



# THE REGISTER

THE JOURNAL OF THE ARK-LA-TEX ASSOCIATION OF PROFESSIONAL LANDMEN

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FEBRUARY 2020

## President's Message

The month of February has always intrigued me. According to Wikipedia, February derives its name from the Roman month Februarius, which comes from the Latin Februum, meaning purification. Those crazy Romans! There is so much going on this month and it's all packed into such a short window of time. Thank goodness we have an extra day this year to enjoy everything that's happening. There's Groundhog Day, the Super Bowl, Valentine's Day, Darwin Day, President's Day, Mardi Gras and Ash Wednesday (although as you know these two don't always happen in February), and the ALTAPL Educational Seminar. More on the last one later.

If you didn't attend January's membership meeting, you really missed a great presentation by Professional Land Surveyor John Fenstermaker. I thought I was pretty familiar with the General Land Office and the Office of State Lands, but Mr. Fenstermaker provided some really interesting historical facts about how our great state was surveyed following the Louisiana Purchase. I really hope Mr. Fenstermaker is able to address the association again, maybe as a speaker at next year's seminar.

Up next for the association is the annual Educational Seminar, to be held all day Friday, February 28 and a half day on Saturday, February 29 at the Petroleum Club. The complete schedule and speaker lineup are included elsewhere in this edition of The Register. I've written about the seminar previously and I can't emphasize enough what an awesome learning opportunity this is for area landmen. We really are blessed to have such knowledgeable folks who will speak on many diverse topics. This really is a great value, too.

Next month we will hold our evening meeting where we honor our Past Presidents. The event is Monday,

March 2, and will begin at 5 p.m. at the Petroleum Club. Robin Forté, CPL, will address the association. Mr. Forté has 30 years of experience in our industry and is a very bright and entertaining speaker. He was heavily involved in the leadership of AAPL and NAPE for several years and also was an Air Force fighter pilot during the Vietnam War. I hope to see many of you attend this meeting as it is always a nice time.

I'm also looking forward to our April monthly membership meeting, where AAPL President Jay W. Beavers, III, CPL, will be speaking. This meeting will be held at Ralph and Kacoo's in Bossier City from 11:30 a.m. to 1 p.m. and should be a real treat. From what I hear, Mr. Beavers is an entertaining speaker who is very down to earth. Additional details will be coming soon on what is our final membership meeting of the year.

The ALTAPL Board, along with our good friends at the Shreveport Geological Society, are busy planning our year-end event to be held at a yet-to-be-determined date in May. We will have more information next month on what promises to be a fun gathering for area landmen and geologists.

I hope to see you at the seminar.

Take care,

**Pedro M. Pizarro, CPL**

President



*Pedro M. Pizarro*

**Ark-La-Tex Association of Professional Landmen**

P.O. Box 1296

Shreveport, LA 71163-1296

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[ppizarro@bellsouth.net](mailto:ppizarro@bellsouth.net)

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[cindyashford@gmail.com](mailto:cindyashford@gmail.com)

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**Shawn S. Meyer, CPL**

Social 318-564-8413

[lsushea@gmail.com](mailto:lsushea@gmail.com)

**Paul Wood, CPL**

Certification, Education,

AAPL Director

318-393-0523

[paul@paulwoodattorney.com](mailto:paul@paulwoodattorney.com)

**Lora S. Smith**

Membership 903-742-9955

[lorassmith@gmail.com](mailto:lorassmith@gmail.com)

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Website 318-465-8130

[travis.hart@ensightenergy.com](mailto:travis.hart@ensightenergy.com)

**Chris Font**

Ethics, Education 318-347-8468

[wchrisfont@aol.com](mailto:wchrisfont@aol.com)

**Lynn Higginbotham, CPL**

Education, Ethics 318-588-6710

[lhigginbotham@argentmineral.com](mailto:lhigginbotham@argentmineral.com)

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Golf 318-349-0731

[kenneth.favrot@vineoil.com](mailto:kenneth.favrot@vineoil.com)

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Most-Trusted Advisor 318-459-9031

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**Chad E. Sepulvado**

Ethics 318-469-4256

[chad@seabaughlaw.com](mailto:chad@seabaughlaw.com)



View the interactive ALTAPL calendar online at [altapl.org/events](http://altapl.org/events).

### **February 28-29**

Educational Seminar

### **March 2**

Evening Membership Meeting  
Honoring Past Presidents

### **April**

Membership Meeting at  
Ralph & Kacoo's in Bossier City

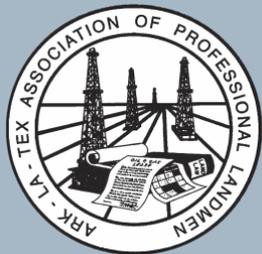
### **Announcements:**

- RPL / CPL Exam and classes tentatively scheduled for Shreveport in 2020, please contact Paul Wood if you are interested. Paul Wood: 318-393-0523 [paul@paulwoodattorney.com](mailto:paul@paulwoodattorney.com).

- If you have any knowledge of any ethics violations, please get in touch with the association. Ethics violations reflect poorly on all landmen and associates of the land side of oil and gas.

### **CONGRATULATIONS CORNER**

Is there someone you know deserving of congratulations? Email [Kenwomack@comcast.net](mailto:Kenwomack@comcast.net) to see them here!



**2019-2020 ALTAPL Annual Advertising Rates**

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**AAPL Upcoming Events**

See more at [www.landman.org](http://www.landman.org).

Date	Event	Location
2/3/2020	CPL Exam, RPL Exam	Houston, TX
2/4/2020	Petroleum Economics Seminar	Houston, TX
2/5/2020 – 2/7/2020	2020 NAPE	Houston, TX
2/11/2020	Due Diligence Seminar	Austin, TX
2/14/2020	Royalty Deductions	Dallas, TX
2/20/2020	AAPL Monthly Streaming Video – Mineral Management	
2/20/2020 – 2/21/2020	Working Interest and Net Revenue Interest Seminar (Basic and Advanced 2 Day Option)	Houston, TX
2/21/2020	CPL Exam, RPL Exam	Fort Worth, TX
2/24/2020	CPL Exam, RPL Exam	Tulsa, OK

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**Ark-La-Tex Association of  
Professional Landmen**

P.O. Box 1296  
Shreveport, LA 71163-1296  
Email: [The.ALTAPL@gmail.com](mailto:The.ALTAPL@gmail.com)

The Ark-La-Tex Association of Professional Landmen is a non-profit organization operated by its membership for mutual benefit to further the knowledge and interests of Professional Landmen, and to better acquaint the public with the scope of the Landman's work.

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**Editor**

Ken Womack  
318-963-5565

[kenwomack@comcast.net](mailto:kenwomack@comcast.net)

**Contributions from our readers  
are welcome.**

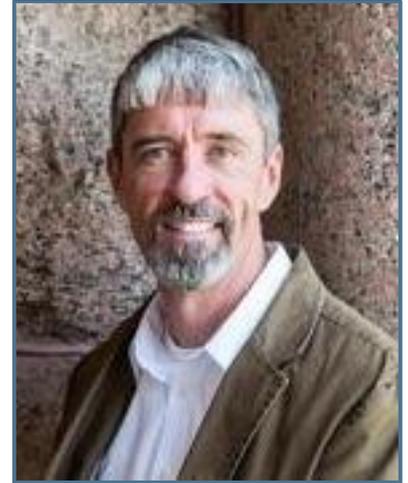
All suggestions and manuscripts should be mailed or emailed to the editor. We reserve the right to edit all material according to standard practices.

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## Letter from the Editor

### ALTAPL Members,

Your editor thoroughly enjoyed our January membership meeting, where John Fenstermaker spoke on the history of the State Land Office. By now you have probably guessed that this writer is a (very) amateur history buff, so this one was especially fun. Those in attendance were quite impressed when Mr. Fenstermaker produced an old section corner post monument made from heart-of-pine and an old-fashioned iron survey chain.



*Ken Womack*



Quick: How many links in a chain?

How many chains make a mile??

In national news, the Trump administration recently proposed changes to federal regulations that could speed up pipeline and infrastructure projects, as well as highways and other projects. The changes would limit the scope of the National Environmental Policy Act, a law signed by President Richard Nixon in 1970. NEPA requires federal agencies to assess the impact of certain projects before they begin and to include the public in the assessment process. NEPA has become the vehicle for environmental groups, native tribes and communities to block or delay drilling and pipeline projects, most notably the "Keystone XL" and "Dakota Access" projects. At the heart of the proposed change is the redefinition of "major federal action" such that privately financed projects would be excluded from the regulations.

# JAMES R. SLEDGE, CPL, L.L.C.



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## Letter from the Editor

(continued)

The Washington Post recently reported that U.S. “greenhouse gas” emissions were more than 2% lower in 2019 than in the previous year. Coal-fired electric power generation decreased by a whopping 18% last year, reportedly to the lowest level in almost 45 years and most agree that the switch to natural gas power generation is responsible for the dramatic reduction. Last year, U.S. “greenhouse gas” emissions were roughly 12 percent below 2005 levels.

Six new ballot proposals have been submitted in Colorado by the “anti-fracking” group Colorado Rising, the main proponent of the failed Proposition 112, which would have mandated 2500 foot setbacks from drilling locations. Five of the new proposals again seek to require pad sites to be “at least 2,000 feet to 2,500 feet from occupied buildings, waterways and other sensitive areas” and the sixth would drastically increase the bonds that drillers have to pay to guarantee clean up and plugging. Voters in Colorado defeated Proposition 112 in November of 2018 by about 5 percentage points.

Texas, New Mexico and North Dakota all had record oil output in October of 2019, according to the EIA, and those production numbers drove U.S. production to an all-time high of 12.66 million barrels per day for the month of October, up from 12.44 million barrels in September. The United States is now the world’s largest producer and a leading exporter of crude. U.S. crude oil exports were up to almost 3.4 million barrels per day in October 2019, up almost 10% from the previous month. Natural gas production also hit record levels in October, to over 106 billion cubic feet per day, driven in some part by a 7.4% increase in gas production in Alaska. Louisiana is the third largest gas producing state, behind Texas and Pennsylvania.

On the international front, Mexican President Manuel Obrador said last month that it will be quite some time before our neighbor to the South is able to produce enough natural gas to become self-sufficient. Until that time, Mexico appears to be content to rely on gas imports from the United States. The U. S. currently provides about 90% of all foreign gas to Mexico. In October 2019, US pipeline exports to Mexico hit an all-time high at 170.6 billion cubic feet.

There have been mixed signals about oil and gas production from the Obrador administration; he has promised to turn around the country’s declining oil and gas production, but he has also canceled lease sales to private firms, ostensibly in favor of leasing to the state owned oil company, Pemex. Some analysts predict it will be at least 2 or 3 years until Pemex’s production volume can be stabilized and production declines turned around.

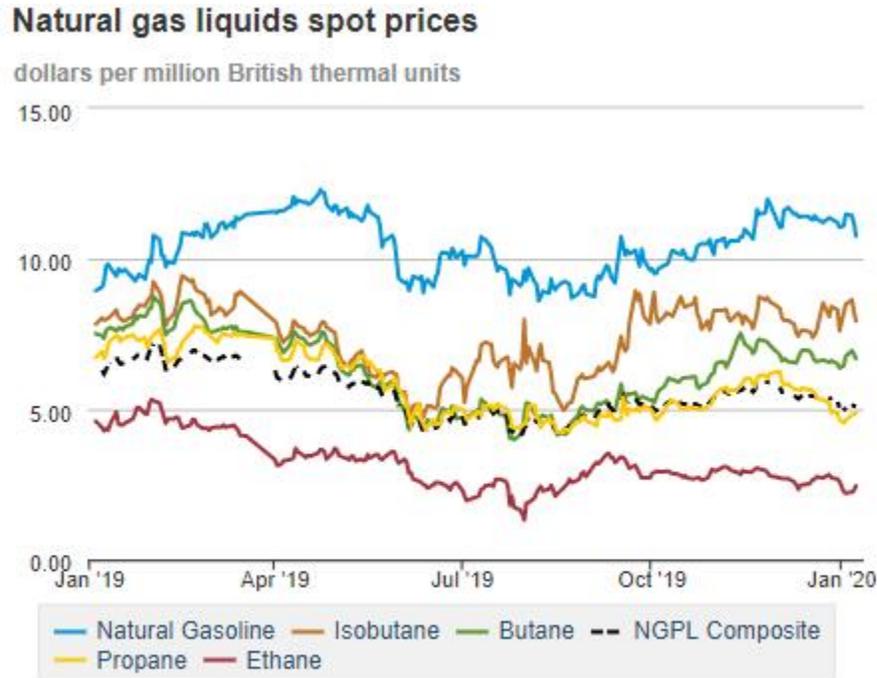
The EIA expects natural gas prices to remain relatively flat for 2020, averaging about 9% lower than last year. Record production, well in excess of domestic demand and export capacity, should keep prices stable in the mid-\$2 range, the government agency predicts. Much more information can be found later in this issue of The Register in the EIA articles “Short Term Energy Outlook” and “EIA Expects Lower Natural Gas Prices...”

