

AMERICAN INSTITUTE OF MINERALS APPRAISERS

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Annual Meeting

Our annual meeting will be February 25, 2009. It will be held at the Denver Marriott City Center; 1701 California Street. A social hour will begin at 5:00PM and dinner will begin at 6:00PM. Following dinner, the Annual Meeting will begin at about 7:00PM.

Candidates For AIMA Offices

Ballots have been mailed to all Members containing nominations for 2009 AIMA officers. Please return your ballot by February 15, 2009. The elected officers for Year 2009 will be announced at our Annual Meeting.

The nominees are:

President – John Gustavson
Vice President – John Chance
Treasurer – William Bagby
Secretary – Donald Warnken

The nominees are the same officers that served your AIMA in year 2008. They have been nominated for a second term for convenience and other reasons. The changing of Treasurer each year has been especially burdensome. A two year term for the Treasurer would alleviate the long delays that have been experienced in the changing of authorizing signatures.

A motion to amend our By-Laws will be introduced at our Annual Meeting which would permit our officers to serve two years in lieu of one year.

Minerals Valuation Analysis of Methods and Case Histories

The schedule is as follows for presentation of papers at the 2009 SME – Minerals Valuation Analysis of Methods and Case Histories Session:

Wednesday February 25, 2009

9:00 AM – Opening remarks by Chairman Donald Warnken and Co-Chairman John Gustavson

9:05 AM – Direct Sales Comparison Approach to Value by Michael Cartwright, Mineral Business Appraisal, Reno, NV

9:25 AM – Valuation of Donations, Conservation Easements, and Preservation Properties with Minerals by Gerald Clark, Associated General Appraisers LLC, Springfield, OH

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Minerals Valuation Analysis of Methods and Case Histories, *Continued from page 1*

9:45 AM – Larger Parcel Issues in Mineral Property Appraisal
By Robert Frahme, Gustavson Associates, Boulder, CO

10:05 AM – Eminent Domain Appraisal, Silver Lake, California
by William Bagby and Fred Barnard, Western Mineral Appraisers LLC, Carlsbad, CA

10:25 AM – Current Status and Direction of International Standards in the USA and Globally
by – Trevor Ellis, Ellis International Services Inc., Denver, CO

10:45 AM – Mineral Appraisal Issues in Court Testimony
by – Stuart Limb, CMC Inc., Scottsdale, AZ

Draft Handbook Review

Richard Bate, AIMA Member, has arranged a meeting room for those interested in reviewing the draft Handbook. The meeting will take place on February 25, 2009, beginning at 1:30 PM, at the John T. Boyd Company's office which is located at 600 17th St. Suite 1725N, Denver, CO. The review will end at 4:00 PM.

John Chance, VP AIMA, will be coordinating the meeting and will have copies of the draft available for review. He can be contacted by telephone at 772-283-7443.

Richard Bate, VP of John T. Boyd Co., can be contacted by phone at 303-293-8988.

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

The Following Has Been Furnished By Michael Cartwright

RoDa Drilling Co. v. Siegal, No. 08-5115

In an action against defendant alleging fraud, breach of contract, and breach of fiduciary duty with respect to various oil and gas investments defendant made on plaintiff's behalf, grant a preliminary injunction seeking record title to the various oil and gas investments is affirmed where the magistrate judge did not err in weighing the factors for such relief.

Devon Energy Corp. v. Kempthorne, No. 07-5299

Pursuant to plaintiff's lease to extract coalbed methane from federal land in Wyoming, final order issued by US Department of the Interior (DOI) requiring plaintiff to retroactively recalculate royalties owned by the government is affirmed where: 1) the DOI's interpretation of the marketable

condition rule reflected a reasonable construction of the rule; 2) the agency's order was not at odds with the plain language of the rule, nor did it effectively "amend", rather than reasonably construe the rule; and 3) plaintiff's claim that DOI's order conflicted with a prior interpretation of the marketable condition rule is rejected.

Alaska Wilderness League v. Kempthorne, No. 07-71457

Upon a petition for review under the National Environmental Policy Act (NEPA) and the Outer Continental Shelf Lands Act (OCSLA) of the Minerals Management Service's approval of a plan to explore in the Beaufort Sea, the approval is vacated and remanded where: 1) the agency did not meet its statutory obligation to take a "hard look" at the impacts of the proposal on bowhead whales and Inupiat subsistence activities; 2) the agency incorrectly determined that no environmental impact statement was required; and 3) the approval also violated OCSLA's requirements that the agency review and approve specific proposed well location and spacing.

