

# NEXUS

CAPLA 

Canadian Association of Petroleum Land Administration

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Manage Your Priorities Like a President  
CAPLA Certification**

Fall 2019

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Kathryn Payne  
President



Mike Flynn  
Executive Director

# President & Executive Director's Message

## Introducing the Electronic Land Files (ELF) Taskforce! A dedicated group of professionals with experience in the digitization journey

Greetings and welcome to the Fall edition of Nexus! The focus of this article is to introduce you to the Electronic Land Files (ELF) Taskforce. You may not be aware, but this group has been diligently (and quietly) working away on how our membership can understand your organization's current level of digital maturity.

### Backdrop

During our CAPLA 25th Anniversary celebration back in April, the event organizers put together a wonderful slideshow of CAPLA accomplishments and achievements over the years. One of the slides harkens back to when CAPLA officially launched their "own Home page" back in 1995. This generated some chuckles in the crowd because a web presence is such common place now, however back in the day, it was a major technological step forward for CAPLA, opening up new possibilities to communicate and interact with our membership and each other.



There have been many other technological advancements over the years which have become essential to Land Administrators and the complicated jobs you do. There is one field of innovation in particular which has been around for many years, but is just lately starting to make serious inroads into our particular segment of the oil and gas value chain: Digitization. .

## We Love our Paper!!

Petroleum land analysts spend a lot of time surrounded by paper. Many companies have rooms filled with boxes, that are filled with files, that are filled with paper that pass through many hands. When those rooms fill up, they pay other companies to store (and eventually destroy) the contents in a separate location. Prior to new digitization technologies, this abundance of paper was an accepted reality of your chosen occupation. However, I think we can all agree that digitization is not merely a passing fad, but an essential component to any business looking to grow.



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## Industry Acceptance

A Gartner survey of 388 CEOs suggest they're beginning to grasp how important digital business is to their growth and customer relationships. Here are some of the findings:

- 31% of CEOs recognized surveyed IT-related initiatives as a top three priority in 2017.
- 41% of CEOs surveyed have only started digital business transformation.
- Just under 50% of CEOs haven't began their digital transformation journey.

## Where Do I Even Start?

The last bullet point above is an important statistic. Even though digitization is recognized as necessary to support leaders and organizational governance, culture and employee readiness, many companies are simply overwhelmed at where to even start. For this reason, CAPLA formed the Electronic Land Files (ELF) Taskforce.

## What is the ELF Taskforce?

The ELF taskforce is made up of CAPLA volunteers who have professional expertise and passion for the digital transformation process. They have come together to create guidelines and considerations with regards to electronic land files.

The following volunteers currently sit on the ELF Taskforce:

Mike Flynn	CAPLA	Executive Director
Deb Watson	Independent	Co-Chair
Tracey Stock	T. S. Professional Corporation	Co-Chair/ Legal
Kari Whipple	CAPLA	Admin
Myles Pirie	Encana	Member
Zen (Zenwill) Sequeira	Imperial Oil	Member
Vanda Gagnier	Shell Canada Limited	Member
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Sherry Batke	Subsidium Services	Member
Melanie Storey	ARC Resources Ltd.	Member
Carley Rupert	Crescent Point Energy	Member
Sabrina Van Gastel	Ember Resources	Member
Tiffany Fink	NEXEN CNOC	Member

## Mandate and Responsibilities

To ELF mandate is to develop guidelines and considerations with regards to electronic land files.

- Strategies to support industry acceptance, application, and management of:
  - (i) electronic files,
  - (ii) electronic service of documents, and
  - (iii) electronic generation of documents, including how documents are mechanically or digitally signed and sealed.
- To communicate the importance of land asset management.
- To elevate the profile of land asset management.

## What have the Elves (as I call the Taskforce members) been up to?

Beginning in early 2018, the ELF Taskforce has met 13 times. These meetings have included several important inputs from the volunteers as well as that from 7 different vendors who are active in the field and Alberta Land Titles. The group has also toured other company facilities and shared their own digital transformation stories with their fellow elves. Finally we have conducted a survey of the membership in order to determine their digital maturity.

## Next Steps

All of this valuable information has been gathered and the Taskforce will now focus on developing the materials for a comprehensive education and communication roll-out early in 2020. In closing, this is a very exciting project and one which I hope you will find to be a worthy CAPLA initiative.

# Water Access and Diversion in Alberta

By Andrew Midgett and Elizabeth Hamilton of  
Husky Oil Operations Limited



*Water Transfer*

When one thinks about water, a vital part of everyone's life, you may think of a bottle – containing a product that comes from the tap when it is turned on, or maybe your favorite swimming spot; an item that is readily available in most of Alberta with our large rivers and lakes.

