

(Next) New definition of WOTUS finalized

U. S. EPA and the U. S. Army Corps of Engineers (the Agencies) have issued a new definition of “waters of the United States” (WOTUS), which becomes effective on March 20, 2023. The definition of WOTUS determines federal jurisdiction under the Clean Water Act (CWA). For example, projects involving oil or natural gas development or pipeline construction require Corps permitting for impacts from crossing, or otherwise disturbing, WOTUS. Typically, the more impacts to such federally regulated streams and wetlands, the more likely the permitting will cause project delays and increase expenses.

Although the Agencies have promoted this final rule as establishing a “durable definition” that will “reduce uncertainty” in identifying WOTUS, this definition does not appear to provide much-needed clarity. Rather, generally speaking, the new definition codifies the approach that the Agencies

have already been informally utilizing to determine WOTUS, which entails relying on the definition of WOTUS from the late 1980s, as interpreted by subsequent U. S. Supreme Court decisions (e.g., *Rapanos v. United States*, 547 U.S. 715 (2006)).

The Agencies’ current approach to interpreting WOTUS relies heavily on both of the frequently discussed tests identified in the *Rapanos* decision. In *Rapanos*, Justice Antonin Scalia issued the plurality opinion, holding that WOTUS would include only “relatively permanent, standing or continuously flowing bodies of water” connected to traditional navigable waters, and to “wetlands with a continuous surface connection to



*Lisa Bruderly
Babst Calland*

Continued on page 25

2023 Gas and Oil Day at the Legislature set



message with members of the West Virginia Legislature. Our industry is of critical importance to this state on so many levels; let's share this infor-

On Wednesday, February 22, 2023, join your gas and oil industry colleagues in the Upper and Lower Rotundas at the West Virginia Capitol to share our

mation with our elected officials. Whether you are a producer, a logger, a well tender, an accountant or a royalty owner, our elected representatives need to know the positive impact our industry has on West Virginia.

Exhibit opportunities are available on a first-come basis; just indicate your interest online. Exhibitors can begin setting up at 8:30 a.m. and tear-down is at 3:00 p.m.

This event takes place prior to the deadline for bills to come out of committee, so join us and let your voice be heard. There is no charge to attend, but [please click here to register](#) as an exhibitor or as an attendee.



*Jason
Harshbarger
Secretary*

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One. Hundred. Billion. Dollars.

Okay, it's nearly \$100 billion. To be more precise, it's \$97,800,000,000. That's the amount of investment in shale development in Ohio since 2012. What a number.

This number comes to us from Cleveland State University, which creates the report for JobsOhio, the economic development arm of Ohio state government. If we had such a report for West Virginia, I imagine it would be similarly impressive, with one key difference.

A part of that giant number in Ohio is the investment in new natural gas-powered generation plants. Ohio has built 13 natural gas combined cycle plants, and that investment comes to \$6.4 billion. Pennsylvania has built 26 such plants.

West Virginia has yet to build one natural gas combined cycle power plant. While in Pennsylvania and Ohio about half of their electricity comes from natural gas, here in West Virginia it is just four percent.

Meantime, it becomes clearer every day that more energy is needed to power our nation. Recent events have challenged the stability and security of our nation's power grid, highlighting the important role natural gas plays in safely and reliably providing energy to consumers.

This topic is front and center for West Virginia legislators, who are studying Senate Bill 188, the Grid Stabilization and Security Act of 2023. The bill aims to provide certainty regarding timelines for those looking to build natural gas power plants here.

You can show your support in many ways, among them is to come to our GO-WV Natural Gas Industry Day at the WV Capitol on February 22. We will set up booths and meet with lawmakers. Check your Action Alerts for more data, then [click here to register](#) and I hope to see you there!



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Northern Long-eared Bat now endangered

In a proposed rule published in the Federal Register on March 23, 2022, the U.S. Fish and Wildlife Service (“USFWS”) announced its intention to reclassify the northern long-eared bat (“NLEB”) from a threatened species with an accompanying 4(d) rule to an endangered species with the additional protection that designation incurs. West Virginia is one of the 37 states in which the NLEB exists. The listing as endangered simply increases the regulatory burden related to construction projects such as oil and gas pipelines and multi-well drilling sites.

GO-WV filed comments on the proposed rule in opposition to the reclassification of the NLEB. The primary points made in the comments were:

“The Service’s Proposal to reclassify the NLEB as an endangered species is not supported by the best available scientific and commercial information for at least two reasons:

The Proposal erroneously relies in significant part on an incomplete subset of hibernacula counts, which are unreliable and exceedingly difficult to perform, to evaluate the NLEB’s status.

The Proposal fails to fully account for important summer data from locations with the greatest prevalence of NLEB and inappropriately relies on unreliable and subjective acoustic data.”

Not surprisingly, the USFWS rejected the comments in opposition to the reclassification and issued a final rule published on November 30, 2022, reclassifying the NLEB as an endangered species with an effective date of January 30, 2023. The impact of the final rule resulted in questions and concerns about compliance under the Endangered Species Act for oil and gas, forestry, wind energy, infrastructure, and many other projects within the 37 States that comprise the range of the NLEB.

However, USFWS was not prepared to provide the guidance necessary to advise stakeholders how to comply with the final rule. As a result, on Janu-

ary 26, 2023, only 4 days before the original January 30, 2023 effective date, the USFWS published a “final rule; delay of effective date” extending the effective 60-days until March 31, 2023. This rule is not being subjected to public comments so there is no opportunity for input.

USFWS explained that “[w]e are committed to working proactively with stakeholders to conserve and recover northern long-eared bats while reducing impacts to landowners, where possible and practicable. Thus, we are working to finalize tools that will help guide project managers through section 7 consultation once the reclassification of the northern long-eared bat takes effect to prevent delay for projects currently reviewed under the section 4(d) rule. We are also developing an online determination key that will provide predetermined consultation outcomes and automatic project concurrence for some projects as well as voluntary guidance for wind facilities and private activities that involve habitat modification. Delaying the effective date will allow us to finalize these documents and communicate with external partners.”

The USFWS has completed consultation on over 24,000 projects in the NLEB range in the last 3 years with many of the projects not being completed. Because incidental take of NLEB has not been prohibited under the existing regulations, but would be prohibited when the final rule becomes effective, numerous federal agencies would need to reinitiate consultation. The USFWS must develop and provide biological opinions and incidental take statements with terms and conditions to ensure any taking that occurs is not a prohibited taking or likely to jeopardize the species. Once the final rule takes effect, the projects would need to cease while these consultations are scheduled and occur. This result would adversely impact agriculture, infrastructure (such as power generation and transmission, roads, bridges, communication towers, dams, levees, pipelines, wastewater treatment

Bats now endangered *Continued on page 27*



From the Burd's Nest: A stitch in time...

