

# A AMERICAN INSTITUTE OF MINERALS APPRAISERS

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## NEWSLETTER

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### **MINUTES OF 2008 AIMA ANNUAL MEETING**

The 2008 AIMA Annual Meeting was held in Salt Lake City, Utah on February 25, 2008. The meeting was opened at 8.26 PM by President Robert Frahme.

A total of fifteen Members and Non-Members were present. A head count of Members was made which indicated a quorum was present.

Minutes of 2007 Annual Meeting were read and approved.

William Bagby, AIMA Treasurer, presented his report for the period 01 January 2007 thru 31 December 2007 and for the period 01 January 2008 through 22 February 2008. A beginning balance of \$9,072.41 as of 31 December 2006 was stated. After deducting expenses, an ending balance of \$9,523.93 was indicated for that period. A balance of \$11,170.93 was stated as of 22 February 2008.

There was some discussion following the Treasurer's Report concerning placing some monies in an interest bearing account. After discussion, that proposal was discarded.

The newly elected officers for the year 2008 – 2009 were announced. They are;

John Gustavson – President  
John Chance – Vice President  
Donald Warnken – Secretary

William Bagby – Treasurer

The subject of Continuing Education requirements was discussed. A concern over the number of hours of Continuing Education required as well as locating and finding the time to take qualifying courses was expressed and discussed.

There was considerable discussion concerning the number of hours required to obtain an Appraisal License as well as the Continuing Education requirement for licensed appraisers. The point being, current AIMA Continuing Education requirements were not excessive.

Member, Stuart Limb motioned that Continuing Education be required for Associate Members but not for Members.

Michael Cartwright amended the motion to include a reduction in the current Continuing Education requirement to 14 hours.

After much discussion, both motions failed.

Michael Cartwright motioned that twenty one hours of Continuing Education be required every three years. There was no second to that motion. Therefore it died.

There was some discussion concerning the need for AIMA Members to also become licensed Appraisers. However, no motion was ever made. Stuart Limb had pointed out that the Office of the Controller of Currency had ruled that minerals are an interest in real estate but not real estate as a counter to the need to be licensed. *Continued on page 2*

## Minutes of 2008 AIMA Annual Meeting,

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Stuart Limb proposed that seven hours of Continuing Education credit be given as an incentive to those presenting Papers at the SME Annual Meeting. That Motion was approved.

A proposal was made to appoint a committee for the purpose of exploring the possibility of AIMA Members developing customized courses for educational purposes. It was approved. Edwin Moritz and Michael Cartwright are to Co-Chair that committee.

The proposed Minerals Handbook was brought up under Old Business. John Chance and Gerald Clark, applicant, have taken the lead in the writing of the proposed handbook. They are proceeding on the basis that the handbook will be a generalized document with supplemental "White Papers" addressing the appraisal of specific mineral rights. The Membership, by vote, approved their approach. The Members were advised that several AIMA Members are now working on their "White Paper" for inclusion in the Handbook.

There was some discussion related to the method of publication and if there would be a charge for the "White Papers". It was proposed that the Handbook and White Papers be published on the Internet. It was decided to postpone those decisions until our next Annual Meeting.

It was proposed that a "Review Board" be established to review the Handbook Draft and the White Papers before publication. That measure was approved and the following Members were assigned to the Board;

Mike Cartwright  
Stuart Limb  
William Bagby  
Robert Frahme  
Donald Warnken

Stuart Limb is to Chair that Board.

Robert Frahme received the Michael Cartwright award of \$100 for presenting the best paper at the SME Meeting.

Michael Cartwright volunteered to be Chairman of the 2009 SME Valuation Session.

Meeting adjourned at 10:30 PM.

Donald Warnken, Secretary

## THE PRESIDENTS LETTER

Dear Members and Associate Members!

