The Rocky Mountain

L • A • N • D • M • A • N

Volume 40 Issue 9 www.dapldenver.org April 2023

DAPL

11:30-11:50: Welcome and Networking
11:50-12:45: Lunch and Presentation
12:45-1:00: Q&A

April 19, 2023 | 11:30 AM - 1 PM

Future of Clean Energy: Geo Thermal Energy Storage (GeoTES)

Mike is born and raised in San Diego where he enjoys living the beach life with his awesome wife and three kiddos.

Mike is an independent investment banker with FieldView Capital, which he founded in 2008. After brokering private equity deals from 2008-2017, Mike shifted to operator life.

In 2018, Mike started Premier Resource Management with two partners in Bakersfield, CA. PRM is developing an energy project on the West Side of the oil-rich San Joaquin Basin.

Californians for Energy & Science is a nonprofit organization that Mike started in 2022 to study the benefits of locally produced energy.

Mike holds a BA in Economics-Pepperdine University (2005), Master of Energy Business- University of Tulsa (2016), and Master of Environmental Management- Duke, Nicholas School of the Environment (2021).

$45 for DAPL Members
$60 for Non-members

Click Here to Register

The University Club
1673 Sherman St. Denver, CO 80203

The Denver Association of Professional Landmen
910 16th Street, Suite 223
Denver, CO 80202
Telephone: (303) 446-2253
E-Mail: dapl@dapldenver.org
Web Site: www.dapldenver.org

Office Hours
by appointment

The Denver 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.

The Rocky Mountain Landman is a publication of the Denver Association of Professional Landmen.

Tabatha Reed
DAPL Office Administrator
Phone: (303) 446-2253

Column Coordinators:

Education	**Bresee Carlson** **Crosby Garrison**
Minutes	**Laurie Wizeman**
Legal	**Estee Sanchez**

Contributions from our readers are welcome. All suggestions and manuscripts should be emailed to the editor at the DAPL office. We reserve the right to edit all material according to standard practices.

Bylined and credited articles represent the view of the authors; publication neither implies approval of the opinions expressed nor accuracy of the facts stated.

WE'RE GOING VIRTUAL!

The DAPL will be closing its physical office effective Wednesday, May 31, 2023.

We will have a physical mailing address thanks to a partnership with the Denver Earth Resources Library (DERL). The office space has not been utilized much since 2020 and the Board decided that this was a good time to make this change since our lease is coming to an end.

Our phone number and email address will stay the same and you can expect Tabatha Reed (DAPL Office Administrator) to be available the same as she is now.

Our mailing address will be:

DAPL
730 17th Street, Suite B1
Denver, CO 80202

2023/24 Membership Renewal Period Now Open

You can renew your membership for 1 or 3 years using the below link.

You will be prompted to log in

DAPL Membership Renewal (click here)

Renewals are due by June 1st

Officer's Forum - Immediate Past President

DAPL Members:

As the Immediate Past President of the DAPL, I am honored and humbled to address you for the final time. It has been such a privilege to be able to serve this dynamic organization over the last six years. I'll never forget my first exposure to the DAPL. I had just moved to Denver and Ed Higuera had asked me to lunch. Little did I know, that lunch was actually a DAPL education committee meeting, and the rest is history now. From chairing the education committee to serving as President, this organization has been my home since moving to Denver. It has connected to me colleagues who have become like friends and family while instilling life long lessons. Looking back but aiming forward, my charge to each and everyone of you is simple – stay engaged. DAPL's greatest asset is it's people and we need you. We need your ideas, your feedback, your energy. Throughout my tenure I've seen this organization weather many storms, and while we know that there will continue to be upturns and downturns in our industry, I know that the DAPL will continue to be pivotal resource for our community. A huge thanks to the current DAPL board led by Armando Trevino this year and a congratulations to the 2023-2024 incoming board. I know that this organization will continue to thrive under the incoming leadership. Thanks again for your continued support. I look forward to cheering on this wonderful organization that has played such a pivotal role in my personal and professional success.