The English proverb, “A stitch in time saves nine,” describes the benefits of working hard now to save time later. It references the importance of fixing something as soon as it is damaged rather than waiting to deal with a potentially worse problem later. In digging around the internet I found the saying may have first shown up in the early 1700’s as applied to the practice of mending a small tear in the sails of a ship before it became larger one. So, it makes sense that sewing reference to “A Stitch in Time Saves Nine” was, as that time, perfect.

For obvious reasons, in the 21st Century, time is quite precious to us—in our hurried lives, time can be very limited and, let’s be honest, in business and our personal lives, time is money. So it now makes sense to identify “A Stitch in Time...” to saving money.

In addition, “A Stitch in Time...” presents another connotation: It makes for better decision making. Following this concept means that when a person has or takes sufficient time to handle a problem, a better solution will usually be the result. Those that wait until the last second to make a decision are generally more stressed and tend to make poorer decisions. Putting in the harder work now tends to allow you to reap better benefits later.

So why this subject, at this time?? Well, as we begin February, the West Virginia Legislative Session is about one-fourth completed. Its work to date has been phenomenal. The Senate and House of Delegates leadership are to be congratulated for their efforts to proactively identify the major issues facing our state and its residents and working in an efficient, effective and unified manner to advance legislation to address the issues.

In just the first 17 calendar days of the 2023 Session, a total of 1,633 bills have been introduced for consideration (1,123 House bills; 510 Senate Bills). And, just for fun and to keep us on our toes, add in another 68 Resolutions. Of those... the House has passed 19 bills, the Senate has passed 52 Bills and the Governor has signed two

bills into law. One of the first two bills already signed into law dealt directly with the leasing of pore space on state-owned property for the purposes of sequestering carbon.

It’s very obvious to see that the time, effort and hard work our legislative body put in over the summer and fall is paying great dividends now in terms of early legislative activities and successes. Their collective “stitch in time...” of working to identify problems then, is proving to finding appropriate solutions now!!

While it is very early in the Legislative Session, here is a sampling of some of the Legislation of specific interest to GO-WV:

- **Senate Bill 188**, the Grid Stabilization and Security Act of 2023, seeks to encourage the siting of natural gas fired electric generation in West Virginia and using West Virginia-produced natural gas as the energy source. This bill also addresses the timelier manner in which decision and appeals will be handled. This bill is working its way through the Senate approval process.
- **Senate Bill 254** proposes to change vehicle inspections from an annual process to a “once every two-year period.” This is mentioned here because of large number of vehicles utilized by our industry in West Virginia. This bill is working its way through the Senate approval process.
- **House Bill 2641** authorizes the WVDEP to establish a rule relating to requirements for Title V air operating permits. Based on early discussions between affected stakeholders and the Agency, fees will be greatly reduced. GO-WV is pleased to have been an integral part of those discussions. Another stitch in time!
- **Other legislation** before us or expected to be before us at this juncture includes ATV usage, royalty payment withholdings, Class VI Injection Well primacy, rare earth minerals, low level radiation, tax credits, producing property

Burd's Nest

Continued on page 27



Producer issues at FERC: 2022 year in review

Like many baseball fanatics, I love pithy quotes from the great Yogi Berra. But many fans today do not know that Yogi's manager, Casey Stengel, was one of baseball's original philosophers; and it was the "Ol' Perfessor" that once said, "Never make predictions, especially about the future."

In the spirit of Stengel, let's look back at GO-WV's successes at the Federal Energy Regulatory Commission ("FERC") in 2022. The settlement of the Columbia Gas Transmission rate case, approved in 2022, may be one of the greatest economic victories for GO-WV (and its predecessor IOGA) in my 37 years of representing the association. We also had a string of successful rate settlement with other pipelines, and favorable rulings in the Equitrans/Big Dog abandonment case and the extension of time to construct the Mountain Valley Pipeline.

FERC approved the Columbia rate case settlement on February 25, 2022. Of course, this was a multi-year effort that included 15 days of settlement conferences, double a typical case. The time spent was worth the effort for West Virginia producers. For example, Columbia proposed to rate its interruptible gathering rate from \$0.27 per Dth to over \$10.00 per Dth – yes, ten dollars. And it proposed a gathering modernization surcharge on top of that rate. Due to our efforts at FERC, when Columbia moved its increased rates into effect in 2021, the gathering rate remained at \$0.27. The settlement eliminated the gathering rate altogether for all but a few shippers. Moreover, buyers of West Virginia gas that transport the gas to TCo Pool continue to pay nothing if they sell to another party in the pool. Columbia collects on transport out of the pool. Plus, there is no longer a separate Low Pressure System charge for lost and unaccounted for gas ("LAUF"). The savings in gathering and LAUF, particularly in the context of a \$10.00 per Dth gathering rate, not only boosted net back revenues at the wellhead, but likely saved many producers on the Low-Pressure System from premature

extinction.

GO-WV also participated in the rate increase cases filed by Texas Eastern Transmission ("Tetco") and Eastern Gas Transmission & Storage ("EGTS"). Our primary purpose in both cases was to do no harm and fight anyone who proposed to adversely affect West Virginia producers. In Tetco, that meant ensuring the continuation of the favorable treatment in the previous settlement of capacity held by EGTS and operated as part of EGTS's system. That was accomplished without a fight. In the EGTS case, because EGTS no longer owns gathering or products extraction, which we fought over for decades, GO-WV helped ensure that no costs were shifted to West Virginia producers. In both cases, settlements resulted in rates lower than the filed increases and refunds to shippers.

One of our biggest cases in 2022 was the abandonment of Equitrans' gathering systems by sale to Peoples Natural Gas and Big Dog. Appalachian gathering abandonments are always difficult because of longstanding case law that prevents FERC from rejecting abandonment of gathering facilities owned by regulated interstate pipelines of conditioning the sale of abandoned facilities, even to protect customers or producers connected to those facilities.

GO-WV nevertheless raised numerous issues to ensure that FERC was fully educated on the potential impact of abandonment on producers that rely on the gathering systems. We particularly questioned whether the facilities should be considered gathering since they were used to transport gas flowing off of Equitrans' mainline to the LDCs and farm tap customers.