As the elected President for 2008 I want to share with you some of the plans, which I have for our Institute. For one, I will not wait until the last few months of the year to organize our activities, but rather I will get going NOW. I am already active with several matters; an important one involves the requirement for our Members to abide by either the *Uniform Standards of Professional Appraisal Practice* or the *International Valuation Standards* when conducting value appraisals of assets or business interests of the minerals industry. USPAP is readily accessible on the web although you have to search chapter by chapter. The web site of the Table of Contents is:

[http://commerce.appraisalfoundation.org/html/USPAP2008/USPAP\\_folder/uspap\\_foreword/USPAP\\_Table\\_of\\_Contents.htm](http://commerce.appraisalfoundation.org/html/USPAP2008/USPAP_folder/uspap_foreword/USPAP_Table_of_Contents.htm)

Once you are on this site, you can click on each Standard Statement, Ethics Rule, Jurisdictional Exception Rule or other subject. The current version in hard copy paper form with validity starting 1 January 2008 is also available from the Appraisal Foundation for \$50.

I mention this, because one of the requirements of USPAP involves the determination of the Highest and Best Use of the property as an integral part during the early stages of an appraisal. I provide the following quotation from the AIMA March 1994 Newsletter.

### "Highest And Best Use

Common to all appraisal is the necessity to first determine the *highest and best use* of a property. The highest and best use refers to the use on the date of the appraisal, or a use, which is so reasonably likely in the near future that this potential would affect the property's market price.

With this in mind, it becomes clear that an oil property or a mine will have substantially different "highest and best uses," depending on its stage of development. Clearly, the highest and best use of a producing property is to produce income from the sale of production. Likewise, on the other end of the development spectrum, the highest and best use of "goat pasture" is to generate the bonuses and rentals that the property will bring to the mineral rights owner. Between these two extremes, properties may be non-producing, although the reserves may be proven, or the property may be a prospect defined by geochemistry, seismic, by subsurface control, or by other means.

The highest and best use of a non-producing property can be related to the ability to produce income, since such income may be reasonably near-term in the future. On the other hand, a *prospect* can rarely be considered to be near income generation,  
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**The Presidents Letter,** *Continued from page 2*

partly because there is a very substantial question with regard to actual discovery of reserves, and partially because the timing of production may be impossible to determine.

Only on the basis of the highest and best use of a property can an appraiser then apply that particular appraisal method, which best suits the property. Table 1 shows the four conventional methods, which may provide the most reliable estimates of value.”

End of Quote from the AIMA March 1994 Newsletter.

TABLE 1

PROS & CONS OF APPRAISAL METHODS

METHOD	ADVANTAGE	DISADVANTAGE
Prior Sales	Excellent Market Data	Rarely Found
Sales Comparison	Good Market Data Applicable to all Uses	Research Expensive Requires Careful Gridding
Income Approach	Reliable for Producing Fields & Mines	Marginally Useful For Undeveloped Properties
Cost Approach	Excellent For Down- stream Assets	Inapplicable for Reserves

In general, The Financial Institutions Reform, Recovery and Enforcement Act of 1989 recognizes USPAP as the generally accepted appraisal standards and requires USPAP compliance for appraisers in federally related transactions. More important for our AIMA Members is the fact that State Appraiser Certification and Licensing Boards, federal, state, and local agencies, appraisal services, and appraisal trade associations require compliance with USPAP [emphasis added].

We, the American Institute of Minerals Appraisers are an appraisal trade association and we resolved at our 24 February 2004 Annual Meeting that AIMA Members must abide by the *Uniform Standards of Professional Appraisal Practice* or the *International Valuation Standards* when conducting value appraisals of assets or business interests of the minerals (including petroleum) industry, except in cases where regulations require the application of an alternative set of valuation standards. All States of the USA have adopted USPAP, so when we work in the USA we must follow USPAP, including the determination of Highest and Best Use of the subject property.