West Texas Intermediate futures were trading at just under \$58 per barrel as of this writing in mid-January, a decrease of about \$2 per barrel from our last report. Natural gas prices plummeted around the third weekend of January, falling to below \$2.00 for the first time in 4 years. Oversupply is almost universally cited as the cause for the collapse, and there aren’t very many optimistic voices out there prognosticating. As of January 21 (date of this writing) gas was only about 25 cents above the 10 year low of \$1.69 (March 7, 2016). It’s very easy to forget that there are other products produced and sold from some (wet) gas wells, here is an

## Letter from the Editor

(continued)

interesting chart from the EIA that shows the 2019 spot prices of natural gasoline, ethane, butane, and propane:



Sources: NGL spot prices from Bloomberg, L.P., and weights for NGPL composite price from EIA-816, Monthly Natural Gas Liquids Report.

**Editor's note: Natural gasoline is a natural gas liquid that is liquid at ambient pressure and temperature. It is a common additive to fuel grade ethanol. Here is a link to an old but very informative article on natural gasoline and other NGLs: <http://calteches.library.caltech.edu/106/1/Bowman.pdf>**

As of mid-January, according to Baker-Hughes, 48 drilling rigs were running in the ArkLaTex area, down 6 from mid-December. There were 31 rigs running in North Louisiana (down 2 from our last report), and in East Texas 16 rigs were running in Railroad Commission Zone 6 (the easternmost zone, down 4 from last report), and still only 1 rig running in Zone 5 (the westernmost zone). No rigs were reported running in the state of Arkansas (same). The national onshore rig count dropped to 776 in the 3rd week of January, another significant drop from last month's reporting, this time by 23. One year ago there were 1031 onshore rigs running. The total (onshore & offshore) U.S. rig count as of January 17, 2020 was 796, the lowest since March 1, 2017. The lowest number of rigs reported in the last 5 years was 404, in May of 2016.

The ALTAPL sincerely thanks the Texas-based law firm of Gray Reed for their contributions to this publication, specifically we thank Chance Decker and Ryan Sears of the for their ongoing "Texas Legal Update", in this issue is the second of a 3-part series, and also Ethan Wood from the Dallas office, for his excellent article "Partial Termination Provisions in Oil and Gas Leases".

Thanks also to Gerald Slattery of Tulane University and the New Orleans based law firm of Slattery, Marino & Roberts for his great article "Pipeline Right of Way Expropriation in Louisiana". Mr. Slattery has

## Letter from the Editor

(continued)

argued cases before courts at all levels of the federal judicial system, including the United States Supreme Court, and at all levels of the state judicial system, including the Louisiana Supreme Court.

Let me reiterate a part of Pedro's letter earlier in this issue. We are all very pleased to announce that our speaker for the March membership meeting (an evening meeting, as usual, at the Petroleum Club) is none other than Mr. Robin Forte, "the Landman's Landman". Robin's is a true American success story, from his days as a fighter pilot over Viet Nam, through his in-house work at Anadarko, to his long tenure as the AAPL and NAPE Executive Vice President, Robin has a wide and impressive range of experience and a great speaking career. Look for his full bio later in the Register.

Thank you all for giving me this great opportunity! The ArkLaTex Association of Professional Landmen is such a great organization and I am truly blessed to be a small working part of it. I hope to see you all at the seminar at the end of the month. Please let me know if you have any ideas about how we can make your newsletter better.

### **Ken Womack, CPL**

Editor, *The Register*

Independent Landman, Notary Public

Office: 318-963-5565, Mobile: 318-820-5464

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## Monthly Membership Meeting (and *Dinner*)

March 2, 2020

Social Hour: 5:00 - 5:45 p.m.

Dinner: 5:45 – 7:30 p.m.

Petroleum Club - 15th Floor

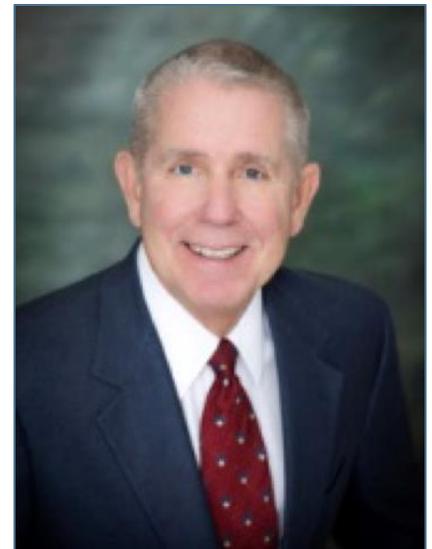
Cost: \$30 in person, \$32.50 online

Speaker: Robin Forte

Reservations for dinner need to be made by noon Thursday before the event.  
Please be prompt in your reservations.

### **Robin Forte', "The Landman's Landman"**

A 30-year veteran of the E&P industry, Robin is known as the "Landman's Landman" for his extensive expertise in oil & gas matters and for leading the national landman's association for 10 years. He has a practical, entertaining teaching style that has something to offer everyone from the newer landman to the seasoned CPL.



A short summary of Robin's experience:

- 30 years oil & gas experience
- 25 years teaching seminars and speaking to oil & gas audiences
- AAPL and NAPE Expo Executive Vice President for 10 years
- AAPL Education Director for 7 years
- Compiled, edited, and wrote the CPL review
- Served as an expert witness on the joint operating agreement, contracts, exploration agreements, pooling and federal units, as well as industry custom and practice
- Company landman for 12 years beginning with Anadarko
- Visiting professor at University of Oklahoma and University of Tulsa
- Published by the Rocky Mountain Mineral Law Foundation and Landman magazine
- Invited speaker for AAPL, RMMLF, NALTA, NADOA, NARO and dozens of local landman associations
- Provided in-house education at Exxon, Columbia Natural Gas, Federal Land Bank and others
- USAF fighter pilot for 6 years during Vietnam



# 2020

feb | educational  
28-29 | seminar  
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FRIDAY, FEB 28	TIME	TOPIC	SPEAKER	SPEAKER AFFILIATION
Registration & Continental Breakfast	7:45 - 8:15			
Welcome	8:15 - 8:30	Welcome	Pedro Pizarro	ALTAPL President
Speaker	8:30 - 10:00	Louisiana Update	John Kalmbach & Drew Burnham	Cook Yancey King & Galloway APLC
Break	10:00 - 10:15			
Speaker	10:15 - 11:15	Primer on Louisiana Property Law	Paul Strickland	Hargrove, Smelley & Strickland (A Professional Law Corporation)
Speaker	11:15 - 12:15	Off the Beaten Path: 10 Laws to Know Before You Take That Lease	David Rogers	Ottinger Hebert, LLC
Lunch	12:15 - 1:00			
Speaker	1:00 - 1:45	SONRIS Presentation	Beverly Kahl	Louisiana Department of Natural Resources-Office of Mineral Resources
Speaker	1:45 - 2:45	Imprescriptible Mineral Servitudes and Related Issues	Lauren Gardner	Onebane Law Firm (A Professional Corporation)
Break	2:45 - 3:00			
Speaker	3:00 - 4:00	Ratification Beware	Ryan Kirby	Kirby, Mathews & Walrath, PLLC
Speaker	4:00 - 5:00	Ethics	Andrew N. Blackburn, CPL	Blackburn Land Services, LLC
	5:00 - 5:15	End of Day Announcements	Pedro Pizarro	ALTAPL President
Cocktails	5:15	Hosted by Bradley Murchison & Shea, LLC		



# 2020

feb | educational  
28-29 | seminar  
ALTAPL

SATURDAY, FEB 29	TIME	TOPIC	SPEAKER	SPEAKER AFFILIATION
Registration and Continental Breakfast	7:45 - 8:20			
Welcome	8:20 - 8:30	Welcome	Pedro Pizarro	ALTAPL President
Speaker	8:30 - 9:30	Texas Update	Jack Wilhelm Edward Wilhelm	The Wilhelm Law Firm
Speaker	9:30 - 10:30	Well Control Issues	Heath Moody	Wild Well Control
Break	10:30 - 10:45			
Speaker	10:45 - 11:15	Assignment or Sublease? The Flaws in the Fine Print	Katherine Douthitt	Blanchard, Walker, O'Quinn & Roberts (A Professional Law Corporation)
Speaker	11:15 - 11:45	Usufructs and Louisiana Mineral Law: A Round Peg in a Somewhat Round Hole	Reginald Cassibry	Blanchard, Walker, O'Quinn & Roberts (A Professional Law Corporation)
Adjournment	11:45	Closing Comments	Pedro Pizarro	ALTAPL President

### Transfers:

If you have special needs addressed by the ADA, please notify us at least two weeks before the program.

All requests for transfers must be made in writing and all must be made **before** February 15, 2020. Individuals may transfer their registration to another individual for this event at no additional charge prior to said date. Registrations may not be transferred **after February 15, 2020**. ALTAPL retains cancellation rights. In the unlikely event of cancellation, ALTAPL will attempt to notify all registrants.

The ALTAPL is proud to offer this high-quality educational opportunity at a significantly lower cost to its members.

For membership information, please visit the ALTAPL online at [www.altapl.org](http://www.altapl.org) Keyword: Membership.



2020

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REGISTRATION FEES

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PLEASE CHECK WHICH APPLIES:

- \$150.00 for **Members IF RECEIVED BY** February 15, 2020 (\$200.00 after Feb 15, 2020)
- \$225.00 for **Non-Members IF RECEIVED BY** February 15, 2020 (\$275.00 after Feb 15, 2020)

**REGISTRATION IS LIMITED TO THE FIRST 125 REGISTRANTS**

**WALK-IN REGISTRATION MAY NOT BE AVAILABLE**

REGISTRATION FEES include Binders and Lunch on Friday.

Lunch will not be served on Saturday.

Please indicate your attendance for Friday Lunch.

- I will have lunch at the seminar on Friday.
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## Partial Termination Provisions in Oil and Gas Leases

By: Ethan M. Wood  
Gray Reed, Dallas

In an era of continued commodity price volatility, lessors and lessees continue to struggle to find the right amount of flexibility in lease language—especially when it comes to keeping leases alive past their primary terms. Lessors want big bonuses as frequently as possible and lots of fat royalty checks without having their land tied up for decades. Lessees, on the other hand, want the flexibility to develop acreage when the economics are most favorable. Partial termination provisions certainly help meet lessors' goals by forcing lessees to “drill it or lose it,” but can often backfire by introducing uncertainty and inefficiencies that can lead to less ultimate recovery. And because secondary terms can extend indefinitely, attempts to keep lessees “honest” decades ago continue to cause consternation today. The last five years have seen numerous rulings illustrating the potential pitfalls of partial termination provisions (*Chesapeake v. Energen*, *Apache v. Double Eagle*, *Endeavor v. Discovery*, and *XOG v. Chesapeake*), and therefore, landmen should strive to familiarize themselves with all of the various scenarios they may encounter when dealing with such provisions.

Partial termination provisions are typically divided into one of three categories—Pugh clauses, retained acreage clauses, and depth-severance clauses. Pugh clauses (also sometimes called “Freestone Riders”) typically provide that if a lessee has formed a pooled unit, production from that unit will not hold acreage outside of the unit. Although generally useful in striking a balance between lessors and lessees, problems can arise with defining a “unit” and situations where no unit is actually formed. Many Pugh clauses do not contemplate the drilling of tract wells or allocation wells across non-pooled portions of the lease. So, even if a portion of the lease is pooled, the entire remaining non-pooled portion could be held by production by a single well or portion of a lateral.

Retained acreage clauses do not face the same issue. In a typical retained acreage clause, a lease will terminate as to lands not included within pooled or proration units at a given date. Retained acreage clauses are often tied to continuous drilling provisions such that lessees are given ample time to fully develop the lease, but lessees must pay careful attention to the time limits imposed by such provisions. Retained acreage clauses can also run into the same unit terminology issues as Pugh clauses, but the timing of the partial termination has proven to be more controversial in recent years. Retained acreage clauses are more lessor-friendly than Pugh clauses, but do allow some measure of flexibility for the lessee (especially if lessees can “bank” extra time between wells in a continuous drilling program).

Depth-severance clauses, however, tilt the scales even further in the lessors' favor, and can be structured like Pugh clauses—*i.e.*, production from pooled depths won't hold remaining depths—or like retained acreage clauses—*i.e.*, at a certain date, the lease will expire as to depths other than those drilled. Such clauses allow lessors to lease multiple productive intervals under their lands, but minimize the lessee's ability to develop different depths. Again, issues as to unit terminology and timing arise regularly, but describing the actual depths involved can be especially problematic. Whatever provisions lessors and lessees decide upon to allow for partial termination, particular attention must be paid to the timing of the partial termination and defining of what is and is not kept.