Within the Oil & Gas industry, mainly focusing on the unconventional resource development plays throughout western Canada, water is a vital product that is being used to help producers successfully drill and complete wells in a cost-effective manner. With drilling operations always using fresh water to drill at a bare minimum of the surface hole until such time that they have safely drilled below the basic ground water protection depths, and completions operations using it as a product to convey sand that will be pumped into extremely tight formations allowing hydrocarbon to flow to the well bore and up the production casing, all in an effort to support the lifestyle that we all know and love.

The products from these developments are used by everyone throughout the developed world. Everything from consumer items such as medicine, cosmetics and cleaning products, to essentials like natural gas to heat our homes and offices, or fuel to aid with transportation needs throughout the world.

With the northern climate such as in Alberta, the alternative to heat our buildings if this hydrocarbon was not available would necessitate the use of alternative heat sources such as wood or coal which would drastically affect our air quality with the sheer number of people living in our communities.

To accommodate for the increased demand for the product (Water):

Historically with vertically drilled wells drilling into conventional formations, fracturing operations were not required as the hydrocarbon in the formations would freely flow to the well bore and subsequently up the production casing. If a completions operation was required on a vertical well due to the amount of contact with the formation being so limited, only small amounts of water and sand were required to gain production and as such, the demand for water resources was very small. Subsequently, large numbers of wells were required in relatively close proximity to each other to meet the desired production level in an area which is needed to meet the production profiles, or to cost effectively operate the local production plant.

It was not until the significant technological advancements in the development of horizontal drilling and stages completions technologies that the industry saw a significant increase in demand for water in support of these new well types.

In an effort to develop these new horizontal wells compliantly and economically, water has been identified as the desired product when compared to other medians available in the space. When compared to the alternatives and trying to balance the company's social license to operate, liability, air quality emissions regulations and public safety concerns, and in efforts to balance the company environmental net affects, locally sourced water has been identified as the product of choice. When evaluating potential sources, the closest water source is generally the cheapest source with the lowest carbon footprint associated to transportation and retention requirements. But each location is to have an independent evaluation pertaining to the water supply rates, source type, seasonality of flow, regulatory requirements or limitations, retention onsite, sand loading, and the required down hole pump rates required to successfully complete the target formations.

Hydraulic fracturing (fracking) can use multiple different products to carry sand into the formation such as liquid propane, light oil, or nitrogen. As volumes of these alternative products required to frac horizontal wells increases, their feasibility is limited due to the sheer cost to transport the product to each location and store onsite, not to mention the safety concerns and liabilities when dealing with some of these alternative substances. The answer to most of the issues and concerns tabled by producers is the use of water. However, this raises a magnitude of other items that need to be managed including ownership of access to waterbodies or dugouts and contact with the public during transportation operations - either along road sides or by users of the source that is being accessed for recreation, irrigation, or in support of their current lifestyle.

Generally speaking, one horizontal well can offset the production from 40 to 80 vertical wells when comparing the amount of contact with the producing formation. With a vertical well historically using 100-500m<sup>3</sup> of water for completions, it is dwarfed in comparison when a horizontal (Hz) well will require anywhere from 5,000 to 50,000m<sup>3</sup> of water for a single well. Additionally, multiple Hz wells can be placed on one site further reducing the overall footprint of the development or disturbance of surface soils or vegetation and reduce the interaction with additional landowners in comparison.



*Waterline Installation*

With this reduced land use and increased well counts per pad (from 1 well to 36 wells) it has become impossible to accommodate completion operations with the traditional trucking support system no matter the product used. This has forced operators to look at offsite storage sites, construction of large fresh water retention ponds, and/or pumping the water from further distances that can supply the required volumes - all in an effort to keep the required completion durations to a manageable number of days. Consequently, these activities increase the amount of the contact with the local communities, counties, 3rd party operators, utility owners, and associated landowners.

