



The Override

Every Landman Wants One!

Volume XIV, Issue I

September, 2021



Presidents Message

Joe Munsey, RPL
Chapter President
Southern California Gas Company

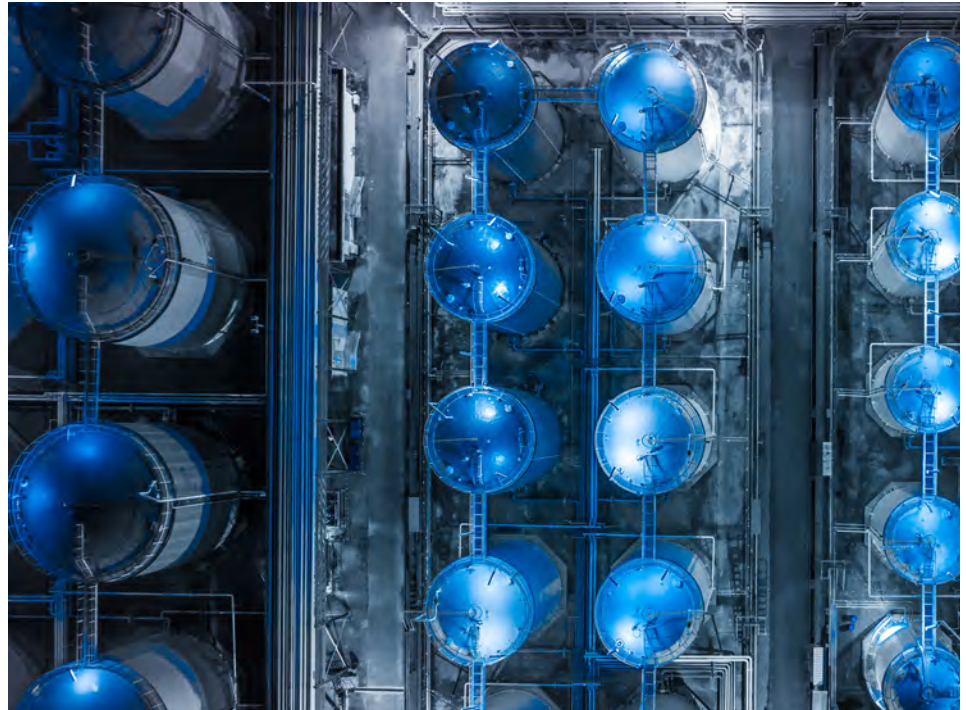
Kudos to Randall Taylor, RPL, LAAPL Immediate Past President, for his exceptional service as Chapter President for the 2020-2021 term, despite the havoc caused by Mr. Wuhan still hanging with the crowd.

Did I say it is an honor to serve as Chapter President of LAAPL? It really is a privilege; however, a word of caution; rabble around too long in a professional association and eventually you are recycled to run and serve as President again; in our case, it's thrice.

We have a rather simple goal for the chapter and its members; figure out if there exists land work beyond the traditional focus we all are accustom to chasing. The fact is, there are traditional and cross-over opportunities that will keep professional landmen and legal experts in steady employment. Our goal is to point out these opportunities to our chapter members.

Check out the article with regards to the problem of orphan wells. If serious funding finds its way to resolve this problem, there is enough legal/land work to grab for everyone in the oil and gas industry for years to come. Solar and wind legal/land work will be a boom for many years to come before it has its bust; we have arranged for a two-part series on solar land work being presented at our "luncheon" meetings.

I look forward to working with the extraordinary 2021 – 2021 Board Members and Chairs which serve the Association, and of course with our membership and industry friends.



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Meeting Luncheon Speaker



Phillip A. Guerra, JD, CPL, Land Acquisition Manager-East Coast with for ForeFront Power, a wholly owned subsidiary of Mitsui & Co., Ltd. His company develop solar projects – behind-the-meter, community solar, and wholesale solutions – across the United States and Mexico. This webinar will focus on the basics of what an oil & gas land professional needs to know about solar from a land perspective. You will learn about the different types of solar energy projects (e.g., ground mount, parking canopy, rooftop). You will walk through an example ground mount site for a potential community solar project in New York. Additionally, this webinar will discuss the similarities and differences between acquiring acreage in oil & gas versus solar, including key lease terms and pricing.

Phillip currently sits on the AAPL's [Luncheon Speaker continued on page 3](#)





Opinionated Corner

CLIFF MOORE

INDEPENDENT, RETIRED

VALUE, DEVALUE AND QUICK CHANGE

As the world (mostly the affluent nations) move forward in its attempt to once again save itself from itself we are faced with an obvious dilemma. And like the man said, when faced with a dilemma, make dilemma-nade. The nevermore push against using fossil fuels is in full swing but the consequences of all or none has been ignored.

India and China are not so gung-ho about abandoning a resource they are only now getting a good grip on. They are building more coal powered energy plants as we speak to bring creature comforts to their outer regions. Lord knows India needs air-conditioning and sewage treatment facilities in the worse way.

Several countries on the great continent are moving forward in their assertions of controlling their resources. One of their resources is fossil fuels. They feel that the European and European based countries, after robbing them of their natural resources, are trying to devalue them now that they can't control or profit from the exportation.

It seems like the first world countries do not want them to compete in the material markets and keep their economies underfoot. Those countries feel slighted. That is a nice way to put it.

For example, Chad, whose county's economy is levied against the valuation of oil. The DRC (Democratic Republic of Congo) is one of the main sources for cobalt and other minerals used in the production of lithium-based products that are a part of the new EV movement. They face two different obstacles.

Chad's volatile economy could collapse if the world went totally green. The DRC is facing restrictive measures and regulations to control how they extract these new in-demand minerals and that could hinder their position in the new world order.

These go-green people are not thinking about the countries who are in the infancy of enjoying the creature comforts long used and taken for granted by first world nations. I'm using "first world" not as a time stamp but as an economic classification. The world's first nations were actually developed in Africa.

You can't give a child an apple and then tell them after one bite they are not allowed to eat any more. "Here, have some grapes."

If you've ever tasted a Red Delicious or a Granny Smith or any other non-GMO'd apple line you know there is no satisfying that experience with a handful of grapes. I think the zealots need to step back and examine the way they are going about the quick change.

Penn and Teller, the world renown magicians, will tell you there is nothing special about a quick-change act. One loose thread or misstep could send it all tumbling to the floor and expose its fallacies. The same goes for expecting the world to go from silk scarves to burlap turtlenecks overnight. The change and the weaning process will be painful.

Note: At this writing there are 54 recognized countries/nations on the continent of Africa.

