

UPDATE

THE OFFICIAL PUBLICATION OF THE
UTAH PETROLEUM ASSOCIATION


ISSUE 2 2020

FUELING UTAH'S GROWTH AND PROSPERITY





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Welcome to our second edition of UPDATE! Reflecting on 2019, it was a year of intensive change for UPA and my first year as your President. Some highlights from 2019 include growing membership revenue 36% and adding a seat to our Executive Committee – welcome to CH4 Energy as a new Chairman's Circle member in 2020! We held a number of well attended and high-quality events including hosting Doug Benevento, EPA Associate Deputy Administrator, Greg Sopkin, EPA Region 8 Administrator, Brian Steed UDNR Executive Director, and Scott Baird UDEQ Executive Director. Our golf tournament was a sell-out success and the inaugural Uintah Basin Shootout received rave reviews and requests for a repeat in both the spring and fall of 2020.

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The concept of continuing professional development is not new. Professionals have long recognized the importance of gaining and maintaining knowledge, improving skills, and developing marketable qualities. That is why legal, engineering, landmen, accounting and similar fields have put continuing education (CE) requirements in place for continued licensing. While the terminology used may vary, Continuing Legal Education (CLEs) for the Utah State Bar versus Professional Development Units (PDUs) for professional engineers, the concept is similar. What is new today is the broad relevance of CE when it comes to everyone's success, regardless of their specific expertise, and even in situations where professional licensing is not a requirement. UPA understands the value of CE to our members and is excited to start offering CE opportunities.

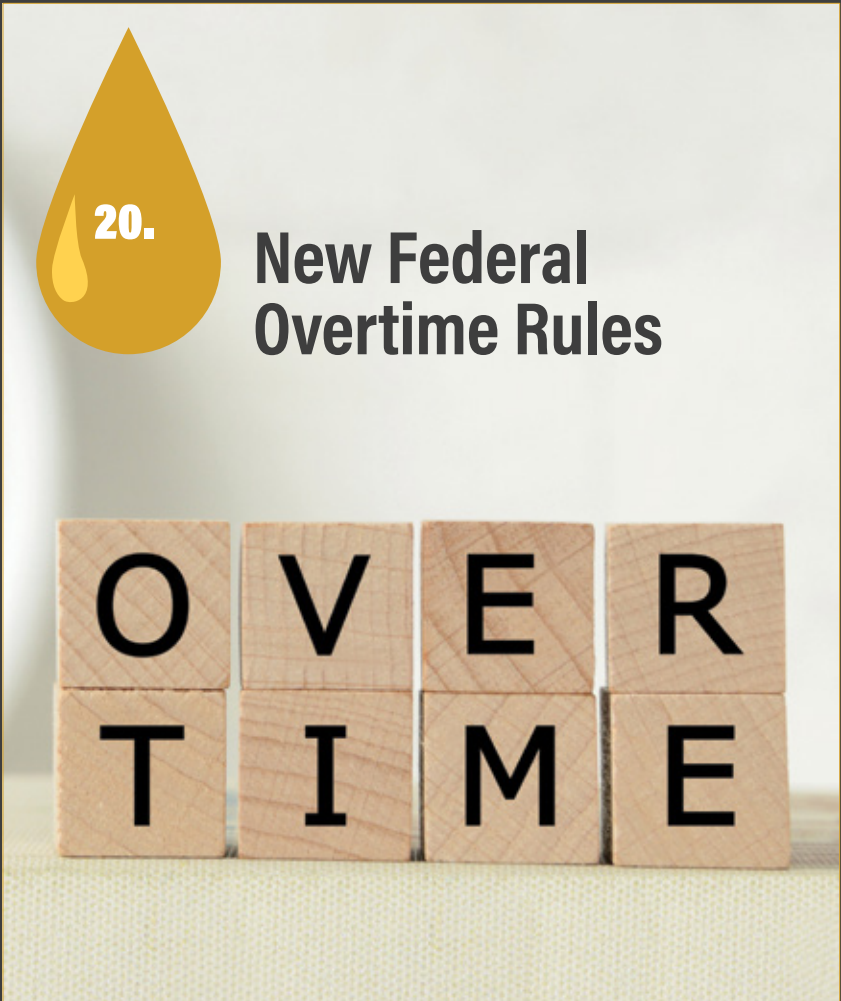
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THE LUNCH SERIES

UPA's Member Lunch & Learn events are offered to bring UPA Members together, learn about important issues facing Utah's petroleum industry, and provide an opportunity to directly engage with key leaders and decision makers.

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WHY YOU SHOULD PARTICIPATE IN YOUR ASSOCIATION'S EVENTS

Your time is valuable. So are your financial resources. That being the case, why should you invest the time and money in attending an association convention? Couldn't you have just as much impact professionally by participating in something like social media?

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Two prominent economists generally expect Utah's 2020 economy to continue to be strong.

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Most business owners probably already know about the new federal overtime rules. You've probably already implemented them; if you haven't, stop reading this article and take care of it.

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CHECK OUT THE UTAH PETROLEUM ASSOCIATION'S HEALTH PLANS!

The new UPA health and wellness plans can help your company avoid the ACA community rating and join a large group pool of petroleum companies to help control cost. Any UPA member that is directly involved in or supports the petroleum industry can participate in the program.

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Who We Are



Mission Statement

“ — The Utah Petroleum Association (UPA) is a Utah-based, statewide petroleum trade association representing companies involved in all aspects of Utah’s oil and gas industry. We exist to serve our member companies and advance the responsible development of Utah’s natural resources and manufacture of fuels that drive Utah’s economy. — ”

Executive Committee

- Spencer Kimball**, EOG (Chair)
- Kristen Lingley**, Encana (Vice Chair)
- Brad Shafer**, Marathon Petroleum
- Bobby Rolston**, Occidental Petroleum
- Kari Smith Gibson**, Conoco Phillips
- Blair Blackwell**, Chevron
- Mike Platz**, Silver Eagle Refining
- Greg Pulliam**, XTO Energy
- Mike Swanson**, Big West Oil
- Josh Jemente**, Holly Frontier
- Rodney Black**, CH4 Energy

UPA Administrative Staff & Office

-  **Rikki Hrenko-Browning**, *President*
-  **Jennette King**, *Administrative Assistant*



Welcome New Members

- CH4 Energy**, Member - Chairman Circle
- NOW CFO**, Member - Silver
- Encore Land Services, Inc.**, Member - Bronze
- Red Leaf Resources**, Member - Bronze
- Arch Energy Partners**, Member - Bronze
- Utah Safety Council**, Member - Bronze

President's Message

Rikki Hrenko-Browning



Dear UPA members and friends,

Welcome to our second edition of **UPDATE!** Reflecting on 2019, it was a year of intensive change for UPA and my first year as your President. Some highlights from 2019 include growing membership revenue 36% and adding a seat to our Executive Committee — welcome to CH4 Energy as a new Chairman's Circle member in 2020! We held a number of well-attended and high-quality events including hosting Doug Benevento, EPA Associate Deputy Administrator, Greg Sopkin, EPA Region 8 Administrator, Brian Steed UDNR Executive Director, and Scott Baird UDEQ Executive Director. Our golf tournament was a sell-out success and the inaugural Uintah Basin Shootout received rave reviews and requests for a repeat in both the spring and fall of 2020. We also rolled out supplemental health benefits for members; see page 24 for details.

2019 also saw the establishment of the UPA Political Action Committee (UPA PAC) to elevate UPA's position and strengthen our voice on state legislative issues. UPA was actively engaged in the massive tax reform undertaking starting from the 2019 Q1 legislative session, through the summer listening tour, in several one-on-ones, and through engagement on the final bill passed during a special session on December 12th. While the bill raises costs for motor and diesel fuel to support needed investments into our transportation infrastructure, the proposed tax on services evolved from what would have been a significant threat to our industry's financial health to a package that largely holds our industry harmless. In order to continue supporting and protecting Utah's oil and gas industry, please consider making a UPA PAC contribution in 2020.

