



39th Annual Clay Shoot

Friday August 25, 2023

Colorado Clays

13600 Lanewood St Brighton, CO 80603

Registration is Now Open
[click here](#)



The DAPL Clay Shoot is one of the DAPL's most popular events. Teams of 5 shooters are challenged by a course sporting clay targets, followed by lunch and the awarding of prizes. Each shooter receives a door prize, with a roughly 1-in-10 chance of winning a firearm, and a high-end firearm is also raffled off to benefit the DAPL Scholarship Fund.

The number of shooters is limited to 225, and the event sells out every year.

Ammunition inventories are extremely low. Be sure to purchase your ammunition early! You will need at least 100 shells. Shot size can be no larger than 7 1/2 and 1 1/8 oz. of shot. Be sure to grab an extra box for the flurry!

Shooters (Lunch Included): DAPL Members – \$100.00 / Non-Members – \$175.00 Non-Shooters (Lunch Only): \$15.00

[Sponsorship Opportunities are Available](#)



The Denver Association of Professional Landmen

Telephone: (303) 446-2253

E-Mail: [daplddenver.org](mailto:dapl@dapldenver.org)

Web Site: www.daplddenver.org

Mailing Address:

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Denver, CO 80202

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 **Chad Sullivan**

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.

Officer's Forum - President

It's summertime, DAPL!

I have the privilege to write to you this year as DAPL President. When I moved here from Houston in 2013, I knew only two people in Denver. I trusted my company to help me find my footing, but I could never have predicted that oil & gas would bring me a group of friends that feel like family, and I have DAPL to thank for that.

In my time on the DAPL Board, I have had the pleasure of watching this organization grow into what it is today. Through historical leadership, corporate sponsorship, education, advocacy, mentorship, scholarship, and networking, we are an influential presence in the Rockies. In recent years, we have watched the traditional oil & gas landman role evolve and adapt into a complex and technical discipline that serves the entire energy industry. My passion project for DAPL is to promote further development of our discipline by encouraging a more inclusive landman community. DAPL should be a resource for all landmen, whether working on behalf of solar, wind, underground storage, infrastructure, or any other land use. Accordingly, I look forward to working with this year's membership and leadership to gain perspective on embracing new considerations for landmen.

I want to thank Armando, the Executive Committee, and the Board, for handing me the keys to a financially strong organization with a clear mission. I want to thank Kelly Muldoon for his efforts last year to transform this year's 50th Annual Fall Land Institute into the 50th Annual Denver Land Institute ("DLI"), hosted by both DAPL and AAPL. Mark October 12 on your calendars for DLI and 10th Annual Rockies Bash! [Registration is Live – click here.](#)

DAPL thrives because of its membership. If you have feedback for me or would like to become more involved in the organization, please do reach out.

Until then, I hope to see you at our summer events:

July 20 - Golf Tournament Pre-Party at 10 Mile Music Hall in Frisco, 6PM-10PM

July 21 - Golf Tournament at Keystone Ranch & River Golf Courses, 8AM-3PM

August 17 - Happy Hour at Skyline Beer Garden in Denver, 4PM-6:30PM

August 25 - Clay Shoot at Colorado Clays, 7AM-3PM

No Officer's Forum would be complete without sincere gratitude to Tabatha Reed for continuing to be the glue that holds DAPL together.

I wish a safe and joyful summer to all!

-Gil Guethlein, CPL
gguethlein@kxpresources.com
DAPL President

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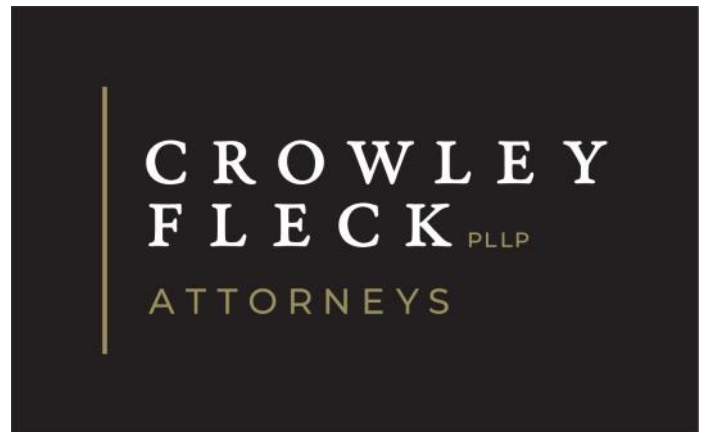
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Field Landman Question

Restrictions on Foreign Persons Owning U.S. Real Property

A DAPL member has asked: Are there federal or state laws that restrict or prohibit real property ownership by non-U.S. persons?

