allocating allowable gas production thereto shall be known as the prescribed proration unit . . . For allowable assignment purposes, the prescribed proration unit shall be a [320]

<sup>1</sup> *ConocoPhillips Co. v. Vaquillas Unproven Minerals*, No. 04-15-00066-CV, 2015 Tex. App. LEXIS 8194 (Tex. App.—San Antonio 2015, pet. abated).

<sup>2</sup> *Id.* at 3.

<sup>3</sup> *Id.* at 3-4.

<sup>4</sup> *Id.* at 8.

<sup>5</sup> *Id.* at 9.

<sup>6</sup> *Id.* at 9-11.

<sup>7</sup> *Id.* at 10.

<sup>8</sup> *Id.* at 10.

<sup>9</sup> *XOG Operating, LLC v. Chesapeake Expl. Ltd. P'Ship*, 554 S.W.3d 607 (Tex. 2018).

<sup>10</sup> *Id.* at 610.



acre unit . . .”<sup>11</sup> However, the field rules also allowed for the formation of smaller “fractional” proration units. Chesapeake then filed several Form P-15s designating proration units with a cumulative acreage totaling less than 320 acres per well.<sup>12</sup>

The XOG court invoked its prior holding in *Jones v. Killingsworth*<sup>13</sup> and unanimously found that the Allison-Britt Field Rules prescribed 320-acre proration units, despite the fact that Chesapeake had designated lesser acreages in its P-15s.<sup>14</sup> Chesapeake was entitled to 320 acres per well, being all of its acreage under the term assignment, and nothing reverted to XOG.<sup>15</sup> This is one of the few reported instances where an operator was found to be entitled to *more* acreage than it had designated on the required filings.

### c. Failure to “Assign” Acreage to a Proration Unit

The opposite result was reached in *Endeavor Energy Res., L.P. v. Discovery Operating, Inc.*<sup>16</sup> In *Endeavor*, the leases in question originally covered approximately 960 acres, and each lease provided that at the end of continuous development:

[The] lease shall automatically terminate as to all lands and depths covered herein, save and except those lands and depths located within a governmental proration unit assigned to a well producing oil or gas in paying quantities and the depths down to and including one hundred feet (100’) below the deepest productive perforation(s), with each such governmental proration unit to contain the

number of acres required to comply with the applicable rules and regulations of the Railroad Commission of Texas for *obtaining the maximum producing allowable* for the particular well [emphasis added].<sup>17</sup>

After drilling four successful wells on the acreage, Endeavor filed certified proration plats collectively designating approximately 324 acres (being an 81-acre proration unit for each well).<sup>18</sup> Endeavor later asserted that it had intended to assign 160 acres to each well and, realizing its mistake, attempted to file new proration plats with the Commission.<sup>19</sup>

The dispute in *Endeavor* focused primarily on the meaning of the phrase “assigned to a well.” Endeavor contended that although it only “assigned” 81 acres per well, it should retain 160 acres for each well because the applicable field rules allowed for a *maximum* total of 160 acres including tolerance acreage.

<sup>20</sup> This, argued Endeavor, is the amount of acreage that would result in obtaining the “maximum” allowable.<sup>21</sup>

Endeavor further argued that the phrase “assigned to a well” is ambiguous because it could refer to Endeavor assigning acreage in its proration plats or it could refer to acreage the Commission has “assigned to” a well through the special field rules.<sup>22</sup> The court disagreed and held that operators, and not the Commission, assign acreage to a well through the filing of a proration plat.<sup>23</sup> The Commission merely provides the regulatory framework under which acreage is designated.

Further, under the lease terms Endeavor only had to *generally comply with* the rules for obtaining the maximum producing allowable. It was not, as it argued, automatically entitled to such acreage as would give it the maximum producing allowable.<sup>24</sup> Endeavor was thus only entitled to retain the 324.00 acres assigned on its original proration plats.

Once again, these cases highlight the unintended consequences of inartfully drafted retained acreage provisions and failure to strictly comply with them once drafted. Because there are endless variations of these provisions, their interpretation hinges on the specific clause and applicable regulations. Retained acreage provisions must be carefully drafted and adhered to, particularly when they incorporate regulatory authority. It is in no way a foregone conclusion that the regulations will be construed in an operator-friendly manner as they were in the XOG decision.

