# The Override

*Every Landman Wants One!*

Volume II, Issue 1 | January, 2007

Los Angeles Association of Professional Landmen

## Inside This Issue:



## 2006–2007 Officers & Board of Directors



*Early morning - a BP rig south of Durango, Colorado*

## Presidents Message

**Kevin Rupp, CPL, Independent**

As Chapter President I continue the course to mollycoddle the members with concise and to the point communications:

- My family had a wonderful time celebrating Christmas and the bringing in the New Year
- I trust our members and friends enjoyed the same
- Basked in the glory the Oil Tax Proposition [whatever number it was] went down in flames
- See you at the Petroleum Club January 18th, 2007


## January Luncheon Speaker

**WILL WE EVER GET "OUR" LNG TERMINAL IN THE LA BASIN?**

Seiichi Tsurumi, Vice President, Stakeholder Relations, and Peter Micciche, Manager of LNG Safety and Security, of Sound Energy Solutions LNG Import Facility in Long Beach, will be our guest speakers for our January luncheon. Sound Energy Solutions proposes to build an LNG receiving terminal on 25 acres of industrial land at Pier T in the Port of Long Beach. This project will help to fuel our cleaner-burning natural gas fired power plants that provide electricity to our homes and businesses.

Without sounding off any "alarms," you will not want to miss the demonstration our guests plan to share with the members and guests.

## Editor's Corner

**Joe Munsey**
**Newsletter Chair**
**Sempra Energy – Utilities**

In our last publication of the *Override*, the end of the year was fast approaching. Whew…it came and went. Trusting all our members and friends enjoyed the end of the year holidays. However, before we start, a cheerful Happy New Year to all.

If my memory serves me well, November was a month of local and national elections – better yet, it was the month we celebrated Thanksgiving. In regards to the results of the election, more particularly on a state wide basis here in California, the Oil Initiative Proposition went down in flames. As to the other propositions, local, state and national elections, well…. while some are glad, others are sad. Thankfully, whether your fellow electorate voted your way, the United States, along with other western democracies, are examples of how politician transitions are done peacefully and with order. In two years, we get to do it all over again.

In this issue of the *Override*, we bring not just one guest writer but two guest writers for your reading pleasure. We are pleased to have secured permission for two articles, one from the *Washington Post* and the other from *Sempra Energy Daily News*.

Although, we attempted to secure the permission to run the *Washington Post* article discussing the issue of eminent domain, permission was granted a few days after we had published our November issue of the Override. As you may recall, Proposition 90 here in California dealt with the "abuses," real or perceived, of eminent domain. As in many other states, the voters were responding to the Kelo v. City of New London Case in which a "mutiny" was on the rise against Redevelopment Agencies invoking condemnation actions for the benefit of….should we say…. developers. Actually, here in California, our state legislatures in fact started down the road with eminent domain reform by passing SB 1650 (Chapter 602), SB 1210 (Chapter 594), SB 1890 (Chapter 603), SB 1206 (Chapter 595), SB 53 (Chapter 591) and SB 1586 (Chapter 311). [Editor would like to acknowledge the assistance of David Cosgrove, Esq.. and Michael Rubin, Esq., of Rutan and Tucker for providing this information.] Not sure if in fact it was that the Californian electorate was fully aware of the reforms and thus in turn defeated Proposition 90. As to the Washington Post article, we are of the opinion reprinting it is still a valuable read to our members and friends.

The second article we are pleased to reprint, with the permission of *Sempra Energy Daily News*, concerns a Los Angeles Basin issue involving Sempra Energy and Venoco which had been "brewing" for sometime. Activist Erin Brockovich, along with Beverly Hills High School students, were handed a dismissal by the judge regarding their case. No doubt round two is underway, but good news for all who were involved with the case, particularly since it affects LAAPL members and their companies. If and when this case is soundly defeated, it will serve as good case law to defeat future anti oil and gas activists using this same "ploy."

Well, if you have not read the "rest of the story" we have on tap, a great January luncheon meeting with our friends from ConocoPhillips discussing its LGN terminal project here in the LA Basin. Our guest speakers, yes, there are two guest speakers, plan an impressive presentation on LNG and what it means to California's natural gas needs. Without sounding off alarms, you will not want to miss the demonstration our guest have in store for us at the luncheon.

In conclusion, we are looking forward to what is next on the horizon. Election for LAAPL Officers will soon be coming around as we head into our last meeting scheduled for the late Spring. We encourage all members to step up to the plate and throw their hat in the ring for the opportunity to lead this great chapter for the 2007 – 2008 term. From past experience, it is "painless" and most of all very rewarding.

Look forward to seeing everyone at the Long Beach Petroleum Club on January 18th, 2007.

## Lawyer's Joke of the Month

**Jack Quirk, Esq.**
**Bright and Brown**

A young couple was killed in an automobile crash on the way to their wedding.

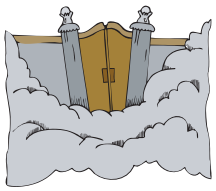
At the gates of Heaven, they asked St. Peter if they could be formally married.

Peter asked them to wait and left to find a minister.

Three years later, he returned with the minister and the couple was married. Some time later, the couple had a serious falling-out and asked to be divorced.

Peter was completed exasperated.

"You saw how long it took to locate a minister here! Do you have any idea how long its going to take me to find a lawyer?"