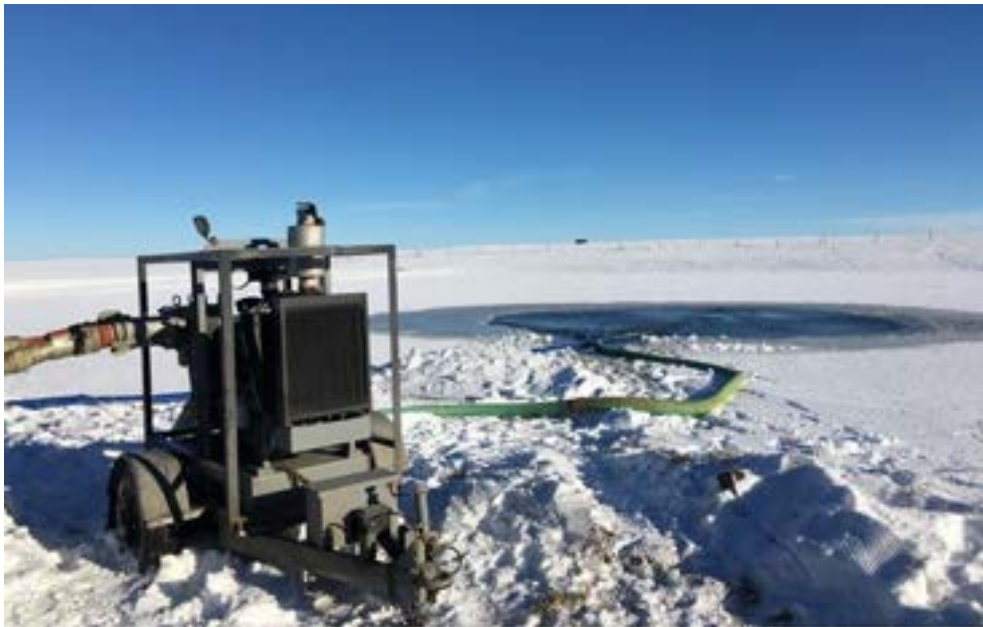
With some of the associated padsites requiring in excess of 1,500,000m<sup>3</sup> of water (54,000 truckload equivalence) completions operations can take several months to accomplish. This amount is in addition to the water requirements needed for set up and flowback transfer operations (fluid that flows back to the wellbore after fracturing is completed) that average between 10% to 50% additional volume (6,000 to 20,000 truck load equivalence) once the well is in production. Industry has moved forward with utilizing temporary hose or pipelines to transport the majority of these products stated above to reduce the number of trucks on the roads.

In Alberta, fresh water for completions operations is most often transferred from water source to site location via use of temporary pipelines. These temporary water transfer lines, which are usually made from materials such as polyurethane with woven fibers intermingling to increase strength, are now running longer and farther because of these larger completions operations.

If no one large water source can be found to support the anticipated completion program, multiple sources are needed. Each potential water source and the anticipated transfer route (depending on the surface location of the site) will require notification, access agreements, and regulatory approvals at each step throughout the operation.

Each natural water source will have a wide variance in diversion rates depending on season of operation, current water flow or elevation, current weather pattern, diversion activities undertaken by other companies in the area, as well as daily diversion requirements just to name a few. These considerations are all in addition to the logistics of the transportation and storage of water for the location requiring the completions operations.

Logistically, due to completions timelines and schedules, all while evaluating the lease size, operators are forced to find the water source or sources that can supply the volume – either natural or man-made (i.e. borrow pits, lakes, rivers, retention ponds). Due to the large volumes required onsite tank storage is not possible for 100% of the volume. Each source or potential source needs to be scouted, water samples collected, and volumetric measurements completed to ensure a water balance would meet or exceed the program requirements as engineered by the completions operation.



*Water Transfer*



*Water Transfer*

Water source flows are monitored via a number of water monitoring stations throughout Alberta where real time hydrometric data reports (when available) are utilized to calculate water availability to diversion. Otherwise manual measurements are needed if mandated by regulatory approvals at the point of diversion. Weather reports and wildlife restrictions may also dictate the access or diversion activities and depending on the fracturing schedule, it may be directed that portions of the diversion activities not coincide with the actual fracturing job as access limitations mandate. Whether or not the operator has water storage capacity available for the operation may also be a considering factor. The time differential between potential operations can also dictate that if a desired water source is too low and heavy rains are forecasted, completion operations and water diversion activities are strategically programed taking advantage of the additional water flows.

Once water source location and volumes requirements are determined, companies must apply for a Temporary Diversion Licence (TDL) through Alberta Energy Regulator (AER), the governing body that manages water resources for the oil and gas operators in Alberta and on behalf of the Alberta Environment and Parks (AEP) Water Act Temporary diversion license Electronic Review System (WATERS). A TDL can be valid for a term of up to one year. All water diverted from any source (once approved for completions operations) has multiple reporting requirements including but not limited to those outlined in Water Use Reporting (WURS) and Directive 059 for water used in hydraulic fracturing operations. The type of water used, water source location, temporary pipeline origin and termination points, name of water body accessed, or even the name of geological zone (if ground water is used) must be documented and reported, along with volumes and diversion rates (m<sup>3</sup> over time). The AER area field office is also required to be notified (via DDS system) at least 24 hours before commencing operations and notified again with 24 hours of completing operations when utilizing surface water transfer lines, whereas when an operator used trucks to transfer water no notification through DDS are required.