With your backing, UPA's membership committee overhauled our benefits and dues structure to transition UPA's finances towards more sustainable long-term health. I recognize that there's never a good time to increase dues. It was only a year ago that I was sitting on the member side, but a more substantial and stable budget is crucial to UPA being able to better serve you. During this change, the membership committee personally reached out to the majority of members and highlighted the goal of bringing a strategic communication ability to the Association. We're making solid progress towards that goal thanks to your support. UPA has also recently joined the Domestic Energy Producers Alliance (DEPA) as a collaborating association and engages regularly with the other state, regional and national trades to share best practices, lessons learned and common narrative resources.

Looking to the year ahead, we are excited to shake up our annual meeting in January at Sundance Resort and have an exciting line up of speakers. Look for a recap of the event in our next edition. My focus for 2020 is to grow our public relations and community outreach strategy. We need to thoughtfully engage with communities along the Wasatch Front and the Uintah Basin to keep our supporters armed and to proactively, rather than defensively, get our message out. I'm excited to continue to grow membership and keep Utah friendly to the oil and gas industry.

I'm proud of our progress over the last year and primed to continue advancing UPA to better serve you. Change is often difficult but well worth the journey. Thanks to all of you for embarking on this journey of change with me and together drive a thriving oil and gas industry.

I hope that you had a joyous and peaceful holiday season and that you are off to a newly energized and prosperous new year! 💧

Incoming Chair **Spencer Kimball**

How did you become part of the petroleum industry? Did you always aspire to be part of this industry?

I began my career with an oil and gas trade association, similar to UPA, in Denver and quickly fell in love with the industry. Since college, I've aspired to work in the world of public policy, and in my opinion there's nothing more exciting in the policy arena than energy and oil and natural gas.

What are your plans as Chair?

This is an exciting time for the Association and I'm honored to serve as Chairman in 2020. This year I plan to support UPA President Rikki-Hrenko Browning as she represents our members on many key pursuits, including a bold new communications strategy, several critical agency rulemakings, a legislative session that will likely see several high-profile bills, and important Uinta Basin-specific issues including air quality and infrastructure.

Describe your education background. What did you study?

I studied political science and history at Southern Methodist University in Dallas, Texas and am about to begin Master's program focused on global energy management at the University of Colorado Denver Business School.

Are there any specific individuals that had a major impact on your career?

There are too many to name, but I've been extremely fortunate to work with incredible people and mentors at EOG and during my time working at Western Energy Alliance and the House Committee on Natural Resources.

What is the most rewarding part of your career?

Being part of an industry that tackles extraordinarily complex problems with smart, innovative solutions. In addition, I'm passionate about the pursuit of public policies that adequately balance responsible production and economic activity with safety and protection of the environment.

What do you think will be some of the dominant trends within the petroleum industry in the next 5-10 years?

I believe the industry will continue to become more efficient, cut costs, and continue to innovate technologically to operate smarter and more safely. EOG is a leader in real-time data capture and analysis, actively integrates information technology into our day-to-day operations, and continues to craft new tools that empower our decision-makers with the latest and best data.



What is the biggest impact of being a UPA member? What makes it beneficial?

Beyond the typical benefits like networking opportunities and issue advocacy, the organization is blessed with outstanding leadership. UPA is unique among oil and gas trade groups in that it represents upstream, midstream, and downstream sectors of the industry. Thankfully, the organization is in great hands with UPA President Rikki Hrenko-Browning, who does an outstanding job balancing the needs and interests of those sectors through strategic thinking, coalition-building, and exceptional management and leadership skills.

If you look back at your professional life, what would be three things that you have learned, that you would pass onto a younger member looking at the petroleum industry as a career?

Constantly ask questions, even if you think they're dumb; don't be afraid to offer ideas that seem unconventional; and learn everything you can about other facets of our industry, even if not directly related to your role.

What makes EOG a great place to work?

Our culture, which I believe makes us unique to many of our peers. EOG's motto is "pleased, but not satisfied," which perfectly describes our corporate culture that allows for challenging conventional ways of thinking and pursuing innovation in everything we do.

Describe EOG's profile in Utah?

EOG has been active in the State for many years and is currently Utah's second largest natural gas producer, according to the Division of Oil, Gas, and Mining.

What is your favorite way to spend your free time? Any unusual hobbies?

I spend my free time playing golf, snowboarding, fly-fishing, but mostly trying to keep up with my two sons.

Tell us about your family.

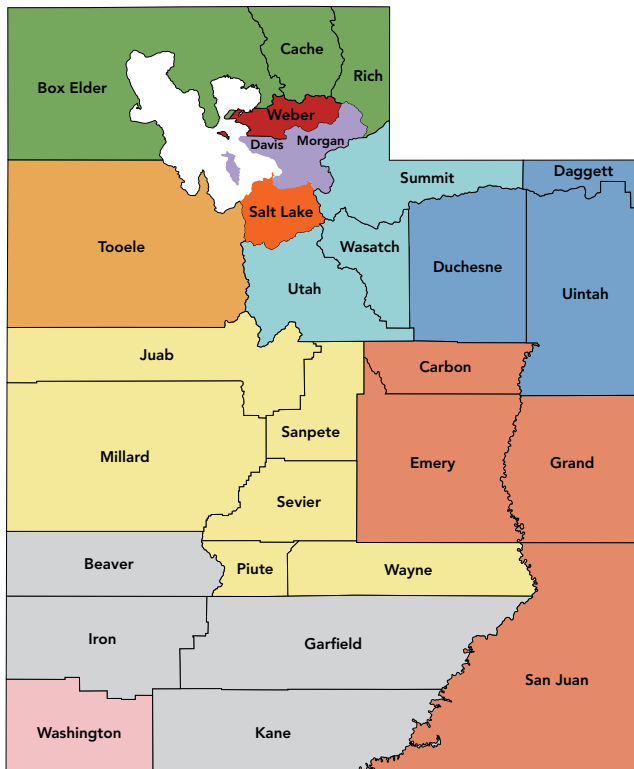
I am married to my wife, Emily, and have two sons, Hank (4) and Cooper (2). 🍷

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Downstream Updates

As in 2019, air quality issues, both PM and ozone will continue to be a point of focus this year. Implementation of the new sales tax on diesel and gasoline is on the horizon and also likely to be accompanied by some uncertainty and unknowns. Expect updates on both topics as we move through the year.

It has already been a busy start to the year for our downstream members with two major federal regulatory changes coming into effect as of January 1, 2020. Both the new IMO 2020 and Tier 3 fuel standards promise significant emission reductions and air quality improvements.

Starting closer to home, as of January 1, 2020 all five of our Utah refineries now need to comply with Tier 3 requirements. Tier 3 is a set of fuel and vehicle standards adopted by the Environmental Protection Agency (EPA) to reduce soot, smog and other types of vehicle tailpipe emissions. In order to meet the Tier 3 national standard, Utah refineries can either produce fuel that averages 10 PPM sulfur or less over a one-year period and across all their facilities, or they can purchase sulfur credits from another refiner who is producing less than 10 PPM sulfur.

Voluntary commitments of some Utah refiners to produce this low sulfur fuel here as opposed to at another facility is an important strategy to help reduce tailpipe emissions locally.

Three of the state's five refineries are producing Tier 3 fuels here, rather than utilizing other methods to comply, such as averaging or purchasing credits. Several refineries have made multimillion dollar investments to produce Tier 3 along with other significant air quality improvements.

While EPA has said that no state would benefit more from Tier 3 gasoline and emissions standards than Utah, Utah cannot set its own gasoline or vehicle emissions standards. Utah's Tier 3 benefit is so significant because vehicles account for approximately half of all the emissions contributing to air quality challenges along the Wasatch Front. In fact, vehicles are the largest source of pollution during winter inversions and the summer ozone season.

In addition to lower sulfur fuel, the second half of the equation is the vehicle fleet. EPA is also requiring much cleaner vehicles to be phased in from model year 2017 through model year 2025. The DAQ estimates that Tier 3 fuel will immediately reduce vehicle emissions in our existing fleet by roughly 7-11%. Once fully implemented, Tier 3 gasoline burned in a Tier 3 vehicle results on average in an 80% reduction in tailpipe emissions, the equivalent of taking 4 out of 5 cars off Utah's roads. The combined Tier 3 vehicle and fuel standards

will reduce volatile organic compounds (VOC) and nitrogen oxides (NOx) emissions by 80% on a fleet average basis and PM emissions by 70% on a per vehicle basis, according to EPA.