Interesting reading: The Berlin Council, 1884-1885; Op-Ed, The Rape of Africa printed in The African Post 5/25/2021 authored by George B.N. Ayittey, Ph.D

Speaker Educational Committee and the NAPE Operators Committee.

He completed his undergraduate studies at The University of Cincinnati in real estate and marketing. Phillip completed his graduate studies at Florida A&M University's College of Law where he obtained his Juris Doctorate.

2021 Mickelson Golf Classic

JASON DOWNS, RPL

GOLF TOURNAMENT CHAIR

SENIOR LAND REPRESENTATIVE

CHEVRON PIPE LINE AND POWER COMPANY

The 17th Annual LAAPL Mickelson Golf Classic was held on Thursday, July 15th at Sand Canyon Country Club and was another major success benefiting the R.M. Pyles Boys Camp "Pyles".

With the generosity of those who came out in support, the Los Angeles Association of Professional Landmen are happy to announce it will contribute the entirety of the tournament net proceeds to Pyles in the amount of \$1,588.00

24 LAAPL members and guests enjoyed a perfect sunny day at Sand Canyon, located in Santa Clarity, California.

Our first-place team was sponsored by Rick Peace, principal of White Wolf Land Services. The team included ringers in Rick Peace, Ryan Freeborn, Quinten Munn and Paul Langland who shot 8 under. Second place tie went to team's Texas Crude and Spectrum Land Services who shot 5 under respectively.

Of course, the young men who attend the R.M. Pyles Boys Camp were the real winners of the day, thanks to the generous contributions of southern California's professional landmen and their respective employers who sponsored this year's LAAPL charity golf event. The LAAPL Membership and Golf Committee extend their sincere appreciation and gratitude to each, and every sponsor, attendee, and volunteer for their support and generous contributions to this year's fundraiser.



THE OVERRIDE IS, AND HAS BEEN EDITED BY JOE MUNSEY, RPL AND PUBLISHED BY RANDALL TAYLOR, RPL, SINCE SEPTEMBER OF 2006.

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Chapter Board Meetings

Marcia Carlisle
The Termo Company
LAAPL Secretary

We encourage all members to attend our LAAPL Board Meetings which are typically held in the same room as the luncheon immediately after the meetings are adjourned.

The LAAPL Board of Directors and Committee Members held a virtual meeting on May 28, 2021, led by President, Randall Taylor, RPL. The topics discussed at the meeting were as follows:

- There was a vote by the Board to accept Laura McAvoy, Esq., as a new member. Full membership vote will take place during the September 2021 meeting.
- The new member voting procedure will be re-evaluated. It is proposed that the Board only vote to accept new memberships.
- Randall Taylor led a clarification discussion regarding the Director's expense reimbursement for attendance at the AAPL meetings.
- Jason Downs advised AAPL will hold its annual meeting at Huntington Beach in 2023.

LAAPL Receives Award?

Not this year, the small chapter association category was awarded to the **Mississippi Association of Petroleum Landmen** at AAPL's Annual Meeting in Arlington, TX. Imagine the shock and awe felt by LAAPL members attending the annual meeting when the announcement echoed throughout the room – “The award for best newsletter, small chapter category, goes to the Mississippi Association of Petroleum Landmen.” It goes without saying, MAPL had a fine newsletter in the running, and we congratulate our sister association. Truth be known, the award's rightful home is here in Southern California – with such bold and brash rhetoric, if ever there was, in written word. Nevertheless, we are grateful to Randall Taylor, RPL, of Taylor Land Service, Inc., Co-chair of the Publication/Newsletter, for all his efforts throughout the year publishing this fine communication tool.



Treasurer's Report

JASON DOWNS, RPL
TREASURER
LAND REPRESENTATIVE
CHEVRON PIPE LINE AND POWER COMPANY

As of 5/4/2021, the LAAPL account showed a balance of

| | |
|-------------------------------|--------------------|
| Deposits | \$6,449.74 |
| Withdrawals | -\$3,083.43 |
| Balance as of 9/8/2021 | \$37,179.50 |

New Members and Transfers

Allison Foster
MEMBERSHIP CHAIR
Independent

Welcome! As a Los Angeles Association of Professional Landmen member, you serve to further the education and broaden the scope of the petroleum landman and to promote effective communication between its members, government, community and industry on energy-related issues.

No Report this month

Scheduled LAAPL Luncheon Topics and Dates

September 16, 2021

Phillip A. Guerra, JD, CPL, Land Acquisition Manager-East Coast
ForeFront Power
Series I of II
“Oil & Gas vs. Solar – A Land Overview”

November 18, 2021

Phillip A. Guerra, JD, CPL, Land Acquisition Manager-East Coast
ForeFront Power
Series II of II
“New Opportunities – Maximizing Your Acreage with Solar”

January 27, 2022

[4TH Thursday]
Annual Joint Meeting with
Los Angeles Basin Geological Society

March 17, 2022

TBD

May 19, 2022

TBD

Officer Elections

Lawyers' Joke of the Month

JACK QUIRK, ESQ.

BRIGHT AND BROWN

GOLF IQ: ACTUAL CALLS RECEIVED AT A PUBLIC GOLF COURSE

Staff: Golf course, may I help you?

Caller: What are your green fees?

Staff: 38 dollars.

Caller: Does that include golf?

Staff: Golf course, may I help you?

Caller: Yes, I need to get some information from you. First, is this your correct phone number?

Staff: Golf course, may I help you?

Caller: Yes, I had a tee time for this afternoon but I'm running late. Can you still get me out early?

Staff: Golf course, may I help you?

Caller: Yes, I'd like to get a tee time tomorrow between 12 o'clock and noon.

Staff: Golf course, may I help you?

Caller: How much to play golf today?

Staff: 25 to walk, 38 with a cart.

Caller: 38 dollars?

Staff: Golf course, may I help you?

Caller: What do you have for tee times tomorrow?

Staff: What time would you like?

Caller: What times do you have?

Staff: What time of the day?

Caller: Any time.

Staff: Morning or afternoon?

Caller: Whenever.

Staff: We have 16 times open in the morning and 20 open in the afternoon. Would you like me to read the whole list?

Caller: No, I don't think any of those times will work for me.

Staff: Golf course, may I help you?

Caller: Do you have a dress code?

Staff: Yes, we do. We require soft spikes.

Caller: How about clothes?

Staff: Yes, you have to wear clothes.

Staff: Golf course, may I help you?

Caller: Yes, do you have a driving range there?

Staff: Yes.