In recent years, issues with partial termination have typically arisen with respect to “snapshot v. rolling” timing issues, defining what a “unit” is, tying retained acreage clauses to regulatory filings, and determining what depths are held by production. Firstly, partial termination provisions can typically be triggered at either one fixed point in time (a “snapshot” provision) or from time to time as certain portions of the lease stop producing (a “rolling” provision). With a “snapshot” provision, at the end of the primary term or at the end of a continuous drilling program, the lease terminates as to all lands not included in a pooled or proration unit. In

## Partial Termination Provisions in Oil and Gas Leases

(continued)

such a scenario, it does not matter what happens to individual units and wells later on—so long as one well is still producing, the lease is held by production as to all lands and depths in those proration or pooled units in existence at the end of the primary term.

With a “rolling” provision, instead of looking to a single point in time to determine what is and is not held by production, one must continuously look at production from each well. As each well stops producing, the lease expires as to the lands and depths associated with that well. Rolling terminations can also be achieved by combining a “snapshot” provision with a “separate tracts” clause. With both clauses together, after the “snapshot” occurs, each proration or pooled unit is treated separately such that if production ceases on that unit, the lease will not be held as to that unit by production from others.

An additional problem faced by those navigating the muddy waters of partial termination clauses is that the term “unit” itself is imprecise—units come in proration, pooled and fieldwide flavors. Pooled units are formed voluntarily by contract among the lessors and lessees of adjoining tracts of land. Proration units are a regulatory creature and are defined by statute as acreage assigned to a well for the purpose of assigning production allowables to a well. Fieldwide units (the least common type) involve the joint operation of separately owned tracts, pooled units or proration units within an entire oil and gas field typically for the purposes of enhanced recovery. Given recent decisions by the Texas Supreme Court that call into question reliance on long-held industry standard terminology (*US Shale v. Laborde Properties*, and *Murphy E&P Co. USA v. Adams*), lessors and lessees should carefully define “units” in Pugh clauses and retained acreage provisions.

Furthermore, partial termination clauses that are based on proration units are very carefully scrutinized by courts in light of 2018’s *Endeavor* and *XOG* cases. In *Endeavor*, a clause stating that “[this] lease shall automatically terminate ... save and except those lands and depths located within a governmental proration unit assigned to a well” only allowed Endeavor to retain the 80-acre proration units actually assigned to the wells in its P-15s filed with the Railroad Commission even though 160-acre units were permitted under the field rules.<sup>1</sup> In *XOG*, the opposite conclusion was reached because acreage “included within the proration unit for each well ... prescribed by filed rules” referred to acreage set by the field rules, not acreage “assigned” in the P-15.<sup>2</sup> Parties to leases should pay special attention to the specific language used and lessees/operators should be aware of field rules for the area and should be extra careful with regulatory filings that might affect lease clauses.

Lastly, consideration must be given to what depths are held by production with depth-severance clauses. Texas courts have frequently addressed the differences between “intervals”, “*stratigraphic* intervals”, and “total depths” (both measured depths and total vertical depths), holding that each have separate meanings. A further wrinkle is that the term “formation” is currently not well defined by Texas law. Because of this, it is unclear what exactly happens when a lease calls for partial termination below the deepest producing “formation”. Would a well drilled into the Wolfcamp A “formation” hold depths associated with the Wolfcamp B “formation”? In *Amarillo Oil Co. v. Energy-Agri Prods., Inc.*, the Texas Supreme Court discussed several definitions of the terms “formation,” “reservoir,” “field,” “stratum” and “horizon,” noting that a formation, field or reservoir may include multiple producing strata or horizons.<sup>3</sup> The Court defined a formation as “[a] succession

<sup>1</sup> 554 S.W.3d 586 (Tex. 2018)

<sup>2</sup> 554 S.W.3d 607 (Tex. 2018)

<sup>3</sup> 794 S.W.2d 20 (Tex. 1990)

## Partial Termination Provisions in Oil and Gas Leases

(continued)

of sedimentary beds that were deposited continuously and under the same general conditions [that] may consist of one type of rock or of alterations of types,” but also noted that “[a]n individual bed or group of beds distinct in character from the rest of the formation and persisting over a large area is called a ‘member’ of [said] formation.” A later Texas case has called into question the precedential value of these definitions, and therefore, this issue remains unsettled. However, careful drafting can provide certainty and prevent these issues from causing major problems later on.

Ultimately, there are many ways to structure partial termination provisions to accommodate the desires of lessors and lessees, but every word used matters. Texas courts are increasingly putting the onus on parties to oil and gas leases to “say what they mean and mean what they say” and are unlikely to swoop in and save the day of those who draft their contracts poorly. Careful consultation with your client (and legal counsel!) should be made to ensure that leases are providing enough flexibility without being so vague as to create more problems than are being solved.

### About the author:



With significant experience in numerous areas of natural resources law, Ethan M. Wood advises upstream and midstream energy clients on the entire range of transactions and issues that arise during oil and gas operations in Texas and many states across the country. He has guided clients through a variety of multi-million-dollar deals and other operational transactions, with a strong emphasis on the acquisition and divestiture of producing assets, and negotiations of oil and gas leases and joint operating agreements.

Ethan also conducts title examinations and renders opinions for producers with drilling operations throughout Texas and coordinates identical activities with local counsel in multiple jurisdictions, including New Mexico, Ohio, Pennsylvania and Oklahoma. As a former independent petroleum landman, Ethan has a unique perspective on the most important aspects of title examination, which allows him to focus on identifying practical ways for landmen to address issues quickly and proactively in the field.

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333 TEXAS STREET, SUITE 700 SHREVEPORT, LA  
318.221.6858 WWW.BWOR.COM

## Pipeline Right of Way Expropriation in Louisiana

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### I. BASIC PRINCIPLES OF EXPROPRIATION

#### A. *What Is Expropriation, and Who Can Do It?*

Under Louisiana law, “[t]he term ‘expropriation’ . . . is practically synonymous with the term ‘eminent domain’ Expropriation means *the right to take private property for public purpose and utility upon the payment first of just compensation.*” According to the Louisiana Fourth Circuit Court of Appeal, the right of a government to expropriate private property inheres in the very nature of government. Such a power does not inhere in private corporations, of course, but by statute a government may extend its power of expropriation to certain private corporations that serve a public purpose. In Louisiana, companies the law deems to serve a public purpose include those engaged in “the piping and marketing of natural gas for the purpose of supplying the public with natural gas” and “common carrier pipe lines,” meaning those “engaged in the transportation of petroleum as public utilities and common carriers for hire.” These pipeline companies have the power to expropriate private property for use in the conduct of their business. The limits on this power are set forth in Louisiana’s constitution and statutes, as interpreted and applied by Louisiana courts.

#### B. *Constitutional and Statutory Bases for Expropriation*

##### 1. *United States and Louisiana Constitutions*

The premises that the sovereign has power to expropriate privately owned property for public purposes and that that power is inherently limited by the rights of the individual are recognized in general terms in the Fifth Amendment to the United States Constitution, which states: “nor shall private property be taken for public use without just compensation.” The 1921 and 1974 Constitutions of Louisiana address expropriation power and the limits on its exercise in a more detailed fashion. The 1921 Louisiana Constitution stated: “No person shall be deprived of life, liberty or property, except by due process of the law. Except as otherwise provided in this Constitution, private property shall not be taken or damaged except for public purposes and after *just and adequate compensation is paid.*”

The 1974 Louisiana Constitution went into even further detail, replacing the concept of “just and adequate compensation,” which might have been subject to a stingy interpretation, with compensation to the owner “to the full extent of his loss”:

(A) Every person has the right to acquire, own, control, use, enjoy, protect, and dispose of private property. This right is subject to reasonable statutory restrictions and the reasonable exercise of the police power.

\* \* \*

(B)(4) Property shall not be taken or damaged by any private entity authorized by law to expropriate, except for a public and necessary purpose and with just compensation paid to the owner; in such proceedings, whether the purpose is public and necessary shall be a judicial question.

## Pipeline Right of Way Expropriation in Louisiana

(continued)

(B)(5) In every expropriation or action to take property . . . a party has the right to trial by jury to determine whether the compensation is just, and the owner *shall be compensated to the full extent of his loss*. Except as otherwise provided in this Constitution, the full extent of loss shall include, but not be limited to, the appraised value of the property and all costs of relocation, inconvenience, and any other damages actually incurred by the owner because of the expropriation.

The 1974 Louisiana Constitution thus establishes that a private entity may not expropriate property unless it is “authorized by law” to do so; that the taking must be for a purpose that is both “public” and “necessary”; that the judge, rather than the jury, shall determine whether the purpose of the taking is public and necessary; and that a jury may determine the amount of money needed to compensate the owner of the expropriated property “to the full extent of his loss.” According to the Louisiana Supreme Court, “to the full extent of his loss” means that the owner “should be ‘put in *as good a position pecuniarily as he would have been had his property not been taken.*’” The Louisiana statutes address in detail the procedure for the exercise of the legal authority to expropriate, the resolution of disputes about that authority, the public purpose for a proposed taking, the necessity of the taking, and the compensation due the owner of expropriated property.

### 2. Louisiana Revised Statutes 19:1 et seq.

Part I (“General Provisions”) of Title 19 of the Louisiana Revised Statutes (entitled “Expropriation”) sets forth the steps that a private company with the power to expropriate must follow when it exercises that power. Overall, the statutes are evenhanded, striking a balance between the power the expropriating entity needs in order to serve a public good and the private property rights of the individual. The procedural requirements the statutes impose on the expropriating entity, however, reveal a certain wariness toward the power to expropriate. This wariness is a change from the communitarian, almost socialist, approach in the distant precursor to the statutes, former article 2626 of the 1870 Louisiana Civil Code, which came close to suggesting that the individual owns property only at the sufferance of the government:

The first law of society being that the general interest shall be preferred to that of individuals, every individual who possesses under the protection of the laws, any particular property, is tacitly subjected to the obligation of yielding it to the community, wherever it becomes necessary for the general use.

Section 1 of Title 19 expansively defines the property that is subject to expropriation as “immovable property, including servitudes and other rights in or to immovable property.” Section 2, in relevant part, grants to natural gas pipeline companies the power to expropriate and, by reference to section 251 of Title 45, grants the same power to pipeline companies transporting “petroleum” (generally meaning any liquid hydrocarbon) as common carriers.

Section 2.1 of Title 19 addresses where to file a petition for expropriation and what the petition must include. Section 2.2 shows the solicitude of Louisiana law for a person whose property might be expropriated. It sets forth detailed requirements that the expropriating entity must satisfy before it files a lawsuit. These requirements include: (1) providing an appraisal and other information to the landowner; (2) making an offer for the property; (3) providing information about the landowner’s and the expropriating entity’s legal rights; and (4) not less than thirty days before filing a suit, providing a letter identifying the purpose for the proposed acquisition, the compensation to be paid, copies of all appraisals, and detailed information about the location and boundaries of the property at issue.

Section 4 of Title 19, consistent with Article I, Section 4 of the Louisiana Constitution, allows juries to determine compensation. The judge has the power to decide all other issues, such as authority to

## Pipeline Right of Way Expropriation in Louisiana

(continued)

expropriate, public purpose, and necessity. Section 8 commands that “[e]xpropriation suits *shall be tried by preference and shall be conducted with the greatest possible dispatch.*” To that end, if the property owner challenges any issue other than compensation, all such issues must be set for hearing within thirty days of the challenge, and the court must make a decision within five days thereafter. If the expropriating authority wins on those issues, the compensation trial will be conducted within forty-five days thereafter, subject to extension for good cause.

Section 9 of Title 19 deals with the compensation owed to the owner of expropriated property. It takes a sound approach toward valuation by not allowing any consideration—positive or negative—of the effect on value of the proposed post-expropriation use of the property: “[T]he basis of compensation shall be the value which the property possessed *before the contemplated improvement was proposed, without deducting therefrom any general or specific benefits derived by the owner from the contemplated improvement or work.*” Having thus cautioned against inflated or deflated valuations, the statute repeats the constitutional mandate that “[t]he defendant shall be compensated to the full extent of his loss.”

Section 12 of Title 19 authorizes, but does not require, an order that the property owner pay the costs of the proceedings if the final award in the expropriation proceeding is equal to or less than what the expropriating authority had earlier offered. Section 13 allows only devolutive appeals from expropriation judgments, which may include “[t]he whole of the judgment,” meaning both the judge-tried issues and the jury-tried issue of compensation. Section 14 of Title 19, in relevant part, addresses the issue of a nongovernmental expropriating entity taking possession in good faith of a landowner’s property and constructing facilities upon it with the consent or the acquiescence of the owner. In such a circumstance, the owner is deemed to have waived his right to receive compensation prior to the taking, but he may file suit to determine “whether the taking was for a public and necessary purpose and for just compensation . . . as of the time of the taking of the property. . . .”

### 3. Louisiana Revised Statutes 45:251 et seq.

Title 19, section 2(5) of the Revised Statutes endows natural gas pipeline companies with expropriating powers. Part I (entitled “Petroleum Pipe Lines”) of Chapter 5 (“Pipe Lines”) of Title 45 (“Public Utilities and Carriers”) does the same for pipeline companies that are “common carriers” of “petroleum.”<sup>26</sup> Section 251 of Title 45 defines those terms and the term “pipe line” expansively, and section 254 provides that such “common carrier pipe lines” shall “have the right of expropriation with authority to expropriate private property under the state expropriation laws for use in [their] common carrier pipe line business. . . .”

