



# The Override

Every Landman Wants One

## President's Message

Hello fellow Land professionals,

I'll be brief for this new issue of the Override.

I'm the new Chapter President.....How did that happen? I believe our newly minted Newsletter Editor, Joe Munsey, has some insights on this matter if you read his column in this current issue. But I'll take that matter up with Pat Moran, RLP, at another time.

Again, to be brief and spare you the extra time you need to finish up your projects while multi-tasking for your boss who knows you are reading the latest and greatest. An extended thanks goes to those Past Officers and Directors and a warm welcome to the Current Officers and Directors — this is probably the first time in LAAPL history that an officer was elected (Secretary) within an hour of receiving his college diploma !!!

**REMEMBER — The 2006 LAAPL Mickelson Golf Classic, Aug. 14, 10:30 AM, Malibu CC.....see forms attached to this newsletter.**

Thank you for your continued support,

*Kevin Rupp*

## Next Meeting: September 21, 2006

Our next meeting is scheduled for September 21, 2006 at the Long Beach Petroleum Club, located at 3636 Linden Street, Long Beach, California 90807, (562) 427-7966.

The board meets at 10:30 AM. Social time is at 11:30 AM with lunch served at noon. We conduct association business at 12:15. The cost is \$20 per person which can be paid on site.

Here is our schedule for the upcoming months.

August 4	2006 Mickelson -LAAPL Golf Classic, Malibu CC
September 21	Regular Meeting
November 16	Regular Meeting

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**Treasurer's Report - Charlotte Hargett**

Balance as of 3/27/06 \$3,451.26

Balance as of 7/25/06 \$5,506.50



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## Los Angeles Association of Professional Landmen

### Keeping Connected

Take advantage of these LAAPL resources.

- Website - [www.laapl.com](http://www.laapl.com)
- *The Override* newsletter
- Meetings
- Activities
- Membership Directory

Los Angeles  
Association of  
Professional  
Landmen

c/o Venoco, Inc.  
6267 Carpinteria Ave., #100  
Carpinteria CA 93013  
[pmoran@venocoinc.com](mailto:pmoran@venocoinc.com)

### Lawyer Joke of the Month—Jack Quirk

A fellow tells the tailor that he needs a new suit but doesn't have much to spend. The tailor says, "I have something that maybe we can both do all-right." He brings out a suit and our fellow puts it on, but it fits very badly. The tailor says, "Here, where the shoulder sits kind of funny, you can just pull it forward under you chin and bend your head over and to the right to hold it in place." And, "Here, where the left arm is a bit too long, you can just pull it up and pinch your left elbow in at the waist to hold it." And, "Here, where the right pant leg has a crooked seam, you can just twist it around and pinch your knees together to hold it in place." Our fellow says, "Boy this looks pretty bad---How much do you want for it?" "Twenty bucks." "Sold."




He walks out the door with the suit on, head bent to the right and down at the right shoulder, left arm pulled in at the waist, and knees pinched together to hold the pant leg. He passes a middle-aged couple and the wife says, "Oh dear, that poor man." "Yeah," says the husband, "but that sure is a nice fit on his suit."



QUOTE OF THE MONTH GOES HERE

The longest road out is the shortest road home. *Irish Proverb*


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**Terry L. Allred, Vice President**



**Transamerica Minerals Company  
1899 Western Avenue, Suite 330  
Torrance, CA 90501**

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*Member: AAPL, BAPL, LAAPL, CIPA, NARO*

*Please contact us for more information and a free copy of our "Oil and Gas Country Available Lands Report". Or you may email us at:  
[terry.allred@transamerica.com](mailto:terry.allred@transamerica.com)*

## **Bright and Brown Oil, Gas and Environmental Lawyers**

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**Pat Moran**, Land Manager  
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Venoco is an independent energy company primarily engaged in the acquisition, exploitation and development of oil and natural gas properties, with offices in California, Denver, CO (Headquarters) and Houston, TX. Venoco operates three offshore platforms in the Santa Barbara Channel, two onshore properties in Southern California, approximately 160 natural gas wells in Northern California and various properties in Southeast Texas.

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## CONNECTIONS & CORRECTIONS

Please welcome our new members.