McDonald v. Sun Oil Co., No. 06-35683

In a suit arising out of the sale of a property containing a disused mercury mine, alleging negligence, contribution, breach of contract and fraud as a result of an alleged oral warranty that certain rock at the mine was free of mercury, summary judgment for defendants is affirmed in part and reversed in part where: 1) the state statute of repose did not render the negligence claim time-barred, because provisions of the Comprehensive Environmental Response, Compensation, and Liability Act amending state statute of limitations rules also applied to statutes of repose; 2) the contribution claim could not be brought without remedial action having been initiated by a state environmental agency; 3) the parol evidence rule was properly applied to find that the parties had reduced their entire agreement to writing and that no binding oral warranty existed; and 4) plaintiff's did not produce evidence of the alleged falsity of statements made by defendant.

Wagner & Brown, Ltd. v. Sheppard, No. 06-0845

In a suit over both proceeds and costs surrounding the formation and subsequent termination of a gas lease, summary judgment for lessor is reversed where: 1) the termination of the lease did not terminate lessor's participation in a unit pooling several tracts, because the pooling agreement covered "premises" and "lands" and not merely leased mineral interests; 2) remand was necessary to determine lessor's share of unit expenses; and 3) lessor was required to reimburse lessees for a share of drilling costs incurred during the term of the lease.

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Administrative Law, Civil Procedure, etc

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Agri-Systems Inc. v. Foster Poultry Farms, No. F053700

Editor's note – this case concerned ethics & professional responsibility

A plaintiff-general contractor's appeal claiming that arbitrator to a construction dispute was required to disclose arbitrator's law firm's representation of a company that owed the general contractor over \$3 million, arbitration award in favor of defendant is affirmed: where 1) the applicable rule of law is the general requirement that a proposed neutral arbitrator "shall disclose all matters that could cause a person aware of the facts to reasonably entertain a doubt that the proposed neutral arbitrator would be able to be impartial"; and 2) the superior court's finding that disclosure was not required was supported by substantial evidence.

Continuing Education Credits

Recently a Member raised the question that concerned "piggy-backing" for Continuing Education Credits. In a communication with the Member, our President, John Gustavson, wrote; "First piggy-backing is certainly allowed when it comes to CE credits. You can use the points or hours toward several societies' or institute's requirements at the same time."

"Second, our current policy and procedure at AIMA is to rely on the Member, himself to differentiate between what is applicable CE material and what is too peripheral. Example: The Appraisal session at the Annual SME meeting is applicable in its entirety, while a reserve assessment (strictly technical) is not. Any papers on reserve assessment AND financial forecast (a DCF analysis) would fall in the middle and a Member would choose to take half credit for that education."

The question often arises concerning CE credit for presenting a valuation paper at the annual SME Meeting. Our Continuing Education Chairman, Robert Frahme, recognizes that considerable time is required for the preparation of a paper. He has stated that 4 CE credit hours would be applicable.

Our President has also stated that attendees at the SME/AIMA session would get 4 CE credits since the whole session is so specific and so closely peer-attended. This means that any author would get both the 4 CE credits for his own paper as well as up to 4 CE credits for attending the rest.

He has further stated that being Chairman of the session is worth an extra 2 CE credits.

There may be an occasion where we become involved in being an instructor. Our President has advised that he has given himself 8 CE credits for instructing a full day of the *Appraisal of Oil & Gas Properties* at the University of Tulsa.

AIMA 43 – 101 Schedule "A" Qualification

At our last AIMA Meeting, we discussed the possibility of getting AIMA qualified for its Members to prepare 43 – 101 reports on mining projects for Canadian approval.

AIMA Member Charles Melbye (cmelbye@msn.com) accepted the task of obtaining additional information concerning approval for an organization such as AIMA. He has advised your editor that he has received that information from his attorney.

Charles Melbye has stated that it appears to be an opportune time for AIMA to get qualified. His attorney has advised the timing is fortuitous, as the CSA is working towards a review of 43 – 101 which would include revisions/additions to Schedule "A".