Title 19 of the Revised Statutes, as applied and explained by Louisiana courts, maps the process a pipeline company must follow as it proceeds toward its goal of constructing a pipeline across expropriated property. The process begins with an appraisal of the property, continues with an offer to purchase, and, if the offer is not accepted by the landowner, concludes with an expropriation trial, a judgment, and perhaps an appeal.

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## Top Ten Texas Oil and Gas Cases of 2019 – Part 2 of 3

*By Chance Decker and Ryan Sears, Gray Reed*

This is a continuation of the three-part series that began last month discussing significant oil and gas decisions from state courts in Texas during 2019. It is not intended to be a strict legal analysis, but rather a useful guide for landmen in their daily work. Therefore, a complete discussion of all legal analyses contained in the decisions are not always included.

### **4. *Texas Outfitters Ltd., LLC v. Nicholson*, 572 S.W.3d 647 (Tex. 2019).**

Texas Outfitters is the Texas Supreme Court's latest analysis of the executive mineral right, and likely the most significant Texas oil and gas case of 2019. Texas Outfitters involved a ranch in Frio County. The surface of the ranch was owned by the Carter family. The mineral interests were owned 50% by the Carters and 50% by their cousins, the Hindes family.

In 2002, the Carters sold the surface of the ranch, a 4.16 mineral interest, and the executive rights to their entire 50% mineral interest to Frank Fackovec, through his company, Texas Outfitters, Limited. The Carters retained their 46% mineral interest in the ranch. Fackovec paid the Carters' approximately \$1,000,000 for the ranch and mineral interest. Fackovec intended to operate a high-end deer breeding and hunting operation on the ranch. Thus, purchasing the executive rights was very important to Fackovec because he believed it would allow him to control leasing. The trial record showed that after Fackovec bought the ranch, he built a main lodge, hunter's cabins, deer breeding pens and installed irrigation wells and expensive deer blinds.

Fast forward to 2010, and the development of the Eagle Ford Shale is in its early stages. In March of 2010, Fackovec receives an offer to lease his and the Carters' mineral interests for \$450 per acre and 22% royalty. Fackovec rejects this offer.

In June of 2010, El Paso Oil Exploration & Production Company ("**El Paso**") offered Fackovec a \$1,750 per acre bonus and a quarter royalty to lease his and the Carters' mineral interest. The Hindes accept El Paso's identical offer for their 50% undivided mineral interest, but Fackovec rejects the offer. Fackovec testified he rejected El Paso's offer because: (1) he thought he could get a better bonus, and (2) he wanted better surface protections for his hunting operation. The Carters wanted Fackovec to accept El Paso's offer. Therefore, the Carters and Fackovec engaged in negotiations for the Carters to buy their executive rights back from Texas Outfitters. The negotiations were unsuccessful because, according to the Carters, the surface protections Fackovec demanded were not reasonable. In fact, at trial, Dora Joe Carter testified that during the negotiations, Fackovec stated he would never agree to any lease. Eventually, El Paso withdrew its offer.

The Carters sued Fackovec and Texas Outfitters in June of 2011 alleging that Texas Outfitters, as holder of the executive rights to the Carters' mineral interests, breached the duty of utmost good faith and fair dealing by refusing to enter the El Paso lease. After the Carters filed suit, Texas Outfitters received two more offers to lease the ranch's minerals. The first included a larger bonus than the El Paso offer—\$2,000 per acre—but was withdrawn when the lessee learned El Paso had already leased the Hindeses' interest. The second included a \$1,500-per-acre bonus and was also withdrawn by the lessee. Ultimately, drilling in the area revealed that the land was not as productive as anticipated, and Texas Outfitters received no further lease offers. In 2012, Texas Outfitters sold the ranch for approximately \$3.5 million, retaining a portion of the mineral interest

The trial court found that Fackovec breached his executive duty to the Carters by not accepting El Paso's lease offer. The court of appeals and the Texas Supreme Court affirmed. The Texas Supreme Court's opinion is remarkable for two reasons.

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(continued)

First, the Court clarified that whether the executive is accused of breaching his duty by executing a lease or by refusing to execute a lease, courts will still analyze the entire transaction to determine whether the executive engaged in acts of self-dealing that unfairly diminished the value of the non-executive interest.

Second, the Court held that an executive may be required to accept an offer to lease both the non-executive's minerals and his or her own mineral interest in certain situations (remember, El Paso's offer was for both the Carters' and Texas Outfitters' mineral interests). This is a significant change in Texas executive rights jurisprudence. And, in a state that values private property rights, as Texas courts purport to do, a Texas Supreme Court mandate that an executive right owner may be required to lease not just a non-executive interest owners minerals against his will, but in fact, must lease *his own* mineral interest in certain circumstances, is quite remarkable.

### **5. *Murphy Land Group, LLC v. Atmos Energy Corporation*, -- S.W.3d --, No. 12-18-00138-CV, 2019 WL 1716359 (Tex. App.—Tyler April 17, 2019 pet. filed).**

Murphy Land Group LLC ("**Murphy**") v. Atmos Energy Corporation ("**Atmos**") is a pipeline dispute from Houston County. Atmos operated pipelines across Murphy's land under three easements granted to Atmos's predecessor. The easements granted Atmos "the right of way and easement to construct, maintain, and operate pipe lines and appurtenances thereto" along with "ingress and egress from the premises, for the purpose of constructing, inspecting, repairing, maintaining, and replacing the property of [Atmos]."

In 2012, Murphy and Atmos executed a "Roadway Lease" granting Atmos a 40' "right of way and easement" on a path that Atmos would select across Murphy's property. The Roadway Lease expired in 2015.

Murphy contended that Atmos's pipeline easements "merged" into the Roadway Lease such that when the Roadway Lease expired, so too did the pipeline easements. Therefore, when Atmos entered onto Murphy's property in 2016 to commence a temporary pigging operation, Murphy filed suit seeking a declaratory judgment that: (1) Atmos's easements expired upon the expiration of the Roadway Lease and (2) that even if the easements had not expired, they did not give Atmos the right to conduct "smart pigging" operations using gas flaring to move the pig along the pipeline.

The trial court dismissed Murphy's claims on summary judgment and the court of appeals affirmed. The court explained that the merger doctrine refers to the "absorption of one contract into another subsequent contract." When the same parties to one contract enter into a subsequent contract *dealing with the same subject matter* as their first contract without stating whether the second contract operates to discharge or substitute the first contract, the two contracts must be interpreted together and the latter contract prevails to the extent they are inconsistent. For the merger doctrine to apply, the subsequent contract must: (1) be between the same parties as the first; (2) embrace the same subject matter as the first and (3) have been so intended by the parties.

Here, the pipeline easements and the Roadway Lease did not deal with the same subject matter. Though the easements provided Atmos with the right of ingress and egress in general terms, the Roadway Lease gave Atmos the right to construct a roadway of a specific size on a specific path of Atmos's choosing with no limitations on the purposes for its use. Because the easements and the Roadway Lease did not deal with the same subject matter, the merger doctrine did not apply and Atmos's easements survived the Roadway Lease's expiration.

The court also sided with Atmos on the pigging issue. The court stated that, "[w]hen interpreting the granting language of an easement, [courts] resolve all doubts about the parties' intent against the grantor ... in order to

## Top Ten Texas Oil and Gas Cases of 2019 – Part 2 of 3

(continued)

confer upon the grantee the greatest estate possible under the instrument.” Accordingly, an easement grantee receives, by implication, all rights “reasonably necessary” to enjoy the rights the easement grants expressly. These rights may change over time and in accordance with technological advances.

Here, the pipeline easements authorized Atmos to “construct, maintain, and operate pipelines and appurtenances thereto” along with “ingress and egress from the premises, for the purpose of constructing, inspecting, repairing, maintaining, and replacing the property of [Atmos].” It was undisputed that a pipeline pigging operation is a pipeline “maintenance” procedure, and thus, clearly fell within the scope of the easement. And, the invention of gas flared “smart pigs”, which are used to detect defects, deformities and other issues in the pipelines, was a technological development that fell within the scope of the easements’ permitted uses. Therefore, Atmos would be allowed to conduct smart pigging operations on Murphy’s land pursuant to its pipeline easements.

### **6. *Joseph Russell Trial and Michael Leo Trial v. Jerome Dragon, Jr. and Patricia G. Dragon*, -- S.W.3d --, No. 18-0203, 2019 WL 2554130 (Tex. June 21, 2019).**

In this case, examining whether the estoppel by deed doctrine applies to prevent petitioners from asserting title to an interest they inherited from their mother, when their father previously purported to sell that interest to the respondents, the Texas Supreme Court reversed and remanded the court of appeals’ judgment by holding that neither the estoppel by deed doctrine nor the opinion in *Duhig* apply.

Leo Trial and his six siblings each owned a 1/7 interest in real property situated in Karnes County, Texas (the “**Property**”). In 1983, Leo gifted to his wife, Ruth, “one-half (1/2) of all of [his] right, title and interest in and to” the Property. As a result, each Leo and Ruth owned a 1/14 interest in the Property, with Ruth’s 1/14 being her separate property – said conveyance was recorded in Karnes County a few days after execution.

In 1992, Leo and his siblings purported to convey the entire Karnes County property to the Dragons. Each of the seven siblings executed identical deeds, containing the following language: “WE, LEO TRIAL of Karnes County, Texas, [and other grantors] . . . do BARGAIN, GRANT, SELL AND CONVEY unto the [Dragons] all that certain parcel or tract of land, lying and being situated[d] in Karnes County, Texas....” The 1992 deed contained a 15-year mineral reservation and a general warranty clause that provided:

...We do hereby bind ourselves, our heirs, executors and administrators to WARRANT AND FOREVER DEFEND all and singular the said premises unto the [Dragons], their heirs and assigns against every person whomsoever lawfully claiming or to claim the same, or any part thereof.

It should be noted that Ruth was not a party to the 1992 deed and the deed did not mention Ruth’s 1/14 interest, and the Dragons were not otherwise aware of the 1983 gift deed as they did not obtain a title opinion. Leo died testate in 1996 with his entire estate going to trust for the benefit of Ruth for life, then corpus to his two sons (the “**Trial Sons**”). Ruth died in 2010 – as a result, Ruth’s 1/14 interest passed to the Trial Sons, giving each a 1/28 interest in the Property.

In 2014, after an operator noticed from a lease status report that Ruth owned an undivided 1/14 interest, said operator prepared a new division order and began paying the Trial Sons their respective royalties in a suspended account – this prompted the Dragons to sue.

The Dragons argued that under *Duhig* and its progeny, Leo breached the general warranty in the 1992 deed at the time of execution because he owned only half of what he purported to convey, and the Trial Sons, as Leo’s

## Top Ten Texas Oil and Gas Cases of 2019 – Part 2 of 3

(continued)

direct heirs, are bound by the deed's general warranty and are estopped from asserting title on any portion of the Property.

Conversely, the Trials argued that estoppel by deed does not apply because the Trial Sons are not claiming an interest in the property under their father, Leo, the original grantor to the Dragons in the 1992 deed, but rather they are claiming that their interest arises from their mother who did not execute the 1992 deed, and thus, could not be bound by that deed.

The court explained that over the years, the doctrine of estoppel by deed developed to have a wide application that "all parties to a deed are bound by the recitals therein, which operate as an estoppel, working on the interest in the land if it be a deed of conveyance, and binding both parties and privies; privies in blood, privies in estate, and privies in law." The court provided that estoppel by deed "does not bind mere strangers, or those who claim by title paramount the deed. It does not bind persons claiming by an adverse title, or persons claiming from the parties by title anterior to the date of the reciting deed."

The court here explained that *Duhig* stands for the proposition that "if a grantor reserves an interest and breaches a general warranty at the very time of execution, then an immediate passing of title is triggered to the grantee for that property that was described in the reservation—in other words, if the grantor owns the exact interest to remedy the breach *at the time of execution* and equity otherwise demands it." The court stated that the facts in this case differ significantly from those in *Duhig* – namely, Leo did not own the interest required to remedy the breach at the time of the 1992 deed to the Dragons, but rather, Ruth owned the 1/14 interest as her separate property. The court highlighted that estoppel by deed "does not bind individuals who are not a party to the reciting deed, nor does it bind those who claim title independently from the subject deed in question."

The Dragons further argued that *XTO Energy*, 357 S.W.3d 47 and *Angell*, 225 S.W.3d 834 are applicable to show that the Trial Sons are estopped from claiming the 1/14 interest. However, the court said that neither decision applies here as *XTO Energy* and *Angell* stand for the principle that grantees are bound by recitals in their chain of title. Again, here, the Trial Sons are claiming through their mother, not their father who executed 1992 deed which contained the general warranty.