Thomas Porter
DAPL Immediate Past President

DAPL 2023
ANNUAL GOLF TOURNAMENT

FRIDAY, JULY 21, 2023
KEYSTONE

SAVE THE DATE

Registration Opening Soon

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Akers & Thompson LLC ATTORNEYS AND COUNSELORS AT LAW

Field Landman Question

Unit Operator Sole Party with Right to Challenge Retroactive Assessments

A DAPL Member has asked, "who has the right to challenge retroactive tax assessments on unit production in Colorado?" This is a question that has been recently litigated in Colorado and, earlier this year, was decided by the Colorado Supreme Court. Per the court's decision in *Colorado Property Tax Administrator v. CO_2 Committee, Inc.*, 2023 CO 8 (2023), the unit operator is the only party with the right to challenge retroactive assessments and property tax increases on unit production.

A "unit" in the oil and gas context is where multiple interests, owned by various parties, are consolidated together into a single operation so that oil and gas may be efficiently developed. Units may be created through formal agreements – like declarations of pooled units – or otherwise. Often, there is a single "unit operator" who manages and handles the day-to-day operations of the unit; typically, contracts such as unit agreements or operating agreements govern this arrangement. Parties who own an interest in the leases or lands included in the unit but are not designated as the unit operator are referred to as "nonoperators" or nonoperating fractional interest owners.

While there are various contracts and agreements that establish and govern unit operations as mentioned above, there are also state statutes and administrative procedures and guidance in Colorado that pertain to unit operations, including in the context of taxation. For example, Colorado Revised Statutes (CRS) § 39-7-101(1) requires that, once a year, unit operators prepare and file an "Annual Statement with the county assessor for each unit the operator manages," which Annual Statement is used by the assessor to value the lands and leaseholds for assessment. Notice of the valuation is then sent "only to the operator" per CRS § 39-5-121(1.5)(b)(l). Though each fractional interest owner is liable for its proportionate share of taxes due on the unit, in accordance with CRS § 39-7-106(2), the unit operator collects payments from all nonoperators and remits the total payment to the county treasurer.

The valuation of property may be revisited in two ways: by the taxpayer and by the county. On one hand, county treasurers have the ability to audit taxpayers and impose retroactive assessments if it is discovered that taxable property has been omitted from the valuation process (CRS § 39-10-101(2)(a)(l), § 39-5-125(1)). On the other, statutory protest procedures provide that if "any person" objects to the valuation of his or her property, he or she may "complete the form mailed with his or her notice of valuation . . ., or file a written letter of objection and protest" (CRS § 39-5-122(2)). Significantly, in order to bring a challenge to court (on taxation or any other issue), a party must have "standing," which means they must have (1) suffered an injury in fact (2) to a legally protected interest.

In short, considering whether nonoperators had standing to challenge retroactive tax increases imposed by the county on unit operations in which they owned an interest, the Colorado Supreme Court found that nonoperators did not have a legally protected interest, and therefore, did not have standing to independently bring such a challenge. The court relied upon the statutes mentioned above, along with other statutes, laws, and administrative procedures and guidance, finding that such sources created an intentional and unique representative system, where the unit operator is the sole point of contact for reporting, notice and taxpaying purposes. It is true that nonoperators are liable to the unit operator for their proportionate share of taxes due on unit operations, and certain methods exist for the county to collect taxes from nonoperators if the operator fails to pay; however, the unit operator is deemed the sole "taxpayer" in the context of unit operations. As such, the right to protest the valuation or pursue other remedies afforded to taxpayers must be read in concert with this overall representative system and found to apply to the unit operator only. Essentially, the court held that the state legislature intended for the unit operator to represent nonoperators "at *every* stage of the property tax assessment process."