Caller: How much for a bucket of large balls?

Staff: Sorry, we're all out of large balls. But we can give you twice as many small balls for the same price.

Staff: Golf course, may I help you?

Caller: Yes, my husband just called me on his cell phone and told me he's on the 15th hole. How many more holes does he have to play before he gets to the 18th?

Staff: Golf course, may I help you?

Caller: Yes, do you have a driving range there?

Staff: Yes.

Caller: How much for a large bucket?

Staff: Four dollars.

Caller: Does that include the balls?

Staff: Golf course, may I help you?

Caller: Do you have a twilight rate?

Staff: Yes, it's 15 dollars after 2 o'clock.

Caller: And what time does that start?



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LAAPL 2021-2022 Officers

LAAPL 2021 – 2022 OFFICERS

OFFICE

ELECTED CANDIDATE

| | |
|----------------|---|
| President | Joseph D. Munsey, RPL, Southern California Gas Company ¹ |
| Vice President | Richard Maldonado, Spectrum Land Service |
| Past President | Randall Taylor, RPL, Taylor Land Service, Inc. ² |
| Secretary | Marcia Carlisle, The Termo Company |
| Treasurer | Jason Downs, RPL, Chevron Pipeline & Power |
| Director | John J. Harris, Esq, Casso & Sparks, LLP |
| Director | Ernest Guadiana, Esq., Elkins Kalt Weintraub Reuben Gartside LLP. |
| Director | Randall Taylor, RPL, Taylor Land Service, Inc. ³ |

¹Per Section 7(3) the Vice President shall succeed to the office of the President after serving his or her term as Vice President and shall hold the office of President for the next twelve (12) months.

²Per Article 8 (2) the outgoing President shall serve as director.

³Per Article 8 (2) the outgoing President shall serve as Director.

Chapter President Announces Committee Chairs

Chapter President Announces Committee Chairs

Our newly elected Chapter President, Joe Munsey, RPL, of Southern California Gas Company, announces his Committee Chairs for the 2021 – 2022 term. The Los Angeles Association of Professional Landmen will be greatly served by the following members:

| | |
|--|---|
| Legal Counsel | Ernest Guadiana, Esq., Partner, Elkins Kalt Weintraub Reuben Gartside LLP (310) 746-4425 equadiana@elkinskalt.com |
| Membership Chair | Allison S. Foster, Independent (310) 867-4076 a.foster.land@gmail.com |
| Website Chair | Chip Hoover, Archer Energy (310) 795-7300 – Cell chiph Hoover@hotmail.com |
| Education Chair | TBD |
| Publishing/Newsletter Chair | Randall Taylor, RPL, President Taylor Land Service (949) 495-4372 randall@taylorlandservice.com Joseph D. Munsey, RPL, Senior Land Advisor Southern California Gas Company (949) 361-8036 jmunsey@socalgas.com |
| AAPL Region VIII Director | Jason Downs, RPL Senior Land Representative Chevron Pipeline & Power (310) 669-4005 jasondowns@chevron.com |
| Legislative Chair <i>[By Popular Demand]</i> | Mike Flores, President Championship Strategies, LLC (310) 990-8657 – Cell mikef@floresstrategies.com |
| Mickelson Golf Classic Chair | Jason Downs, RPL Senior Land Representative Chevron Pipeline & Power (310) 669-4005 jasondowns@chevron.com |
| Nominations Chair | Dale Hoffman, CPL, Retired (907) 830-2571 dale.e.hoffman@gmail.com |



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Region VIII Director Report

AAPL QUARTERLY BOARD MEETING
September 19, 2021

Hilton Cleveland Downtown ~ Cleveland, OH

| | |
|-------------------------------------|---|
| Name: | Jason Downs, RPL, Senior Land Representative |
| Company: | Chevron Pipeline & Power |
| Email: | jasondowns@chevron.com |
| Local Association Full Name: | Los Angeles Association of Professional Landmen |

47 **Total Local Association Members**

27 **Total Active (“Land Professionals”) AAPL Members within your Association**

Association projects/activities:

- LAAPL will host a virtual luncheon on 9/18/21 and holds out hope for a November (11/18/21) in-person luncheon at The Grand, Long Beach.
- The Mickelson Golf Classic 2021 a success raising over \$1,500 net proceeds for the Pyles Boys Camp.
- West Coast Land Institute San Diego has been rescheduled for 2022.

Association requests/concerns:

Los Angeles would like to see AAPL and California Oil & Gas Associations (CIPA & WSPA) work in tandem on support for California political initiatives and public awareness.

Local news including business activity and day rates:

Independent work in LA basin is minimal with a few Landmen working project based and quasi-inhouse roles. Broker rate \$40-\$100 an hour with seasoned Landmen charging a premium.

Bylaws Policy and Procedure suggestions:

None





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Legislative Update

BY MIKE FLORES
Championship Strategies, Inc

CALIFORNIA OIL AND GAS BILLS AS OF SEPTEMBER 10, 2021

| California Ends 9/10/21 | Access all bills: http://leginfo.legislature.ca.gov/faces/billSearchClient.xhtml | | | |
|----------------------------|---|---|--|---|
| | AB 25 | R | Repeals ABC test for independent contractors and reverts back to more permissive <i>Borello</i> multi-factor test | In Committee |
| | AB 345 | D | Creates a statewide 2,500 foot buffer zone around oil wells | Passed Senate in Assembly Committee |
| | AB 896 | D | Collection of unpaid idle well fees from an operator; establishing the timelines and criteria for determining if a well has been deserted, and locating or collecting any costs from the operator or responsible party for a well that has been deserted or ordered to undergo well integrity testing or to be plugged and abandoned by the supervisor | Passed Assembly: Passed Senate Committee |
| | SB 25 | D | Express intent for legislature to enact legislation related to regulation of well stimulation treatment projects | In Committee |
| | SB 47 | D | Expresses intent for legislature to enact legislation related to orphaned wells; offers no specifics | Passed Senate |
| | SB 84 | D | Amends provisions of existing law regarding orphan, idle and abandoned wells | Passed Both 9/7/2021 |
| | SB 406 | D | Makes numerous changes to existing oil and gas conservation law to enhance public transparency | Passed Senate Passed Assembly cmte |

* FROM AAPL GOVERNMENT AFFAIRS REPORT OF SEPTEMBER 9, 2021

| Bill No. | Sponsor (D/R) | Description | Status |
|----------|------------------|--|--|
| SB 419 | D | State regulator to develop a strategic plan related to oil and gas that incorporates protecting public health, safety, and environmental quality; required union employment for certain oil field work; Reintroduced 8/24/21 all oil and gas provisions removed; no longer relevant bill | Passed Senate; Pulled by sponsor |
| SB 467 | D | Hydraulic fracturing ban | Died in cmte 4/13/21 |

California to Open 5 Natural Gas Plants to Avoid Blackouts

California officials say five temporary gas-fueled generators will be set up around existing power plants throughout the state to **avoid blackouts** and boost the state's grid. This is a move in the opposite direction from California's big push toward "green" renewable energy.