### Newest member —

Joel Miller, Energy Asset Analyst  
Transamerica Minerals Company  
1899 Western Way, Suite 330  
Torrance, CA 90501  
Office: 310.533.0508



### *Editors Corner — Joe Munsey, Newsletter Chair, Sempra Energy - Utilities*

Trusting all LAAPL Chapter members and energy industry associates are enjoying the summer with family and friends.

Can anyone believe I jumped at the opportunity to become Editor of "The Override" when the Newsletter Chair was suddenly vacated? What does the Chapter President do in order to fill the slot for editor of a chapter's newsletter? A couple of things come to mind, i.) Twist arms, ii.) Flower his/her speech on the prestige of holding the Chapter Newsletter Chair, iii.) Wait until the first person who speaks is by default the editor, iv.) Twist arms again, v.) Run out of options. Now, how did I get this position again?

Many thanks go to Zakia Meraj who labored to get "The Override" out to all the members, even doing so well after she left Transamerica Minerals. We applauded her for putting forth a 110% effort by going beyond the call of duty. Zakia will be missed by all.

As with most novice editors, there are attempts to revamp, change the format, offer a "new"/"improved" version of basically getting the word out to our members and friends. I believe it is an attempt to make one's "mark" within the ranks of past editors. Well, we will try not to break with tradition in which Dale Hoffman, Past President, put in place several years ago; but we do have an approach that will offer more industry articles of interest for our readers. Here are some "additions" you should see in the future, beginning with this issue:

- √ Issue/Case of Month [Rae Connet, Esq. will provide much needed commentary to keep the LAAPL up to "snuff" on the legal affairs affecting our industry.]
- √ Articles by a Guest Writer [At times we may include articles that may not be specific to oil and gas but will have to do with land. We are land professionals. Read what our guest writer, Keith McCullough, Esq., has to say about a case his firm won in one of the State's most expensive eminent domain cases in San Francisco.]

*Editors Corner ( continued from page 5 )—*

- √ New Membership and Transfers [Well, bringing in new members will be part of everyone's job. Transfers....can we convince other landmen to move here – specifically the LA Basin? They say housing cost is stalled or may slide a bit. More on that subject later – need to see if it pans out.]
- √ Board Meeting Location [Check out the newsletter where the “movers and shakers” of the LAAPL meet.]
- √ Guest List [Start inviting energy industry and other land related professionals to attend.]
- √ Special Events [Edgar Salazar wants you to join him for the 2006 Mickelson Golf Classic, Malibu CC, 8-4-06.]
- √ Editor's Corner [I'll be here each issue.]

What you can expect to still see:

- √ President's Message
- √ Lawyer's Joke of the Month
- √ Speaker of the Month



So, do we have a new format? Not really, Pat Moran, RLP, of Venoco, Inc. has volunteered to continue publishing the newsletter and putting into “slots” the same format, except inserting the extra columns and then off to your electronic mail box.

We have a wonderful speaker lined up for our September meeting, the venerable Edward S. Renwick, Esq. of Hanna and Morton LLP, will once again address the membership and guests with his much anticipated subject on the issue of the 99 year limitation affecting leases. When your 99 year oil and gas lease reaches that last year and still is producing....what next?

See you at the next meeting in September. Joe

## **LAAPL ANNUAL MICKELSON GOLF CLASSIC** EDGAR SALAZAR, CHAIRMAN

### *PXP-EXPLORATION*

**Mark your calendars! The 2006 LAAPL Mickelson Golf Classic is fast approaching: August 4, 2006, Malibu Country Club, in Malibu, CA.**

**It will be a Texas four man scramble, with 10:30 AM first tee-time.**

**Net proceeds to be donated to R.M. Pyles Boys Camp. Additional details, sponsorship and registration can be found on page 10 of this newsletter.**

## **DRILLING OBLIGATIONS CALIFORNIA IMPLIED COVENANTS**

*By L. Rae Connet, Esquire  
PetroLand Services*

There is implied in every oil and gas lease a common law obligation to protect the leased premises from drainage. It standard applied at common law is that of the “reasonably prudent operator.” A reasonably prudent operator is expected to take into consideration all existing facts and circumstances and would not drill unless the well would likely produce oil in sufficient quantity to repay the cost of drilling, equipping and operating the well and a reasonable profit on the entire capital expenditure. This appears to be the rule in all jurisdictions. Only when drainage is substantial and the drilling of an offset well would produce a profit for the lessee, does the implied obligation attach. The obligation to drill protection wells exists separately as to each producing formation.