His attorney also states there is no prescribed process to obtain recognition and listing in Schedule "A" as a professional association, but what would work is a formal submission to Robert Holland of the BCSC by AIMA illustrating how they meet the requirements under the definition of a "professional association", which is as follows:

"professional association" means a self-regulatory organization of engineers, geoscientists or both engineers and geoscientists that (a) is given authority of recognition by statute in a jurisdiction of Canada, or a foreign association listed in Appendix A; (b) admits individuals on the basis of their academic qualifications and experience; (c) requires compliance with the professional standards of competence and ethics established by the organization; and (d) has the disciplinary powers, including the power to suspend or expel a member;"

The submission would demonstrate how AIMA meets each of the stated requirements, and would include copies of the applicable statute giving recognition, by-laws (showing the qualification and procedures), copies of conduct/competence and/or ethics (if applicable) and anything else that AIMA feels relevant to showing it meets the requirements. This would allow the CSA to assess their inclusion as such, and would be accompanied by discussions with AIMA on some or all of the points, as well as potential consultation with other associations currently on Schedule "A". In any event, it would all be stated by a formal submission to Robert Holland.

Robert Holland contact address is;

Robert Holland, P. Geo.
Co-chair, CSA Mining Technical Advisory & Monitoring Committee
B.C. Securities Commission
701 West Georgia Street
P.O. Box 10142 Pacific Centre
Vancouver, B.C.
Canada VZY 112

Circular 230 – The New Tax Preparer Rules

Louis Posgate, ASA Business Appraiser, has furnished your *Editor* information concerning courses on how to avoid the Circular 230 undervaluation penalties.

Recently, the IRS issued its final guidance for Circular 230 – The New Tax Preparer Rules. This sweeping legislation, which covers almost all written tax advice, will significantly change the manner in which the tax professional prepare their client returns. Failure to understand and comply with the new regulations may result in significant financial penalties or even suspension of practice.

How does Circular 230 affect us as Appraisers? Simple. The IRS views the attorney, **appraiser**, and client to be 3rd party non-signing tax preparers. It appears that the IRS will be targeting appraisals lacking diligent documentation and the consideration of all the facts that USPAP require.

The Knowledge Congress recently assembled a panel of distinguished professionals and key regulators to help “students” understand Circular 230 and its impact on your practice. They presented their expert opinions on December 4, 2008 in a two-hour live Webniar. While December 2008 is history, a recording and course material concerning that event is available for purchase. Additional information can be obtained from their website: www.knowledgecongress.org/events.htm.

Oil & Gas Prices

We have witnessed the most dramatic rise and collapse of oil and gas prices ever in a few months. During the rise, some analysts were predicting even higher prices than that realized while some analysts were predicting an immediate price down turn. None were correct in the time frame the predictions were made. Now analysts are again offering their forecasts for 2009. Do we believe them?

Here are some price forecasts:

Goldman Sachs forecast \$27/bbl oil and that prices may not get out of the \$40's in 2009.

Tudor Pickering Holt is re-forecasting its forecasts and calling for even softer gas prices for 2009 of \$5.50/Mcf – down from the firm's earlier projection of \$8.00/Mcf. They forecast \$55/bbl oil and \$5.50/Mcf gas next year and \$8.00/Mcf for year 2011 and beyond.

TD Securities forecast \$30/bbl oil.

Merrill forecasts \$25/bbl oil possible, short term.

The current soft gas prices and long-term price forecasts are linked to analyst's projections of over supply. It is contended that gas storage capacity will be topped out by 3rd quarter with available supplies. The envisioned over supply problem may be compounded by the offshore wells coming on line that are now shut in by Ike and Gustav Hurricanes.

Soft gas prices and gas glut forecasts have caused some companies to slash rig counts. This has in turn caused lay offs in supporting industries.

The Shale Gas Plays

The shale gas plays have been getting considerable attention these days. Some dub the shale gas plays as “unconventional opportunities”. None the less the number of drilling rigs in the gas plays simply out number drilling rigs in the oil plays.

Will these shale gas plays pay out? XTO must think so. In 2008 they acquired vast acreage positions in almost every brand-name play, such as; the Barnett Shale, the Haynesville Shale, the Cotton Valley Shale, the San Juan (Rockies) Shale, the Fayetteville Shale, and the Marcellus Shale. In all, it is reported that XTO's 2008 acquisitions have resulted in 1.4 million net undeveloped acres and an estimated 2.3 tcf of proved reserves with another 5.0 – 8.0 tcf in upside potential.

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