The other matter, which is very high on my list and which requires immediate attention, is the lack of cooperation by our Members towards obtaining their necessary Continuing Education credits. Or, if the credits were obtained, then some Members are failing to record their Credits with Bob Frahme, our Continuing Education Committee Chairman. E-mail your Credits to Bob at [rfrahme@gustavson.com](mailto:rfrahme@gustavson.com).

In April 2003 Ed Moritz, who at that time was AIMA Vice President, wrote in the *Newsletter*:

**“The pros and cons of instituting education requirements are not fully understood but a few main ones are presented below:**

**Benefits (Pros):**

- **Increases Credibility of Institute** – professional organizations that require continuing education tend to gain more respect than those that do not. In my own experiences, I have been confronted by direct criticism (mainly from opposing attorneys in litigation cases) of the AIMA where the criticism emphasized the lack of educational and testing requirements of our organization.

- **Strengthens Professional Development** – I have personally benefited tremendously from the interface with other AIMA members in getting their perspective and valuable input on a variety of different topics. I think an expansion of this pooling of knowledge and experience can only be beneficial to everyone if it is focused in the direction of a continuing education effort.

**Difficulties (Cons):**

- **Regulatory Burden on Institute** – the implementation of educational requirements will require that rules and regulations be promulgated and enforced by the AIMA. Such activities are not considered particularly onerous but are an additional burden on a small organization.

- **Assuring Fairness** – this issue relates to striking a balance that the proposed educational requirements have enough substance to be beneficial and gain credibility, while at the same time making sure that they are not arbitrary or unrealistic and that members have reasonable access to educational resources and classes.”

End of Quote from the AIMA April 2003 *Newsletter*. ”

What is particularly noteworthy is the important comment by Ed Moritz, where he states: “the implementation of educational requirements will require that rules and regulations be promulgated and **enforced** by the AIMA [emphasis added].”

Is that not the truth?

Over the last two years the Officers of your Institute have encouraged you to cooperate with our Continuing Education Committee, but we have a long way to go. Now comes the time of enforcement. *Continued on page 4*

## **The Presidents Letter, *Continued from page 3***

This will be my most important challenge for this year of the American Institute of Minerals Appraisers. I must make sure that we keep our Members and yet, I must show that our Institute is strong and has “teeth”. Otherwise, we will not prevail. Your support (and comments) are invited.

Finally, I want to improve our mentoring program of Associate Members. We need to assist those, who are interested in honing their skills and walk in our footsteps. We need about 5 volunteers right now to offer to mentor the Associate Members and bring them to the point of full Certification as Members. I am also looking for a Chair of that Committee. If you are interested in that sector, please let me hear from you, either as a mentor or as the Committee Chair potential.

Let’s have a GREAT year!

*John B. Gustavson, 2008 President*

## **CONTINUING EDUCATION**

By Robert Frahme

Have you reported your Credits from the last few months of qualifying Continuing Education to Robert Frahme, the AIMA Committee Chairman?

Take a minute NOW to do it and submit your Credits for this important requirement of your certification to Bob at [rfrahme@gustavson.com](mailto:rfrahme@gustavson.com). Should you have any questions, call Bob at (303) 443-2209.

There are courses available Online that may qualify for CE credit. The Van Education Center (Van Ed) is just one of many. They offer the Appraisal Foundation’s USPAP 7 – hour course as well as other appraisal courses. Their online address is:  
<http://www.vaned.com/index.cfm/fa/AAP/fa2/Intro/state/CO>.

*Editor’s Note:* Red Vector is another online company that offers courses. Their telephone number is (866) 546-1212. Their Website address is: <http://www.redvector.com>.