In Alberta, temporary water transfer lines are not licensed under Directive 056, therefore Participant Involvement requirements are not necessary. This is mainly due to the fact that the transfer line and associated infrastructure is in place for a short period of time and the fresh water being transferred is a non-hazardous substance. Also note, the AER is only responsible for managing water use specific to the Oil and Gas industry while all other usage such as municipal and agriculture uses are managed by the AEP.

Landowner consent is required where private land is utilized for placement of transfer lines. Temporary workspace and access agreements are signed with landowners and they are paid for temporary access for the use of land to lay transfer line and direct access to water sources that may be present on the property. Additional compensation may be justified if rutting occurs, damage to property, crop loss due to transfer routing and operations, or operations during various weather conditions. However, landowners are not paid for the water itself and as per the Water Act, water is considered to be property of the Crown. If consent cannot be obtained from a landowner an alternative source or line route needs to be located.

With respect to Crown land, each route and water source must still be evaluated and some of the disposition holders along the route of the source will need to grant consent. Crown authorization is also required for temporary water transfer lines where a Temporary Field Authorization be (TFA) must applied for through the AER.

Because the majority of geological formations in Alberta are relatively 'dry', meaning they produce low amounts of water both in the initial flowback and the production stages, most operators are 'water short' in the volumes needed for their development programs. Additionally, the current regulations only allow for transportation of produced water (water that is naturally present with the hydrocarbon) via water trucks or permanent pipeline.

With the ever-changing completions programs, this makes it very difficult to recycle and reuse all flowback or produced water throughout the region. However, the amount of flowback or produced water is often not substantial enough to meet the water demand or completions operations which results in both fresh water and produced water sources being utilized.

As the number of sources and duration of transfers increase, contact with the public from all aspects is greater leading to more potential contact points with the public and areas of concern with the diverse land usage throughout our actively used public or private lands. This in turn increases the potential for issues and concerns to arise. With the temporary water line sitting from 'point of diversion' to 'point of use' visible to the public throughout the life of the project, the possibility exists that individuals can voice concerns at any time.



*Temporary Water Storage Installation*

With much of the Alberta land base utilized for a variety of activities, potential problems regarding limiting access to farming activities, timber harvesting operations, construction operations, recreational users, drainage concerns, are just a few of the matters that could be concerning from the public who may or may not even be associated with the development or transfer line routing operations.

This does not even touch on individuals that may have concerns with oil and gas development in the area let alone the questions regarding hydraulic fracturing operations, even while meeting all the applicable regulatory requirements both on surface or subsurface activities.

To ensure we maintain a social licence to operate, a high regard for the potential impacts to the public must be at the forefront of each and every situation, ensuring the parties involved conduct the operations with the highest level of skill and professionalism.

**Sources:**

[Hydrometric data reports](#)

[Directive 059 –Drilling and Completion Data Submission](#)

[AER Bulletin 2014-38 Temporary Surface Water Pipelines](#)

[AER Water Act](#)



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# Manage Your Priorities Like A President

By Lisa Holden Rovers

In an ever-changing business world that requires leaders and professionals to be more agile, you likely strive to be more productive at work. This often looks like diving into the work that's in front of you and masterfully checking things off your to-do list. At the end of your work day, you feel like you've been busy, but haven't made much progress on moving your important goals forward. You're left wondering:

When bumping up against conflicting tasks, deadlines, and expectations, how do I decide what to do first?

How can I be more proactive with my important work priorities instead of reacting to what or who's in front of me?

There is a critical starting point for you to improve your productivity at work and become more proactive on how you master your priorities. That starting point is YOU! It requires you to become aware of how you currently use your time and manage your priorities, identify obstacles that get in the way, then implement strategies and new habits to support you.

I believe in learning from people who have experienced greater success. With this in mind, a prioritization tool that I share with my leadership clients to help them shift from being reactive to proactive is called the Eisenhower Matrix.

This tool was created by former US President Eisenhower, and popularized by Steven Covey in his book, *The 7 Habits of Highly Effective People*.

This matrix can help you evaluate your priorities and identify what you need to do first, what can wait awhile, what can others do, and what you can avoid altogether.

**MSA lessons we learned in Kindergarten:**

- + Share everything.
- + Play fair.
- + Don't hit people.
- + Clean up your own mess.
- + Don't take things that aren't yours.
- + Say you're sorry when you hurt somebody.
- + When you go out into the world, watch out for traffic, hold hands, and stick together.