The common law duty to protect the lease from drainage by drilling offset wells can be altered by any of these facts: (1) express offset provision in the lease; (2) the fact that the lessee also owns a lease on the draining parcel of land; and (3) secondary recovery operations or other operations to stimulate production.

### Effect of an Express Offset Provision:

In the absence of other factors, an express offset provision in the lease will control, and no further obligation to protect against drainage will be implied into the lease. (Hartman Ranch Co. v. Associated Oil Co. (1937) 10 Cal.2d 232, 239 *holding* “implied covenants will not be raised which are in conflict with express covenants.”)

However, not every express provision relates to both development obligations and protection obligations and care should be used in reading a lease to insure that an express offset requirement is not limited only to the obligation to develop. For example, where the offset requirement is found within those sections of the subject lease that deal with development, courts may conclude that the offset requirements are only limiting as to the duty to develop the lease.

Additionally, where the lessee is the owner of a leasehold interest in the adjoining property and has drilled the well that is draining the subject property, the protection provided by an express offset provision will not control. Under such circumstances, the lessee will be obligated to protect the property being drained by drilling an offset well, unless there is a lease provision that expressly controls this implied duty.

### Effect of Common Ownership of Leasehold Interests in Draining Lands:

Where the lessee is the owner of a leasehold interest in both the lands being drained and the lands whereon the draining well is located, the California courts have implied a separate covenant – the covenant not to depreciate the lessor’s interest. (Hartman Ranch Co. v. Associated Oil Co. (1937) 10 Cal.2d 232, 242.)

Moreover, where the lessee is the common owner of the leasehold interest in the two adjoining parcels of land, and by its actions drains the oil from one leasehold by operations on the other leasehold, the lessee will not be able to stand by the reasonably prudent operator standard. Under such circumstances, the lessor may recover even when the lessor is unable to show that a protection well would be profitable to the lessee. (R.R. Bush Oil Co. v. Beverly-Lincoln Land Co. (1945) 69 Cal.App.2d 246.)

Therefore, where the lessee is owner of two adjoining leases in California, an implied covenant not to depreciate the lessor’s interest should be read into each lease and, absent other controlling factors or provisions, the lessee should not rely on an express offset provision to limit its duty to protect. However, even this implied duty can be overcome by an express provision in the lease, as discussed below.

(continued..)

### Effect of Operations to Stimulate Production:

Some diversity in case law exists where a technical breach of the duty to protect occurs as a result of secondary recovery operations. Two questions arise: (1) is the lessee liable for product drained away from a lease when the lessee converts a producing well into an injection well to increase total recoverable product? and (2) is the lessee liable for product drained away from a lease as a result of drilling an injection well on an adjacent parcel?

There is no definitive answer to either question. The only California case that I've found that deals the issue of liability resulting from shutting in a well on one lease and thereby increasing production on another lease (no secondary recovery operations at issue) found liability for the lost royalty to the shut-in lessors. There is two Illinois cases that deal with changing a producing well into an injector. The earlier case found the lessee liable, even where the drainage to other lands was replaced by other products on the drained lease. Legal commentaries view this case as "extraordinary for its shortsightedness." In the same jurisdiction, but later in time, the Illinois court found no liability. The reasoning was that lease purpose should be determined from the lease as a whole as it affects the interest of both the lessor and lessee. One legal treatise argues that this result seems correct and is in line with more current views.

The Texas case of Amoco Production Co. v. Alexander 622 S.W.2d 563 involved field wide drainage away from one lessor's lease in a situation where the lessee was the common lessee on all the field leases. The court there held that the lessee's duty to prevent drainage operated as to field wide drainage as well as local drainage. The court refused to consider the lessee's duties to its other lessors as they had not been joined as parties to the suit.

Application of the Hartman case to this issue in California would suggest that a California court would hold that any action by a common lessee that diminishes one of its lessors lease in favor of another lessor's lease, would violate the implied covenant not to depreciate the lessor's interest. Whether the California courts would consider the lessee's duties to its other lessors is not known. And, whether the California courts would consider the import of common ownership of the lessor's interest in two or more leases, or the fact that the parties actually considered that the common lessee could drain the lease from adjoining lands would be questions of law not yet raised in reported decisions.