It is also important to note that, during the pendency of the litigation leading to this court decision, a new law was enacted in Colorado which clarified that nonoperating fractional interest owners' interests are not subject to independent valuation and such owners are not entitled to receive notice of the valuation of unit operations or the right to protest or appeal the same. Senate Bill 22-026, passed into law and effective as of March 30, 2022, codified at CRS § 39-7-110(2), specifically states as follows:

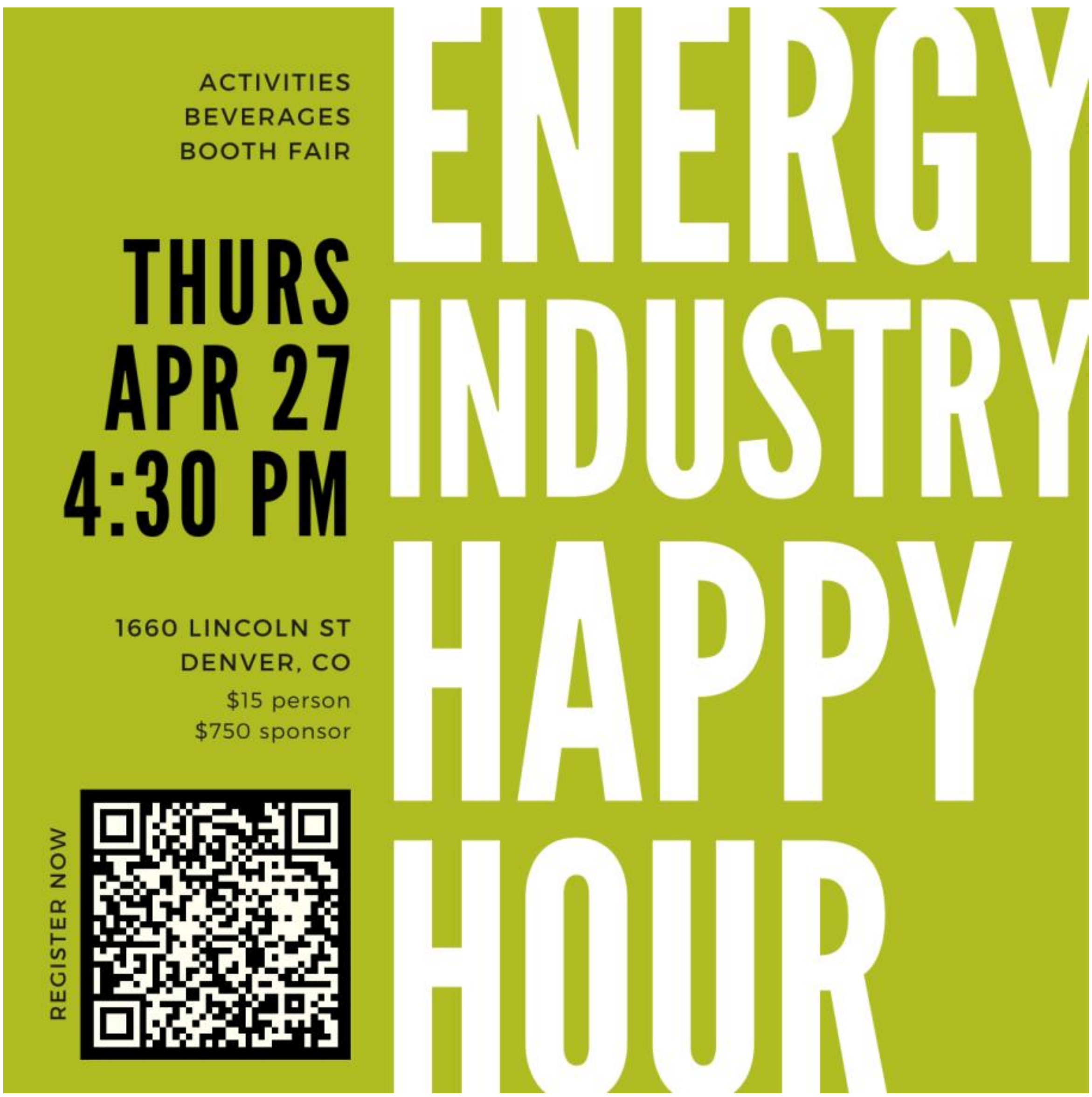
> Notwithstanding any other provision of law, the partial interests of oil and gas fractional interest owners are not subject to separate valuation by the assessor and shall be represented by the well or unit operator of each wellsite. The well or unit operator is the sole point of contact for all notification, review, audit, protest, abatement, and appeal procedures.