Looking ahead, the other Utah refiners may also start producing T3 fuels locally and we could see an expansion in the retailers where T3 fuels will be available. We all have a role to play in improving air quality and we're happy to be part of the solution!

Shifting from vehicle fuels to marine fuels, IMO 2020, the International Maritime Organization's new global shipping regulations are also now going into effect. These new standards are a win-win for the US — they will drive down global sulfur emission and will also strengthen our economy and further solidify the U.S. as a global energy leader.

These regulations have been in the works for more than a decade, with the 171 IMO member states agreeing to a schedule of gradual marine fuel sulfur reductions from 3.5% to 0.5% by January 1, 2020. Analysts have predicted that foreign refiners failed to prepare and lack the capability to produce the newly required low-sulfur "sweet" fuel. The U.S., on the other hand, invested in capital intensive upgrades, and, coupled with booming production from the shale revolution, is well postured to capture significant gains from the new standards.

Previous studies have shown Utah's energy industry to be worth \$5.3 billion and to be responsible for providing about \$543 million in state and local revenues. The Ute and Navajo tribes benefit from royalties and taxes, and the industry also annually provides the majority of the state's Permanent School Fund through SITLA, in 2018 providing \$33.3M, or 54% of the fund — the largest single contributor. The state benefits even from production on federal acreage, receiving anywhere from 42-45% of federal oil and gas royalty payments. Additionally, the industry creates up to 16,500 high paying jobs, primarily in rural Utah.

With the global demand for light, sweet oil, and Utah's abundant untapped low sulfur crude resources, we stand well positioned to see increased production and move up from the current place of the 10th largest oil producing state in the U.S.. This growing interest in the state's low sulfur fuels could even drive investments into the infrastructure needed to connect our abundant resources to growing global markets. The oil and gas industry is already a powerhouse for the state's economy. IMO 2020 stands to further stoke demand for Utah's massive low sulfur fuel resources while reducing sulfur emissions worldwide. 💧

Upstream Updates

While our downstream colleagues are starting out the new year with two freshly implemented federal regulations, our upstream segment is bracing for a number of likely, but uncertain, state and federal regulatory changes.

In November 2019, a legislative Performance Audit of Utah's Oil and Gas Program was released. While UPA acknowledges that a number of the audit findings are indeed troubling, digging deeper into the audit there are also some key findings that deserve a broader perspective. One of the more prominent audit headlines was a stat of 105 unresolved noncompliant issues (note that there wasn't a discussion as to what percent of these posed a likely environmental or safety risk versus how many were for minor infractions). Considering that the Oil and Gas Program oversees 16,141 active wells and 28 waste disposal facilities, only 0.65% of the facilities DOGM (Division of Oil Gas and Mining) oversees had unresolved noncompliant issues, most of which were subsequently resolved in a matter of weeks. Headlines also noted that six problem operators are expected to cost taxpayers nearly \$1 million in remediation, plugging, and reclamation costs. However, the report later goes on to note that after potential bond forfeitures, the remaining liability transferred to the state is estimated to be \$450 thousand. While UPA shares concerns about any unfunded liabilities to the state, particularly if these are not related to historical sites that didn't previously require bonding, the \$450 thousand would be funded from the Conservation Fund collected by the Division directly from operators, not from taxpayers. In 2018 alone, operators paid nearly \$3.5 million into the Conservation Fund, in addition to the nearly \$30 million paid in severance tax to the general fund.

Regardless, we support the Division and anticipate working cooperatively to provide robust solutions to the problems identified. We look forward to the Division providing more details on the changes ahead, but in addition to staff changes, DOGM has also noted that there will be changes to inspections and training for staff and operators, changes to bonding regulations, and likely legislation in 2020, to give the Division the authority to levy fines. While it is premature for UPA to take a position on these changes as details have not yet been provided, we do support DOGM having adequate regulatory "teeth." A regulator that has the resources and enforcement tools necessary to carry out its mission is in our long-term best interest.

Separate from the audit and any resulting changes, after several years of working together with the Division and Board of Oil, Gas and Mining, we anticipate completion of a forced polling rule in 2020. We are also actively working with the Division on horizontal drilling rules as well as operatorship rules. The

“ — A regulator that has the resources and enforcement tools necessary to carry out its mission is in our long-term best interest. — ”

2020 year is sure to be another busy regulatory year with the Division and Board of Oil, Gas and Mining!

The end of 2019 also saw a flourish of activity with EPA that will likely result in multiple upstream rulemakings in 2020. On December 19, EPA announced temporarily expanding its voluntary self-audit and disclosure program for upstream oil and natural gas facilities by giving existing owners the opportunity to find, correct, and self-disclose Clean Air Act violations. EPA is making this self-audit program available to existing owners of oil and natural gas exploration and production facilities for a limited period of 12 months to accelerate compliance. Incentive programs like this one provide reduced penalties for a limited time.

On December 16th, EPA also announced that the Region 8 Administrator signed the proposed rule entitled "Federal Implementation Plan for Managing Emissions from Oil and Natural Gas Sources on Indian Country Lands Within the Uintah and Ouray Indian Reservation in Utah." This proposed rule would control emissions from new, modified, and existing oil and natural gas facilities on the Uintah & Ouray (U&O) Indian Reservation to address air quality in the Uinta Basin Ozone Nonattainment Area in northeast Utah. The proposed "U&O FIP" would also continue the streamlined approach to authorize new and modified minor oil and natural gas production sources on the Reservation. As of the date of this publication the rule has not yet been posted in the Federal Register, but EPA is planning on a 60 day comment period and UPA will collaborate with Western Energy Alliance to provide substantive comments. We also anticipate that EPA may take action in 2020 on establishing a voluntary emission reduction credit (ERC) bank for ozone precursors. The rule would apply to stationary sources on Indian country lands within the Uintah and Ouray Indian Reservation following the feedback received from their May 2019 Advanced Notice of Proposed Rulemaking (ANPR). UPA is in discussions with EPA Region 8 to schedule a Q1 2020 meeting with Administrator Sopkin — members should look for details to come soon! 💧

The Legislature Has Accomplished Major Tax Reform: Now It's Time to Do Right by Utah's Forgotten Economic Region

Not everyone knows why Utah's economic outlook has been ranked first in the nation 12 years running, the best place to do business, highest job growth, lowest unemployment, and repeatedly #1 on the Family Prosperity Index.

While many factors have affected the positive outcomes which produced these rankings, informed analysts recognize the influence of wise policies advanced by Utah's Legislature and its Governors over the past three decades. But the highest recognition is owed to the voters of Utah who have elected so many courageous and visionary policymakers with the strength to put principle above popularity, work tirelessly to create popularity for sound principles, and enact the best policies based on those principles.

During the debate over Utah's 2007 Tax Reform package and after its passage, naysayers complained about the process and claimed the changes were done to primarily benefit businesses and the rich. After the changes took effect, those naysayers became silent, recognizing that the changes benefited everyone. When the housing bubble burst that December creating the Great Recession, Utah was the least affected and enjoyed the fastest recovery, in large part due to those tax reforms and the rainy-day funds which had been set aside from ending balances over the years.

In the recent Special Session of the Utah Legislature, Governor Herbert and the Legislature showed similar wisdom and courage in the face of loud accusers as they modernized Utah's tax code. These improvements will set the state on sound footing for future economic growth and revenue stability, ensuring funding for education, transportation and other essential services.

I have great confidence in the voters of Utah. I believe they will reject both the ill-informed petition organizers and opportunistic candidates who are seeking to repeal this important landmark legislation.

Essential Next Steps

Utah's enviable business tax and regulatory climate, which has made Utah one of the best states to raise a family, was created by visionary policymakers. Through the 2018 Single Sales Factor legislation, Utah has made its corporate tax system competitive with states which don't impose income taxes. The state has also systematically eliminated tax pyramiding by removing sales taxes from business inputs in nearly all major NAICS code categories.

However, the state still imposes punitive sales taxes on oil & gas exploration and production and non-renewable electric generation. Unfortunately, this has had an adverse effect on the eastern part of the state, most prominently the Uintah Basin counties of Duchesne and Uintah.