## II. General Curative Approaches

Because retained acreage, continuous development and depth termination provisions vary so greatly between leases, it is an exercise in futility to posit one-size-fits-all curative recommendations. Curative efforts must be approached with the same level of flexibility and creativity as the bespoke provisions they attempt to cure.

Curative approaches will be distinguished based on whether the clause has already been triggered, the number of leases, the specific language of the clause or clauses (and whether they conflict internally or as between leases), whether the leases have been pooled, the lease dates, past development, the

deliverability or pressure, but not on productive acreage, a minimum acreage for maximum allowable provision may not result in additional acreage. Caution should be used in the presence of such a provision. See Scott C. Petry, *Drafting the Retained Acreage Clause: The Effect of Governmental Authority on Retained Acreage*, 27th Annual Advanced Oil, Gas and Energy Resources Law Course (State Bar of Tex. 2009).

<sup>11</sup> *Id.*

<sup>12</sup> *Id.* at 611.

<sup>13</sup> *Killingsworth*, 403 S.W.2d 325.

<sup>14</sup> *XOG Operating, LLC*, 554 S.W.3d 607, 613.

<sup>15</sup> *Id.*

<sup>16</sup> *Endeavor Energy Res., L.P. v. Discovery Operating, Inc.*, 554 S.W.3d 586 (Tex. 2018).

<sup>17</sup> *Id.* at 591, 600.

<sup>18</sup> *Id.* at 591-92.

<sup>19</sup> *Id.* at 594.

<sup>20</sup> *Id.* at 600.

<sup>21</sup> *Id.*

<sup>22</sup> *Id.* at 601.

<sup>23</sup> *Id.* at 601-02.

<sup>24</sup> *Id.* at 603-06. Such a provision has been referred to as a “minimum acreage for maximum allowable” clause. See Durrett, *supra* note **Error! Bookmark not defined.** However, note that productive acreage is not always a component of the allowable. If a retained acreage provision is based on net-acre feet, initial potential,

availability of time banking, the specific developmental plan, the local geology and various other factors. The measures discussed below provide only general approaches to disarming rogue retained acreage clauses. They are intended to address retained acreage provisions that have already been triggered, retained acreage clauses that are soon to be triggered or retained acreage clauses that conflict with those in other leases or with their own pooling provisions.

### a. An Example

In recent years, the author has encountered several variants of the following situation. Multiple leases authorize 640-acre pooled units. However, a typewritten addendum to each lease provides that “notwithstanding anything to the contrary” the lease will terminate at the end of the continuous development term as to all acreage save and except the acreage included within a producing well’s proration unit, and only as to those depths from the surface to the deepest producing formation. The leases may all have different primary terms and conflicting continuous development programs.

The lessee then pools the leases as to all depths, drills a couple of horizontal wells and the continuous development period comes to an end. Several years later, the operator wants to drill additional wells, often targeting a deeper formation. The issue is whether the leases are still held by production as to the deeper formation<sup>25</sup> under the pooling clause or whether the deep rights have been released under the depth termination clause. Further, in some instances the operator has designated proration units based on a

standard 640 acres, but it turns out that the lands under lease comprise an irregular oversize section.

One approach to correcting these discrepancies is through a combination of amendment and ratification. The amendment will likely include new retained acreage and depth provision language that is subordinated to a new pooling clause. This will allow the lease(s) to be held as to their entirety in the presence of pooling. It may also be necessary to amend some or all of the leases to “reset” the continuous development period. This can ensure that all the leases are subject to a similar timeline. The lease(s) may also be ratified to confirm the acreage and depths currently held by production.

Circumstances may also call for “revivor” of a lease as to any lost or potentially lost depths and/or acreage outside of a proration unit. Any such “amendment, ratification and/or revivor” will require careful tailoring to meet the specifics of the situation. Another option is, of course, to negotiate new leases covering any unleased depths and acreage.