"We cannot keep the lights on without additional natural gas and the state's been forced to go out and find it in an emergency situation," [said Assemblymember Jim Patterson](#). Hopefully, this means no more flex alerts and rolling blackouts for people here in the Central Valley and across the state.

*Legislative
continued on page 10*



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Legislative
continued on from 8

"The very electrons, natural gas, that the California politicians are trying to eliminate are now the very electrons that California is now saying we need 150 additional megawatts of that natural gas," said Assemblymember Patterson. Assemblymember Patterson says the state's new project shows it needs natural gas to keep the lights on.

"California has been gambling that we can have a grid that can supply the fifth largest economy in the planet with enough electricity primarily from wind and solar," said Assemblymember Patterson, "Now, the problem with that is that wind and solar is not baseload, it is intermittent load, it is a supply that goes away when we need it the most."

California Denies 21 Hydraulic Fracturing Permits

California denied 21 oil drilling permits in July in the latest move toward ending hydraulic fracturing in a state that makes millions from the petroleum industry but is seeing widespread drought and more dangerous fire seasons linked to climate change.

State Oil and Gas Supervisor Uduak-Joe Ntuk sent letters to Aera Energy denying permits to drill using hydraulic fracturing in two Kern County oil fields to "protect public health and safety and environmental quality, including (the) reduction and mitigation of greenhouse gas emissions."

Aera Energy, a joint venture Shell and ExxonMobil, called the permit denials "disappointing though not surprising." "This is the latest decision attacking the oil and gas industry that is based solely on politics rather than sound data or science," Aera spokeswoman Cindy Pollard said, adding that the company was evaluating its legal options.

"Banning hydraulic fracturing will only put hard-working people of California out of work and threaten our energy supplies by making the state more dependent on foreign oil," she said.

Kern County Supervisors Vote to Sue Gov. Newsom for Recent Oil Actions

The Governor did not mince words when he said he has the oil industry in its cross hairs and he has Kern County in its cross hairs," Phillip Peters, Chairman, Kern County Board of Supervisors, said.

Tuesday, the Kern County Board of Supervisors voted to file a lawsuit against Governor Newsom, for [recent oil production rules](#). The vote was approved 4-1 with Supervisor Supervisors say the Governor's permits to [oil production and fracking for permits](#) has resulted in great harm to Kern County and its residents.

"He's hurting men and women and families in Kern County," Zack Scrivner, Kern County Supervisor for District 2, said. "This is an industry that provides \$80 million a year in property taxes to Kern County for us to provide fire protection, Sherriff, parks, libraries, etc..., it's about \$100,000 to our schools."

California's Plan to Make New Buildings Greener Will Also Raise Costs

A recent building code change for new construction could reduce emissions by requiring use of solar panels and batteries, raising prices in an already expensive state.

Legislative
continued on page 12

MPI

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Gary L. Plotner, President

glp@mavpetinc.com

BAPL President – 1985-86 and 2003-04; AAPL Director – 1988-90, 2002-03, 2004-07

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In August, state regulators [updated California's building code](#) to require some new homes and commercial buildings to have solar panels and batteries and the wiring needed to switch from heaters that burn natural gas to heat pumps that run on electricity. Energy experts say it is one of the most sweeping single environmental updates to building codes ever attempted by a government agency.

But some energy and building experts warn that California may be taking on too much, too quickly and focusing on the wrong target — new buildings, rather than the much larger universe of existing structures. Their biggest fear is that these new requirements will drive up the state's [already high construction costs](#), putting new homes out of reach of middle- and lower-income families that cannot as easily afford the higher upfront costs of cleaner energy and heating equipment, which typically pays for itself over years through savings on monthly utility bills.

Study: Oil and Gas Industry Supports More Than 11 Million Jobs Nationwide

The oil and natural gas industry plays a key role in the national economy, supporting more than 11.3 million jobs around the country, including 375,000 in Ohio, [a new study says](#).

Nationwide, the industry accounts for 5.6% of total U.S. employment and 5.3% of the Ohio's employment, according to the 134-page study commissioned by the Washington, D.C.-based American Petroleum Institute. It produced \$892.7 billion in labor income, including \$24.7 billion in Ohio.

The study, released Tuesday, by the American Petroleum Institute, examines and details the oil industry's effect on the economy for the year 2019.

The industry has generated an enormous amount of economic benefits across the country, said Frank J. Macchiarola, API's senior vice president of policy, economics and regulatory affairs. API plans to use the study, compiled by PwC, as it lobbies for policy on the national and state level. Macchiarola said the study "serves as a reminder of our industry's reach and its importance to our everyday lives."

California Independent Petroleum Association Files for Bankruptcy Following Anti-SLAPP Judgment

California Independent Petroleum Association filed for bankruptcy recently after an appeals court determined it must pay nearly \$2.3 million in attorneys' fees for challenging a settlement related to new permitting processes for oil and gas producers in Los Angeles neighborhoods.

The association filed for voluntary Chapter 11 bankruptcy, which allows for a company to reorganize its financial obligations, rather than liquidate. "CIPA fully expects to emerge from this process in the next couple of months and continue its mission to defend our members' ability to meet the energy needs of the state of California," said CEO [Rock Zimmerman](#).

In July, a Los Angeles Superior Court judge ordered CIPA to pay Los Angeles and the Center for Biological Diversity nearly \$2.3 million for costs associated with the case. The amount was at least triple the size of any other anti-SLAPP judgment in California's history, Zimmerman said.



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Case of the Month - Right of Way



CAN A PUBLIC AGENCY CONDEMN PROPERTY TO PREVENT A PROPOSED PRIVATE USE?

*Bradford Kuhn, Esq., Partner
Law Firm of Nossaman LLP*

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In the City of Fresno, the Tower Theatre is a bohemian landmark, opened in 1929 as a 20th Century Fox Movie House. This year, it became public that Adventure Church was buying the theatre, which has caused tensions to rise in the community, with thousands signing a petition to save the historic theatre, weeks of demonstrations trying to prevent its use as a church, and even a pending lawsuit. The City attempted to defuse the situation by offering Adventure Church an alternative location, which also backfired. So what's next? The City may be considering using eminent domain to prevent the use of the Tower Theatre for a church. But can it do so?