As a result of GO-WV's arguments, FERC made it clear that because of Big Dog's need to back-flow gas previously transported on Equitrans to customers on the gathering system, Big Dog would require a limited jurisdiction certificate. When Big Dog filed an application for that cer-

FERC 2022 review

Continued on page 27

Upcoming events planned for 2023

February 7, 2023

SafeLand USA Training Class

2000 Green River Dr., Fairmont, WV

Info: benchmarkpllc.com/training

February 16, 2023

Contractor Management Solutions Workshop

Oglebay Resort, Wheeling, WV

Info: gowv.com

February 22, 2023

Oil and Gas Day at the Legislature

Upper and Lower Rotundas, Charleston, WV

Info: gowv.com

March 7, 2023

SafeLand USA Training Class

WVU Alumni Center, Morgantown, WV

Info: <https://extapps.wvu.edu/extforms/index.cfm?formid=125>

March 23, 2023

PIOGA's 2023 Spring Meeting

Rivers Casino, Pittsburgh, PA

Info: www.PIOGA.org > Events

April 4, 2023

Pipeline Safety Seminar

Charleston, WV

April 5, 2023

Damage Prevention Seminar

Stonewall Resort, Roanoke, WV

April 6, 2023

Pipeline Safety Seminar

Bridgeport, WV

May 4, 2023

PIOGA Clay Shoot Networking Event

Promise Land Sporting Clays Club, Freeport, PA

Info: www.PIOGA.org > Events

May 8, 2023

Spring Swing

Berry Hills Country Club, Charleston, WV

Info: gowv.com

May 22-24, 2023

IOGCC Annual Business Meeting

Oklahoma City, OH

Info: iogcc.ok.gov

June 5-6, 2023

Science Teacher Workshop

Embassy Suites, Charleston, WV

June 6, 2023

Oil Patch Classic Golf Outing and Steak Fry

Wanango Country Club, Reno, PA

Info: www.PIOGA.org > Events

August 13-15, 2023

GO-WV Summer Meeting

The Greenbrier, White Sulphur Springs, WV

August 17, 2023

26th Annual Divot Diggers Golf Outing

Tam O'Shanter Golf Club, Hermitage, PA

Info: www.PIOGA.org > Events

September 14, 2023

PIOGA's Birds & BBQ Clay Shoot

West Penn Sportsmen's Club, Murrysburg, PA

Info: www.PIOGA.org > Events

September 15-16, 2023

GO-WV Sports Weekend

Bridgeport Country Club, Bridgeport, WV

October 16-18, 2023

Special note:

The GO-WV 2023 Summer
has been **rescheduled** to

August 13-15, 2023

at The Greenbrier.

Please save the date!



GO-WV Board welcomes five new members in January

Please join the GO-WV Board of Directors in welcoming these members approved in January:

Audubon Companies

ISP

Heather Bywaters
190 Boyce Drive
Chester, WV 26034
Cell: (304) 914-1621
hbywaters@auduboncompanies.com
www.auduboncompanies.com

CapitalExpress

ISP

Bryan Kain
200 Pimpernel Street
Summersville, SC 29483
Cell: (317) 403-2283
bkain@capstonebt.com
www.capstonebt.com

Tim Greene

ROY

Timothy Greene
116 Estate Lane
South Charleston, WV 25309
Cell: (304) 545-7644
Fax: (866) 528-5332
tim@lmma.com
www.lmma.com

Stone Ridge Energy, LLC

POP

Don Supcoe
PO Box 179
Dellslow, WV 26531
Cell: (304) 767-5178
don@sreapp.com
www.sreapp.com

Select Excavating Services, LLC

ISP

James Butcher
299 Hickory Hills Road
Jane Lew, WV 26378
Cell: (304) 613-9194
jim@selectexcavating.com



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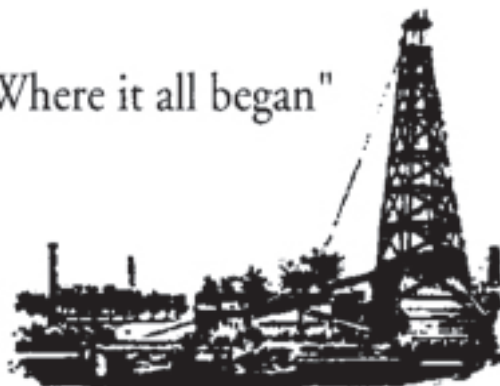
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2023 scholarship deadline: March 17

In 1997, the Independent Oil and Gas Association of West Virginia, Inc. (now the Gas and Oil Association of WV, Inc. - GO-WV) established its Scholarship Program in an effort to become more involved in higher education in West Virginia. The Scholarship Program was specifically created to reward the outstanding scholastic achievements of high school seniors whose parents work in the oil and natural gas industry and are association member companies. The Association also awards deserving high school “student employees” who have completed a required number of working hours at an association member company.

Since 2020, two annual one-time, \$1,000 scholarships are also sponsored by ConServ Incorporated. They are for students who are choosing a career path that benefits the oil and gas industry in a vocational/technical field such as, but not limited to, welder, truck driver, well tender, electrician, mechanic, etc.

Since the GO-WV Scholarship Program’s inception, \$206,500 has been awarded to these very deserving students. Complete eligibility rules and documents for both scholarship types are found at <https://gowv.com/education/scholarship/> and were sent to all member companies.

The completed application, including all required forms and information, must be signed by the high school guidance counselor and postmarked no later than March 17, 2023. From all the applications received, the GO-WV Scholarship Review Committee will review and award a limited number of one-time only scholarships.

Here is a quick glance at those rules:

1. Applicant must be a West Virginia high school senior.
2. Applicant must be a dependent of an employee/retiree of a GO-WV member company in good standing OR be employed by a GO-WV member company in good standing (Student employee must have worked a minimum of 400 hours in the past calendar year. Validation of hours worked and a letter of recommenda-

tion from the employer **must** be provided).

3. Applicant must enroll in a four-year West Virginia college or university or a community college/vocational-technical school.
4. Applicant must compose an essay answering the question asked on the application form.
5. Application must be signed by the high school guidance counselor.
6. The completed application and all documentation requested must be postmarked no later than Friday, March 17, 2023.

GO-WV will accept completed applications postmarked by March 17, 2023. Should you have any questions, or need additional information, please contact Katie McCracken at 304-344-9867 or kmccracken@gowv.com.

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Creating good jobs

To build a petrochemical plant, house or a commercial building, raw materials like wood, concrete, metal, plastic and glass are required. To make stuff like household products, medical equipment, automobiles and thousands of other products, petrochemicals from natural gas and oil are the building blocks. The main raw material to make stuff is carbon typically from petrochemicals, plants and now sometimes coal.

We may transition to other energy sources but we still need raw materials to make structures, vehicles and everyday products we need. These raw materials today come from oil, natural gas, wood and other plant-based sources. Using coal as a source of raw materials can allow plants to be used primarily as food for a growing world population that will add another billion people by 2050. Natural gas and natural gas liquids are the most economical feed stocks today.

The pandemic showed how dependent we are on China for essential products. U.S. companies responded. DOW Chemical in Charleston opened a shutdown production line and started making hand sanitizer. Star Plastics in Jackson County began making ventilator parts to name two of many. Shale Crescent USA (SCUSA) did radio interviews from coast to coast on “The pandemic shows why Made in America is essential.” Hosts and callers regardless of politics were mad about our dependence on China and wanted to see manufacturing come back to the USA. Companies aren’t coming here just to be patriotic or to help consumers. We are seeing reshoring of manufacturing. Companies are moving production to or increasing production in the USA.

Why do foreign companies want to come to the USA? Here is what we learned;

- Companies like stable predictable government regulations. In the USA, regulations don’t change depending on the individual regulator and what they are paid as in some countries. The USA has a court system companies can use if they believe regulators exceed authority.