The Basin is infamous for the boom and bust cycles which have resulted from the crude oil price rollercoaster. Former Senator Kevin Van Tassell describes the \$300,000 boom cycle homes built to house the families benefiting from the high-paying oil field jobs, only to see those families walk away from their mortgages when the next bust cycle hits, leaving the homes to be sold off for as little as one-tenth of their original value.

Years ago, the coal counties of Carbon, Emery and Sevier faced similar threats when the lower cost of producing strip-mined coal in Wyoming and Montana threatened the price competitiveness of Utah's deep-mined coal.

Among other actions, the Utah Legislature removed sales taxes on all of the equipment needed to employ mine workers and rejected attempts to impose severance taxes on coal, ensuring the economic viability of families in Utah's coal-dependent counties. This mining sales tax exemption also ensures the international competitiveness of Utah's metal mining operations such as Rio Tinto's Kennecott mine and smelter operation, ensuring the continuation of these high-paying jobs. Non-metal mines continue to thrive throughout the state supported by the mining sales tax exemption.

The Legislature's decision to exempt solar and wind power generation equipment from sales taxes has led to billions of dollars of investment in Utah wind and solar farms, vastly increasing the property tax base of schools and local governments in Beaver and Millard Counties.

Data centers, which can contain as much as \$1 billion investment or more in a single site, and require constant replacement of data storage equipment, benefit from the Utah Legislature's sales tax exemption on this equipment. The location of these facilities in the Beehive State adds tremendous new property tax base for schools and local governments without adding to school enrollments due to the low number of employees necessary to operate the facilities.

Passage of the 1995 manufacturing sales tax exemption ensured that Micron's initial investment of more than \$1 billion in Lehi and ultimately led to Utah's Silicon Slopes tech boom. The three-year-life manufacturing exemption in 2018 ensures that manufacturers in northern Utah continue to provide jobs for Utah families.

Time to End Tax Pyramiding for Oil & Gas and Electrical Generation

Unfortunately, the oil and gas operations in the Uintah Basin and other oil and gas counties such as San Juan continue to pay punitive sales taxes on all of their machinery and materials consumed in the process, including sand. This sales tax combined with a hefty severance tax makes capital investment less attractive and leaves the region victim of ongoing boom and bust cycles.

Plans are being laid for a railroad to Carbon County to connect the Uintah Basin with the rest of the nation and make its high quality waxy crude available to other markets. Once the rail link is combined with the elimination of the sales tax on machinery and materials, it is estimated that the current 80,000 barrel a day production could be increased to 400,000 barrels a day. This would ensure jobs and economic viability of the region and would mitigate the boom and bust cycles of the past.

As Utah coal-fired power plants in Carbon, Emery, and Millard Counties are replaced by clean fuel natural gas generation it is important that Utah eliminates the punitive sales tax on that machinery and equipment.

Fortunately, the Legislature will be considering legislation to correct these tax flaws in the 2020 General Session of the Legislature. Senator Ron Winterton's (Roosevelt) bill to eliminate sales taxes on inputs for oil and gas, electrical generation and pipelines has already been approved by the Public Utilities Interim Committee as a committee bill. This long overdue legislation has the full support of your Taxpayers Association. 💧

By Utah Tax Payers Association, Tax Watchdog, Reprinted with Permission

The Case for Continuing Professional Development

The concept of continuing professional development is not new. Professionals have long recognized the importance of gaining and maintaining knowledge, improving skills, and developing marketable qualities. That is why legal, engineering, landmen, accounting and similar fields have put continuing education (CE) requirements in place for continued licensing. While the terminology used may vary, Continuing Legal Education (CLE) for the Utah State Bar versus Professional Development Units (PDU) for professional engineers, the concept is similar. What is new today is the broad relevance of CE when it comes to everyone's success, regardless of their specific expertise, and even in situations where professional licensing is not a requirement. UPA understands the value of CE to our members and is excited to start offering CE opportunities.

CE has always been part of good professional practice, but that professionalism relies increasingly on an ability to respond quickly to changing market conditions, to client requirements, and to the influences of government policies. Even though we are all being encouraged to innovate, doing so often demands mastering new skills. As a result, having access to CE throughout your professional career is increasingly central to your professional and organizational success. Many professions, even those without the tradition of licensing requirements, are choosing to embrace the concept of CE because their leaders understand that learning under the guidance of one or more experts will almost certainly save them time, money, and effort.

The following sections describe the top reasons for CE in more detail.

Professional Competence

Some experts estimate that the knowledge gained in some degree courses has an average useful lifespan of about four years. While this will vary according to the discipline, it does nevertheless highlight the increasing need to maintain an active interest in changing legislation, technology, and operational procedures. You will get left behind if you stand still.

Suppose you want to increase your managerial responsibilities. In that case, the need to acquire new skills and knowledge in a rapidly changing work environment becomes even more acute. CE helps you to stay interested and interesting. Although experience is a great teacher, it does not give you exposure to anything you haven't done before. Focused CE opens you up to new knowledge, new possibilities, and new skill areas. CE ensures that you will be more aware of the changing trends and directions in your profession as you work to stay relevant.

Changing Expectations of Members and Consumers

The development of a more affluent consumer society combined with access to the Internet has also resulted in a better informed and more sophisticated public. One consequence of this trend is that people expect a higher duty of care and level of service from their professional advisors than they did in the past. They can, and do, double-check information on the internet all the time to help them determine whether you are trustworthy. Compared with the access to knowledge everyone enjoys, the skills you acquired during your initial training period or during formal classroom education may not completely equip you for the role you are now expected to take. Your ability to provide tailored customer service and to prevent information overload by identifying just the essentials is crucial. CE can help you do both. It ensures that you maintain and enhance the knowledge and skills you need to deliver a high level of personal service to your customers, clients, and the community. CE can lead to increased public confidence in individual professionals and in entire professions.



Suppose you want to increase your managerial responsibilities. UPA's Lunch Series and our Annual Meeting will now offer various CE opportunities.



Increasing Knowledge Decreases Risk

The professions are at much higher risk from claims of negligence than they were in the past. In response, insurance companies have raised the premiums for professional indemnity (PI) insurance in recent years. Although CE may not totally eliminate PI claims, it does make clear the potential cost of ignorance. The cost of CE will always be less expensive than getting taken to court. Some evidence is also emerging that insurance companies may be willing to slightly reduce PI premiums when professional staff have access to a structured CE program.

Raising the Bar

The fact that so many organizations emphasize quality assurance, continuous improvement, and workplace ethics means that CE has increased relevance in these areas as well. Quality assurance and continuous improvement both require education and training. Additionally, ethics are often taught in continuing professional development classes that teach participants how to recognize and do the right thing.

Safeguarding Standards of Competency

One of the primary roles of professional bodies is to safeguard standards of competence. In a society that is driven by consumer demand, industry standards have had to rise dramatically in recent years. CE has a key role to play in the communication of agreed standards and in ensuring that members comply with specified procedures. CE ensures that your capabilities keep pace with the current standards of others in the same field. CE also helps you continue to make a meaningful contribution to your team. As a result, you can be increasingly effective in the workplace. This assists you to advance in your career and move into new positions where you can lead, manage, influence, coach, and mentor others.

Increasing the Value of Employees and Organizations

The recent years have re-emphasized the highly competitive nature of modern business. Whether in the private sector or, increasingly, the privatized public or state sector, the competitive market edge consists of being partly or totally focused on client care, quality of service, and technological innovation.

Albert Einstein has been credited with saying, "We cannot solve our problems with the same thinking we used when we created them." To be effective at solving problems, organizations must invest in the development of people skills. Supporting CE is one way organizations can help people to develop these necessary skills.

UPA's Role in CE

UPA's Lunch Series and our Annual Meeting will now offer various CE opportunities and are one of the ways our association is providing industry educational opportunities to our members. We hope that you will take advantage of our offerings and to increase your industry knowledge and network with colleagues. 💧

The Lunch Series

UPA's Member Lunch & Learn events are offered to bring UPA Members together, learn about important issues facing Utah's petroleum industry, and provide an opportunity to directly engage with key leaders and decision makers.

The lunch series features topics related to both the upstream and downstream ends of the oil and gas industry as well as legislative, regulatory or political guest speakers. The events are open to all UPA members free of charge.