In short, the answer is yes – there are federal and state laws that restrict or prohibit certain non-U.S. persons from acquiring ownership of real property in the United States under specific circumstances. This article briefly discusses some of those federal and state laws. Notably, such prohibitions and/or restrictions on real property may apply to severed mineral interests and other types of oil and gas operations and development as well as interests in the surface lands; however, some of these restrictive laws expressly exclude minerals *e.g.*, oil and gas.

Federal Law

United States federal law related to protecting national security gives the federal government the power to block the acquisition of specified real property by certain non-U.S. persons. Historically, the Committee on Foreign Investment in the United States (“CFIUS”), which is an inter-agency committee, has held the authority to review covered transactions – such as mergers and acquisitions of U.S. companies and assets – by certain non-U.S. persons, and in certain cases impose civil penalties, block, or unwind such transactions. In 2018, the Foreign Investment Risk Review and Modernization Act of 2018 (“FIRRMA”) was enacted, which among other things, expanded CFIUS’s enforcement authority over the acquisition of certain real property in the United States.

FIRRMA extended CFIUS jurisdiction to acquisitions by foreign investors of certain property rights in real estate within proximity to specified airports, maritime ports, and military installations. Regulations have been promulgated that list the specific protected facilities and a related distance that is considered in proximity – *e.g.*, certain facilities have a 1-mile radius protected zone, while others have a 100-mile radius protected zone. The regulations also provide exceptions to who is considered a foreign investor.

Utah

During the 2023 General Session of the Utah Legislature, House Bill (“H.B.”) 186 was signed into law on March 13, 2023. The new law restricts certain foreign entities from owning land in the State of Utah. The state law complements, but also expands on, FIRRMA.

Specifically, H. B. 186 provides that a restricted foreign entity may not acquire an interest in land in Utah. An “interest in land” means any right, title, lien, claim, interest, or estate with respect to land. “Land” is defined as all land in the State of Utah, except for land that is “that is owned, controlled, or held in trust by the federal government.” The definition further itemizes types of real property that are deemed to be “land,” and the term “subsurface land” is included (the law does not expressly say that the list is exhaustive). The terms “minerals,” “mineral estate,” or “oil and gas” are not used.

A “restricted foreign entity” under H.B. 186 means: (a) a company that the United States Secretary of Defense is required to identify and report as a military company under Section 1260H of the William M. (Mac) Thornberry National Defense Authorization Act for Fiscal Year 2021, Pub. L. No. 116-283; (b) an affiliate, subsidiary, or holding company of a company described in subsection (a); (c) a country with a commercial or defense industrial base of which a company described in subsection (a) or (b) is a part; (d) a state, province, region, prefecture, subdivision, or municipality of a country described in subsection (c); and/or (e) an agency, bureau, committee, or department of a country described in subsection (c).

The prohibition is not retroactive – it does not apply to an interest in land that a restricted foreign entity acquired before May 3, 2023. The law provides that any deed or other written instrument, other than in probate, purporting to convey an interest in land to a restricted foreign entity in violation of the statute is invalid.

Additionally, a restricted foreign entity that acquires an interest in land on or after May 3, 2023, by grant, gift, donation, devise, or bequest, must alienate such interest within five years after the date of acquisition. If the restricted foreign entity does not timely alienate such interest, the same escheats to the state.

Field Landman Question cont'd.

Montana

Montana's Legislature passed Senate Bill ("S.B.") 203 earlier this year, which provides that a "foreign adversary" may not: (a) buy, lease, or rent critical infrastructure, land used for agricultural production, or real property or a residence that has a direct line of sight to any part of a military installation from any type of business entity provided for in Title 35 of the Montana Code (any type of for-profit or nonprofit entity); or (b) enter into a contract with any entity provided for in Title 35 of the Montana Code that results in the foreign adversary's control of agricultural production land or critical infrastructure.