According to an article in the Fresno Bee, while the City has not definitively said it wants to use eminent domain, it has filed a "petition for order permitting inspection for appraisal". That appraisal is a required step to present an offer of just compensation before adopting a resolution of necessity and resorting to eminent domain. The City indicates it has the power to acquire the property, since California law allows for public agencies to take necessary steps to ensure historical preservation, and the Tower Theatre is listed on the National Register of Historic Places. The City also indicates it may "acquire property for development for recreational purposes and for development of facilities in connection therewith".



If the City can convince the court that preservation of a historic resource is a legitimate public use of property, and that historic preservation is being jeopardized by a potential private use, it may be able to proceed. But it will face significant obstacles. For one, the Religious Land Use and Institutionalized Persons Act (RLUIPA) protects religious institutions from discrimination in zoning and landmarking laws. Additionally, the City must demonstrate that it will put the property to a more necessary public use. However, such "public uses" have been broadly defined as matters of public health, recreation and enjoyment (including allowing for the City of Oakland to potentially take and operate the Raiders' football franchise). To provide some context for the potential uphill battle if the City of Fresno does try to proceed with eminent domain, the City of Visalia previously attempted to stop a local church from buying a downtown theatre, and that resulted in a 3-year legal fight that the City eventually won.

If the City does successfully pursue condemnation, then how much is Tower Theatre worth? The 81-year-old venue and surrounding properties went up for sale last year with a \$6.5 million asking price, but Adventure Church paid \$3.9 million. This likely sets a strong bar for the potential value of the property in an eventual eminent domain action. We'll stay tuned and follow this one.

Mr. Kuhn can be reached at bkuhn@nossaman.com.

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Bibikos' At the Well Weekly Round-up

Mr. Bibkos practices as GA Bibikos, LLC, an oil and gas law practice, with his office in Harrisburg, PA, he can be reached at gbibikos@gabibikos.com.

Below are various oil and gas cases recited in his blog site [gabibikos.com] *At the Well Weekly* which may be of interest for your further inquiry.

Headlines & Holdings – Appalachia

- **PA Superior Court Interprets Two Deeds to Find Grant of O+G Rights.** The Superior Court held that two deeds read together, one of which granted a one-half interest in natural gas and the other referring back to the first deed, conveyed an undivided one-half interest in the gas rights despite the lack of the phrase “oil and gas” in the second conveyance as usually required by the state’s “Dunham Rule.” *Jenkins v. P.P.&V Corp.*, --- A.3d ---, No. 692 WDA 2020, 2021 WL 2531153 (Pa. Super. June 21, 2021).
- **OH Fed. Ct. Rejects Equitable Accounting Claim.** A federal court in Ohio rejected a claim for equitable accounting of royalty payments on oil and gas production from “horizontal deep wells” operated by defendants for lack of pleading facts establishing fraud, fiduciary duty, and necessity. *Sabre Energy Corp. v. Gulfport Energy Corp.*, --- F. Supp. 3d ---, No. 2:19-CV-5559, 2021 WL 2779157 (S.D. Ohio July 2, 2021).
- **EQT Hit with \$40 Million Verdict for Drilling Deeper.** A jury in WV awarded \$40 million in damages against EQT for drilling past the Marcellus and Utica formations in violation of depth restrictions in the parties’ oil and gas lease. EQT moved to set aside a \$40 million jury verdict. *Huey v. EQT*, No. 21-1614 (4th Cir.) (pending).
- **Supreme Court of PA Invalidates Use of Bonus, Rents from State’s O+G Leases to Fill Budget Gaps.** The Pennsylvania Supreme Court held that income such as bonus payments and other rental payments to the Commonwealth from its oil and gas leases with producers, in addition to royalties as determined in a previous case, also must be returned to the corpus of the trust created by the Environmental Rights Amendment in Article I, sec. 27. *Pa. Environmental Defense Fund v. Commonwealth of Pennsylvania*, --- A.3d ---, No. 64 MAP 2019, 2021 WL 3073335 (Pa. July 21, 2021).

Headlines & Holdings - Beyond Appalachia

- **TX Appeals Court Says ORRI can be Reformed to Comply with Rule Against Perpetuities.** On remand from the Texas Supreme Court, an appellate court in Texas concluded that a reserved overriding royalty interest in a mineral lease may be reformed under the state’s property code to comply with the rule against perpetuities. *Yowell v. Granite Operating Co.*, --- S.W.3d ---, No. 07-17-00112-CV, 2021 WL 2639921 (Tex. App. June 25, 2021).
- **Bankruptcy Court Says Lender had Duty to Inquire about Gas Purchase Agreements.** A bankruptcy court said a lender had a duty to inquire about unrecorded gas purchase agreements before it could take priority over payments owed to a gathering company pursuant to those agreements. *In re: Alta Mesa Res., Inc.*, --- B.R. ---, No. 19-35133, 2021 WL 2877430 (Bankr. S.D. Tex. July 8, 2021).
- **CBM Delay Rental Obligation Survives “Free and Clear” Sale in Bankruptcy.** The Sixth Circuit held that a delay rental obligation in a coalbed methane lease ran with the land under Illinois law such that a debtor could not sell the lease in bankruptcy “free and clear” of the obligation, concluding that the debtor’s notice of the free-and-clear sale during the prior bankruptcy did not satisfy due process. *In re: HNRC Dissolution Co.*, --- F.4th ---, No. 20-5396, 2021 WL 2910528 (6th Cir. July 12, 2021).
- **Federal Court in Cal. Dismisses Challenge to Berkeley NatGas Ban.** A federal court in California dismissed a challenge brought by the Cali. Restaurant Association to Berkeley’s local ban on natural gas hookups for new and renovated buildings, concluding that federal law (EPCA) applies to efficiency standards for appliances and does not preempt local public, health, and safety ordinances. The Association has appealed. *California Restaurant Association v. City of Berkeley*, --- F. Supp. 3d ---, No. 4:19-CV-07668-YGR, 2021 WL 2808975 (N.D. Cal. July 6, 2021).
- **Tenth Circuit Declines Diversity Jurisdiction Over O+G Royalty Suit Based on Speculative Amount in Controversy.** The Tenth Circuit concluded that a Colorado class action suit regarding underpaid royalties belongs in state court because neither the value to the plaintiff nor the cost to the defendants add up to more than \$75,000 in controversy and the claim that future litigation may result in millions in liability is too speculative to support diversity jurisdiction. *Phelps Oil & Gas, LLC v. Noble Energy Inc.*, 5 F.4th 1122, No. 19-1376, 2021 WL 3046855 (10th Cir. July 20, 2021).