This past November, our members met and listened to presentations from Brian Steed, Executive Director of the Division of Natural Resources, and Scott Baird, Executive Director of the Department of Environmental Quality. Both Mr. Steed and Mr. Baird recently assumed their duties in their respective areas. 📌



Brian Steed
Executive Director, Division of Natural Resources



Scott Baird
Executive Director, Department of Environmental Quality

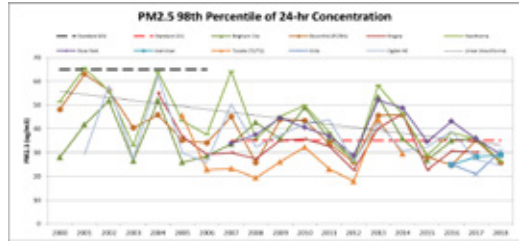
Thanks to our generous sponsors of this event:





Air Quality-PM 2.5

- Salt Lake City, Provo, and Logan areas have attained the standard



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Air Quality-PM 2.5

- Though we've met standard, not designated as "in attainment" ...yet
- UDAQ will submit maintenance plans and redesignation requests to EPA by December 2019
- Maintenance plans require modeling out 10 years and will include all current control measures to show that we can continue to maintain the standard
- Redesignation is important so that most stringent control measures do not have to be implemented—would require 5% reduction annually.

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Air Quality-Ozone

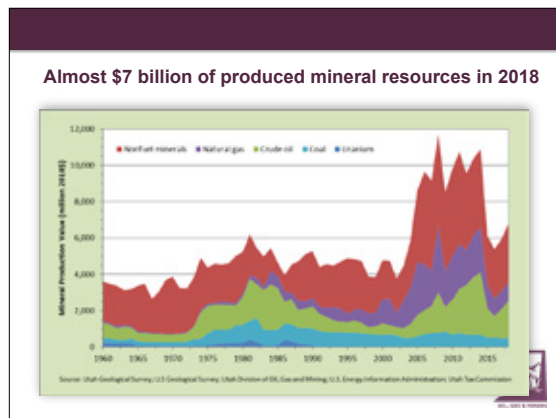
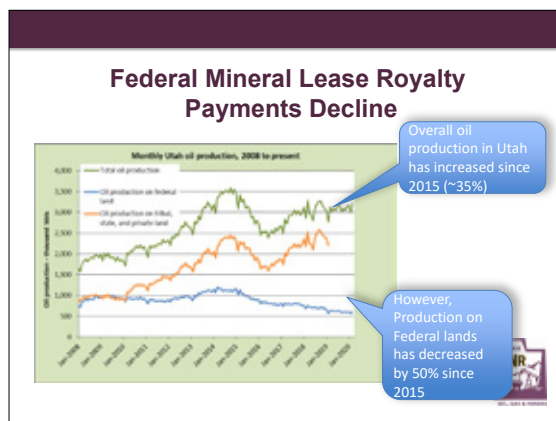
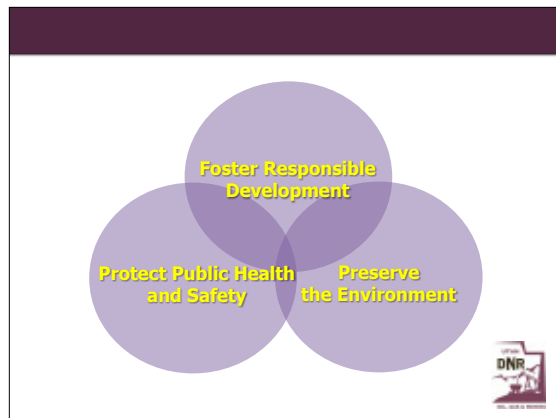
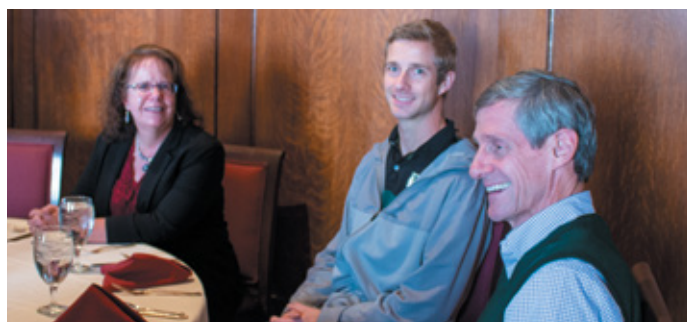
- In 2018, Wasatch front and Uintah Basin designated as "marginal" non attainment for the 2015 Ozone standard
 - Requires the following:
 - Emissions inventory (submit August 2020)
 - New Source Review Rules for sources over 100 tons per year (submit August 2021)
 - Reach attainment in 3 years
- Monitoring data indicate that Utah's three nonattainment areas are unlikely to attain the standard by 2021.

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Air Quality-Ozone

- If the nonattainment areas do not meet the standard by August 2021, EPA will bump from Marginal to Moderate.
 - The bump up triggers the requirement of a SIP that would be due to EPA by February 2023.
- SIP requirements include:
 - A 15% reduction of VOCs (an ozone precursor);
 - A vehicle Inspection and Maintenance Program for areas meeting the population threshold;
 - Reasonably Available Control Technology installed on all point sources greater than 100 tons of NOx or VOCs; and
 - Demonstration of attainment by August 2024

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- ### Ongoing Conversations & Interest
- Board of Oil, Gas and Mining rulemaking. Aggressive timeline.
 - Compulsory pooling
 - Horizontal drilling and spacing, operatorship of drilling units
 - Potential "bad actor" legislation. What is an appropriate balance?
 - Further State regulatory control.
 - Goal: one-stop shop for permitting and compliance
 - Devil is in the details
 - Uinta Basin rail line



Why You Should Participate in Your Association's Events

Your time is valuable. So are your financial resources. That being the case, why should you invest the time and money in attending an association convention? Couldn't you have just as much impact professionally by participating in something like social media?

Social media is important, of course, and doing it well can be vital to career development. But there is just no substitute for seeing people face-to-face and talking to them. Associations provide a valuable way to get you in a room with other people, learning from each other; the other resources they provide will strengthen you professionally as well. You would be surprised at the number and variety of resources that are available to you through an association membership.

Associations are also good insurance for staying in business. Approximately 85% of the businesses that fail are ones where the people who worked there didn't think associations were important. People really do need each other in order to succeed. Association membership can be one of the most important investments you can make professionally — and that goes double when economic times are hard.

The Pitch for Professional Development

The top reasons why convention attendance should be a must-do item on your list include the following:

- **Contacts, contacts, contacts:** Everyone talks about the importance of networking, but a lot of people don't understand what networking really is. It's a network of friendships and acquaintances, some strong, some weak, and it isn't something you lock in your desk and expect to keep fresh. If you know someone and never call them or have any regular contact with them, there's always a chance that your friendship will starve a slow and lonely death. More likely is that you will begin the slide away from each other. To thrive, any relationship will benefit from regular feeding. A cell phone call or a blog entry is better than nothing. But don't you want to raise the bar just a little? A convention is a great excuse for getting together. Share a lecture, a meal, a laugh. Done right, it will build you professionally. It might also be fun.
- **Feeding your brain:** How long can you expect to stay at the top of your field — or even just get there in the first place — if you don't ever put yourself in situations where you can get a lot of different information from a lot of different sources in a short period of time? There's a collective synergy that can only come to life when you have many competent, professional people all in the same room, ready to talk shop. Don't fool yourself: search engines can never replace personalized, expert information delivered in real time. You'll find out about trends, legislation, and important issues by becoming a member and actively choosing to participate.

“ — People really do need each other in order to succeed. — ”

The Game Plan

To get the most out of any convention, you need to start ahead of time.