- Companies want safety and security. We talked to companies who had operations in Ukraine. No one wants to lose their investment to a missile.
- Companies like our stable economic and monetary systems.
- The USA has a large economy they can sell to.
- Companies want a stable government. The USA has a peaceful change of power. In some countries regimes can change overnight with a violent overthrow of those in power creating turmoil which is bad for business.
- People like the living conditions in the USA.
- The USA has both personal liberty and economic opportunity, a rare combination.
- **The biggest reason companies want to come to USA is for dependable economic energy.** In Europe and Asia gasoline, diesel and electricity prices are much higher than ours. Natural gas needed for feedstock or to fuel a facility can be 8 to 10 times more expensive in Europe than in the USA. A dependable supply of natural gas at any price is now an issue. Weather dependent energy is available in Europe. They come here for dependable natural gas.
- Transportation, especially ocean shipping has become unpredictable and very expensive partly due to increased fuel costs.

Governor Jim Justice announced in his State of the State address that TCL, a company from India, will be coming to Marshall County, West Virginia to manufacture. Shale Crescent USA has been working with TCL since 2018. We were introduced to them by my friend Scott from AEP at the World Petrochemical Conference (WPC) in Houston in 2018. At that conference, Shale Crescent USA presented the results of their IHSMARKIT study comparing the cost to build and operate an ethane cracker in this region to one built on the Gulf Coast. Companies have been building petrochemical plants and crackers on the Gulf Coast

Creating good jobs

Continued on page 26



Time now to plan for your 2023 advertising in GO-WV News

Your continued support of *GO-WV News* through your advertising is greatly appreciated. Advertisers have the opportunity to expand their reach to this important market and keep your name and your products and services at top-of-mind awareness for your current and potential customers.

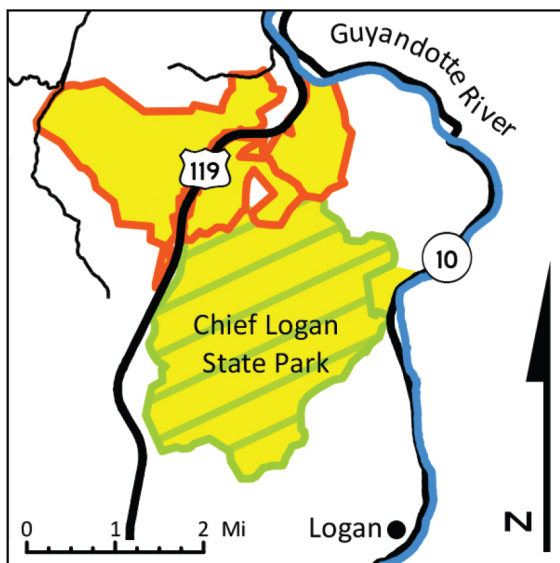
The 2023 advertising contract can be found on page 24 of this issue or at gowv.com. You will need to complete and return this contract

by December 30, 2022 for your advertisement to be included in the January 2023 issue of the award-winning *GO-WV News*. For our current advertisers, a copy of your current contract and most recent ad are available from the *GO-WV* office. Ads must be paid in full by check or credit card prior to publication.

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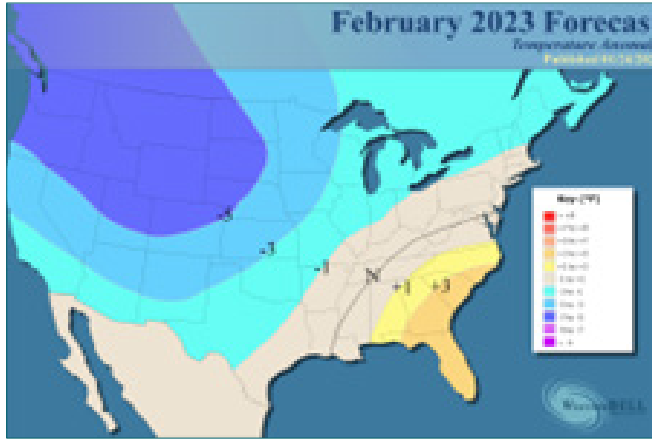
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lgeorge@larrygeorgelaw.com

WeatherBELL: Winter so far



After a warm January, February has opened very cold in line with the expected high volatility of the winter during this La Niña.

As expected, the cold shots have been increasingly more focused on the central and northwestern parts of North America with less cold conditions along the East Coast.

As February turns to March another cold and stormy period is likely, though uncertainty remains high this year based on the wild swings we continue to expect. However, a late spring is also anticipated with plenty of cold air sticking around in northern areas well into April.

For more information about WeatherBELL's services and to get the hot-off-the-press forecast updates, please visit our website www.weatherbell.com or contact us at sales@weatherbell.com.



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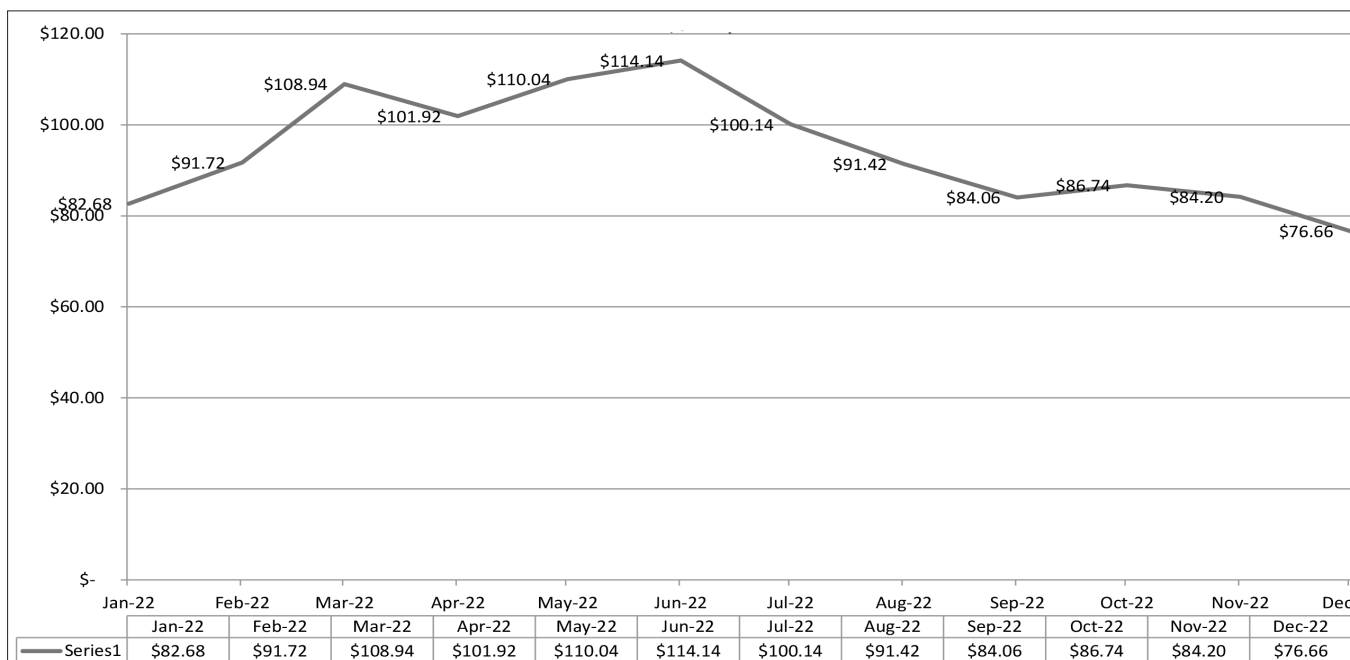
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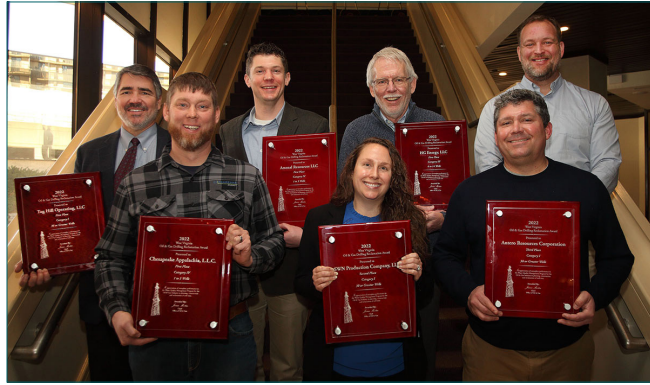
Whether buying or transporting crude, Ergon Oil Purchasing offers flexible logistics to move your product from wellhead to market. Through Ergon's refineries, network of terminals, barge and trucking fleets, we understand what drives the crude oil industry.