### b. Ratification vs. Revivor

The scenario above alludes to lease ratification and revivor. Although a complete discussion of these doctrines is outside the scope of this article, they may be utilized to cure lost acreage or depths under a retention clause. The terms should be distinguished.

Ratification is generally defined as an agreement confirming a lease by the original lessor. Ratification does not effect a present conveyance of a terminated lease, but binds a mineral owner to an otherwise defective,

voidable lease that was previously executed.<sup>26</sup>

Revivor creates a new grant of the mineral leasehold estate following termination or partial termination of a lease.<sup>27</sup> To be effective, the instrument reviving the lease must specifically reference the revived lease, acknowledge its validity, and include words of present grant and a recital of new consideration paid.<sup>28</sup> Whether ratification, revivor, or some combination thereof is appropriate will be determined by the surrounding circumstances.

### c. Curative Measures Following the 2020 “Double Black Swan” Event

Beginning in April 2020, oil prices dropped to unprecedented lows, with spot prices even going negative at points. This was due to a confluence of diminished demand and drastic oversupply. Few oil and gas leases contemplate circumstances in which storage facilities have filled completely and a complete lack of an available market emerges.

This prolonged period of depressed oil prices and/or the lack of a market affected many operators’ ability to meet various obligations under their oil and gas leases, including those related to continuous development. Some states even passed emergency legislation allowing the temporary shut-in of oil wells without penalty.<sup>29</sup> However, such regulatory or legislative generally did not affect non-state or federal oil and gas leases. These leases remained private contracts between individuals.

<sup>25</sup> A similar situation sometimes arises in North Dakota. A lease will provide that it is only to be held to the base of the deepest producing “formation.” The leased lands will later be compulsory pooled as to the “Bakken Pool,” and a Bakken well drilled. However, the parties fail to contemplate that “Bakken Pool” is an administrative term and that “the typical Bakken, Bakken/Three Forks, and/or Three Forks Pool is defined as that accumulation of oil and gas found in the interval from 50 feet above the Bakken Formation to above the top of the Birdbear Formation within the limits of any given field.” See NDIC Order No. 24665, Case No. 24665 (2014).

This can lead to misunderstandings and disputes as to whether the lease is held as to the entire Bakken Pool (including the Three Forks) or only as to the Bakken Formation.

<sup>26</sup> Patrick H. Martin & Bruce M. Kramer, *Manual of Oil and Gas Terms* 866 (2018).

<sup>27</sup> *Id.*

<sup>28</sup> *See id.*

<sup>29</sup> See N.M. STAT. ANN. § 19-10-6 (Shut-In Oil Wells; Conditions) and N.M. CODE R. § 1919.2.100.71 (Temporary Shut-in of Oil Wells Due to Severe Reduction in the

Price of Oil). See also Amy R. Sisk, *Mineral Owners, State Brace for Idled Oil Wells*, BAKKEN BREAKOUT (Apr. 8, 2020), [https://bismarcktribune.com/bakken/mineral-owners-state-brace-for-idled-oil-wells/article\\_27633dcc-ebf6-5110-89f9-7c0b936eb7f3.html](https://bismarcktribune.com/bakken/mineral-owners-state-brace-for-idled-oil-wells/article_27633dcc-ebf6-5110-89f9-7c0b936eb7f3.html), retrieved Apr. 21, 2020 (“The [State of North Dakota] has not yet received any requests to shut in wells, but it has a policy in place that allows for applications to halt production at wells, temporarily, without voiding a lease. ‘I would expect with these prices that we would be getting more than a few,’ Gov. Doug Burgum said.”

Once again, collaborative measures have proved to be the best approach in relieving operators from these unmet obligations. As always, the most advantageous remedial measure will depend on the language of the lease and the surrounding facts. These measures may include amending your current lease to include more favorable provisions or a lease extension if the lease is still within its primary term. Other options may include taking a new lease with a new primary term or executing a "tolling agreement" that suspends lease obligations for an agreed-upon amount of time.

Once again, depending on the circumstances, it may be advisable to pay at least nominal consideration and include words of present grant in your curative instrument. You will also likely want to record the curative instrument, or a memorandum thereof, to protect yourself from later challenge by furtive top-lessors.