- The first step is to identify the associations that will most benefit you, personally and professionally. Examine both regional and national options, and be thoughtful about joining. You will be better off joining one really good association than joining several of them and not having enough time for any of them. If you are a student, you are probably eligible for a discounted student membership. There's also usually a discount if you sign up for a multi-year membership.
- Do more than just pay your dues. You won't get the benefit of joining the association if you stop at giving it money. That's a little like buying something in a store and then just leaving it behind on the counter.
- Find out what conventions are being sponsored by the association that would best fit your professional needs. Most trade associations have an annual meeting, although the meeting schedule might be more frequent than that.
- Decide to attend something. Register in advance — it will generally save you money. If you have to travel to another city and will be staying overnight, there will usually be a recommended hotel. Stay there. The goal is to be immersed in the richest environment possible for networking. That won't happen in the hotel across the street or across town.
- Do the research. You want to get an idea of what the program will be so you can make the best use of your time. You should also read any available publications so you can figure out who the important players are, and what it is that people are currently involving themselves in. Figuring out where to spend the time might be a challenge; you may have to make some difficult choices. Which speakers will teach you the most? What subjects could have the most benefit for your life? Who are the most important people to meet?
- Focus on being more extroverted than usual. Arrive early, stay late, and look for opportunities to meet people. If you are shy and talking to strangers is hard for you to do, focus on trying to make it easier for other people to talk to you. Strangers don't have to stay strangers. Getting into a genuine conversation can happen with remarkable speed once you identify some common interests. At the same time, be polite, but make sure you continue to circulate. You will be in many different social situations

while you are at the convention. Each one is an opportunity for another new conversation.

- Pay attention to the professional information that is presented. Education is a privilege in all of its forms. The things you learn during a convention may change or enhance your career direction significantly.
- Bring business cards, and exchange them with other people. It's easier to reconnect later with someone if you do.
- Keep initial conversations light. The first time you talk to someone is probably not the time to talk about your childhood dreams and aspirations. Instead, ask questions about subjects that are of interest to you, such as finding out major employers in our field, ways to get involved, and skills to focus on for improvement.
- Take advantage of discounts and handouts. There may be product and service exhibits that would help you, and the convention cost may be lower than it would normally be.

After the Convention

The convention should continue to benefit you after you leave:

- Your association may offer professional services to members, such as help with finding a job. You may also find opportunities (especially for jobs) as a result of your access to directories and journals.
- Seasoned professionals may decide to mentor you.
- Put the knowledge you gained to work, and continue to collect more insight as you go along.
- Most important of all, look for service and leadership opportunities where you could benefit others, then make sure you give these opportunities your best efforts. You might end up writing and publishing articles, serving and eventually leading committees, influencing legislation, and becoming one of the must-meet attendees yourself. 💧



Day 1 - January 13th
UPA Reception
Redford Conference Center
5:00 PM to 7PM

Come join us for great food, drink and conversation at the Redford Conference Center at Utah's Sundance Resort. Take the opportunity to network with members and industry friends during this fun evening. Dress casual or come in your ski clothes. Dinner will be provided and a cash bar will be available.

Day 2 - January 14th

UPA Annual Meeting Agenda
 January 14, 2020 – Sundance Resort

8:00 a.m. Breakfast
Welcome: Rikki Hrenko-Browning, UPA President
Association Business and President's Report: Brad Shafer, Marathon – Outgoing UPA Chairman
 Spencer Kimball, EOG – Incoming UPA Chairman
 Rikki Hrenko-Browning – UPA President

8:30 a.m. Energy Communications Panel - How to Reset the Conversation on Energy
 Moderator – Blair Blackwell, Chevron

- o Matt Most, Encana: CAC Presentation – Coordinating Our Energy Message and Sharing Tools and Intel
- o Kevin Slagle, WSPA – Moving from Confrontation to Solutions, Community Partnerships
- o Don Thoren, AFPM – The “Empower” Employee Toolkit and Workforce Activation

9:45 a.m. Adjourn to Breakouts & Vendor Exhibits

Breakout A

10:00 a.m. Legislative Roundtable – Preview of the 2020 General Session and Other “Hot Topics”
 Moderator – Brad Shafer, Marathon

- o Representative Keven Stratton
- o Representative Casey Snider
- o Representative Kay Christofferson

11:00 a.m. Networking & Tradeshow Break

11:15 a.m. Panel – Tackling Air Quality and Climate Change Challenges
 Moderator – Ryan Clerico, Enefit

- o Michelle Bujdoso, Marathon– UPA and UMA Wasatch Front Ozone Efforts
- o Seth Lyman, USU – What Our Research Has Taught Us and What More We Need to Know
- o Matthew Todd, API – The Environmental Partnership, Real Progress in Addressing Climate Change and Methane

12:15 p.m. Adjourn to Keynote Luncheon

Breakout B

10:00 a.m. Safety, Security and Emergency Planning
 Facilitator – Spencer Kimball, EOG

- o 10:00-10:20: Jerry Parkstone, UOSH – Occupational Safety in the Oil and Gas Industry

- o 10:20-10:40: Matt Beaudry, Utah DPS – Resilience Planning and Preparedness in the Energy Industry
- o 10:40-11:00: Mark Lemery, DHS: CISA – Risk Mitigation Capabilities and Resources

11:00 a.m. Networking & Tradeshow Break

11:15 a.m. Potential Industry Disruptors
 Facilitator – Greg Pulliam, XTO

- o 11:15-11:35: Mark Hemphill, Rio Grande Pacific- Uintah Basin Railway project, Update and Implications
- o 11:35-11:55: Terry Horn, AUI/Woodstar Labs – Industrial Cybersecurity: A Culture Change
- o 11:55-12:15: Jennifer Michael, Chevron - Technology Innovations: Opportunities for the Industry

12:15 p.m. Adjourn to Keynote Luncheon

12:45 p.m. Keynote Luncheon – Jason Isaac, Life:Powered - Raising America's Energy IQ
 Energy powers everything we touch, providing light, warmth, and most of the products we use on a daily basis — yet the fossil fuel industry is vilified in the mainstream media. As access to reliable, affordable energy increases, nearly every measurement of human flourishing improves, from life expectancy and child mortality to education and economic freedom. Jason Isaac of the Life:Powered project will share persuasion tactics to effectively communicate how responsible production of energy will continue to make the world safer, our environment cleaner, and each and every citizen more prosperous.

1:45 p.m. Walk to Redford Center

Looking Beyond- Federal & Global Energy Policy and Politics

2:00 p.m. Senator Mike Lee Skype Address and Q&A

2:15 p.m. Jerry Simmons, DEPA – Some Things Everyone in the Oil and Gas Industry Should Know

3:00 p.m. Closing Keynote – Thomas Sansonetti, Holland & Hart, - Energy and Environmental Law and Policy Under the Trump Administration (and Beyond).
 Mr. Sansonetti joined Holland & Hart in 1993 and built a nationally recognized practice in natural resources and environmental law. Considered an expert in natural resources and environmental matters, Tom served as an Assistant Attorney General for the Environment and Natural Resources Division in the Department of Justice and also as the Solicitor at the Department of the Interior. Tom will share his views on energy policy under the Trump administration and what may lie ahead.

3:45-4:00 p.m. Closing

2020

Economic Forecast for 2020

Two prominent economists generally expect Utah's 2020 economy to continue to be strong. Natalie Gochnour, senior advisor for the Salt Lake Chamber and an associate dean for the David Eccles School of Business, University of Utah and Ken Simonson, Associated General Contractors of America weigh in.

Natalie Gochnour recently wrote an analysis that focused specifically on Utah. The main reason for Utah's strong economy is the construction industry, but she also saw factors that could change the situation.

Despite the strength of Utah's economy, the U.S. economy as a whole seems to be slowing down and might be headed toward a recession.

- The upcoming election for governor could go in unexpected directions because no one has the advantage of being an incumbent.
- Ken Simonson focused his analysis on the U.S. as a whole. Simonson pointed out that although the U.S. economy is expanding, the expansion is slower than it was.
- He sees volatility in consumer behavior, business confidence, and the stock market.
- Manufacturing data shows weakness, and the data for single-family housing and apartments is mixed.
- Economists are concerned about trade and the effect of slowing global growth, which increases the risk of recession.

A national recession would not surprise economists. Drawing on information from Moody's Analytics and the Bureau of Labor Statistics, Natalie Gochnour considered the following in her analysis of Utah's economy:

- The U.S. is currently going through the longest expansion in its history. There have been a dozen recessions since World War II. The first one started in 1945 and the last one was the Great Recession. The expansion since the Great Recession has already lasted 10 years, which is double the post-World War II average, but it could also continue into 2020 and 2021.
- Although the majority of the U.S. is expanding economically, Louisiana is at risk of recession and other states are currently recovering from recession: Connecticut, North Dakota, West Virginia, and Wyoming.
- It is important to realize that even in Utah, which is generally expanding, four counties have experienced a silent recession between July 2009 and July 2019: Beaver, Carbon, Emery and Piute. Sometimes you have to look at the individual counties as well as the state as a whole. Statewide, growth has been +36.3%, but that number hides the economic situation of these specific counties, which lost jobs instead of gaining them.
- Measured between October 2018 and October 2019, Utah had a 3.3% job-growth rate. That outperforms the U.S. job-growth rate, which is 1.4% for the same period.
- The unemployment rate in Utah is currently 2.7%. The national unemployment rate is 3.5%.