Oil & Gas Reclamation Award recipients recognized at GO-WV Winter Meeting

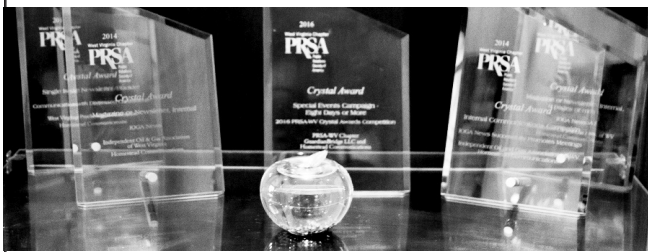
The West Virginia Department of Environmental Protection Office of Oil and Gas, along with the Gas and Oil Association of WV, Inc. (GO-WV), announced winners for the reclamation of oil and gas wells that were drilled between December 1, 2021 and November 30, 2022. Four categories are based on number of permits and total scores: *Category One* (30 permits or greater, score of 87-99); *Category Two* (15 to 29 permits, score of 90-99); *Category Three* (six to 14 permits, score of 92-99); and *Category Four* (one to five permits, score of 95-99).

Winners are pictured at right.

Back row, from left, Jerry DeRosa, Tug Hill Operating, LLC (1st Place, Category One), Dave Boyer, Arsenal Resources, LLC (1st Place, Category Four), Roger Heldman, HG Energy (1st Place, Category Three), Aaron Kunzler, Antero



Resources Corporation, (3rd Place, Category one). Front row, from left, Chris Lee, Chesapeake Appalachia, LLC (2nd Place, Category Four), Stephanie Paluda, SWN Production Company, LLC (2nd Place, Category One) and Adam Voris, Antero Resources Corporation, (3rd Place, Category one). EQT earned 1st Place, Category 2.



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"Strengths, weaknesses, opportunities and threats" presentation from Winter Meeting

On September 1, I officially took on the new role of President & CEO of the Independent Petroleum Association of America. IPAA was founded nearly 95 years ago, and in this tumultuous time, it's my belief that the association's efforts are needed now more than ever.

I'm honored to have the opportunity to step up to the plate and go to bat for our industry. I've worked in oil and natural gas for more than 25 years, including s IPAA's Energy In Depth, the industry's rapid response, research and communications coalition, in 2009. With my colleague, Dan Naatz, IPAA Chief Operating Officer and Executive Vice President, I'm working closely with the IPAA board to support a smooth and organized transition that builds on our association's efforts to advocate for independent producers in Washington and provide member value through facilitating capital raising, business development and educational opportunities.

As you know, the American natural gas and oil industry is very diverse and consists of many sectors. IPAA represents the exploration and production part of the industry -- the "independent" companies who don't have refineries or gasoline stations. These companies specifically search for and develop the nation's gas and oil wells.

There are about 6,000 independent producers exploring for and producing the nation's supply every day of the year. They are spread across 33 states.

And here's the kicker that a lot of people don't realize: collectively, these small businesses are responsible for developing 91 percent of the nation's natural gas and oil wells, accounting for 83 percent of America's domestic oil supply and 90 percent of our domestic natural gas supply. "Independents" employ millions of people nationwide and account for three percent of the nation's gross domestic product. Through good times and bad, our companies invest billions in new projects, searching for America's energy.



GO-WV Executive Director Charlie Burd and IPAA President and CEO Jeff Eshelman visit at GO-WV Winter Meeting.

Through the effort of independent producers, today, America is a world leader in natural gas and oil production. And we are doing it responsibly. Now, thanks to the use of affordable, reliable natural gas, America has its cleanest air in more than two decades, while natural gas and oil production is at record levels. We are the envy of nations – we lead the world in reducing emissions.

In this time of continuing uncertainty, one thing is certain: a healthy oil and natural gas industry is good for America – for our economic and national security – as well as for our allies across the globe.

But make no mistake — the industry and all its important benefits are at risk. The Biden Administration's attacks on American oil and natural gas producers have been relentless. The President and some Democratic leaders want to shackle our industry with new taxes, increase regulations and limit access for oil and natural gas development. President Biden and his allies in Congress seem determined to stop the energy renaissance America has enjoyed over the last decade.

And who (other than our companies) pays the price? American consumers.

SWOT analysis

Continued on page 15



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Skyrocketing prices didn't seem to bother this administration – until the November elections. That's when the president spent more time on the phone with OPEC and Venezuela – begging them to increase production. Meanwhile, our industry, the true solution to stable prices, didn't even get a single phone call.

And, let's not even get started on the release of oil from the Strategic Petroleum Reserve. That was not strategic, that was political. The SPR should only be used in times of crises and emergencies. If the President really needs new supplies of oil, look no further than America's oil industry.

As I see it in Washington there are many Strengths, Weaknesses, Opportunities and Threats faced by our industry. Let me take a minute to address some of these

Strengths.