*"All I Really Need to Know I Learned in Kindergarten"*  
by Robert Fulghum

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The basics of the Eisenhower Matrix is quite simple. You separate your priorities into four key areas by asking these four questions, then take the appropriate action:

1. What's important and urgent? Do these activities first.
2. What's important but not urgent? Schedule these activities.
3. What's urgent but not important? Delegate these activities where possible.
4. What's not urgent and not important? Develop strategies to eliminate these activities.

**“What's important is seldom urgent, and what's urgent is seldom important.”  
Dwight Eisenhower**

I want to help you immediately gain time to focus on your most important priorities. Therefore, this four part series begins with the end in mind by exploring ways to minimize or eliminate the not urgent and not important – those time-wasting activities that get in the way of your success.

The good news is, that these are the activities that are fully in your control to manage.

When you apply strategies to reduce or eliminate the following seven time-wasters, you will instantly up-level your productivity. You will also have more time available to improve how you manage your priorities within the other three areas of the Eisenhower Matrix.

**Distractions** – This is the most common time-waster that my leadership clients ask me to help them navigate. A big distraction that competes for your attention and reduces your concentration is notifications (e.g. email, instant messenger, social media and phone calls). These are easy to self-manage by turning them off, unless they are absolutely necessary to your work. Set specific times to check your emails and limit the time you spend on social media.

Procrastination – Do you ever catch yourself spending more time chit chatting at the coffee station or de-cluttering your office instead of getting important work done? Are you overwhelmed by where to start or unclear on what to do? If so, try breaking a project into smaller chunks. Set a timer for how long you want to work on it. Commit to not doing anything else until the task is done or you've run out of your scheduled time. Unsure what the smaller chunks may look like? Just start with the first step you know you need to do. The next step will reveal itself.

Multi-Tasking – Research continues to show that multi-tasking reduces work quality and slows you down. Want to test this one out yourself? Say your ABC's as fast as you can. Then, count from 1 to 26 as fast as you can. Now combine them together. Count A1, B2, C3, etc. Much slower, right? And, you likely messed up in a few places – even though you do know your ABC's and how to count to 26. The key lesson here is to focus on one thing until its done. Or, focus on it during the time you scheduled to work on it that day, and focus on nothing else during that time period.

Poor Use of Technology – Technology is a great working tool and an amazing time suck! It's up to you to determine the best use of technology for your work and set boundaries and limits for your personal use. Do you find yourself getting sucked into the vortex of social media? Delete the apps from your smart phone for a while. Are you distracted by newsletters or RSS feeds? Delete the ones that are unrelated to your goals. Set an auto-feature to move valuable newsletters to a reading folder that you review at a set date and time. Do you find yourself following a rabbit hole when doing web-based research? Set a time limit for your research to help keep you focused.



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Striving for Perfection – Are you overdoing the work that is really needed? I get it, you strive for continuous improvement or you've just come up with a really creative idea to incorporate into your presentation that's 99% done. The reality is that this extra effort may not add more value to the project results or may just slow things down. Reality is, that good enough, is good enough, at least for now. Get crystal clear on what's absolutely essential for your project or task. Deliver well on that, and be known as someone who gets the job done and improves the next iteration.

Unnecessary Meetings – Do you find yourself attending meetings that have no clear purpose, or only require your input for a few minutes of the meeting? Ask in advance for the purpose of the meeting and when your participation or input is most required in the meeting. Where possible, negotiate for another way to provide the information, send someone else who is better suited for the meeting, or set a specific time on the agenda for you to arrive and depart.

Unnecessary Work – Are you busy busting your butt on projects and tasks that are no longer relevant to your goals? Bust this time-waster by asking yourself for E.V.E.R.Y. task you do: "How is this relevant to my current goals?" This may also require you to bust-through a mindset that leaves you believing you are not relevant to your organization if a task is no longer relevant. Trust me, when you identify irrelevant work and offer to take on work that is more relevant, you increase your relevance to your team. If you struggle in this area, reread that last sentence once more to let its message truly sink in.

## TAKE ACTION CHALLENGE

Which one of these time-wasters resonates most with you? Pick one to focus on first. For that time-waster, what do you excel at and struggle with? What one thing will you do to reduce or eliminate that time-waster today? What will you do over the next two weeks? What will you do over the next month?

Are you a leader? Model the way by sharing your strategy with your team, and invite them to identify a time-waster that they want to work on. Create team accountability by checking everyone's progress at your next monthly team meeting.