Field Landman Question cont'd.

Note, however, that this does not mean that nonoperators have no ability to impact the taxation of their unit interests; rather, it means that nonoperators must engage with the unit operator – as opposed to the county or the courts – on such matters. For example, CRS § 39-7-101(1.5) provides that, on or before March 15 each year, nonoperating interest owners may submit a report to the operator showing the actual net taxable revenues and actual net exempt revenues received at the wellhead for production taken in kind during the prior calendar year; the operator then shall use that information in preparing its Annual Statement, which is the basis for valuation of unit production by the county.

Diana S. Prulhiere
Steptoe & Johnson PLLC

Do you have a land issue you would like discussed? Do you need supporting documentation to win a bet with a colleague? Is there a question you are too embarrassed to ask your boss? If so, the DAPL would like to hear from you! Please submit your question to joe.martin@highwestresources.com. Each month, we will publish a question chosen from those submitted, along with a Steptoe & Johnson PLLC attorney's discussion of the issue. The foregoing article discusses general legal principles and laws applied to a generic fact situation, is not intended to constitute legal advice or create any attorney-client relationship, and no representation or warranty of accuracy or applicability regarding the same is made by the author or Steptoe & Johnson PLLC. The content of and views expressed in the foregoing article are those of the author, and are not the views of the DAPL.



2023 DAPL Calendar of Events

April 2023

Sun	Mon	Tue	Wed	Thu	Fri	Sat
						1
2	3	4	5	6	7	8
9	10	11 Education Committee Meeting	12	13 Board Meeting	14 Bill Goodin Scholarship Applications Due	15
16	17	18	19 Luncheon	20	21	22
23	24	25	26	27 Energy Industry Happy Hour	28	29

May 2023

Sun	Mon	Tue	Wed	Thu	Fri	Sat
	1	2	3	4	5 Univ. Of WY. PLM Conference	6
7	8	9 Education Committee Meeting	10 Board Meeting	11	12	13
14	15	16	17 Luncheon	18	19	20
21	22	23	24	25	26	27
28	29	30	31 DAPL Office Closing			

April 2023

11th-Education Committee Meeting
13th-Board Meeting
14th-Bill Goodin Scholarship Applications Due - *see page 10 for more information*
19th-April Luncheon - *see page 1 for more information*
27th-Energy Industry Happy Hour- *see page 8 for more information*

May 2023

5th-Univ. of Wyoming, PLM Conference - *see page 16 for more information*
9th-Education Committee Meeting
10th-Board Meeting
17th-May Luncheon (last one of the season)
17th-Headshot Happy Hour - more details to come
31st-DAPL physical office closing - *see page 2 for more information*

June 2023

1st-2023/24 Executive Board Change
1st-2023/24 membership renewals due - *see page 2 for more information*
13th-Education Committee Meeting
14th-Board Meeting

July 2023

11th-Education Committee Meeting
12th-Board Meeting
21st-Annual Golf Tournament - *see page 3 for more information*

August 2023

8th-Education Committee Meeting
9th-Board Meeting
25th-39th Annual Clay Shoot - *see page 10 for more information*

BILL GOODIN SCHOLARSHIP

Application Now Open

IN ORDER TO BE ELIGIBLE FOR THE DAPL BILL GOODIN SCHOLARSHIP:

- Students must be pursuing a major in Energy Management at an AAPL accredited college or university within the U.S.
- Student must maintain enrollment in the land management program throughout the academic year.
- Student should have at least a 2.5 cumulative GPA.
- Student must be a Sophomore, Junior, or incoming Senior to apply for the Bill Goodin Scholarship.