Natural gas production is actually good for the environment – as I mentioned before, the nation has its cleanest air in 20 years. According to the Environmental Protection Agency's 2021 Greenhouse Gas Inventory, methane emissions in the United States continue a downward trend from 2005 levels. In fact, total U.S. greenhouse gas emissions continue to decline despite increased production and consumption of natural gas. Our industry is committed to reducing leaks and improving pipeline infrastructure. Initiatives like The Environmental Partnership bring companies together to discuss best practices to improve the industry's environmental performance. American producers are taking the right steps to produce energy more cleanly, safely and reliably.

I think we are the only country to reach the Paris Climate Accord goals – without even signing the accord itself!

Other strengths of our industry include America's vast natural gas and oil reserves. We have more than a 100 year supply of energy underneath our country. Oil and gas will remain America's largest fuel source through 2050 at least!

And we will produce it not only responsibly, but also utilizing some of the most advanced technologies available. I once heard it said that our industry rivals the technology of NASA – they explore outside of the earth, and we explore inside.

SWOT analysis

Continued on page 16

So, we have a very strong, resilient industry. What are some of our weaknesses?

Weaknesses.

Inflation, which affects all Americans. Our industry is not just producing energy, we are also energy consumers. A weak economy results in a weakened industry. Labor and service costs, for example, purchasing tubular goods, have driven up the costs of drilling and completing wells by 30 % year over year. Supply chain issues, even the ability to acquire pickup trucks, has also impacted the industry.

But there are some good opportunities to keep in mind.

Opportunities.

America's natural gas and oil production are also vital here at home. I always like to point out that taxes, royalties, rents, fees and bonuses – particularly from federal land production – are the US Treasuries second largest revenue source! We, as an industry, have the opportunity to make America's national security, as well as economic security strong.

We also have a positive impact and opportunity on the global level. Natural gas and oil are international commodities – and our industry is vital to global security. We are an ally that our friends can count on thanks to the shipment of crude oil exports and liquefied natural gas. Just two weeks ago, Germany accepted its first shipment of US LNG. And other nation's will as well – especially those being crippled by Russia, and in some cases, by their own governments who chose to subsidize unreliable, unaffordable alternative energy programs, rather than promoting traditional energy, such as natural gas and oil.

Another opportunity is the Republican takeover of the U.S. House of Representatives. For example, three days after the House elected Kevin McCarthy as speaker, the House Energy and Commerce Committee, it's in first action of the 108th Congress, held a roundtable on energy prices. I was lucky enough to be invited and testified as the sole energy representative on the panel. Holding this roundtable was a clear signal that this new House is making energy a priority.

But all of these strengths and opportunities are jeopardized by many threats. The largest of which is uncertainty.

Threats.

And uncertainty breeds inaction. But that's not an option. So what are the threats that create uncertainty. They are vast, and everyday there seems to be a new one:

- Lawsuits filed by environmental activists
- Permitting and infrastructure regulations
- Threats of new regulations (such as endangered species act and Waters of the US)
- Increased taxes (methane and proposed Wind-fall Profits Tax)
- ESG rules / investment rules
- Securities and Exchange Commission "Climate Plan" on banks and funding
- Bans and setbacks
- Electrification proposals (no new gas stoves / no new natural gas hookups in houses and federal buildings)
- Delayed lease sales onshore and offshore
- Misinformation campaigns / aggressive opposition cites incorrect seismic, health, safety information

And more.

So, what can be done to address these challenges – the strengths, weaknesses, opportunities and threats?

First, we must encourage capital investment and dial back activist pressure to divest from oil and natural gas production. Second, business thrives where there is a predictable landscape. Federal, state and local government must streamline ordinances, so producers have a predictable market in which to operate. Third, remove the hurdles for pipeline projects and allow abundant natural gas supplies to reach customers in the cleanest, most efficient method available. Fourth, regulators should develop and greenlight new infrastructure projects to meet growing demand

These solutions won't immediately solve all the questions surrounding the world's energy challenges. However, they make for a good starting point. Now is the time to protect our future in a holistic way that considers economic, national security and environmental implications.

It is time for the Biden Administration to look at American oil and natural gas as a partner in efforts to address our nation's energy challenges, not the enemy.

SWOT analysis

Continued on page 17

First day of Winter Meeting featured insurance seminars, meetings and receptions



Above, Mike McCown and Jon Hildreth visit during the Past Presidents and Gunslingers luncheon. Top right Producers Issues meeting sponsored by Steptoe Johnson. Center right, Encova speakers on Workers' Compensation were (from left) Tammy Roberts, Alisha Cunningham, Melissa Blatt and Wes Wojciechowicz. Bottom right features Lori Miller Smith between House Minority Leader Doug Skaff and House Judiciary Committee Chair Moore Capito. Below, House Speaker Roger Hanshaw spoke to members and legislators at a reception sponsored by Antero Resources.



SWOT analysis

Continued from page 16

IPAA and GO-WV members understand we aren't the only solution to questions surrounding American energy, but we must be part of the conversation.

Our members have never faced such an arduous challenge from politicians, the media and academia, and this next chapter will undeniably be tough. The IPAA board and staff are proud to

work on our members' behalf, for this industry and for our country. And we look forward to continue working with each of you.

Once again, thank you for this opportunity – we really appreciate the invite and opportunity to keep growing our relationship among the associations.

Second day of Winter Meeting featured industry leaders and legislators

These photos highlight the presentations on the second day of the Winter Meeting. The top left photo features GO-WV Vice President and Program Chair Jeff Isner welcoming the large crowd of members and industry leaders attending the meeting. The middle left photo features speakers from the hydrogen hub panel including, from left: Kevin Ellis, Antero Resources; Jaclyn Presnal, Williams; Michael Killion, Equitrans; Morgan O'Brien, Hope Gas; and Isner. The bottom left photo features GO-WV leaders and members of our legislative panel including, from left: Isner, GO-WV Executive Director Charlie Burd; Phil Reale, Law Office of Philip A. Reale; Delegate Vernon Criss; House Speaker Roger Han-



shaw; GO-WV President Maribeth Anderson; Senator Eric Tarr; and Senate President Craig Blair. Top right photo below features Isner with Maureen "Mo" Miller, who teaches 7th grade Science, PLTW Energy & Environment at George Washington Middle School. Below right, Gas & Oil Museum Executive Director Senta Goudy accepts the GO-WV donation.



Second day of Winter Meeting featured outstanding presentations

Lloyd Jackson was joined by his wife Trina and son Ryan in person, while his son L.G. and daughter-in-law Stephanie joined virtually, as he received the 2023 Gunslinger Award for his lifetime of contributions to the natural gas and oil industry, as well as to the State of West Virginia.



Rusty Hutson, Sr., presented his namesake award, the 2023 Rusty Hutson, Sr. Heritage Award, to Ike Morris for exemplary service and commitment to the industry and community. Morris was joined by his wife Sue, son Doug and Hutson.

At right, all Gunslingers attending the Winter Meeting are shown. Back row, from left, Dennis Xander, George Patterson, Doug Malcolm, Mike McCown and Don Nestor. Front row, from left, David Haney, Scott Freshwater and Mike Ross.