- **TX Appeals Court Upholds Depth Limitation in Sale of Minerals Subject to O+G Lease.** A court of appeals in Texas upheld a declaration that a conveyance of mineral rights was limited to shallow depths based on the totality of transactions concerning the lease covering the properties. *Posse Energy Ltd. v. Parsley Energy, LP*, --- S.W.3d ---, No. 08-20-00061-CV, 2021 WL 3140054 (Tex. App. July 26, 2021).
- **New Mexico Fed. Court Dismisses APA Challenge to BLM Leases.** A federal court in New Mexico dismissed an environmental group's APA challenge to BLM's approval of drilling new oil and gas wells in the Mancos Shale, holding that BLM took the requisite hard look at the impact that additional drilling activity would impose on the environment under NEPA. *Dine Citizens Against Ruining Our Environment v. Bernhardt*, --- F. Supp. 3d ---, No. 1:19-CV-00703-WJ-JFR, 2021 WL 3370899 (D.N.M. Aug. 3, 2021).



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Hide and Seek: The Orphan Well Problem in America

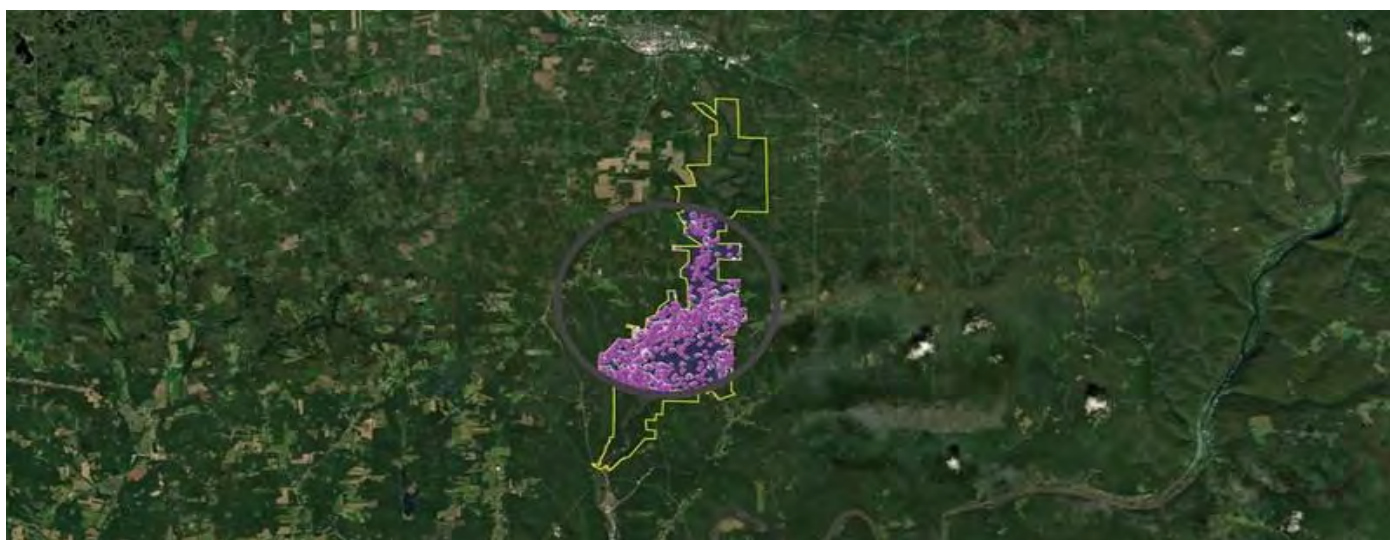
By Blake Wright, JPT Technology Editor
Journal of Petroleum Technology

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The impact of orphan wells, both on the environment and on tightening budgets, is a growing concern in the industry. Boom times result in a vast uptick in wells drilled. In bust times, when companies disappear, the liability outlook for these probes gets murky and federal and state governments start looking for answers.



Magnetic surveys are used to guide ground-based field research more effectively. In addition to location data that is not always precise, wells are often difficult to identify in the field due to being buried or concealed by vegetation. Source: National Energy Technology Laboratory.

It's a problem as old as the industry itself. The initial oil rush in the late 1800s spread like wildfire through Pennsylvania, and by 1891 the state's annual crude output had hit 31 million barrels, or 58% of the nation's total oil production for that year. However, by the turn of the century the bloom was off the rose. Pennsylvania's once-robust oil allure had been eclipsed by finds in Texas, California, and Oklahoma, each spawning its own regional oil booms. So why the history lesson? Because it's important to understand the potential volume and impact of orphan wells in the US.

In the infancy of the industry, plugging-and-abandonment (P&A) techniques were crude at best, if anyone even went to the trouble. Worse still was the overall record keeping at the time. With oil booms around the country setting off races to harness as much black gold as possible, wells were being drilled at breakneck pace. Once these earliest wells were tapped of their commercial usefulness, operators moved on to the next. There was little-to-no oversight. No regulations. No standards. The result? Thousands, if not more, of scattered, undocumented wells.

"Back in the day, you have people drilling wells, and nobody's keeping track of where the wells are drilled and who owns the wells," said Daniel Raimi, fellow with Resource for the Future, an independent institution that conducts environmental, energy, and natural resource research. "The government's not keeping track and has little to no regulation in place to ensure that operators