Scholarship application can be submitted through our website using the below link.
The completed application must be received by April 14, 2023.

Bill Goodin Scholarship Application (click here)

From a Legal Perspective

Double Fractions: What Is 1/2 of 1/8?

Last month, the Texas Supreme Court handed down its decision in *Van Dyke v. The Navigator Group*, No. 21-0146 (Tex. Feb. 17, 2023). The case involved a "double-fraction" dilemma from an old mineral conveyance in which the parties used two fractions.

In 1924, the Mulkeys conveyed their ranch and the underlying minerals to G.R. White and G.W. Tom with the following reservation: "It is understood and agreed that one-half of one-eighth of all minerals and mineral rights in said land are reserved in grantors…and are not conveyed herein." After the deed's execution, for nearly ninety years, both parties, their assignees, and various third parties engaged in numerous transactions, including conveyances, leases, ratifications, division orders, and contracts, reflecting that each side owned an equal 1/2 interest in the minerals. In 2013, after Endeavor Energy began to pay royalties from its drilling operation to both parties in equal shares, the White parties brought a trespass-to-try-title action, with at least $44 million in royalties in dispute.

The successors to White and Tom ("White parties") asserted that the reservation was for a 1/16 mineral interest, using simple arithmetic. The successors to the Mulkeys ("Mulkey parties") contended that the reservation was for 1/2 of the mineral interest. The trial court granted the White parties' motion for partial summary judgment, holding that the deed's reservation unambiguously reserved only a 1/16 mineral interest, and the court of appeals affirmed. The Supreme Court reversed, concluding that both the construction of the original deed and the application of the presumed-grant doctrine led to the conclusion that the Mulkey parties reserved a 1/2 mineral interest.

First, the Court stated that old documents that use 1/8 within a double fraction raise a presumption that 1/8 was used as a term of art to refer to the mineral estate. It stated that "[t]he test is what the text reasonably meant to an ordinary speaker of the language who would have understood the original text in its context." At the time the parties executed the deed, "1/8" was widely used as a term of art to refer to the total mineral estate. Under the "estate-misconception" theory, the prevalent but mistaken belief was that, in entering into an oil and gas lease, a lessor retained only a 1/8 interest in the minerals, rather than the entire mineral estate in fee simple determinable with the possibility of reverter of the entire estate. In this case, the Court noted, it would be easier to refer to 1/16 instead of 1/2 of 1/8, which suggests further that the parties to the deed intended 1/8 to refer to the entire mineral estate. This presumption could be rebutted by other language in the instrument, but nothing in this deed suggested that pure arithmetic was intended by the parties.

Second, the Court held that the presumed-grant doctrine would confirm the Mulkey parties' ownership of 1/2 of the mineral interest. The Mulkey parties argued that even if 1/2 of 1/8 meant only a 1/16 mineral interest in 1924, they acquired the other 7/16 interest through the presumed grant doctrine, which is essentially a form of adverse possession. That doctrine requires three elements: (1) a long-asserted and open claim, adverse to that of the apparent owner; (2) nonclaim by the apparent owner; and (3) acquiescence by the apparent owner in the adverse claim. The court found that the parties' ninety-year history of repeatedly acting in reliance on each owning 1/2 mineral interest, through conveyances, leases, ratifications, division orders, contracts, probate inventories, and other recorded documents, satisfied the requirements of the presumed-grant doctrine. It was not until 2012, when Endeavor Energy paid each party 1/2 of the royalties, that some of the White parties alleged ownership of 15/16 of the mineral estate. Previous to that time, all of the transactions showed that the White parties understood the Mulkey parties to have a 1/2 interest.