Ike Morris presented the 2023 Rusty S. Hutson, Sr. Heritage Award

The Rusty Hutson, Sr., Heritage Award, sponsored by Diversified Energy and Apex Pipeline, was first presented to its namesake at the 2022 GO-WV Winter Meeting. The Heritage Award is presented for exemplary service and commitment to the oil and gas industry, promoting civic engagement and fostering strong relationships between the industry and local communities.

This year's recipient meets the spirit of this award in so many ways.

I. L. "Ike" Morris is the owner of Waco Oil & Gas Co., Inc. While Morris arrived in Glenville in the early 1960's, he incorporated Waco in 1975. Waco continues to be a successful oil and gas operation in West Virginia, employing approximately 70 area residents and currently operates Waco Foods LLC which owns the Glenville, Grantsville and Craigsville Foodlands. He has also ventured into coal mining, stone quarries, fitness center, restaurant, lounge, automatic car wash and commercial and residential real estate through the years. He is very active in land, minerals and timber throughout the state of West Virginia.

In addition to overseeing his own businesses, Morris is a member of the First Baptist Church of Glenville. He is a former Board member of United Bank, Alliance Petroleum Corp. in Canton, Ohio, the West Virginia Oil and Gas Commission, and past president of the Glenville Golf Club. He was honored as the 1994 West Virginia Oil & Gas Man of the Year, the 25th Annual Honorary Italian Man of the Year at the WV Italian Heritage Festival and was also named Gilmer Countian of the Year.

As a local businessman and philanthropist, Morris and his family serve both Glenville State College and Gilmer County communities through their active support and generous financial gifts.

Morris serves as a Partner in Education with Gilmer County High School, contributes to various other education and philanthropic endeavors and provided the funds for the installation of artificial turf and other improvements at the Glenville



Above, Rusty Hutson, Sr. presents the Heritage Award bearing his name to 2023 recipient I. L. "Ike" Morris during the GO-WV Winter Meeting.

State College football stadium, now named Morris Stadium. His generosity extends to academics as well. He assisted with the establishment of the Accounting Textbook Scholarship, and has contributed to numerous projects throughout the campus, including the Waco Center. In 2022, the Morris family provided a \$500,000 matching grant to the Glenville State University Foundation for their annual Day of Giving for academic scholarships.

The Morris family constructed the Sue Morris Sports Complex, which provides state-of-the-art sports facilities for softball and baseball teams, which boasts of artificial turf on one baseball and two softball fields, practice fields, a stage area, fire pit and campsites to promote sporting events for all ages. His generosity and continued support of Gilmer County can be seen in many aspects through the area.

Morris, a resident of Glenville, WV is married to Sue Morris. They are the proud parents of two children, Doug and Shelly, and have three grandchildren, Ian Morris, Jordan Morris and Hannah DeMarino. They have two great-grand children, Arianna Hope and Mia Grace.

Lloyd Jackson honored as 2023 Gunslinger Award recipient

During an IOGA Strategic Planning Retreat in 1991, the job of the Board of Directors was described as “taking a bunch of gunslingers and turning them into a posse.”

In 1993, the IOGAWV Board of Directors initiated a distinctive service award, named the Gunslinger Award, to recognize individuals who make unique contributions to the well being of the West Virginia natural gas and oil industry over an extended period of time.

It has been my humble honor to receive this award in 2018, and now it’s my absolute privilege to present the award to the 2023 recipient.

The members of the West Virginia natural gas and oil industry are a hard driving bunch of entrepreneurs who have survived hard times and prospered in sometimes harsh economic environments. In many cases they have had to subordinate their natural instincts as hard driving leaders to be effective in the trade association environment. The twenty-eight past winners of the Gunslinger Award have done just that, and this year’s winner is no exception.

This year’s recipient has devoted countless hours and worked diligently on behalf of our industry and this state throughout his lifetime, always putting others before himself, showcasing his Gunslinger spirit time and time again.

An attorney and businessman, he led his family’s oil and natural gas production and well servicing business, an industry in which he and his family have been involved in for more than a century.

Educated in West Virginia public schools, he graduated Phi Beta Kappa from West Virginia University with a degree in political science, then served as editor-in-chief of the Law Review and graduated Order of the Coif from the WVU College of Law.



These remarks from Scott Freshwater, shown left above, preceded the presentation of the 2023 Gunslinger Award to Lloyd Jackson.

He served as six years as Prosecuting Attorney of Lincoln County and as a state senator for 12 years, during which time he wrote legislation for both the PROMISE Scholarship and the Comprehensive Early Childhood Legislation, among other bills.

He has served as a board member or officer of the Claude Worthington Benedum Foundation Board of Trustees, Vision Shared West Virginia, WVONGA, Energize West Virginia, Premier Bank and Premier Financial Bancorp, and on the Advisory Board of the Clay Center for the Arts and Sciences of West Virginia. He was named the 1997 Oil and Gas Man and of the Year and, most recently, WVU’s 2022 “Most Loyal Alumni Mountaineer.”

Jackson and his wife Trina have two sons, L.G. and Ryan.

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such relatively permanent waters” (i.e., adjacent wetlands). Justice Anthony Kennedy, however, advanced a broader interpretation of WOTUS in his concurring opinion, which was based on the concept of a “significant nexus,” meaning that wetlands should be considered as WOTUS “if the wetlands, either alone or in combination with similarly situated lands in the region, significantly affect the chemical, physical, and biological integrity of other covered water.”

President Biden’s new definition directly quotes and codifies these tests as regulations that may be relied upon to support a WOTUS determination. Publication of this definition, at this time, is likely a preemptive move by the Agencies in advance of the Supreme Court’s impending decision in *Sackett v. EPA*, a case in which the Court is considering “the proper test for determining whether wetlands are ‘waters of the United States.’” Some have speculated that the U. S. Supreme Court’s opinion may support a more narrow interpretation of WOTUS than is currently being implemented

by the Agencies. If true, this inconsistency would create even more uncertainty in identifying WOTUS.

While this new WOTUS definition may not, conceptually, be a significant change to how the Agencies regulate streams and wetlands, the new definition could expand how the Agencies evaluate whether a wetland is “adjacent” to a WOTUS and whether a waterbody will “significantly affect” a WOTUS, both of which would support federal jurisdiction of the stream/wetland. The preamble to the new definition includes lengthy discussion regarding adjacent wetlands. In addition, the new definition of “significantly affect” enumerates five factors to be assessed and five functions to be considered in evaluating whether a potentially unregulated water will have a “material influence” on a traditionally navigable water. Factors include distance from the traditionally navigable water, hydrologic factors and climatological variables. Functions include contribution of flow and retention and attenuation of runoff. Both the factors and the functions are broad and open to interpretation, which could lead to the Agencies asserting jurisdiction over more waterbodies.