Orphan Wells
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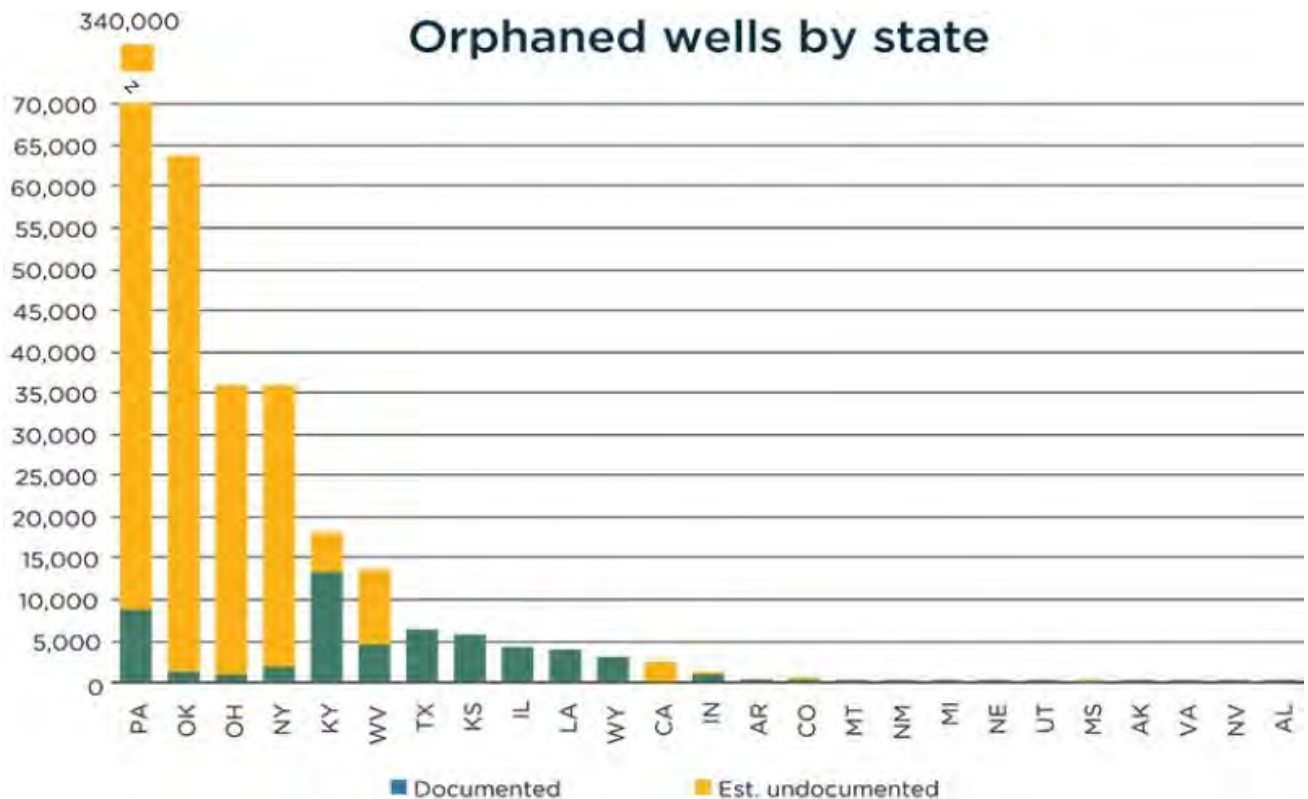
safely decommission their assets at the end of their lives. As a result, you have wells that maybe produce for a couple of years, and then the owners walk away. Multiply that by a couple of hundred thousand and now you've got a problem.”

Today, there is plenty of oversight and regulation for the industry to leave abandoned wells in much better shape than those earliest probes. However, orphan wells are still a problem. To paint the clearest picture, it would be prudent to define what an orphan well is.

This is where we run into our first problem. Definitions can vary wildly from state to state and organization to organization. Some lump all abandoned, unplugged wells into their counts as orphan wells. Others count all idle wells. However, for the sake of clarity we will define orphan wells as those nonproducing, idle wells whose ownership is unknown. By that definition it is safe to say that many of the nation's earliest wells fit that criteria.

In more modern times, orphans result from idle wells whose owner goes belly-up prior to any P&A work. In most of these cases, bonds are employed to help offset the cost of plugging these wells. However, while they vary state to state, most bonding minimums do not cover the full cost of abandonment and remediation, if needed.

According to the US Environmental Protection Agency, there are about 2 million unplugged, abandoned oil and gas wells scattered across the US. Other experts place the number higher; some believe it is lower. Some researchers believe as many as half of those could be orphan wells. A survey by the Interstate Oil and Gas Compact Commission in 2018 put the range of orphaned and idle wells at around 560,000 to 1.1 million. Again, abandoned doesn't always mean orphaned. One fact that can be extrapolated from the data gathered to date is that no one knows for sure just how many orphaned wells are out there. But that is changing.



Data source and notes: IOGCC (2020). For estimated undocumented wells, some states report a range. For those states, the average of the low and high estimate is used.

Documented and estimated undocumented orphaned oil and gas wells in the US. Source: Columbia University CGEP report.

The Hunt

Researchers like Natalie Pekney have dedicated about a decade's worth of field work trying to locate, chronicle, and sample the potential hazards from the orphan wells across the US. Pekney is an environmental engineer with the US Department of Energy's National Energy Technology Laboratory (NETL) who has conducted field work in Oklahoma, Kentucky, and Pennsylvania, her home state and in many ways ground zero for the orphan well issue. She and her team used aerial magnetic survey techniques to pinpoint potential orphan wells by identifying the metal well casings. A 2017 study of the Hillman State Park location, west of Pittsburgh in southwestern Pennsylvania, discovered more magnetic well readings than previously reported in the area's well count database.

"We started doing this work at least 10 years ago," said Pekney. "We had a team that was perfecting the approach of using aerial magnetic techniques for finding wells. They would fly the survey and then go out on the ground and check those locations to verify if there was or was not a well there. They were noticing sometimes at these wells they could see bubbling, or you could smell a strong hydrocarbon smell. So just anecdotally, one could assume that some of them were still leaking. Then we had a thought to go out and measure how much, so we've been doing the emissions measurements since 2015 or so."

Over time, the lab released its magnetic well-location technology to the private sector, which now employs sensor-equipped drones for much of the survey work. Now the team focuses more on the methane-emissions work. The group was in the throes of conducting measurement studies in Kentucky when COVID-19 sidelined the effort.

"We're just now making plans to go back there and try to complete that work," said Pekney. "The same thing in New York. We had plans to go out there and we had to put those off because of the pandemic. We're currently trying to start our fieldwork efforts back up now that a lot of the travel restrictions and such have been relaxed."

Pekney said they really had no expectations of what they might find once they started tracking emissions. With no previously published data on the subject, they had nothing on which to base a guess. Ultimately, in the context of greenhouse gas emissions from all US oil and gas sources, estimated emissions from abandoned wells is but a fraction of the total. The Hillman State Park survey took samples from 31 wells (22 above ground, unplugged and nine buried). The average emissions rate for the aboveground wells was 0.70 kg of CH₄ per well per day.

Methane emissions are also a hot topic in political circles. Methane has more the 80-times the warming power of carbon dioxide over the first 20 years after it reaches the atmosphere, making it public enemy number one in the fight against climate change and global warming.

"It's not huge, but at the same time, it's kind of a correctable problem in a sense because these wells, generally the high-emitting ones have not been plugged, and plugging is effective at eliminating or decreasing emissions," said Pekney.