The Court noted that "[o]nly in a legal text could the formula 'one-half of one-eighth mean anything other than one-sixteenth"…noting that its result may seem "bizarre, unsatisfying, and literally fuzzy math." But, the rules that courts must apply "are not primarily those of arithmetic but of textual construction."

Catherine Bazile
Summit Energy Law LLC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DAPL February 2023 Board Meeting Minutes

2/8/2023

In attendance:
In person: NA

<u>On Phone:</u> Tyler Aylor, Gil Guethlein, James Culbertson, Tabatha Reed, Armando Trevino, David Connelly, Janet Rost, Estee Sanchez, Kelly Muldoon, Teale Stone, Jake Bakker, Ed Doka

Pres. Armando Trevino called the meeting to order at 11:33 AM MST

Approval of Minutes. Armando motioned to approve the January minutes. Janet Seconded. APPROVED.

Membership. Reported by Janet Rost.
We have two active memberships and one associate. Janet motioned to approve. Armando Seconded. Approved. We currently have 635 members, in February of last year we had 550 members.

February 2023 Board Meeting

MEMBER NAME	COMPANY	ACTIVE	ASSOCIATE	STUDENT	AAPL	SPONSOR	OFFICE PHONE	E-MAIL
Tiffany Sarntinos	Avant Natural Resources	X			No	Shelly Albrecht	720-746-5053	tiffany@avantnr.com
Margaret Higuera	Coronado Natural Resources		X		No	Ed Higuera	616-443-4941	margaret@coronadoroyalty.com
Mark Schichtel	Independent	X			Yes	Janet Rost	303-250-9537	mark.khenergy@gmail.com

Feb-23
Total Number of Current Members - 635
Total Number of Non-Members (Expired) - 773
Expiring 5/31/23 - 385
Expiring 5/31/24 - 83
Expiring 5/31/25 - 62
Expiring 5/31/26 - 1
Honorary/Retired (never expire) - 105

Feb-22
Total Number of Members - 1283
Renewals for 2021/22 Year - 269
2021/22 3 Year Renewals - 77
Current (not expired) - 550

Continued on next page

Treasurers Report. Reported by James Culbertson.
Investment Policy Statement moving forward as it relates to our RBC account. Will be setting up a meeting for March with the Finance and Budget Committee. Initial payment for NAPE Event was paid from the general account.

Banking Accounts	February 2023	January 2023	1-Month Diff.	February 2022	1-Year Diff.
PNC Checking	$247,856.49	$240,565.40	$7,291.09	$262,217.44	-$14,360.95
Savings/Money Market	$10,004.60	$10,004.51	$0.09	$10,003.59	$1.01
RBC Investment	$96,737.77	$95,161.73	$1,576.04	$74,718.64	$22,019.13
Total Checking/Savings/Investments	$354,598.86	$345,731.64	$8,867.22	$346,939.67	$7,659.19
RBC Investment Account	**Beginning Balance**	***Fees**	**Gain/Loss**	**Current Balance**	
Investment Period (1/1/23 - 1/31/23)	$95,161.73	$0.00	$1,576.04	$96,737.77	
	Updated Investment	**Current Balance**	**Updated vs Current**		
Investment Balance	$100,000.00	$96,737.77	-$3,262.23		
Scholarship Accounts	**February 2023**	**January 2023**	**1-Month Diff.**	**February 2022**	**1-Year Diff.**
PNC Bill Goodin	$10,179.35	$10,179.27	$0.08	$6,730.55	$3,448.80
PNC Cappy Ricks	$15,482.64	$15,482.51	$0.13	$15,481.10	$1.54
PNC DAPL Scholarship	$8,306.99	$8,306.99	$0.00	$8,206.99	$100.00
PNC Raffle Acct	$4,230.00	$4,230.00	$0.00	$3,780.57	$449.43
Total Savings	$38,198.98	$38,198.77	$0.21	$34,199.21	$3,999.77
DAPL Pending Checks	**Amount**				
#1051 - Hanson & Co., 2021/2022 Taxes	$3,650.00				
Total Pending DAPL Checks	$3,650.00				
*RBC Fees are paid quarterly and are 1.5% assesment of the balance					