The Dragons went on to argue that under *Houston First American Savings v. Musick*, 650 S.W.2d 764, at the time the Trials' sons inherited the disputed 1/14 interest, the after-acquired title rule was triggered and the interest vested immediately in the Dragons to make them whole under the express terms of the 1992 deed. The court here disagreed because *Musick* dealt with "a party claiming in the same capacity as the original grantor who made the warranty." And here, conversely, the Trial sons' claim to the 1/14 interest has nothing to do with the 1992 deed to the Dragons whereby Leo purported to convey the entire interest.

The court explained that although the court of appeals misapplied *Duhig*, there is no question that Leo breached the general warranty at the time of execution, and therefore, the proper remedy is monetary damages. And because the Trial Sons are the direct heirs of Leo, they are bound by the general warranty to warrant and forever defend the Dragons from adverse claims to the property. The only question is "whether the Trial [S]ons are liable for damages when they fail to warrant and defend against their own adverse claim to the property – their claim deriving from the interest they inherited from Ruth's separate property—and if so, what the amount of those damages would be."

The court held that because the Trial Sons' claim to the 1/14 interest in the subject property is derived from their mother, an independent source predating the 1992 deed, estoppel by deed and the decision in *Duhig* do not apply to divest the Trials Sons of their interest. Accordingly, the Texas Supreme Court reversed the court of

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(continued)

appeals' judgment divesting the Trials Sons of their interest and remanded the case to the trial court to determine whether damages are appropriate.

### STAY TUNED ...

Next month, we will discuss the final four cases that may have an impact on your daily work. We hope this series will help you address the legal issues presented by modern oil and gas activities. As always, if you believe one of these decisions might have a bearing on an action you are about to take or a decision you might make, consult a lawyer.

### ABOUT THE AUTHORS

CHANCE DECKER, PARTNER – [cdecker@grayreed.com](mailto:cdecker@grayreed.com)

An aggressive and results-driven litigator, Chance Decker focuses on resolving high-stakes disputes for businesses in the oil and gas industry. His client list includes major players and growing businesses across the energy industry, including E&P companies, interstate pipeline companies, pipe and steel distributors, and oilfield services companies. Chance earned his B.S. from Texas A&M University and his J.D. from University of Houston Law Center.

RYAN SEARS, PARTNER – [rsears@grayreed.com](mailto:rsears@grayreed.com)

Leader of Gray Reed's Energy Transactions Practice Group, Ryan Sears serves as outside general counsel for both domestic and international energy clients, focused primarily on structuring upstream and midstream transactions and advising on the various issues that typically arise during the exploration and production of oil and gas. He earned his undergraduate degree and his law degree from the University of Oklahoma.



Jon Q=Petersen, *President*  
 Autie T. Orjias, *V. P. / Land Manager*  
 Dean Giles, *Secretary / Treasurer*  
 S. Cody Lenert, *Geologist*  
 Ryan Q=Petersen *Land*

**(318) 222-8406**  
**Fax (318) 222-6061**

401 Edwards Street, Suite 1200  
 Shreveport, LA 71101

P. O. Box 1367  
 Shreveport, LA 71164

Email:  
[mei@marlinexploration.com](mailto:mei@marlinexploration.com)

## CYPRESS ENERGY CORPORATION

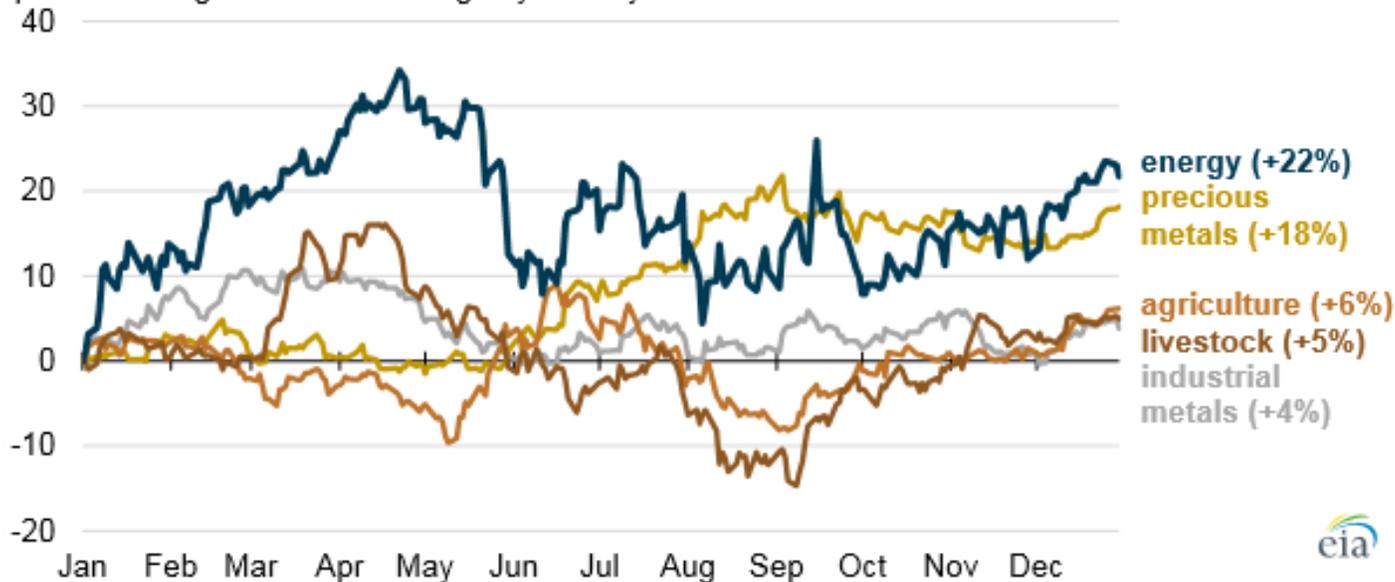
400 Travis Street, Suite 1909  
 Shreveport, LA 71101  
 Office 318-220-7693  
 Joey Venezia, Agent  
[javcpl@yahoo.com](mailto:javcpl@yahoo.com)  
 Jeremy Harris, Agent  
[jeremyhlman@yahoo.com](mailto:jeremyhlman@yahoo.com)

P.O. Box 66769  
 Baton Rouge, LA 70896  
 Office 225-343-1311  
 Cyril J "Joey" Landry III  
 N. Peter Davis  
 Cell 225-938-6838  
[pdavis@cypressla.com](mailto:pdavis@cypressla.com)

## Energy commodity prices rose more than other goods in 2019

### Components of the S&P Goldman Sachs Commodity Index (2019)

percent change since first trading day of the year



**Source:** U.S. Energy Information Administration, based on S&P Goldman Sachs Commodity Index (GSCI)

The energy portion of the S&P Goldman Sachs Commodity Index (GSCI) ended 2019 22% higher than it began the year. Price indexes for other commodity types also increased in 2019, but not as much as the energy commodity index.

Composed of 24 individual commodity contracts organized into five sub-indexes, the values of the GSCI and its sub-indexes are calculated as weighted averages. The weight assigned to each commodity reflects its significance to the world economy in a given year as measured by its production volume and liquidity.

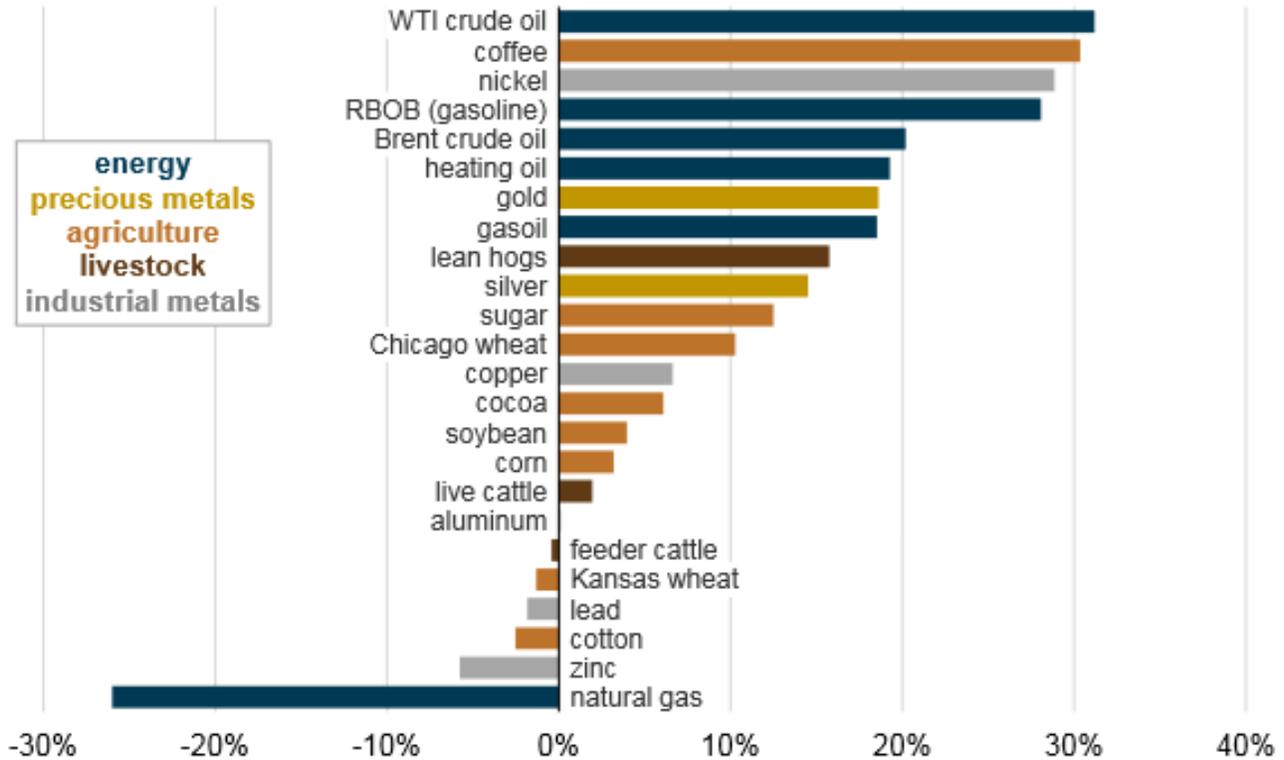
Prices for West Texas Intermediate (WTI) crude oil and Brent crude oil ended the year 31% and 20% higher, respectively, than on January 2, 2019. WTI's increase of 31% was the largest increase of all GSCI commodities in 2019.

Other energy commodities such as RBOB (reformulated blendstock for oxygenate blending—essentially the petroleum component of motor gasoline), heating oil, and gasoil rose by 28%, 19%, and 19%, respectively, in 2019. Natural gas was the only GSCI energy commodity to decrease in 2019: prompt-month natural gas futures sold on the New York Mercantile Exchange fell 26% from \$2.96 per million British thermal units (MMBtu) on January 2 to \$2.19/MMBtu on December 31—the largest percentage decline of all commodities in the GSCI in 2019.

## Energy commodity prices rose more than other goods in 2019

(continued)

Commodity futures price changes (January 2 to December 31, 2019)  
percent change



Price changes for each commodity are weighted by their relative importance in the broader market. WTI and Brent crude oil prices accounted for 72% of the weighting in the S&P GSCI energy index and 45% of the total GSCI in 2019. Since the creation of the GSCI in 1991, WTI and Brent have been the GSCI’s highest and second-highest weighted commodities, respectively, so both the GSCI and the energy sub-index tend to follow major price movements of these crude oils.

Prices of many nonenergy commodities tend to move in the same direction as energy commodities. For instance, because consumers use more copper and more crude oil when the economy is expanding, copper prices and the Brent crude oil price typically move together.

Conversely, precious metals such as gold and silver are typically seen as safe assets with values that increase with economic contractions. Gold and silver prices are positively correlated with each other but negatively correlated with commodities associated with economic expansion.

### Geological Drafting Consultants

John A. Harrell  
400 Travis St., Ste 1606  
Sheveport, LA 71101  
(318) 221-7780

Draftstud@aol.com

## LOUISE F. PEARCE

ATTORNEY AT LAW

(318) 459-9031

400 Travis Street, Suite 909  
Shreveport, Louisiana 71101  
lpearce@louisepearce.com

### STROUD

Exploration Company, L.L.C.

SCOTT D. STROUD  
PRESIDENT

416 Travis St. • Suite 600 • Shreveport, LA 71101  
(318) 425-0101 • Fax (318) 425-2211

Ted Scurlock  
Consulting Landman

Jim King  
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General Counsel

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P.O. Box 187, Homer, LA 71040

(318) 927-2223

Paul L. Wood  
Attorney at Law

318-798-6177  
Fax: 318-798-6178



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James R. Sledge, CPL at  
[jsledge@jrscplllc.com](mailto:jsledge@jrscplllc.com)

with questions.