Let me know what actions you take and how they increased your productivity and decreased your stress at work. I'd love to hear from you!

Lisa Holden Rovers is a certified leadership coach and award-winning human resources professional. In 2005, she founded Workplace Matters to help small and mid-sized organizations build a strong leadership culture so they can inspire high-performing teams and influence results. Lisa can be reached at:  
[info@workplacematters.ca](mailto:info@workplacematters.ca)



# CAPLA Certification - Important Announcement

On May 13th, the Board of Directors held a special meeting of the Board to exclusively discuss the certification program. Leading up to the meeting, information was reviewed from various sources:

- Background of the certification program
- Committee co-chairs' description of Committee efforts and accomplishments
- Feedback directly from Committee members
- CAPLA Membership Survey comments/suggestions

The Board took time to discuss the above in depth, and the topic was on the agenda for our annual planning/strategy session. The Board has decided to wind up the certification program in order to bring focus to other professional development initiatives that align better with CAPLA member needs in our current environment.

First though, it is important to the Board that you understand the rationale for this decision. It was based on a number of factors, including:

- The significant effort expended by the committee to develop and maintain certification questions.
- The low uptake: the total number of certifications since day one makes up only 7% of our current membership number; if we look at current active members who are certified, that number drops to 5.8%.
- The amount of time and energy required to pass the exam is not a reasonable ask in today's environment where people are already stretched thin.
- While there is personal satisfaction in passing the exam, companies are not placing value on certification to the extent that was originally intended.
- A CAPLA education philosophy that prioritizes 'just in time' and right-sized learning, with an aim to more innovative delivery.
- Recognition that land admin/analyst competencies are broader than the technical knowledge required to pass the exam.
- Certification program has been operating as a negative revenue stream for CAPLA due to the costs associated with having Olds College adjudicating the exams.

The Board is working with the current Co-Chairs of the Certification Committee in the following areas:

- Messaging to those who have passed the certification exam. It is only the program that is being shelved. The certification was hard-earned and remains an accomplishment to those members who successfully passed the exam.
- How to manage the candidates currently in the certification pipeline. Continue the current process, and how far out would this put us? Or, put a hard timeline on writing/passing?

The Board has tasked the current Certification Committee with items that are critical to the CAPLA vision of a land asset management community united in fellowship, skill development, education and innovation. In order to achieve this, the Committee will be rebranded and focused on professional development

The CAPLA Board would welcome any feedback you might have on this decision and new direction.



The graphic features the P2 Qbyte logo at the top left, with a blue and green geometric icon. Below it, the text reads "Trusted by Over 300 Canadian E&P Companies". To the right, three interlocking gears are shown: a blue gear labeled "Qbyte FM", a green gear labeled "Qbyte CS Land", and a grey gear labeled "Qbyte Metrix". At the bottom left, the "Better Together" logo is displayed. The bottom section of the graphic is a dark blue bar containing contact information: "Contact [bettertogether@p2energysolutions.com](mailto:bettertogether@p2energysolutions.com) for more information" and the website "WWW.P2ENERGYSOLUTIONS.COM/QBYTE".

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# Non-Assignable Trusts and the ARO Balancing Act

By CAPLA Contracts Committee

Western Canadian oil and gas companies have long used trust agreements to split legal and equitable title in their lands for a variety of reasons—from necessity where only part of a lease is sold or earned, to the practice of using land agents and keeping ownership in an area undisclosed publicly while an exploration program is underway. Typically, such trust agreements have been easily assignable, and many forms of trust agreements (including our committee's template, available here) <sup>1</sup> incorporate the 1993 CAPL Assignment Procedure. <sup>2</sup>

Due to recent industry developments, we have seen that some parties are moving away from easily assignable instruments and are using forms of trust agreements with a strict consent for assignment requirement, or otherwise fully non-assignable. Partially due to the focus on abandonment and reclamation obligations ("AROs") and the string of industry insolvencies in recent years, producers are increasingly concerned about certainty and the stability of contractual counterparties.

While such restrictions do assist in preventing a company from being stuck in an undesirable contractual relationship, these agreements pose other challenges, particularly in the transactional context.

## Trust Agreements

A trust is an equitable arrangement that allows two entities to share ownership rights in a single piece of otherwise indivisible property. A trust may arise whenever there is a split in the legal and beneficial ownership of property, and in these cases, one party may hold legal title and be obliged to manage the property for the benefit of another.<sup>3</sup> The party holding legal title is referred to as the trustee, while the party with beneficial title is referred to as the beneficiary.