"Foreign adversary" is defined as "any foreign government or foreign nongovernment person determined by the secretary of commerce to have engaged in a long-term pattern or serious instances of conduct significantly adverse to the national security of the United States or the security and safety of the people of the United States for the purposes of sections (3)(a) and (3)(b) of Executive Order No. 13873 of May 15, 2019, or a corporation, however constituted, domiciled or headquartered in a nation determined to be a foreign adversary, or a corporation over which a foreign adversary has a controlling interest."

"Agricultural production" means the production of any growing grass, crops, or trees attached to the surface of the land or farm animals with commercial value, and includes homesteads with one or more acres of improvement.

"Critical infrastructure" is defined generally as systems and assets, whether physical or virtual, so vital to the United States that the incapacity or destruction of such systems and assets would have a debilitating impact on security, national economic security, national public health or safety, or any combination of those matters.

The Montana Code also defines "critical infrastructure facility" by enumerating a lengthy list of specific facility types, including liquid natural gas terminals or storage facilities; gas processing plants; natural gas distribution utility facilities; aboveground oil, gas, hazardous liquid, and chemical pipelines; crude oil (inclusive of Y-grade or natural gas liquids) or refined products storage and distribution facilities; and below or aboveground portions of any oil, gas, hazardous liquid, or chemical transmission or distribution pipeline, tank, railroad facility, or other facility.

In the event a foreign adversary violates this law, it must divest from its interest in critical infrastructure or land used for agricultural production within one year; if such foreign adversary fails to do so, the property may be sold at public auction by the county sheriff of the county where the critical infrastructure or land used for agricultural production is located.

North Dakota

North Dakota's Legislature passed H.B. 1135 earlier this year, which prohibits certain persons and entities from acquiring agricultural land in North Dakota. "Agricultural land" is defined as "land capable of use in the production of agricultural crops, livestock or livestock products, poultry or poultry products, milk or dairy products, or fruit and other horticultural products." Expressly excluded from the foregoing definition is "any oil, gas, coal, or other minerals underlying the land, any interest in minerals, separate from the surface, whether acquired by lease or otherwise, or any easements or tracts of land acquired in connection with the extraction, refining, processing, or transportation of minerals."

An individual who is not a citizen of the United States, a citizen of Canada, or a permanent resident alien of the United States may not acquire, directly or indirectly, any interest in agricultural land, subject to certain enumerated exceptions. If a permitted individual acquires an interest pursuant to an enumerated exception, but then later ceases to meet the exception, the individual must alienate the agricultural land within twenty-four months.

The restriction does not apply to agricultural land that may be acquired by devise, inheritance, as security for indebtedness, by process of law in the collection of debts, or by any procedure for the enforcement of a lien or claim. However, all agricultural land acquired in the collection of debts or by the enforcement of a lien or claim must be alienated by a foreign adversary within three years after acquiring ownership if the acquisition would otherwise violate the restriction on foreign adversary acquisition.

After June 30, 2023, a foreign government may not acquire agricultural land in North Dakota. "Foreign government" is defined as any government other than the government of the United States or its states, territories, or possessions, or the government of Canada or its provinces or territories.

Field Landman Question cont'd.

Texas

In 2021, Texas enacted the Lone Star Infrastructure Protection Act, which prohibits business entities doing business in Texas from entering into “an agreement relating to critical infrastructure in this state” with any company that is either owned by or controlled by individuals who are citizens of China, Iran, North Korea, Russia, or any other “designated country,” or any company owned by a company or other entity, including a governmental entity, that is owned or controlled by citizens of, or is directly controlled by the governments of, China, Iran, North Korea, Russia, or a designated country.

“Critical infrastructure” is defined in the law as “a communication infrastructure system, cybersecurity system, electric grid, hazardous waste treatment system, or water treatment facility.” The law is broad enough to prohibit sales of real property that constitute critical infrastructure, as well as other contractual arrangements related to accessing critical infrastructure.