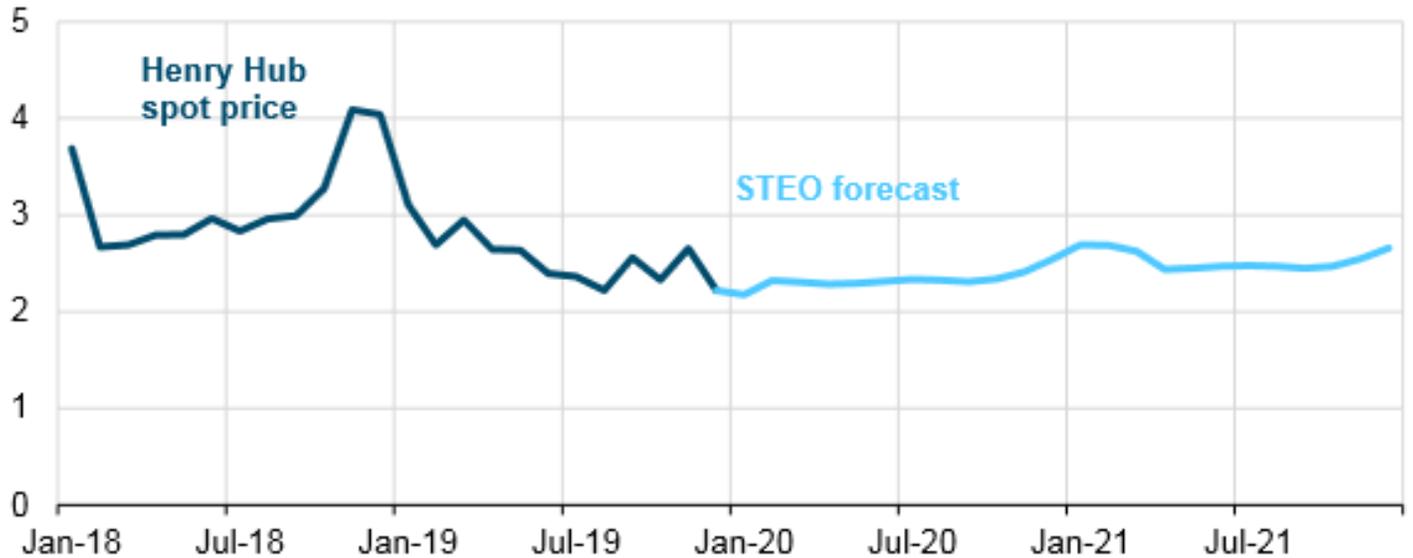
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[paul@paulwoodattorney.com](mailto:paul@paulwoodattorney.com)  
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## EIA expects lower natural gas prices in 2020 as production outpaces demand

### Monthly Henry Hub natural gas spot prices (2018-2021)

dollars per million British thermal units



**Source:** U.S. Energy Information Administration, *Short-Term Energy Outlook*, January 2020

In its January 2020 *Short-Term Energy Outlook* (STEO), the U.S. Energy Information Administration (EIA) forecasts that average U.S. natural gas prices will be 9% lower in 2020 than in 2019. EIA expects lower natural gas prices will be the result of continued production growth primarily in response to the following factors:

- Improved drilling efficiency and cost reductions
- Higher associated gas production from oil-directed rigs
- Increased takeaway pipeline capacity from the Appalachian and Permian production regions

This production growth outpaces the growth in domestic demand and exports.

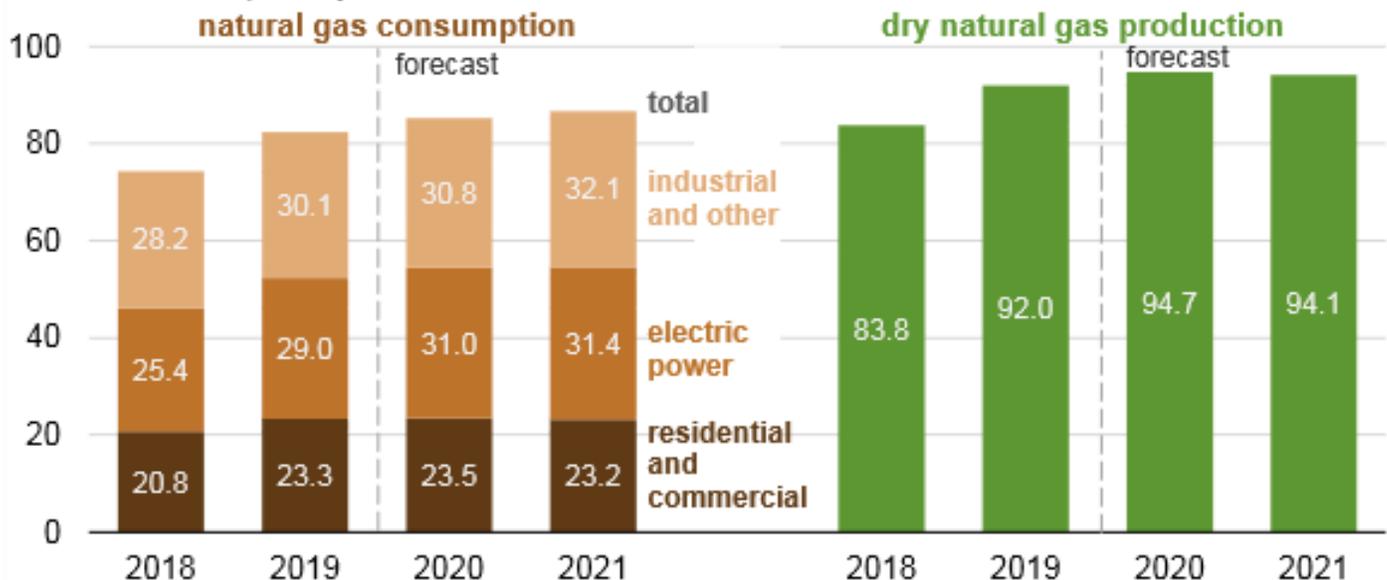
EIA expects the natural gas spot price for the U.S. benchmark Henry Hub will average \$2.33 per million British thermal units (MMBtu) in 2020, about 24 cents lower than the 2019 average of \$2.57/MMBtu. Following a year of decline, EIA expects 2021 natural gas prices to rise by 9% because of upward pricing pressure from declining growth in natural gas production.

## EIA expects lower natural gas prices in 2020 as production outpaces demand

(continued)

### Annual U.S. natural gas consumption and production (2018-2021)

billion cubic feet per day



**Source:** U.S. Energy Information Administration, *Short-Term Energy Outlook*, January 2020

EIA expects record volumes of U.S. dry natural gas production to continue through 2020, from an estimated 92.0 billion cubic feet per day (Bcf/d) in 2019 to 94.7 Bcf/d in 2020. Most U.S. production will come from the Appalachian Basin in the Northeast, followed by the Permian Basin in western Texas and New Mexico and the Haynesville shale formation in eastern Texas. Cost reductions in drilling and well completions and improved drilling efficiency will support continued record-production levels in 2020. In addition, a growing share of natural gas production is coming from oil wells that produce natural gas, also called associated gas. Increased takeaway capacity from the highly productive Appalachian and Permian production regions will further enable growth. However, in 2021, EIA expects dry natural gas production to decline by less than 1% to 94.1 Bcf/d in response to lower forecast natural gas spot prices in 2020, which would reduce Appalachian Basin production.

Total U.S. natural gas consumption remains relatively unchanged compared with 2019 levels in the STEO forecast, increasing 1.7% in 2020, but decreasing 1.2% in 2021 to an average 85.7 Bcf/d in 2021. EIA forecasts natural gas consumption to decrease slightly in the residential and commercial sectors as a result of expected milder weather that will require less energy for space heating in the winter and air conditioning in the summer. Based on forecasts by the National Oceanic and Atmospheric Administration, EIA forecasts 1.8% fewer heating degree days (HDD) in 2020 compared with 2019, which had a colder-than-normal first quarter.

EIA expects U.S. natural gas use in the electric power sector to increase 1.3% in 2020 as a result of natural gas-fired generation additions that continue to displace coal-fired generation. However, in 2021, because of a forecast of higher natural gas spot prices and increased competition from renewables, EIA estimates that natural gas consumption in the electric power sector will decline 3.2% in 2021. EIA expects the natural gas

## EIA expects lower natural gas prices in 2020 as production outpaces demand

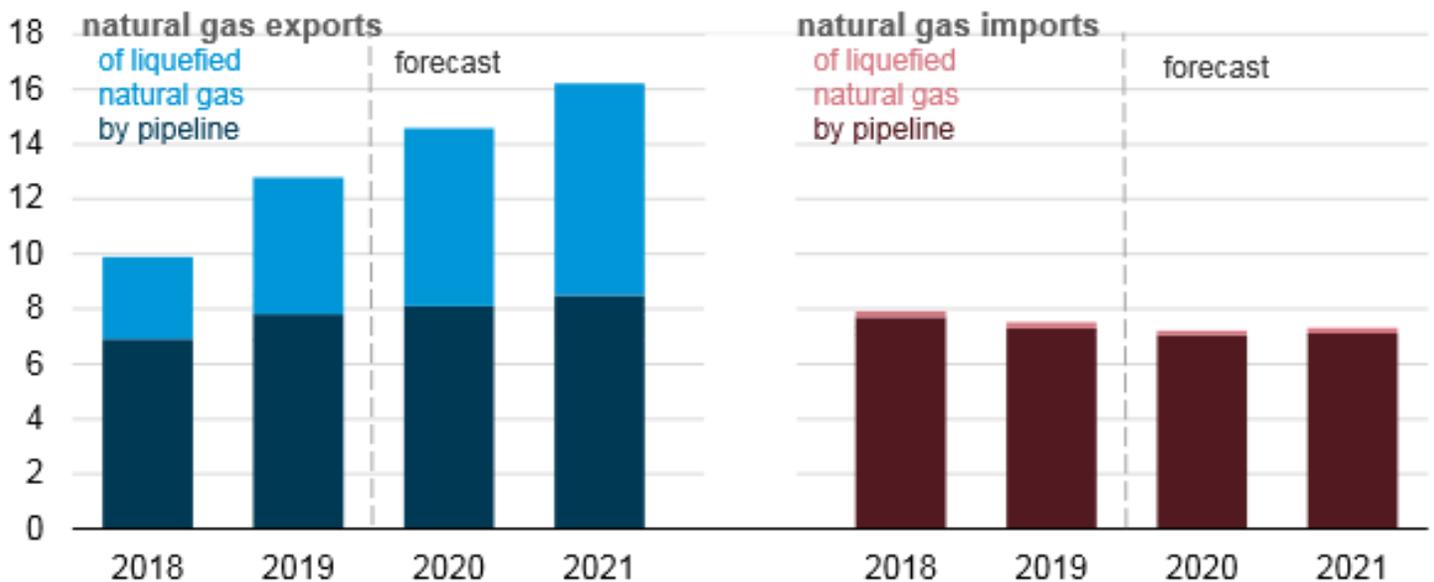
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share of electricity generation in 2021 to be 37%, about the same as its 2019 share, while coal's share of electricity generation will fall from 24% in 2019 to 21% in 2021.

Natural gas consumption in the U.S. industrial sector will continue to grow in 2020, increasing 4.6%. New methanol plants that use natural gas as feedstock are scheduled to come online in 2020, which will support the increased industrial sector consumption. In 2021, EIA expects industrial sector consumption to flatten because of higher industrial sector natural gas prices.

### Annual U.S. natural gas trade (2018-2021)

billion cubic feet per day



**Source:** U.S. Energy Information Administration, *Short-Term Energy Outlook*, January 2020

The United States became a net exporter of natural gas on an annual basis for the first time in 2018, and EIA expects that this trend will continue during the forecast period. In 2020, net exports will average 7.3 Bcf/d—an increase of 2.0 Bcf/d over the 2019 levels. EIA expects 2021 net exports to rise further to 8.9 Bcf/d as new liquefied natural gas (LNG) projects enter service. The remaining trains at the Cameron LNG and Freeport LNG facilities, located along the Gulf Coast, and the Elba Island LNG facility in Georgia will be placed into service in 2020. EIA expects LNG exports to increase from an estimated 5.0 Bcf/d in 2019 to 6.5 Bcf/d in 2020 and up to 7.7 Bcf/d in 2021, more than double the 2018 level.

EIA forecasts that gross exports of natural gas by pipeline will continue to grow, increasing to 8.1 Bcf/d in 2020 and 8.5 Bcf/d in 2021, or 8.8% higher than the 2019 level. Most of the increase will be driven by increasing natural gas demand and by pipeline projects in Mexico that are scheduled to come online by the end of 2021. EIA expects imports of LNG to remain flat through 2021, and imports by pipeline will continue to decrease through 2020, when Appalachian production and takeaway capacity displace imported natural gas from Canada in the U.S. Midwest markets.