### Effect of Express Provisions Limiting Implied Covenants:

Implied covenants will only be read into a lease in the absence of express provisions. The parties are, therefore, free to draft the lease so as to expressly prevent implied covenants from being read into the lease.

In Swigert v. Stafford (1948) 85 Cal.App.2d 469 the Court was called upon to interpret such a provision. The lease in question contained a provision that read as follows: "*The parties have expressed herein their entire understanding and agreement, and it is expressly stipulated that no implied covenants or conditions whatsoever shall be read into this lease relating to the drilling or production of any wells, offset or otherwise, or to any other operations of Lessee hereunder or the measure of diligence therefor, or to any thing to be done hereunder by Lessee ...*" (Id.)

In interpreting the provision quoted above, the Court in Swigert held:

**"the lease here involved specifically provides that no implied covenants or conditions whatsoever shall be read into the lease relating to drilling, or to lessee's measure of diligence, or to anything else to be done by lessee. The parties were therefore bound by the precise terms of their agreement. Where the covenants and conditions of a lease are so clear as to leave no doubt as to their meaning, and no latent ambiguity is involved, the instrument cannot be varied by proof of subsequent conduct of the parties or by the attendant circumstances. The parties to a solemn agreement are bound by its terms regardless of the hardships entailed thereby.**

(Jameson v. Chanslor-Canfield Midway Oil Co., 176 Cal. 1, 8 [167 P. 369].) (Swigert, supra, 85 Cal.App.2d at 472.)

*End*



## **“CHARTING OUR SUCCESS”**

Charting the course for Chapter is the main focus of the Executive Board. The LAAPL wins hands down as one of the premier Chapter Executive Board in our industry. Professionalism and expertise does not get it any better. The Executive Board meets at 10:30 AM prior to each luncheon meeting at the Long Beach Petroleum Club. Board meetings are opened to membership.

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### **SPEAKER FOR SEPTEMBER LUNCHEON**

#### **WHAT ABOUT THAT 99 YEAR LEASE? (Can I Produce After 99 Years?)**



Edward S. Renwick specializes in trying cases and arguing appeals, in representing clients before administrative and legislative bodies, in helping clients settle and avoid disputes, including acting as a mediator, and in counseling clients in transactional matters, particularly in the energy and oil and gas industries

He is experienced in natural resources and environmental matters such as contaminated property, ground-water problems, air quality matters, CERCLA, RCRA, toxic torts, natural gas pricing, geothermal resources, oil and gas, zoning, title matters, alternative energy, renewable energy and land use. He also has handled cases involving contract disputes, constitutional issues, antitrust law, partnership accounting, trusts and estates, income taxation and property taxation.

In addition to maintaining his law practice, Mr. Renwick served as vice president and general counsel of a California independent oil and gas company from 1973 through 1991.

Since 1974, Mr. Renwick has been a Fellow of the American College of Trial Lawyers, to which admission is by invitation only and is "limited to those trial lawyers who are outstanding and considered the best in a state."

# The 2006 LAAPL Mickelson Golf Classic

*Sponsored by Santa Barbara Travel*

## Friday, August 4, 2006

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901 Encinal Canyon Road  
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For directions go to [www.malibucountryclub.net](http://www.malibucountryclub.net)

This year's golf tournament fundraiser is open to all LAAPL and BAPL members, spouses or significant others, co-workers, clients, and friends. We are proud, once again, to donate net proceeds from the tournament to R.M. Pyles Boys Camp and the LAAPL Scholarship Fund, and encourage you to "sponsor" generously and purchase plenty of raffle tickets. Among these year's prizes are two United Airlines round trip tickets to anywhere in the U.S. where United flies, *including Hawaii*. Please return your completed registration and sponsorship **forms ASAP**, only 60 golf reservations are available. Cocktail hour, buffet dinner, raffle and awards ceremony will follow. The LAAPL hopes you can attend this tournament fundraiser, an outstanding venue for golf in Southern California. We look forward to your company.

*Please make your checks payable to LAAPL, mail payment and registration forms to: Charlotte Hargett, Plains Exploration & Production Company, 5640 South Fairfax Avenue, Los Angeles, CA 90056, tel. 323.298.2206, fax 323.296.9375, [chargett@plainsxp.com](mailto:chargett@plainsxp.com).*

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