### **III. Conclusion**

This article is not intended to be comprehensive but is instead intended to gather various considerations for negotiating, drafting and interpreting retained acreage provisions. Although this article is focused on retained acreage clauses and their related provisions in Texas, the principles are applicable in many other jurisdictions. No matter what state your leases are in, the chances are that there is no standard retained acreage clause, and that the exceptions have swallowed the rules with regard to their legal

construction. As these provisions are often heavily negotiated, their application and interpretation will depend entirely on the language of the specific lease, the specific field or statewide rules that are incorporated, and the actual drilling activities that have taken place. In the event you have encountered a problematic retained acreage clause, the available curative measures will likely be as nuanced as the provision itself.

Despite these shortcomings, retained acreage provisions remain a powerful tool in ensuring full development of the leasehold. Thus, they are here to stay. One certainty is that, like the "standard" Producers 88 itself, there are any number of new twists waiting to be debuted. It is therefore advisable to consult with your experienced attorney of choice when faced with a convoluted retained acreage provision.

#### **About the Author: D. Bradley Gibbs**

Bradley Gibbs' practice involves advising clients regarding due diligence, complex mineral titles, pooling issues, lease analysis, joint operating agreements, surface use issues, title curative and general upstream matters. He is licensed to practice law in Texas, North Dakota, Kansas, and Wyoming.

Mr. Gibbs is Board Certified in Oil, Gas and Mineral Law by the Texas Board of Legal Specialization. He is a member of the Oil, Gas, and Energy Resources Section of the State Bar of Texas, the College of the State Bar of Texas, the Oil, Gas & Mineral Law Section of

the Houston Bar Association, the Association of International Petroleum Negotiators (AIPN), the American Association of Professional Landmen (AAPL), and the Houston Association of Professional Landmen (HAPL). He received his J.D. from the University of Houston Law Center in 2011 where he was an editor for the Houston Journal of International Law and received multiple awards for excellence in legal research and writing, including the HJIL Writing Award for an Outstanding Comment on a Topic in International Law. He was selected as a Super Lawyers Rising Star and a Top-Rated Energy & Natural Resources Attorney in Houston in 2018-2021.



# HAPL Skeet Shoot Recap

The 47<sup>th</sup> Annual HAPL Skeet Shoot was held at American Shooting Center on September 25<sup>th</sup> and despite the challenges 2021 has presented us with, the event was once again a huge success! This year we had over 100 shooters registered for the event, resulting in some great friendly competition. Our 1<sup>st</sup> place awards for both the men's and women's category this year belong to the Gaither family, with 49 for the men's category and 47 in the women's category!

We would like to pay a huge thanks to our great sponsors this year, who we could not put on such an event without! **UpCurve Energy**, **Kirby, Mathews & Walrath, PLLC**, **Record Title Research, LLC**, and **Kearney, McWilliams & Davis, PLLC** were our featured sponsors for this event, where they not only provided sponsorship funds to make sure this event was a success, but also provided some help of their own with the event! Our 2<sup>nd</sup> year food truck experience for this event was again a great success! **Suncoast Land Services** assisted by providing a much-needed gun cleaning/service area, and **Pronghorn Land & Minerals, LLC** also set up a tent to provide some awesome swag and raffled off a Yeti Cooler! The generosity shown by these sponsors, as well as the sponsorships outlined below are what allow us to keep putting on such a great shoot!

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# Tap Into AAPL*Connect* and Get the Conversation Going

By: Le'Ann Callihan, Vice President of AAPL & NAPE

Among the many benefits of AAPL membership is the strong sense of community. And it just got even better.

We've streamlined the pathway to our association communities with the launch of an all-new AAPL member service — AAPL*Connect*. On this platform, numerous communities have been set up to help members network, share common interests, discuss industry concerns and forecasts, ask technical questions and more.

This robust member forum provides a place to keep the conversations going, from hot industry trends and current events affecting the profession to governmental affairs and legislative and regulatory updates — and everything in between. Have an opinion or need advice? Then join the communities that best suit you and begin sharing your expertise while also learning from your peers. There is even a special community for local associations such as HAPL.