A “designated country” is one designated by the Governor of Texas, after consultation with the Public Safety Director of the Texas Department of Public Safety, as a threat to critical infrastructure. The Governor shall also consult with the Homeland Security Council of Texas to assess the potential threat.

Colorado and Wyoming

To date in 2023, bills have been introduced in Colorado and Wyoming with provisions similar to the Utah and Montana laws detailed above; however, those bills did not pass during those state legislatures’ 2023 Sessions.

John R. Chadd
Member, 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.



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DAPL

August Happy Hour



Where: Skyline Beer Garden
1601 Arapahoe St.

When: Thursday, August 17th
4:00-6:00PM

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2023 DAPL Calendar of Events

July 2023

Sun	Mon	Tue	Wed	Thu	Fri	Sat
						1
2	3	4	5	6	7	8
9	10	11 Education Committee Meeting	12 Board Meeting	13	14	15
16	17	18	19	20 Networking Event	21 Golf Tournament	22
23	24	25	26	27	28	29

August 2023

Sun	Mon	Tue	Wed	Thu	Fri	Sat
		1	2	3	4	5
6	7	8 Education Committee Meeting	9 Board Meeting	10	11	12
13	14	15	16	17	18	19
20	21	22	23	24	25 Clay Shoot	26
27	28	29	30	31		

July 2023

11th-Education Committee Meeting
 12th-Board Meeting
 20th-10 Mile Music Hall Network-
 ing Event - *see page 11 for more in-
 formation*
 21st-Annual Golf Tournament

August 2023

8th-Education Committee Meeting
 9th-Board Meeting
 17th-August HH - *see page 9 for
 more information*
 25th-39th Annual Clay Shoot - *see
 page 1 for more information*

September 2023

12th-Education Committee Meeting
 13th-Board Meeting
 20th-Luncheon

October 2023

10th-Education Committee Meeting
 11th-Board Meeting
 12th-50th Annual Denver Land Insti-
 tute - *see page 17 for more infor-
 mation*
 12th-10th Annual Rockies Bash - *see
 page 17 for more information*

November 2023

7th-Education Committee Meeting
 8th-Board Meeting
 15th-Luncheon



DAPL
DENVER ASSOCIATION OF PROFESSIONAL LANDMEN

Networking Event

MUSICAL ARTIST
Narrow Gauge Country & Rock Band



Thursday,
July 20, 2023

6PM -10PM

10 Mile Music Hall,
Frisco, Colorado

Presented By:

**KEARNEY
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From a Legal Perspective

Montana Supreme Court Finds No Tribal Sovereign Immunity for Entity Created Under State Law

In *Lustre Oil Co. LLC v. Anadarko Minerals, Inc.*, 2023 MT 62 (Apr. 6, 2023), the Montana Supreme Court addressed whether tribal sovereign immunity applies to entities created under state law.

Facts

On March 9, 2009, the Assiniboine and Sioux Tribes (the “Tribes”) formed A&S Mineral Development Company, LLC (“A&S”) to develop oil and gas resources located on their home of Fort Peck Indian Reservation (“Reservation”), incorporating A&S in Delaware. Anadarko Minerals, Inc. (“Anadarko”) operated oil and gas leases on privately owned land within the exterior boundaries of the Reservation. After spilling significant amounts of oil and produced water on Reservation lands, Anadarko and the Tribes reached a settlement in 2018, by which Anadarko assigned the leases covering Reservation lands to the Tribes. Thereafter, the Tribes used A&S to develop the leases.

In February of 2021, Lustre Oil Company and Erehwon Oil & Gas, LLC (collectively, “Lustre”) initiated an action against A&S and Anadarko seeking to quiet title and invalidate A&S’ interests in the oil and gas leases. In short, Lustre argued that it had obtained valid interests in the leases from a third-party broker after Anadarko allowed the leases to expire prior to transferring to A&S.

A&S and Anadarko moved to dismiss Lustre’s action in District Court, ultimately basing their argument on A&S’ sovereign immunity as an arm of the Tribes. The District Court concluded that A&S was indeed an arm of the Tribes and that it did not have jurisdiction over A&S, resulting in dismissal of Lustre’s lawsuit.