Over the course of the next few years, Pekney believes her group can assist states by helping with plugging prioritization—identifying the "super-emitters" and getting those dealt with first.



GPS-enabled computers assist researchers on the ground in finding and geolocating abandoned wells, such as the one pictured here. Source: NETL.

The Answer?

Both state and federal officials have been active in recent months regarding the plugging of orphan wells. Several bills are floating around at the federal level that would aim to put workers sidelined by the pandemic back to work plugging these wells.

Senator Michael Bennet's (D-CO) The Oil and Gas Bonding Reform and Orphaned Well Remediation Act is aimed at cleaning up tens of thousands of orphaned wells across the nation and reforming the bonding system. The REGROW Act, sponsored by Senators Ben Ray Lujan (D-NM) and Kevin Cramer (R-ND) would budget more than \$4.6 billion to put skilled energy workers back to work cleaning up these sites, with the goal of plugging every documented orphan well in the country.

"Safety and environmental protection are top priorities for our industry, and we operate under strict standards and practices to ensure that American energy is produced responsibly from start to finish," said Frank Macchiarola, American Petroleum Institute's senior vice president of policy, economics, and regulatory affairs. "Our industry complies with all existing state and federal requirements for abandoned wells and reclaiming wells sites, and we will continue to support new efforts, like those outlined in the bipartisan REGROW Act, to plug these wells and further reduce methane emissions."

Roughly \$8 billion has been given out to states by the federal government for mine-reclamation projects over the past four decades. President Joe Biden's recently announced \$2.3-trillion infrastructure plan would earmark \$16 billion toward the cleanup and plugging of old oil wells and mines, a significant step up in investment for orphan well remediation.

"Society is bearing a lot of the costs right now because of things like water pollution and methane emissions," said Raimi. "That is costing all of us something. It's just difficult to measure. There are

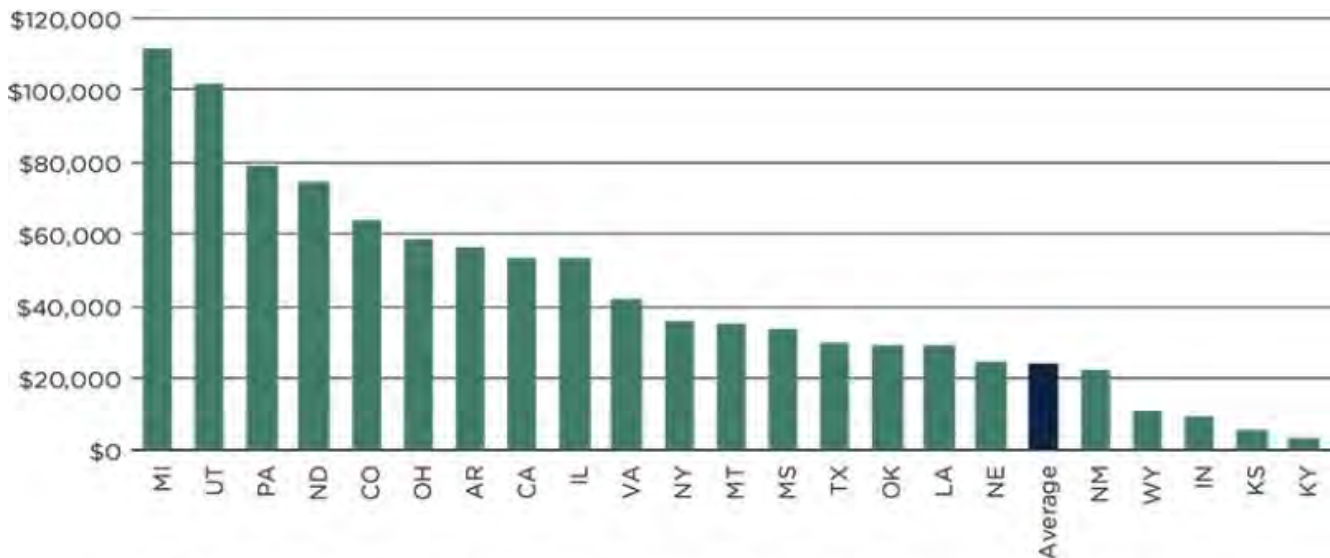
Orphan Wells
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some proposals at the federal level to inject dollars into state plugging programs. That's a helpful first step, but it certainly doesn't address the magnitude of the problem.

"From my perspective," he continued, "the thing that would be most helpful is for us to have better information on which wells are most hazardous. Because with, let's just say, a million orphaned wells, and 2.1 million unplugged abandoned wells, we must prioritize, and we can't prioritize unless we know which wells pose the most risk to the environment and to public health."

There is still a long road ahead for the solution to the orphan well problem, and with fresh bankruptcies during the past year due to the pandemic, the number of wells left to deal with continues to be a moving target. The energy transition could be both a sign for celebration and alarm. As assets exchange hands from bigger operators raising capital for greener projects to smaller, lower-cost producers, the new owners will look for every advantage to preserve the bottom line. That might include deferring abandonment work, because, frankly, there's no money in that.

"At the very least, we're in the tens of billions of dollars range," said Raimi on the national tab for orphan well cleanup. "I don't know what the ultimate number is going to be, and therefore we need more information. It's possible that there are some orphaned wells out there that are not causing anybody any harm. They might be in the middle of prairie land, not leaking any methane, and not causing risk around water. Should we really spend \$100,000 to plug a well like that? Probably not. But again, we don't know which wells pose substantial risks and which don't."



Data source and notes: IOGCC²³. Where states reported average surface remediation costs separately, we have included them here. The average is a weighted average and is relatively low because the largest number of wells have been plugged in lower-cost states such as Texas, Louisiana, Wyoming, and Kansas. Average plugging and restoration costs per well. Source: Columbia University CGEP report.

For Further Reading

[Green Stimulus for Oil and Gas Workers: Considering a Major Federal Effort To Plug Orphaned and Abandoned Wells](#). 2020. Daniel Raimi, Neelesh Nerurkar, and Jason Bordoff, Columbia University CGEP.

[Decommissioning Orphaned and Abandoned Oil and Gas Wells: New Estimates and Cost Drivers](#). 2021. Daniel Raimi, Alan J. Krupnick, Jih-Shyang Shih, and Alexandra Thompson, ChemRXIV, Cambridge University Press.

Blake Wright, JPT technology editor, has been a journalist covering the upstream oil and gas industry for more than 25 years. Based in Houston, his areas of special focus include emerging oilfield technologies and field development trends. He can be reached at bwright@spe.org.



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