Following is a list of communities currently available for AAPL members to join, but the good news doesn't stop here. Additional communities can be added as needed.

## **Join the buzz in the AAPL*Connect* communities:**

- Member News: the place to find the latest information on upcoming education events, member obituaries and other relevant AAPL news.
- Governmental Affairs Network: a network to stay in the know on important government relations issues.
- E&P Company Landmen Network: a community for AAPL members who work as corporate landmen.
- Independent Field Landmen Network: a community for AAPL members who work as independent field landmen.
- Local Association President & Director Network: a network for interaction among presidents and directors of AAPL's local associations.
- Local Association Network: the place to connect and share ideas on events, issues and other related matters and to promote events hosted by local associations.
- Renewable Energy Network: a network designed for discussions about renewable energy.
- Student Network: a community designed for our next generation of land professionals.
- Women Land Professionals: a community for AAPL women who work as land professionals.
- Diversity Forum: a place for members to volunteer their time in support of AAPL's DEI goals. This forum supports AAPL's commitment to diversity, equity and inclusion. It is a space for members and staff to discuss ideas, suggestions and even challenges.
- Appalachian, Michigan & Illinois Landmen: a group of landmen who live in or work in Michigan, Illinois or the Appalachian region.
- Mid-Continent Landmen: a group of land professionals working in the Mid-Continent region.
- Rockies Landmen: a group of land professionals/ROW agents working in the Rocky Mountain region.
- Southeastern U.S. Landmen: a group of landmen who live in or work in the Southeastern region, including Louisiana.
- Texas Landmen: a group of land professionals working in the state of Texas.
- West Coast, OCS, Alaska & Canada: a group of land professionals working along the West Coast (including Arizona and Nevada), Outer Continental Shelf, Alaska and Canada.

Within the AAPL*Connect* Member Forum, you can create or join specific groups that interest you, while being assured that comments from you and your fellow AAPL members are kept in a secure forum not detected by internet search engines such as Google.

Help us build the AAPL*Connect* network by joining in with your comments. Your participation is welcomed and appreciated — the more land professionals contributing to the communities, the greater the value of the forum. Jump into the conversation today! See how to get started in AAPL*Connect* on the next page.

**How to get started in AAPLConnect:**

1. Log in to your member profile at [landman.org/resources/member-resources/aapl-connect-member-forum](https://landman.org/resources/member-resources/aapl-connect-member-forum) using your AAPL credentials
2. Click on “Communities” tab.
3. Select “All Communities” to see a list of available communities.

After joining, you can view all your communities under the “My Communities” section.

**How to post or start a discussion:**

Click on the “Participate” tab and then select “post a message.” This page will allow you to post to a community in which you are already subscribed. Select the community to post your message and then decide if you want to cross post it to another community. Once you are done with your message, hit post and you are all done!

Another way to create a new post is within the “My Communities” section. Once you select the community to post your message, you will see the “latest discussion posts” for that community and can click the green “add” button or navigate to the “discussions” and click on the green “post new message” button.

How do I comment on a discussion?

Simply click on the thread subject and then click on “reply.”

You can also “follow” a discussion if you’d like to stay in the know about the replies but without commenting by clicking on the “follow star.”

Questions about how to use AAPLConnect? View the FAQs on the [landman.org](https://landman.org) website.

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# Seeking Nominations - AAPL Awards

We need your help in nominating HAPL members to be considered for the AAPL awards to be presented during the 2022 AAPL Annual Meeting.

The process is simple. Just look through the awards and corresponding descriptions below, then think of individuals that come to mind. Send the HAPL office an email at [hapl@hapl.org](mailto:hapl@hapl.org) **by December 1st** with your nominations, your questions or to be walked through the submission process.

If you would like to participate on the Nominating Committee please contact Claire H Morse at [morsech@chevron.com](mailto:morsech@chevron.com). It would require one or two short meetings to review and select the best nominations to be submitted to AAPL and preparing submittal forms as needed. Volunteering on the committee is a valuable contribution to HAPL.