Lustre appealed the District Court’s decision to the Montana Supreme Court (hereinafter, the “Court”). The Court focused on analyzing whether A&S was an arm of the Tribes and, therefore, entitled to sovereign immunity.

Analysis

In its decision, the Court carefully examined the relationship between the Tribes and A&S, the financial implications of a judgment against A&S, and the legal implications of the Tribes’ decision to incorporate under Delaware law. The ultimate decision reflected a nuanced understanding of the complexities of sovereign immunity and the legal status of tribal entities, primarily with respect to the five factors enumerated in the Ninth Circuit decision in *White v. University of California*, 765 F.3d 1010 (9th Cir. 2014):

- (1) the method of creation of the economic entities; (2) their purpose; (3) their structure, ownership, and management, including the amount of control the tribe has over the entities; (4) the tribe’s intent with respect to the sharing of its sovereign immunity; and (5) the financial relationship between the tribe and the entities.

First, the Court measured the closeness of the relationship between the Tribes and A&S as being particularly significant. The Court emphasized that the financial relationship between the entity and the Tribes, and whether a judgment against the entity would affect tribal assets, was a crucial factor in determining the entity’s claim to sovereign immunity. The Court emphasized it did not examine the financial relationship between the Tribes and A&S and whether a judgment against A&S would reach the Tribes’ monetary assets.

Next, the Court discussed the case of *Breakthrough Management Group, Inc. v. Chukchansi Gold Casino & Resort*, 629 F.3d 1173 (10th Cir. 2010), in which the Tenth Circuit concluded that entities so closely related to the tribe should share in the tribe’s sovereign immunity. The Court noted that the cases in which immunity has not been extended to tribal enterprises typically involved enterprises formed solely for business purposes and without any declared objective of promoting the tribe’s general tribal and economic development.

The Court further discussed *Somerlott v. Cherokee Nation Distributors Inc.*, 686 F.3d 1144 (10th Cir. 2012), in which the Tenth Circuit held that an entity is legally distinct from its members and tribe when it voluntarily subjects itself to the authority of another sovereign that allows it to be sued. Accordingly, a separate legal entity organized under the laws of another sovereign cannot share in the sovereign Tribe’s immunity. The Court further elaborated on the issue of sovereign immunity and discussed the implications of the Tribes’ decision to incorporate A&S under Delaware law.

From a Legal Perspective cont'd.

The Court ultimately concluded that the “method of creation” factor supported a finding that the Tribes’ decision to incorporate A&S under Delaware law weighed *against* finding immunity.

The Court also discussed the financial relationship between A&S and the Tribes, noting that A&S’ revenue was substantial and significantly protected the Tribes’ treasury, as well as promoted the self-determination and self-sufficiency of the Tribes. The Court concluded that A&S functioned as a tribal enterprise and, but for the express waiver, would be entitled to the Tribes’ immunity.

Holding

Ultimately, the Court found that the District Court erred in its conclusion that A&S was immune from suit as an arm of the Tribes, particularly in light of the Tribes’ choice to incorporate A&S under Delaware law—thereby subjecting it to state laws allowing limited liability companies to sue and be sued—and the Tribes’ intent to keep A&S a separate and distinct entity for liability purposes.

Devon D.A. Bell
Beatty & Wozniak, P.C.

John L Hunt Mentoring Program

WE'RE LOOKING FOR MENTORS & MENTEES FOR THE 2023/24 PROGRAM

The John L. Hunt Mentoring Program's goal is to bridge the workforce gap through a mentoring relationship that will transfer knowledge, resources and life experiences. The one-year program strives to create lasting relationships for both the mentors and mentees and to provide meaningful two-way dialogue.



[Click here for more information](#)

DAPL June 2023 Board Meeting Minutes

6/14/2023

In Attendance:

In-person: Tabatha Reed, James Culbertson, Gil Guethlein, Laurie Wizeman, David Connelly, Crosby Garrison, Jake Bakker Scott McDaniel, Chad Sullivan

On Phone: Janet Rost, Teale Stone, Armando Trevino, Estee Sanchez

Pres. Gil Guethlein called the meeting to order at 11:30 AM MST 6.14.2023

Approval of Minutes:

Chad motioned to approve the May minutes. Jake seconded. APPROVED

Membership - Reported by Janet Rost:

Five new active members, all with AAPL membership other than 1.