## **Administrative Law, Civil Procedure, Environmental Law, Government Law, Indian Law, Property Law & Real Estate**

*Editor’s Note: Michael Cartwright has furnished the following case laws for your information*

### **Williston Basin Interstate Pipeline Co. v. An Exclusive Gas Storage Leasehold and Easement etc., No. 06-35660**

In an action claiming that plaintiff has lost and is continuing to lose natural gas stored in its Elk Basin Storage Reservoir due

to the operation of gas production wells owned by defendants, dismissal of the action is affirmed where: 1) the condemnation claim was properly dismissed, but on the ground that it failed to state a claim; 2) the District Court did not abuse its discretion in declining to exercise supplemental jurisdiction over the state law claim; and 3) state law claims were properly dismissed for lack of subject matter jurisdiction. A natural gas company may not condemn additional property that is not specifically described in its existing certificate of public convenience and necessity (CPCN), even if the natural gas company seeks to acquire such property in order to operate and maintain an existing storage facility.

### **Sunrise Valley, LLC v. Norton, No. 06-4188**

In a quiet title action brought under the federal Quiet Title Act, summary judgment for defendants is affirmed where: 1) sand, gravel, and rock are minerals in which the government has an expressed reservation on land patents issued under the Stock-Raising Homestead Act, and 2) the court is bound to apply the precedent in *Watt v. Western Nuclear, Inc.* 462 U. S. 36 (1983) since the case is governed by the Stock-Raising Homestead Act.

### **National Mining Association v. Kempthorne, No. 06-5199**

In challenge to 1999 Rule promulgated by appellee, summary judgment for appellee is affirmed as appellee secretary’s interpretation of the phrase “valid existing rights” in the Surface Mining control and Reclamation Act, as foreclosing surface mining operations in sensitive areas, is reasonable.

### **John R. Sand & Gravel Co. v. US, No. 06-1164**

The special statute of limitations governing the Court of Federal Claims requires sua sponte consideration of the timeliness of a lawsuit filed in that court, despite the government’s waiver of the issue.

### **Bering Strait Citizens for Responsible Res. Dev. V. Army Corps of Engineers, No. 07-35506**

In an appeal involving a permit issued to Defendant-gold mining company by defendant-Army Corps of Engineers for a major gold-mining project in Alaska, denial of plaintiffs’ motion for injunctive relief and dismissal of the suit on summary judgment is affirmed where the Corps complied with the requirement of the Clean Water Act (CWA) AND THE National Environmental Policy Act (NEPA).

### **Arkoma Basin Exploration Co., Inc. et al. v. FMF Assocs. 1900-A, Ltd., No. 03-1066**

In a suit arising in circumstances in which limited partnerships hired petitioner to estimate production from mineral properties in Oklahoma, but the properties failed to produce as predicted, a court of appeals ruling in favor of plaintiffs-  
*Continued on page 5*

**Administrative Law etc.**, *Continued from page 4*

partnership is affirmed as to certain partnerships, and reversed as to the remainder where, under Virginia law, petitioners' reserve estimates in a mature gas field were actionable as statements of fact, while those in another field were nonactionable statements of opinion.

**Lee-Barnes v. Puerto Ven Quarry Corp., No. 06-2581**

In a suit to recover investments after failed business dealings, an appeal of an order nullifying a prejudgment surety bond after the poster declared bankruptcy is dismissed where: 1) the district court's Rule 54(b) certification of the order constituted an abuse of discretion since the order failed to meet either Rule 54(b)'s "party" or "claim" requirement; and 2) the bond issue did not rise to the level of importance needed for recognition under the collateral-order doctrine.

**MINERALS HANDBOOK**

John Chance reports that work on the Minerals Handbook is underway. However, he also reports that he has not received any "white papers" from our Members. For those desiring to contribute to the handbook, please contact him asap with your status report.

John's cell phone number is 937-631-0305 and his e-mail address is [gotta@ctn.net](mailto:gotta@ctn.net)

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The NEWSLETTER is published by the American Institute of Minerals Appraisers, 5757 Central Avenue, Suite D, Boulder, CO 80301

Phone: (303) 443-2209; Fax: (303) 443-3156

Editor: Donald Warnken

E-mail: [dongene32@sbcglobal.net](mailto:dongene32@sbcglobal.net)

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