Historically, trust agreements in the energy industry have typically existed in two contexts: between a producer (as beneficiary) and a land agent (as trustee) in a land purchase arrangement, or between two producer entities due to a split title issue in a lease (for example, following a farmout due to the Crown's restriction against partial lease transfers).

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Recently, we have been hearing that some land agents are no longer entering these agreements unless they are non-assignable, with legal title being promptly transferred to the producer, or otherwise cancelling the old agreements and entering into a new agreement with any applicable assignees.

For trust agreements between producers, certain industry participants have also been moving towards non-assignable forms of trust agreements, or otherwise imposing restrictions with respect to the financial capability of proposed assignees. Certainly, in the trust context, the identity of counterparties is important, as the unfulfilled obligations of a delinquent party may become the responsibility of the non-delinquent party, specifically because of the broad powers of the Alberta Energy Regulator with regards to AROs. In light of recent regulatory changes and related litigation, it is foreseeable that producers would be moving towards minimizing the risk of becoming liable for the obligations of their counterparties by attempting to maintain greater control and certainty over who can and cannot be party to their agreements. Restricting assignment achieves this goal, at the cost of sacrificing some flexibility.

For instance, a trustee would not want their trust agreement assigned to a financially unstable beneficiary, because if this new beneficiary becomes insolvent, the trustee may be required to pay for the beneficiary's outstanding AROs (despite possible recourse to the Orphan Well Fund). Similar transfers may be also concerning for beneficiaries, who may need to cautiously monitor such trustees and be ready to promptly act to secure their interest in case the trustee enters insolvency proceedings. Further, we are even aware of trust agreements going beyond this, for example including additional restrictive covenants such as requiring a prior written consent to any disposition of an interest or attempting to provide such agreements with restrictions akin to a lien, etc. As such, please do not assume that all trusts are created equally!

### Transactional Impacts

While making a trust agreement non-assignable removes the risk of a producer becoming responsible for the obligations of a delinquent party with whom it did not originally contract, you should consider the challenges that non-assignable trust agreements may pose in the context of a transaction. For example, consider in the context of an asset sale, where most agreements relating to an asset are assignable. If there is a value-critical lease that is subject to a non-assignable trust agreement, then it may be necessary for the respective trust agreement to be terminated, renegotiated and a new form executed upon closing. This makes a negotiation with a third party potentially a condition to close the transaction, which may be problematic from a timing and practical perspective if the third party is not amenable, which may mean that the transaction is delayed or otherwise hindered.

There is no clear answer as to whether trust agreements should be non-assignable, as it is ultimately a matter between contracting parties. Both assignable and non-assignable trust agreements have real driving reasons behind them—knowing the identity and capability of your counterparties weighed against the transactional impediments that come with restrictions on disposition. One method to reconcile these competing interests is to include a qualification on assignment rather than a strict restriction.

For example, allowing assignment only with the non-assigning party's prior written consent (with such consent not to be unreasonably withheld or at a party's sole discretion) could strike a more appropriate balance between achieving certainty in counterparties and facilitating transactions, although this still moves away from the Assignment Procedure.

The decision of whether to enter non-assignable trust agreements is a difficult one as they come with significant advantages and drawbacks. Ultimately, non-assignable trusts and the decision for producers to use them comes down to a balance between the value of knowing your counterparty against not unduly impeding transactions.

**Parties should seriously consider these consequences before entering into such agreements and should draft assignment provisions that reflect where on that scale their values fall.**

1. CAPLA resource
2. The 1993 Assignment Procedure is available here from the Canadian Association of Petroleum Landmen:  
[http://landman.ca/landman\\_support/Content/Industry%20Agreement%20September%201993.pdf](http://landman.ca/landman_support/Content/Industry%20Agreement%20September%201993.pdf)
3. Eileen E. Gillese, *The Law of Trusts*, 3rd Ed (Toronto: Irwin Law In., 2014) at 3.



# Review of the Alberta Energy Regulator

By Anthony Dawber

Earlier this month (Oct 3, 2019) myself & another CAPLA representative took part in the Review of the Alberta Energy Regulator. The focus of the review wasn't "red tape" but an assessment of the AER's mandate and systems operations.

The meeting was a follow up to the Regulatory Enhancement Project Task Force ("REP") recommendations made in 2010. In short, these are that the Alberta Government must:

- Establish a single hydrocarbon regulator;
- Meaningfully engage with stakeholders, Indigenous groups and the public;
- Adopt a risk approach to decision making;
- Measure and report performance.

The Review on the AER's progress since the REP recommendations was structured by these questions:

## AER Mandate

1. What are the areas of the mandate the AER covers well? How so?
2. What are the areas of the mandate the AER could improve upon?
3. Are there areas of work the AER does outside of its mandate?
4. Are there additional areas that should be addressed by the mandate?
5. Has the AER met its mandate?