Gil motioned to approve the new members. Jake seconded. APPROVED

Within the last month DAPL has received 120 renewals. There are approximately 250 members that still need to renew.

June 2023 Board Meeting								
MEMBER NAME	COMPANY	ACTIVE	ASSOCIATE	STUDENT	AAPL	SPONSOR	OFFICE PHONE	E-MAIL
Kirsten Leighton	Tracts	X			Yes	Janet Rost	817-875-7485	kristen@tracts.co
Jodi Barrett	Sweet Water Royalties	X			No	John Jordan	720-657-1724	jodiraebarrett@gmail.com
Michael McCarthy	Discovery Land Services	X			Yes	James Hubert	303-941-4078	mmccarthy@discoveryland.com
Jackson Jenkins	SM Energy	X			Yes	Tom Bertrand	918-607-9380	jjenkins@sm-energy.com
Reagan Adams	EOG Resources	X			Yes	Kevin Lindberg	720-948-2868	reagan.m.adams5@gmail.com

Continued on next page

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1/3 Page	2 3/8 x 9 or 4 3/4 x 4 1/2	\$140.00	\$126.00
1/2 Page	7 1/2 x 4 1/2	\$195.00	\$175.50
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Full Page	7 1/2 x 9 1/2	\$390.00	\$351.00

Contact : DAPL Office (303) 446-2253

50th ANNUAL DENVER LAND INSTITUTE

Thursday, Oct. 12
8 a.m. - 4:30 p.m.
Ritz-Carlton, Denver

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TOPICS:

- ▶ Case Law Update
- ▶ Federal Lands Panel
- ▶ Renewable Energy
- ▶ Carbon Capture Operations
- ▶ Market Update
- ▶ Ethics of Augmented Intelligence
- ▶ AAPL President's Update

10th ANNUAL ROCKIES BASH

- ▶ Thursday, Oct. 12 from 5 - 10 p.m.
- ▶ Wynkoop Brewing Company
1634 18th Street
Denver, CO 80202
- ▶ For additional information,
visit dapldenver.org/meetinginfo.php

AAPL will help to raise sponsor dollars for DLI, it should be comfortably funded. The board should still focus on raising funds for corporate sponsorship so that the DAPL is well funded and set up for success for this next year.

Goal is to raise approximately \$35,000 for the Rockies Bash and DLI. Additional funds will be used to fund other DAPL goals.

Jason Rayburn will be volunteering for the Rockies Bash.

Golf Tournament. Reported by Teale Stone.

Sponsorship continues to flow in.

Armando is working to have all the yeti cups order, golf balls and additional items ordered.

Auction items are being marketed and gifts for the tournament are being purchased. Some gift items will be supplied

Approx. 140 people are registered. Waiting on 10 additional corporate sponsors to finalize which will mean 188 there are projected attendees, but course can hold up to 288. Tabatha to work on some social media to get additional attendees

Scott at KMD is working on a flyer and planning to sponsor a HH on Thursday in Frisco.

Target was to receive approx. \$8,500 in sponsorship and most of that has been received. Some sponsor will be providing gifts rather than funding for the purchase of gifts.

Networking - Reported by James Culbertson

May Happy hour was great success. Great feedback with the headshots and looking into the possibility of scheduling another headshot for future HH.

Justin Savage is working with Lime and potentially Skyline for July HH.

August HH will be worked on after planning details are solidified for the July HH.

Mentorship Committee – Scott McDaniel

Last happy hour is in May.

Will have one more HH to celebrate the year and give away certificates.

Program has gone well the past year and Scott is reaching out to local school programs to recruit new mentees and already has a few members signed lined up. High expectation that it will continue to grow next year.

Would like to connect with the DPC but still working to connect with them. Scott will be searching for a 3rd person to help with the committee.

Motion to approve the next DAPL mentorship HH by Scott up to \$250 HH – Gil APPROVED

Pres. Gil adjourned the meeting at 11:55 AM MST 6.14.23

2022-2023 DAPL OFFICERS, DIRECTORS AND STANDING COMMITTEE CHAIRS

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 KXP Resources.....gguethlein@kxpresources.com

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