## AAPL Award Descriptions:

### LIFETIME ACHIEVEMENT AWARD

To be presented to an AAPL member who has honored and distinguished the land profession through demonstrated leadership, integrity, and his/her contribution to the industry, the community and the profession for his/her entire land career. Current AAPL Officers are excluded from nomination.

### LANDMAN OF THE YEAR AWARD

To be presented to an AAPL 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 calendar year 2021. Current AAPL Officers are excluded from nomination.

### PIONEER AWARD

To be presented to an individual, group or company who at any time has significantly impacted the land profession with a fundamentally distinct contribution. This award may be given to a Landman who is NOT an AAPL member. This award may be posthumously given. Current Executive Committee members may not be submitted and self-nominations will not be considered.

### BEST MEMBER COMMUNICATION

To be presented for the best single communication by a member of a local association during the 2021 calendar year. The communication may be written or oral, but if oral, a written transcript must be submitted. The communication may be to the local association membership, to AAPL or the industry but must pertain to AAPL. The individual must be a member of AAPL for his or her entry to be considered.

### BEST AAPL DIRECTOR'S COMMUNICATION

To be presented for the best single communication by an AAPL Director during the 2021 calendar year. The communication may be written or oral, but if oral, a written transcript must be submitted. The communication may be to the local association membership, to AAPL, to the industry or the community, but must pertain to AAPL.

### BEST PUBLISHED ARTICLE IN AN AAPL PUBLICATION

To be presented for the best single article by an AAPL member during the 2021 calendar year published in the AAPL's Landman. No formal entry is required as this will be judged using 2021 AAPL publications.

### SPECIAL AWARDS

Multiple awards in this category may be awarded based on merit. To be presented to the member(s) or group(s) who/which has made an extraordinary contribution to AAPL, the land profession, the industry, or the community. May include but is not limited to:

**Education** – may be presented to a member who has achieved a level of unusual distinction in AAPL's continuing education program as demonstrated by his/her contribution of time and service to the betterment of land professionals.

**AAPL Committee Member Award** – may be presented to an AAPL Committee member who has greatly exceeded expectations.

**Community Service** – may be presented to a member who has contributed greatly toward civic improvement in his/her local community.

**Other** – may be presented to a member who has achieved unusual distinction or contributed significantly to the betterment of land professionals in any other way deemed worthy of recognition.

HAPL members have a long history of making significant contributions to our great industry. Let's make sure to help give our fellow HAPL members the recognition they deserve! In addition, if you would like to serve on the Award Committee to review and finalize nominations, please let me know. It won't take much of your time and is a great way to contribute to HAPL.

# HAPL New Members

## Active Members:

Jeremiah Cooper, CPL  
Apache Corporation

Tanner Jones  
Momentum Minerals

Matt Sherrill, CPL  
Zarvona Energy LLC

Jason Van Pelt, RPL  
Mandalorian Energy Resources LLC

## Associate Members:

Gavin Nadeau  
Southwestern Energy Company

Andrew Smith  
Southwestern Energy Company



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# HAPL MEMBERSHIP

## WHY JOIN?

Members can attend, at a discounted rate varying by event, numerous educational events throughout the year where they can sharpen their skills and stay up-to-date with changes in the industry.

Earn multiple continuing education credits and ethics credits to maintain RPL and CPL certifications at educational seminars and monthly luncheons.

Members can attend, at no charge, numerous socials throughout the year and expand their professional networks

Scholarship opportunities for HAPL members kids heading to college.

Monthly newsletters & email blasts to keep members up to date on current events.

Members can participate in the mentoring program as a mentor, helping to mold the careers of landmen just starting their careers, or as a mentee, gaining valuable insights and knowledge.

HAPL hosts 3 annual sporting events--a skeet shoot, golf tournament, and saltwater fishing tournament--that members can register for at a discounted rate.

Annual Active & Associate memberships are currently \$70



*Houston Association of Professional Landmen*



Lindsey Griffith  
HAPL Executive Administrator/  
Newsletter Editor



John Gerrish, CPL  
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