President's Report. Reported by Armando Trevino.
Roughly $11K we still need to pay Keystone Golf Course. Per the last communication, essentially, they stated they will not be providing any relief for the drink tickets that we did not use. Teale, make sure we can use drink tickets for both courses. Should be more streamlined this year working with the food and beverage coordinator. We have pledged $45K in corporate sponsorships and $20k has been received. Waiting on checks from a few others. Need all corporate sponsorships by end of the month. Tod Ritchie was unable to attend but sent an update on the Clay Shoot, they have something with Colorado Clays in the spring and at the end of August. Can we commit to both timeslots? Do we have enough attendees? Sponsorship could be an issue with both events. Presentation computer received.

Ski Day. Reported by Tabatha Reed/Ed Doka.
We are a little behind on sponsorships. Registration is completely open, Lift tickets are $150 for members and $190 for non-members, and the party is $100 and $140, respectively. As of right now, we have one sponsor. The sponsorship cut-off date is February 24th for signage. Last year we had a pretty good turnout, 75-80 people turned out for the party last year. Everything seems ready to go.

Networking. Reported by James Culbertson.
We had a happy hour planned at Rhein Haus that will not be taking planned, the minimum is difficult to meet. Planning on pushing the end of February to mid-March. Typically, with the happy hours, we had existing relationships and now these venues and we're not changing fees, however, these venues are charging higher minimums.

Education Committee. Reported by Gil Guethlein.
We are still looking for a March speaker. We have a few potential speakers lined up, but we would like to focus on oil and gas since the last few have been renewables focused. We are still talking to AAPL about planning our land institute. Still finalizing the dates depending on venue availability. The price is increasing due to AAPL institute's price range. This will keep us more in line with AAPL events. The Rockies Land Institute, the board will need to approve the name change of the event.

Golf Tournament. Reported by Teale Stone. What games associated or outside industry sponsorships we want to pursue. We have not seen a ton of benefit in the past using outside companies to organize games and raise money. March/April we will touch base with the food and beverages manager at Keystone. Gift bags draw names? Or would we want to pool it into a larger big-ticket prize? We would like to open registration shortly after Ski Day.

Pres. Armando Trevino *adjourned the meeting at 12:33 PM MT*

SAVE THE DATE!!

50th ANNUAL DENVER LAND INSTITUTE

(formerly the Fall Land Institute)

@ The Ritz-Carlton, Downtown Denver

&

10th ANNUAL ROCKIES BASH

@ Wynkoop Brewery

THURSDAY, OCTOBER 12, 2023

University of Wyoming | School of Energy Resources

ROCKY MOUNTAIN

PROFESSIONAL LANDMAN CONFERENCE

Save the Date

Friday
5
May

Featured Keynote Trustee John McKinley

The UW School of Energy Resources is pleased to host the Rocky Mountain Professional Landman Conference. The forum seeks to bring together industry professionals and PLM alumni in the rocky mountain region to showcase the esteemed profession, and discuss career paths and opportunities for future graduates.

Contact Christine Reed at christine.reed@uwyo.edu with any questions.

To pre-register for the event, please scan the QR code.

- **Networking Reception (5/04/23)**
- **5 Gen Ed Credits, 1 Ethics Credit of CLE; Wyoming State Bar**
- **4.5 RL, RPL or CPL recertification credits, 1 Ethics credit; AAPL**

2022-2023 DAPL OFFICERS, DIRECTORS AND STANDING COMMITTEE CHAIRS

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Chair Needed

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