In general, Ken Simonson says that contractors are confident and busy. Most states are still hiring for construction jobs, although more slowly than they

were. People are spending in most categories, but the numbers haven't been adjusted for inflation. He sees three main concerns:

- Labor shortages that are being made worse by the current hostile U.S. immigration policy.
- Trade policies that increase the cost of materials and, as a consequence of that increased cost, reduce the demand for construction.
- The possibility of rising interest rates. Again, higher rates translate to decreased demand for projects that produce income for the construction industry. People don't build new homes they can't afford.

The Bureau of Labor Statistics listed the following Utah industries according to their individual job growth rates and the number of jobs created in the state between October 2018 and October 2019.

- Construction: 6.4% (6,900 jobs)
- Educational/health services: 4.6% (9,600 jobs)
- Financial activities: 2.9% (2,600 jobs)
- Government: 1.5% (3,800 jobs)
- Information: 5.1% (2,000 jobs)
- Leisure/hospitality service: 3.3% (5,000 jobs)
- Manufacturing: 2.4% (3,200 jobs)
- Natural Resources: 3.1% (300 jobs)
- Other services: 3.1% (1,300 jobs)
- Professional and business services: 5.1% (11,000)
- Trade/transportation/utilities: 1.9% (5,500 jobs)

As you can see, the percentage increase doesn't necessarily match the number of jobs generated. For example, the construction industry had the highest percentage growth at 6.4%, while professional and business services grew 5.1%, but there were 6,900 new jobs in construction versus 11,000 jobs in professional services.

The discrepancy occurs because comparing percentage growth to the actual number of jobs created isn't an apples-to-apples comparison. The percentage increase is for just that industry alone. As a result, construction grew 6.4%, outpacing every other industry in terms of its growth, but it did not have as many jobs to start with as some other industries, so the number of actual jobs created is lower than the number of jobs created in those other industries during the same period.

Clearly, however, there are plenty of construction jobs in Utah right now. What's the breakdown of the 6.4% increase in Utah construction jobs? According to the Bureau of Labor Statistics in October 2018 and October 2019:

- Jobs constructing buildings went from 22 thousand to 24.5 thousand, an increase of 11.4%.
- Heavy and civil engineering jobs went from 10.7 thousand to 11.4 thousand, which is up 6.5%.
- Jobs for specialty trade contractors went from 74.5 thousand to 78.2 thousand, or an increase of 5.0%.

- Total construction jobs were 107.2 thousand in October 2018 and 114.1 thousand in October 2019, for a total increase of 6.4%.

Compare that against the total Utah economy for the same period. The total number of jobs in October 2018 was 1,542.0 thousand. In October 2019 it was 1,593.2 thousand. That represents an increase of 3.3%. As a result of Utah's strong construction industry, the value of permit authorized construction in Utah, was \$4,748.2 million.

What is driving construction in Utah? It's population growth. Although the population is not growing as fast as it was in 2016, 2018 population growth was still strong, and net migration is positive.

What factors could endanger Utah's economy?

- A national recession, a manufacturing recession, and/or a global slowdown
- Continuing political disfunction on a federal level
- Federal policy errors
- Geopolitical problems such as a no-deal Brexit, political unrest in places like Hong Kong or the Middle East, and changes in oil prices
- Labor shortages
- Stock market corrections
- Trade war escalation

What causes any expansion to end? Natalie Gochnour has said it's a combination of vulnerability within the private economy and exposure to risk as a result of public policies. That's why the fact that the global policy uncertainty index, which is higher now than it has been since 1997, is a concern.

What were the specifics of Utah's Economic Forecast as of October 2019? The best numbers are bold, and the worst numbers are highlighted in red.

Category	2019 (%)	2020 (%)	2021 (%)
Job growth	2.8	2.3	1.5
Personal income	5.6	5.7	5.0
Unemployment rate	2.9	2.8	3.1
Taxable sales	4.4	5.2	5.0
Annual pay	3.7	4.2	4.0
Auto/truck sales	2.3	1.7	1.5

In short, 2020 looks like a good year, but 2021 probably won't be as good.

Ken Simonson had key points to watch in several different areas.

Roads, Transportation, and Sewer or Water

- The federal government won't increase infrastructure spending until 2021 or later, but states are acting by adding highway funding and toll projects.
- Transit construction is selective. For example, there are many airport projects, public and private, that are either new or ongoing.
- Spending on water and sewer or wastewater is at or near record levels, but long-term new funding is unlikely.
- The federal government has increased the amount of money available for conservation. The Corps of Engineers is having a hard time keeping up. It cannot award and manage additional projects fast enough.

Power and Energy, Manufacturing, Amusement, and Communication

- Solar and wind power efforts are growing. Court and regulatory delays are affecting oil and natural gas pipelines. Falling gas prices have discouraged companies from new drilling projects.

“ The unemployment rate in Utah is currently 2.7%. The national unemployment rate is 3.5%. ”

- Project cancellations will stall manufacturing construction because of the effect of tariffs, foreign retaliation, and a slowing global economy.
- Funding for local, state, and federal parks is continuing to erode. Big spending on amusement and recreation tends to be slow and irregular.
- As wireless firms build out 5G networks, their efforts could revive communication.

Education and Health Care

- The fact that property values are increasing for homes and commercial properties is supporting preK-12 projects that are being built with money from school district tax receipts and bond issues.
- Districts are spending more money on school reconstruction and expansion in cities and suburbs than on new schools in new subdivisions.
- University enrollment is decreasing and some small colleges are closing completely. Why the decrease? Fewer students are choosing to invest in a university education; in addition, there are fewer full-tuition foreign students.
- The stock market is affecting capital campaigns for college construction.
- Health care spending is being increasingly redirected from hospitals to doctors' offices and special-care stand-alone facilities such as hospice, rehab, surgery and urgent care.

Retail, Warehouse, Office, Hotel, and Data Centers

- Retail is turning toward mixed-use buildings and renovations. Massive numbers of stores are closing.
- E-commerce has meant increased warehouse growth, but trade wars have reduced shipment traffic in both directions.
- Instead of new suburban office parks, companies are building in cities or renovating existing buildings. Employees have smaller work spaces.
- Many hotels are being built, but the sector is extremely sensitive to rising interest rates.
- Data centers are a strong niche, but most are not reported separately. Instead, information about them is usually included in data about office totals.

Residential Spending

- People have money to buy homes because of low interest rates, increased income and wealth, but builders are having problems finding workers and getting permits.
- Multifamily occupancy rates and rents are level. Although some millennials are (slowly) moving to houses, that is being offset by seniors moving to apartments. There are more high-rises, and most multifamily construction is for rentals, not condos.
- Data is weak for construction additions and renovations, but it should closely track homebuying.

Construction Employment

- The two hottest construction markets between Sept. 2018 and Sept. 2019 were Ogden-Clearfield, Utah, at 6% (up 5% from the peak until September 2019), and Provo-Orem, Utah, at 4% (up 4% from the peak).
- Logan, Salt Lake City, and St. George are all down from the peak, but between Sept. 2018 and Sept. 2019, Logan grew 9%, Salt Lake City grew 2%, and St. George grew 5%. By Sept. 2019, Logan had lost 3% from its peak, Salt Lake City had lost 4% from its peak, and St. George had lost 9% from its peak. 📉

New Federal Overtime Rules



Most business owners probably already know about the new federal overtime rules. You've probably already implemented them; if you haven't, stop reading this article and take care of it.

The U.S. Department of Labor exists to benefit wage earners, people looking for jobs, and retirees in the U.S. Its mission also includes improving work conditions, making profitable business opportunities available, and ensuring that employees are given work-related rights and benefits.