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MICHAEL P. AMEEN, JR.  
T. ISSAC HOWELL  
JONATHAN E. LOVE  
JONATHAN J. ROSE  
PAUL A. STRICKLAND

SENIOR COUNSEL  
JOSEPH L. HARGROVE, JR.  
DAVID L. SMELLEY

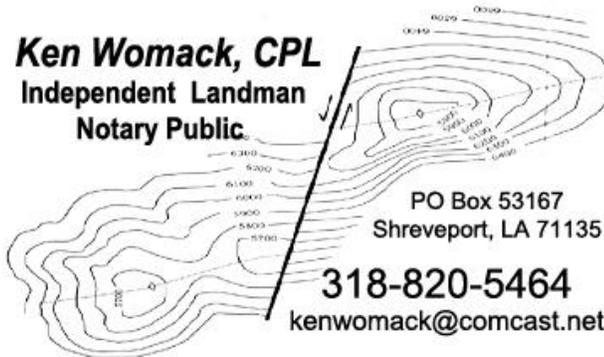
OF COUNSEL  
WILLIAM G. CONLY

AMERICAN TOWER, SUITE 600  
401 MARKET STREET  
SHREVEPORT, LOUISIANA 71101

TELEPHONE: 318-429-7200  
FAX: 318-429-7201  
<http://hargrovelawfirm.net>

POST OFFICE BOX 59  
SHREVEPORT, LOUISIANA  
71161-0059

**Ken Womack, CPL**  
Independent Landman  
Notary Public



PO Box 53167  
Shreveport, LA 71135  
**318-820-5464**  
[kenwomack@comcast.net](mailto:kenwomack@comcast.net)

## **DONNER PROPERTIES, LLC**

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P.O. BOX 1346 • SHREVEPORT, LA 71164  
(318) 227-2131 • FAX (318) 222-5832 • CELL (318) 347-8848  
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## **TALCO ENERGY, LLC**

**Ted A Lyles**  
Certified Professional  
Landman

10895 Longfellow Trace  
Shreveport, LA 71106  
6 Heatherstone  
Lafayette LA, 70508  
Cell : 318.207.0348  
[lylesco22@comcast.net](mailto:lylesco22@comcast.net)

## **EnSight IV** Energy Partners, LLC

**Ron Tuminello, CPL**  
Vice President of Land  
**Travis Hart, CPL**  
Senior Landman  
**Sherri Harmon, RPL**  
Land Administrator

333 Texas Street, Suite 1919  
Shreveport, LA 71101-3676  
318-429-2220 • 318-429-2229 (fax)  
[ron.tuminello@ensightenergy.com](mailto:ron.tuminello@ensightenergy.com)  
[travis.hart@ensightenergy.com](mailto:travis.hart@ensightenergy.com)  
[sherri.harmon@ensightenergy.com](mailto:sherri.harmon@ensightenergy.com)

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## Short-Term Energy Outlook

### From the U.S. Energy Information Agency

[www.EIA.gov](http://www.EIA.gov)

#### Highlights

- This edition of the Short-Term Energy Outlook is the first to include forecasts for 2021.
- EIA forecasts Brent crude oil spot prices will average \$65 per barrel (b) in 2020 and \$68/b in 2021, compared with an average of \$64/b in 2019. EIA expects West Texas Intermediate (WTI) crude oil prices will average about \$5.50/b lower than Brent prices through 2020 and 2021, compared with an average WTI discount of about \$7.35/b in 2019.
- Global liquid fuels inventories were mostly unchanged in 2019, and EIA expects they will grow by 0.3 million b/d in 2020 and then decline by 0.2 million b/d in 2021.
- On January 1, 2020, the International Maritime Organization (IMO) enacted Annex VI of the International Convention for the Prevention of Pollution from Ships (MARPOL Convention), which lowers the maximum sulfur content of marine fuel oil used in ocean-going vessels from 3.5% of weight to 0.5%. EIA expects this regulation will encourage global refiners to increase refinery runs and maximize upgrading of high-sulfur heavy fuel oil into low-sulfur distillate fuel to create compliant bunker fuels. EIA forecasts that U.S. refinery runs will rise by 3% from 2019 to a record level of 17.5 million b/d in 2020, resulting in refinery utilization rates that average 93% in 2020. EIA expects one of the most significant effects of the regulation will be on diesel wholesale margins, which will rise from an average of 43 cents per gallon (gal) in 2019 to a forecast peak of 53 cents/gal in March 2020 and an annual average of 50 cents/gal in 2020. EIA expects diesel margins to decline to 49 cents/gal in 2021.
- U.S. regular gasoline retail prices averaged \$2.60/gal in 2019, and EIA forecasts that they will average \$2.63/gal in both 2020 and 2021.
- EIA estimates that U.S. crude oil production averaged 12.2 million b/d in 2019, up 1.3 million b/d from 2018. EIA forecasts U.S. crude oil production will average 13.3 million b/d in 2020 and 13.7 million b/d in 2021. Most of the production growth in the forecast occurs in the Permian region of Texas and New Mexico.
- U.S. net imports of crude oil and petroleum product fell from an average of 2.3 million b/d in 2018 to an average of 0.5 million b/d in 2019, and EIA estimates the United States has exported more total crude oil and petroleum products than it has imported since September. EIA forecasts that the United States will be a net exporter of total crude oil and petroleum products by 0.8 million b/d in 2020 and by 1.4 million b/d in 2021.
- U.S. dry natural gas production set a new record in 2019, averaging 92.0 billion cubic feet per day (Bcf/d). EIA forecasts dry natural gas production will rise to 94.7 Bcf/d in 2020 and then decline to 94.1 Bcf/d in 2021. Production in the Appalachian region drives the forecast as it shifts from growth in 2020 to declining production in 2021.

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## **Short-Term Energy Outlook**

### **From the U.S. Energy Information Agency**

[www.EIA.gov](http://www.eia.gov)

(continued)

- EIA forecasts that Henry Hub natural gas spot prices will average \$2.33 per million British thermal units (MMBtu) in 2020, down from \$2.57/MMBtu in 2019. EIA expects that natural gas prices will then increase in 2021, reaching an annual average of \$2.54/MMBtu.
- EIA forecasts that U.S. coal production will total 597 million short tons (MMst) in 2020, down 93 MMst (14%) from 2019, as a result of declining domestic demand for coal in the electric power sector and lower demand for U.S. exports. EIA expects that coal production will again fall by 16 MMst (3%) in 2021 as export demand stabilizes and declines in U.S. power sector demand slow.
- EIA expects the share of U.S. total utility-scale electricity generation from natural gas-fired power plants will remain relatively steady, it was 37% in 2019, and we forecast it will be 38% in 2020 and 37% in 2021. Electricity generation from renewable energy sources rises from a share of 17% last year to 19% in 2020 and 22% in 2021. The increase in the renewables share is the result of expected additions to wind and solar generating capacity. Coal's forecast share of electricity generation falls from 24% in 2019 to 21% in both 2020 and 2021. The nuclear share of generation, which averaged slightly more than 20% in 2019 will be slightly less than 20% by 2021, consistent with upcoming reactor retirements.
- After decreasing by 2.1% in 2019, EIA forecasts that energy-related carbon dioxide (CO<sub>2</sub>) emissions will decrease by 2.0% in 2020 and by 1.5% in 2021. Declining emissions reflect forecast declines in total U.S. energy consumption combined with assumptions of relatively normal weather. Energy-related CO<sub>2</sub> emissions are sensitive to changes in weather, economic growth, energy prices, and fuel mix.

<https://www.eia.gov/outlooks/steo/>

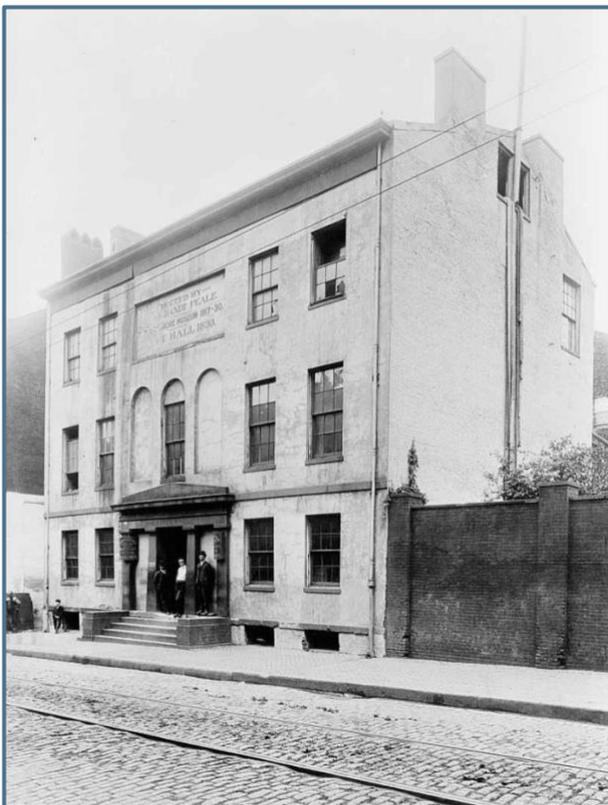
## Did You Know?

**On February 20, 1959, the first trans-oceanic shipment of liquefied natural gas (LNG)** arrived at a newly constructed terminal on Canvey Island, a reclaimed island in the Thames estuary in Essex, England. This island had been the sight of one of the first known attempts to manage the effects of the sea through rudimentary seawalls during the reign of King Edward II (1307–1327), but had recently become the world's first port built to receive imports of LNG, built by the British Gas Council. The *Methane Pioneer* – the first liquefied natural gas tanker - had embarked from Lake Charles, Louisiana in late January, bearing a load of 2020 tonnes of LNG (about 2226 US or “short” tons). The delivery was a great commercial success, and there were 7 more deliveries over the following 14 months, but the Groningen Gas Field was discovered in the early 1960's, this was the first of several very significant finds in the North Sea that made the LNG shipments much less economically attractive. Shipments continued to arrive at the site, mostly from Algeria, up until 1984.



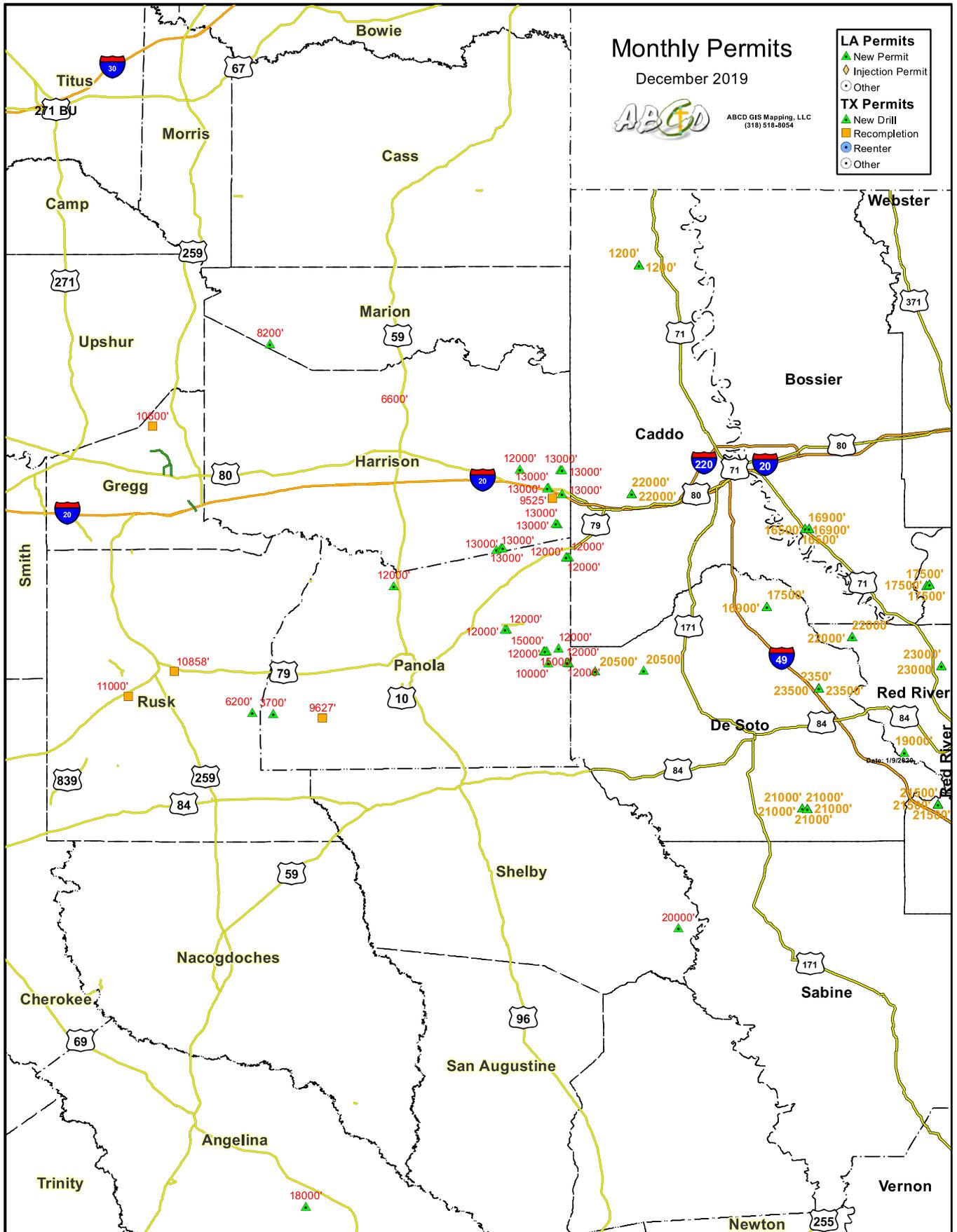
Above: The *Methane Pioneer*, dockside at Canvey Island.