The new definition also codifies that the effect of the potentially regulated water must be evaluated “alone or in combination with similarly situated waters in the region,” which will likely broaden how the Agencies evaluate the potential regulation of ephemeral and isolated waterbodies.

Consistent with President Obama’s Clean Water Rule and President Trump’s Navigable Waters Protection Rule, the new WOTUS definition has already been challenged in the U.S. District Court of the Southern District of Texas by Texas and 18 industry groups, including the American Petroleum Institute, claiming that the new definition is “unworkable” and in conflict with the CWA. These challenges may result in the stay or vacatur of the new definition. If this occurs, the Agencies may, again, revert back to the current definition of WOTUS.

Babst Calland will continue to follow these and other Clean Water Act developments. If you have any questions about these developments, contact Lisa Bruderly at 412-394-6495 or lbruderly@babstcalland.com.

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for over 40 years. The IHSMakit study showed a cracker built in the Shale Crescent USA will have a 4 times greater profit than one built on the Gulf Coast. This is true for other types of facilities. The SCUSA region is more profitable primarily by eliminating transportation costs. The Shell ethane cracker at Monaca, PA is now in operation. TCL will be using butane.

Scott was instrumental helping to get the SCU-SA-IHSMakit study to TCL management and introducing them to Shale Crescent USA. SCUSA has met routinely with TCL over the past 5 years. We are thrilled to have them coming to West Virginia. TCL has hired local contractors and some employees. Ultimately, they will have 50 employees in phase one. TCL will be producing products using regional energy and natural gas liquids to sell primarily to U.S. customers. TCL will have a low carbon footprint by using the latest technology and eliminating over 20,000 miles of ocean transportation by producing their products in the SCUSA instead of shipping them from India made with OPEC oil.

Before a company makes the decision to come to a specific state or site, they must first decide to come to our region. The IHSMakit-SCUSA study information and the supporting Shale Crescent USA context of the data helps companies to decide to choose our region over the Gulf Coast or China. West Virginia, Ohio and Pennsylvania then compete with each other for prospective companies. The WVDO did a great job of closing the deal and bringing TCL to WV. This is a big win for the WVDO and encourages other companies to come to West Virginia. Wins like this help the natural gas industry by creating demand for natural gas and natural gas liquids.

Because of the pandemic, Americans understand how many products we import. They want to see manufacturing and jobs it creates come back to the USA. They want a secure dependable supply for products. The recent SCUSA-Jobs Ohio study shows manufacturing in the USA using American energy and selling to U.S. consumers is more profitable than manufacturing products in China and shipping them to the USA. It is good for U.S. consumers, has a lower carbon footprint since ocean transportation of energy and product is eliminated and benefits the local natural gas and

oil industry by increasing demand for product and reducing transportation costs.

TCL and others will benefit from all of these advantages. The jobs are real. This is the start of something big.

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and water supply) residential and commercial development, forestry, military operations, and mining projects.

The 60-day extension is intended to prevent confusion and disruption for federal agencies in the implementation by providing time to finalize guidance and tools that are under development and communicate with stakeholders to minimize

project delays. While the extension is an unusually positive step by USFWS, it is inadequate to allow entities impacted by the final rule time to comply with the as yet undefined additional regulatory requirements.

If you have questions, please contact Mark Clark at MClark@Spilmanlaw.com, Joseph Unger at JUnger@Spilmanlaw.com, or Dave Yaussy at DYaussy@Spilmanlaw.com.

Burd's Nest*Continued from page 4*

tax valuation rules, AST's, the budget, multiple taxing scenarios and much more.

Another "Stitch in Time"

Please allow me to inform you that, barring any unforeseen circumstances, I will be having total left knee replacement surgery on Thursday, February 2. This knee was originally severely injured on August 12, 1978, while playing baseball. Two days later I spent over seven hours on the operating table repairing the MCL and ACL ligaments, my meniscus and grafting muscles to add long-term protection to the knee ligaments. All this was followed by seven weeks in a hip-to-toe cast—oh, what fun!! LOL! My placing

importance on getting my knee repaired as soon as possible then, rather than wait, gave me another 44.5 years of productive use. However, the time is now to get it replaced.

All this said, the GO-WV lobbying team is and will be extremely active in sourcing and tracking legislation of material importance to all of you as members and the examples shown above are but a few of the many bills and issues we are following. It is my plan to be actively engaged every day from home following the legislative and association activities on-line and through communicating with the "GO-WV Team". Questions on any of these or other legislative initiatives can be directed to me or the GO-WV office.

FERC 2022 review*Continued from page 5*

tificate, FERC required it to remedy deficiencies in its application that GO-WV pointed out in its comments and required Big Dog to file its contracts with the LDCs in the form of a special rate schedule available for review by the public. That filing will provide rate transparency that is critical to the rates Big Dog will charge to other shippers. FERC also ruled that its actions in granting the limited jurisdiction certificate to Big Dog did not affect the West Virginia Public Service Commission's jurisdiction over the pipelines.

In July of 2022, GO-WV filed a letter of Charlie Burd supporting Mountain Valley Pipeline's request for additional time to construct its interstate pipeline and FERC granted the extension to enable MVP to secure other federal permits. FERC's second extension is being challenged again in the court of appeals.

Finally, on December 31, 2022, Chairman Rich-

ard Glick's term at FERC ended and in early January President Biden designated Commissioner Willie Phillips as Chairman, leaving FERC with only four members for the time being. Rumored candidates to fill Glick's seat include current FERC general counsel Matthew Christansen and Rick Kessler, a senior advisor to Democrats on the House Energy and Commerce Committee. In addition, Commissioner James Danly's term expires in June and the President could re-nominate or replace him with another Republican. The President's nominees must be considered by the Senate Energy and Natural Resources Committee, chaired by Senator Manchin, and confirmed by the Senate. In the past, where there were two open seats, nominees have been paired together for easier confirmation.

As a nod to Casey Stengel, I'll make no predictions.



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Ad Sizes	Full page 2 columns (7" wide x 9.5" deep)	\$1,600.00/mo	\$1,500.00/mo	\$1,400.00/mo
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	Half page (horizontal) 2 columns (7" wide x 4.5" deep)	\$1,000.00/mo	\$900.00/mo	\$800.00/mo
	Quarter page 1 column (4 5/8" wide x 3" deep)	\$600.00/mo	\$500.00/mo	\$400.00/mo
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Ads can be run each month throughout the year or in any combination of months you choose. Please note there is a price break when you commit to a longer contract. Changes to your ad copy or cancellations can be made during the duration of the contract, but must be submitted 30 days prior to the next publication. (i.e, February 1st for the March issue). Please complete the information requested below and return this page, with payment, to **GO-WV Newsletter, GO-WV, 300 Summers Street Suite 820, Charleston, WV 25301**; email dslaughter@gowv.com. Ads must be paid in full by check or credit card prior to publication. Please call Diane Slaughter at (304) 984-0308 to discuss these options.



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