## AER System Operations

1. Has the regulatory system evolved as the REP envisioned and recommended?
2. Are there areas of the original recommendations that were not adequately addressed when the AER was established?
3. Are there areas where AER and the regulatory system has shown significant progress?

The AER Review took place over a number of days, with each day dedicated to specific interest groups such as: Industry, Landowner Groups, Indigenous Groups, and Municipalities.

CAPLA was invited to a group that included municipal representatives, including:

Brian DeJong – Councillor, County of Newell  
Jamie Doyle, RPP, MCIP - Deputy CAO, Municipality of Wood Buffalo  
Tom Burton – Councillor, Municipal District of Greenview  
Bruce Beattie – Reeve, Mountain View  
Al Kemmere – President Rural Municipalities of Alberta ("RMA")  
Kathy Rooyakkers – Councillor, Wetaskiwin County  
Paul McLaughlin - Reeve, Ponoka County  
Tom McGee – Councillor, Drayton Valley

The following Government of Alberta representatives also attended:

Sonya Savage - Minister of Energy, MLA

Clint Neufeld - Advisor to Minister Savage

Martin Chamberlain – Senior Assistant Deputy Minister, Projects & Initiatives Advisory Office

It was interesting to hear the particular concerns of the municipalities, with whom CAPLA members often work with.

The following is a summary of their concerns regarding AER's mandate:

- The ERCB did a socio-economic assessment of projects, but the AER doesn't.
- Confusion regarding work camp permits and whether AER, AEP, or municipality approves them.
- The size and term of camps can leave them overlooked by local Emergency Response.
- Municipalities felt that they were the last to hear about projects, but should be the first.
- Municipalities are lumped in with stakeholder notification, but should be consulted, like a landowner.
- Environmental liabilities.
- Companies going into receivership and not paying taxes. The suggestion was to build credit-checks into LMR ratings, or to give AER a broader mandate to investigate a company's finances.
- A policy to freeze financial "bad actors" (similar to "global refer" for non-compliance).
- AER hasn't built public trust. Should be straightforward about building economy, not trying to represent people.
- Broaden the mandate to include Indigenous consultation. Remove consultation from companies and take a leadership role.
- Instead of paying for FNC, give a portion of land transactions to Aboriginal groups, like in B.C.
- Make being a synergy-group member a licencing requirement.

CAPLA expressed these concerns about the mandate:

- Socio-economic assessments aren't advised, since this is extra cost and time. AER shouldn't follow in the steps of a CERA style "gender-based analysis" ("GBA+") which includes socio-economic factors. Additionally, both REDA and Alberta's Land Use Framework takes account of socio-economic factors.
- The Public Lands Act and Regulations are out of date and a review of this legislation is in order. For example, Grazing Lease Holders can significantly delay projects.
- The SRB is moving too slowly.
- The ACO is not well integrated with the AER and Aboriginal groups can significantly delay projects.

The following is a summary of the municipalities concerns regarding AER's system-operations:

- The Play-based approach is appreciated, since it put municipalities and landowners at the beginning of the process.
- The Compliance Dashboard is useful.
- Communication between the field and head-office needs to improve.
- Field-staff are competent and should have more decision-making power, based on risk.
- AER needs Texas timelines with Alberta environmental protection.
- AER delivers policy but it needs to be able to communicate feedback on policies to the policy-makers.
- Use the current tools, which are already excellent. Allow for local Codes of Practices and standard. Don't invite more laws.
- Allow companies to get on with the job if they are compliance and not have to constantly seek approvals.

CAPLA expressed these concerns about systems-operations:

- The OneStop assessment rules for Public Lands and Well Licence applications aren't transparent and should be released like the previous assessment rules for OneStop.
- How the AER "risk-ranks" companies should be transparent.
- Approvals should be more risk based instead of lists of conditions that duplicate legislation.
- (The specific observations about processes, such as Renewals or PLAR Table errors, were "red-tape" issues that are to be addressed through that channel.)

In addition to the discussions on mandate and systems-operations, Minister Savage emphasized that the Review didn't imply that a complete overhaul of the AER is pending, but rather that the Government is seeking feedback to make improvements. (An NEB to CERA style change isn't planned). The Minister also highlighted that people's safety and the environment won't be compromised due to any changes that are made.

If CAPLA members have any further thoughts about AER systems-operations, such as administrative processes and regulations, comments can be directed toward this website: <https://www.alberta.ca/cut-red-tape.aspx>



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