**On February 7, 1817, the first American “gaslight” street lamp was lit** at the corner of North Holliday Street and East Baltimore Street in Baltimore, Maryland. Prior to this time, a few streets had been illuminated by candles in glass boxes, an idea first propounded by Benjamin Franklin.



The brothers Rembrandt and Rubens Peale, fresh off of a trip across the pond, had become inspired by European gas lamps fueled by manufactured gas, a by-product of the distillation of wood and coal. The London-based Gas Light and Coke Company had recently become the first company to provide manufactured gas to consumers as a utility. The brothers Peale returned home with an exciting idea, they invited local businessmen and socialites to an open house display at their museum where they burned manufactured gas in a “gaslight lamp”, the first of its kind in The States. The Gas Light Company of Baltimore was soon formed and by 1823 New York City was becoming illumined by the new gaslight phenomenon. Very quickly the rush was on in most major cities and soon the first American system of delivering gas to residential and commercial customers via pipeline was begun. As we know, natural gas eventually replaced manufactured gas, and the rest, as they say, is history...

Left: The Peale brothers' museum, in Baltimore Maryland.



**Texas Permits – December 2019**  
**provided by Xingwen Chen of ABCD GIS Mapping**

<b>AppDate</b>	<b>API</b>	<b>Operator</b>	<b>County</b>	<b>Purpose</b>	<b>TD</b>
12/2/19	36538539	KJ ENERGY, LLC (469901)	PANOLA	New Drill	3700
12/2/19	40135450	KJ ENERGY, LLC (469901)	RUSK	New Drill	6200
12/3/19	20335390	ROCKCLIFF ENERGY OPERATING LLC (722890)	HARRISON	New Drill	12000
12/3/19	31531066	ENERQUEST CORPORATION (252059)	MARION	New Drill	8200
12/3/19	40134314	AMPLIFY ENERGY OPERATING LLC (020467)	RUSK	Recompletion	10858
12/4/19	41931765	XTO ENERGY INC. (945936)	SHELBY	New Drill	20000
12/4/19	36538538	R. LACY SERVICES, LTD. (687208)	PANOLA	New Drill	12000
12/5/19	36535835	BUFFCO PRODUCTION INC. (106406)	PANOLA	Recompletion	9627
12/6/19	20335362	COMSTOCK OIL & GAS, LLC (170038)	HARRISON	New Drill	13000
12/9/19	36538540	ROCKCLIFF ENERGY OPERATING LLC (722890)	PANOLA	New Drill	12000
12/9/19	36538541	ROCKCLIFF ENERGY OPERATING LLC (722890)	PANOLA	New Drill	12000
12/9/19	36538542	ROCKCLIFF ENERGY OPERATING LLC (722890)	PANOLA	New Drill	12000
12/10/19	20335366	COMSTOCK OIL & GAS, LLC (170038)	HARRISON	New Drill	13000
12/10/19	20335376	COMSTOCK OIL & GAS, LLC (170038)	HARRISON	New Drill	13000
12/10/19	20335380	COMSTOCK OIL & GAS, LLC (170038)	HARRISON	New Drill	13000
12/11/19	20335375	COMSTOCK OIL & GAS, LLC (170038)	HARRISON	New Drill	13000
12/11/19	20335374	COMSTOCK OIL & GAS, LLC (170038)	HARRISON	New Drill	13000
12/11/19	36538516	COMSTOCK OIL & GAS, LLC (170038)	PANOLA	New Drill	13000
12/11/19	36538518	COMSTOCK OIL & GAS, LLC (170038)	PANOLA	New Drill	13000
12/11/19	36538519	COMSTOCK OIL & GAS, LLC (170038)	PANOLA	New Drill	13000
12/12/19	36538499	ROCKCLIFF ENERGY OPERATING LLC (722890)	PANOLA	New Drill	12000
12/12/19	36538522	ROCKCLIFF ENERGY OPERATING LLC (722890)	PANOLA	New Drill	12000
12/12/19	36538503	ROCKCLIFF ENERGY OPERATING LLC (722890)	PANOLA	New Drill	12000
12/12/19	36538507	ROCKCLIFF ENERGY OPERATING LLC (722890)	PANOLA	New Drill	15000
12/13/19	36538506	ROCKCLIFF ENERGY OPERATING LLC (722890)	PANOLA	New Drill	15000
12/13/19	20330959	SHERIDAN PRODUCTION COMPANY, LLC (775854)	HARRISON	Recompletion	9525
12/17/19	36538329	PETROQUEST ENERGY, L.L.C. (660818)	PANOLA	New Drill	10000
12/18/19	36538500	ROCKCLIFF ENERGY OPERATING LLC (722890)	PANOLA	New Drill	12000
12/18/19	18331236	DALLAS PRODUCTION, INC. (197690)	GREGG	Recompletion	10600
12/20/19	40133530	TRIVIUM OPERATING, LLC (871168)	RUSK	Recompletion	11000
12/20/19	20335381	COMSTOCK OIL & GAS, LLC (170038)	HARRISON	New Drill	13000
12/20/19	00530455	COBRA OIL & GAS CORPORATION (163000)	ANGELINA	New Drill	18000
12/20/19	36538546	ROCKCLIFF ENERGY OPERATING LLC (722890)	PANOLA	New Drill	12000
12/20/19	36538547	ROCKCLIFF ENERGY OPERATING LLC (722890)	PANOLA	New Drill	12000
12/31/19	20332540	T W CLEMONS OPERATING CO., LLC (834248)	HARRISON	Reenter	6600

**Louisiana Permits – December 2019**  
**provided by Xingwen Chen of ABCD GIS Mapping**

County	WellSN	WellName	PermitDate	Depth	Operator
BIENVILLE	252166	HA RA SUU;WALKER ETAL 9 H	12/27/19	17500	AETHON ENERGY OPERATING LLC
BIENVILLE	252167	HA RA SUU;WALKER ETAL 9 H	12/27/19	17500	AETHON ENERGY OPERATING LLC
BIENVILLE	252168	HA RA SUU;WAITES 9 H	12/27/19	17500	AETHON ENERGY OPERATING LLC
BIENVILLE	252169	HA RA SUU;WAITES 9 H	12/27/19	17500	AETHON ENERGY OPERATING LLC
BIENVILLE	252170	HA RA SUU;WAITES 9 H	12/27/19	17500	AETHON ENERGY OPERATING LLC
BOSSIER	252137	HA RA SUS;MIRE ETAL 5 H	12/10/19	16900	AETHON ENERGY OPERATING LLC
BOSSIER	252138	HA RA SUS;MIRE ETAL 5 H	12/10/19	16900	AETHON ENERGY OPERATING LLC
BOSSIER	252139	HA RA SUS;BROUSSARD 5 H	12/10/19	16500	AETHON ENERGY OPERATING LLC
BOSSIER	252142	HA RA SUX;BROUSSARD 4 H	12/10/19	16500	AETHON ENERGY OPERATING LLC
BOSSIER	252143	HA RA SUX;BROUSSARD 4 H	12/10/19	16500	AETHON ENERGY OPERATING LLC
CADDO	252128	HORTON	12/4/19	1200	KIRBY OIL COMPANY
CADDO	252129	HORTON	12/4/19	1200	KIRBY OIL COMPANY
CADDO	252134	HA RA SU116;ROBINSON 8-5 HC	12/6/19	22000	BLUE DOME OPERATING, LLC
CADDO	252136	HA RA SU116;ROBINSON 8-5 HC	12/9/19	22000	BLUE DOME OPERATING, LLC
DE SOTO	252130	BRUSHY 32-5	12/5/19	21000	VINE OIL & GAS LP
DE SOTO	252131	BRUSHY 32-5	12/5/19	21000	VINE OIL & GAS LP
DE SOTO	252132	GALLASPY 32-5	12/5/19	21000	VINE OIL & GAS LP
DE SOTO	252133	GALLASPY 32-5	12/5/19	21000	VINE OIL & GAS LP
DE SOTO	252144	HA RA SUNN;W MEIER 22-27 HC	12/10/19	17500	AETHON ENERGY OPERATING LLC
DE SOTO	252145	HA RA SUSS;W MEIER 27 H	12/10/19	16900	AETHON ENERGY OPERATING LLC
DE SOTO	252147	HA RA SU101;DEMMON 34&27 HC	12/12/19	20500	GOODRICH PETROLEUM COMPANY
DE SOTO	252148	HA RA SU101;DEMMON 34&27 HC	12/12/19	20500	GOODRICH PETROLEUM COMPANY
DE SOTO	252150	BRUSHY 32-5 H	12/16/19	21000	VINE OIL & GAS LP
DE SOTO	252156	HA RC SUB;DESOTO FAM 15-22 HC	12/23/19	2350	VINE OIL & GAS LP
DE SOTO	252157	HA RC SUA;DESOTO FAM 16-21 HC	12/23/19	23500	VINE OIL & GAS LP
DE SOTO	252158	HA RC SUA;DESOTO FAM 16-21 HC	12/23/19	23500	VINE OIL & GAS LP
RED RIVER	252140	HA RA SUI;REX YOUNG 7-6 HC	12/10/19	22000	AETHON ENERGY OPERATING LLC
RED RIVER	252141	HA RA SUI;REX YOUNG 7-6 HC	12/10/19	22000	AETHON ENERGY OPERATING LLC
RED RIVER	252146	HA RB SU93;CLOYCE CLARK 24 H	12/10/19	19000	BRIX OPERATING LLC
RED RIVER	252159	HA RA SUZ;BLACKSTONE 34-3 HC	12/26/19	23000	VINE OIL & GAS LP
RED RIVER	252160	HA RA SUZ;BLACKSTONE 34-3 HC	12/26/19	23000	VINE OIL & GAS LP
RED RIVER	252161	HA RA SUZ;MCKISSACK 34-3 HC	12/26/19	21500	VINE OIL & GAS LP
RED RIVER	252162	HA RA SUZ;MCKISSACK 34-3 HC	12/26/19	21500	VINE OIL & GAS LP
RED RIVER	252163	HA RA SUZ;MCKISSACK 34-3 HC	12/26/19	21500	VINE OIL & GAS LP
WEBSTER	252152	HA RA SUZZ;LINDSAY 36-25 HZ	12/18/19	23000	COMSTOCK OIL & GAS--LA, LLC

**Photos from the January Meeting**





ARK-LA-TEX ASSOCIATION OF PROFESSIONAL LANDMEN



APPLICATION FOR MEMBERSHIP  
PLEASE TYPE OR PRINT

FULL NAME: \_\_\_\_\_  
MAILING ADDRESS (Street, City, State Zip): \_\_\_\_\_  
BUSINESS TELEPHONE NUMBER: \_\_\_\_\_ CELL (Optional) \_\_\_\_\_  
EMAIL ADDRESS: \_\_\_\_\_  
EMPLOYED BY: \_\_\_\_\_ TITLE: \_\_\_\_\_  
DATE YOU BEGAN PETROLEUM LAND WORK: \_\_\_\_\_

ARE YOU A MEMBER OF THE AAPL (American Association of Professional Landmen)?  
 yes # \_\_\_\_\_  no

ARE YOU CERTIFIED by AAPL (American Association of Professional Landmen)?  
 yes  no

CPL \_\_\_\_\_ RPL \_\_\_\_\_ RL \_\_\_\_\_

Please circle the category for which you are applying:

- ACTIVE — Minimum of four (4) years active experience as a Landman;
- APPRENTICE — Less than four (4) years active experience as a Landman;
- ASSOCIATE — Non-Landman requesting membership.

Please give a brief but specific statement on the experience that qualifies you for membership:

\_\_\_\_\_  
\_\_\_\_\_

Have you ever been convicted of a felony? Yes No (circle one)  
If yes, attach a detailed description of the offense and the status of the matter.  
Have you been found guilty of an ethics violation by ALTAPL or any other professional organization?  
Yes No (circle one)  
If yes, attach a detailed description of the offense and the status of the matter.

Applicant's Signature: \_\_\_\_\_ Date: \_\_\_\_\_

EACH APPLICANT MUST HAVE TWO (2) SPONSORS (Sponsors Must be active and current members of the ALTAPL):

1. \_\_\_\_\_ 2. \_\_\_\_\_  
Signature Signature

1. \_\_\_\_\_ 2. \_\_\_\_\_  
Sponsor's Printed Name Sponsor's Printed Name

MEMBERSHIP FEE: \$45.00, which includes annual dues of \$40.00 and a one-time processing fee of \$5.00. Please make your check payable to ALTAPL and return with your application to:

ALTAPL  
Attention: Membership Chairman  
P.O. Box 1296  
Shreveport, LA 71163-1296