After a failed attempt in 2016 by the U.S. District Court for the Eastern District of Texas to increase salary thresholds, the U.S. Department of Labor decided to gather information from people in 2017 and 2018. The response the department got made it plain that many people in the U.S. strongly supported the idea. As a result, after a long process of determining which changes should be made, the Wage and Hour Division of the U.S. Department of Labor announced its new overtime rule on Sept. 24, 2019. The rule, which is the first change in overtime regulations since 2004, went into effect Jan. 1, 2020, and is intended to give 1.3 million U.S. employees the option of overtime pay under the Fair Labor Standards Act (FLSA). The changes apply to companies of all sizes, large or small. The department made the following changes:

- The standard salary level below which full-time employees become eligible for overtime pay has been increased from \$455 per week to \$684 per week, or \$35,568 per year. (This is higher than the \$679 per week that was proposed March 7, 2019.) Eligibility depends on job duties, but this part of the change in rules should affect approximately 1.2 million employees.
- The total annual compensation level for highly compensated employees is now \$107,432 instead of \$100,000. This change will affect approximately 101,800 employees. The proposal on March 7, 2019, would have had a higher cap at \$147,414.
- Many companies currently use nondiscretionary bonuses and incentive payments, including commissions, as part of the annual salary package for employees. That portion is now limited to more than 10%. At least \$684 would have to be paid weekly on a salary or fee basis.
- Workers in U.S. territories and creative professionals in the movie industry who

special salary levels. These have now been revised, too.

The federal government takes an interest in whether someone is highly compensated because of the advantage their wages give them when considering benefits such as those associated with retirement. However, the IRS has a different definition for a highly compensated employee than the Department of Labor. According to the IRS, an employee is highly compensated when:

- They owned a business interest of more than 5% during the current year or the previous year.
- Their previous-year compensation for 2019 was \$125,000; in 2021 and after, their previous year compensation was \$130,000.
- They are in the top 20% of employees when ranked by compensation.

Because the last update took place more than 15 years ago, the Department of Labor has committed itself to review the salary threshold again on a more regular periodic basis. However, future changes still won't take place automatically. Salary thresholds will stay the same unless the Department of Labor acts to change them.

What didn't change? Overtime rules for the following careers stay the same:

- Firefighters
- Nurses
- Paramedics
- Police officers
- Some laborers, including those who work production lines and who have no management responsibilities

The job duties test is also staying the same. Employers can't determine whether an employee is exempt or not based on salary or job title alone. They also need to take into account job duties. Exemptions include the following types of employment:

- Administrative, meaning fields such as finance, HR and IT; it does not mean administrative assistants, who are usually nonexempt.
- Executive, meaning people whose primary job responsibility is managing employees. For those who live in California, an executive spends more than 50% of work time "exercising discretion and independent judgment."
- Learned professionals such as certified public accountants, lawyers, physicians, scientists and teachers.

- Creative professionals outside the movie industry who work independently and are engaged in an artistic and creative field.
- Outside sales, where "outside" means outside the employer's business location.

The increases that were approved were extremely moderate from an employer's point of view. The suggested changes in 2016 would have been bigger (\$913 per week, or \$47,476 per year) and would have mandated automatic increases every three years. The Department of Labor calculated its number by dividing salaries into percentages and selecting the 20th percentile as the point at which overtime requirements go away. This method is the same way the limits were calculated in 2004. It is not the way they were calculated in 2016, during President Obama's administration.

To determine whether the changes affect your employees, you will need to look at the numbers for any employees who did not have a salary exemption under the old rules. If they earn less than the minimum salary, then they need to track their hours and employers need to pay them overtime for working more than 40 hours per week.

Although you are allowed to calculate the hourly rate by either ignoring overtime or taking overtime into account, be cautious about including overtime when making hourly rate computations. The resulting number would have to be higher than the minimum wage, and frankly, your employees might not be happy about your making that decision.

Employers also need to consider any differences in rules for exempt employees versus nonexempt employees. More specifically, look at the following:

- Do you make a distinction about working from home if an employee is exempt rather than nonexempt?
- Are exempt employees allowed to set their schedules? Are nonexempt employees required to be at work at a specific time, such as 8 a.m.?

Someone who has had the liberty of being exempt is not going to appreciate being required to follow a different set of rules because of the reclassification.

Another important factor is where your business is located. States have to abide by federal law, of course, but they can also write laws that treat this particular federal law's requirements as a minimum, not a maximum. In California, companies

with fewer than 25 employees have to pay overtime to employees earning more than \$49,920. Companies with more than 25 employees have to pay overtime to employees earning more than \$54,080. Other states that have their different limits than the federal one include Alaska, Colorado, Maine and Nevada. New York not only has different rules for the state than the federal government; three of its counties also have different rules than the rules for the state as a whole. Utah, unsurprisingly, adopts the federal law and stops there.

As an employer, what are your options if you have newly nonexempt employees because of the increase? You can:

- Give them a raise to make them exempt again. If their wages are close to \$35,568, a raise might be cheaper than hiring more employees or paying them overtime.
- Limit or ban overtime. However, doing either is likely to make anyone angry who has been relying on overtime pay.
- Pay overtime; that is, pay employees who work overtime 1.5 times their regular rate of pay for any hours worked beyond the 40 hours in a week.

If you decide to give nonexempt employees a raise, the best way to do that (if you can afford it) is to give everyone a raise. Across-the-board raises would be an especially practical solution for companies that will be spending substantially more money paying for overtime or hiring

additional people to do the work that still needs to be done once overtime has been restricted. After all, everyone benefits from a pay raise and nobody will be angry about being passed over. It will also close the wage gap and help you avoid violating wage-related restrictions.

You have probably talked with employees about these changes already. If you haven't, then you need to do so as soon as possible, preferably as a group. Include a question-and-answer period. Communication is a key way to keep the transition as smooth as possible.

During the meeting, talk to employees about the following:

- Job flexibility (that is, where and when they are allowed to work)
- Procedures for implementing overtime
- Redistribution of tasks to make compliance with the new rules possible
- The overtime policy

Nonexempt employees generally have less flexibility in their work because flexibility makes it harder to track their time. Irregular hours at multiple locations are a challenge. That challenge is something to keep in mind as you consider how to adjust the rules at your place of work.

If employees have become nonexempt, you will also need to train them about how to track their time worked. Doing so might involve buying a technology package to track time and attendance.

Being positive is also an important part of making the change. Just as some people get attached to overtime pay, other people consider being exempt to be something that gives them higher status. They need to understand that the changes are federally mandated, do not affect your perception of their importance, and (if you've decided to pay overtime) do not mean that they've been demoted if they can now earn overtime pay for their extra hours worked. They may feel less upset once they realize the change could mean more money in their paycheck.

The most complicated aspect of the new rule, of course, is determining whether an employee is exempt or nonexempt. If you have any questions about that or other issues related to the change, this would be a good time to talk to your attorney or to find a legal professional to consult. 🔥



Florence Miller, or "Flo", grew up in Utah County, attended Brigham Young University and later transferred to University of Utah. She graduated with a Bachelor's of Science in Nursing and practiced as a Registered Nurse for 5 years. Ms. Miller loved being a nurse, but always had the goal of studying law. In 2000, Ms.

Miller attended law school at the University of Toledo College of Law and graduated in the top 10 of her class. Ms. Miller started her career as a lawyer at a Clark Hill, PLC, in Detroit, Michigan. For the past 13 years, Ms. Miller has practiced in Utah. She has been a shareholder at Van Cott, Bagley, Cornwall & McCarthy and Prince, Yeates & Geldzahler.

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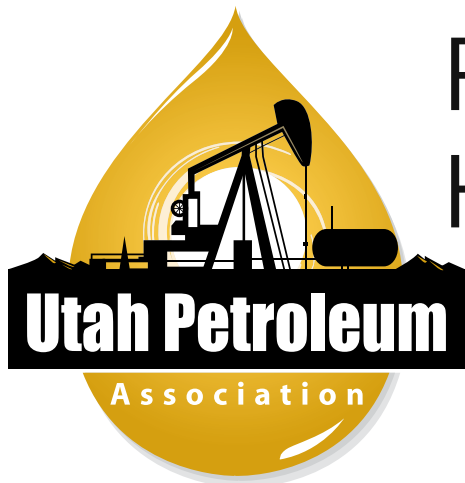
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