## Guest Article I

### Court Ruling Fuels Dispute in West Over Eminent Domain

**By**
**Blaine Harden and Juliet Eilperin**
**Washington Post Staff Writers**
**Monday, October 2, 2006; A03**



SEATTLE -- Libertarians and land developers have found populist fodder in a contentious Supreme Court decision from last year that favors eminent domain over private property.

This fall, they are trying to harness anger over the ruling in an effort to pass state initiatives in the West and federal legislation that could unravel a long-standing fabric of state and local land-use regulations. Among other things, the rules control growth, limit sprawl, ensure open space and protect the environment.

The property-rights movement, as it is known, has a major new benefactor -- Howard Rich, a wealthy libertarian real estate investor from Manhattan. He has spent millions -- estimates run as high as $11 million -- to support initiatives that will appear on ballots throughout much of the West.

The initiatives -- and legislation approved Friday in the House -- have alarmed many city and state officials, along with environmental organizations, budget watchdog groups and smart-growth advocates. They complain about "bait-and-switch" tactics.

"They bait you with eminent domain, but you end up voting to destroy all land-use regulation," said Elaine Clegg, a nonpartisan member of the city council in Boise, Idaho.

Following the lead of an Oregon initiative that in 2004 derailed the nation's strongest laws against sprawl, measures this November aim to do much the same thing in Idaho, Arizona, California and Washington. They would compel state and local governments to pay cash to property owners when land-use rules, such as zoning regulations, reduce the value of their land. Some of the measures say that if government can't pay up, owners can develop their land as they see fit.

In Oregon, there is no money to pay claims that total $5.6 billion, so land-use rules are being waived. In Washington, passage of a "pay-or-waive" initiative could cost state taxpayers $7 billion to $8 billion in the next few years, according to studies by the state and the University of Washington. In California, where there is no provision to waive payment, Proposition 90 has aroused opposition from staunchly conservative groups such as the California Taxpayers Association, which is concerned that the initiative could cost the state billions of dollars, triggering tax increases and slow growth.

The federal bill, which was approved in the House by a vote of 231 to 181, would revamp land-use regulation nationwide, allowing developers and property owners to challenge local and state rulings in federal court, rather than in state court.

The National Association of Home Builders has been pushing the measure for years, but the Supreme Court's eminent-domain decision finally "brought the bill back into the limelight," said Jerry Howard, the association's chief executive.

The bill's author, Rep. Steve Chabot (R-Ohio), who chairs the Judiciary subcommittee on the Constitution, said property-rights disputes that can drag on for years deserve speedy resolution in federal court.

"The Fifth Amendment says you can't take a person's property without due process," he said, comparing property rights with freedom of speech and freedom of religion.

Opponents of the bill, including 36 attorneys general and a slew of environmental advocates, say the measure will undermine state and local governments' ability to oversee growth and preserve open space.

In Idaho, a measure called Proposition 2 would halt eminent-domain seizures of the kind allowed by the Supreme Court in 2005 in Kelo v. New London. That ruling upheld the right of local governments to condemn private property and then hand it over to someone else for commercial development. Since Kelo , 26 states have passed laws that ban the use of eminent domain for economic development purposes.

But the Idaho initiative, as with others in the West, is about much more than just eminent domain. It would require state and local governments to compensate landowners for regulations that restrict what they can do with their land.

About three-fourths of the more than $330,000 spent to put Proposition 2 on the ballot came from groups funded by Rich, in a pattern of spending that has been repeated in many Western states.

Groups bankrolled by Rich have this year spent about $11 million in 12 states in support of measures to restrict land-use planning, cap state spending or limit judicial power, according to state campaign finance reports compiled by the Ballot Initiative Strategy Center, a Washington-based group that is supported by labor.

Rich was not available to comment on his spending or the goals of his property-rights groups.

John Tillman, president of one of those groups, Americans for Limited Government, declined in an e-mail to comment on the amount of Rich's spending, saying that campaign finance reports "speak for themselves." He did not dispute the $11 million figure.

Tillman did note that the Supreme Court decision in Kelo has alarmed the public, putting "everyone on notice that property rights are on shaky ground and that the time to act is now."

In some states, grass-roots opposition to land-use rules existed well before Kelo and before Rich began spending money. For the past 15 years in Washington state, the Washington Farm Bureau has fought laws that limit what some farmers can do with their land in heavily populated places such as King County, which includes Seattle.

In Oregon, which had been a national leader in land-use planning, the consequences of rolling back the rules are becoming clear. At last count, there were 3,038 claims by property owners involving more than 173,000 acres, according to a tally kept by Portland State University. Of the 2,630 claims that have been decided, 90 percent have gone in favor of landowners, with state and local governments waiving land-use rules. Most of the claims come from owners of what had been protected farm and forest land bordering fast-growing urban areas.

"The agenda behind these initiatives is to make it so expensive for local and state governments to regulate land use that they can hardly function at all," said John Echeverria, executive director of the Georgetown Environmental Law and Policy Institute.

In recent weeks, courts in Nevada and Montana have knocked some initiatives off ballots. The Nevada ruling was on technical grounds, but a state judge in Great Falls, Mont., found "a pervasive and general pattern of fraud" in the gathering of signatures for three ballot measures aimed at reining in government power.

"A number of paid out-of-state signature gatherers used bait-and-switch tactics to fraudulently induce countless Montanans to sign petitions other than the petitions they thought they were signing," wrote Judge Dirk M. Sandefur.

The ruling has been appealed to the Montana Supreme Court. Nearly all of the money for signature gatherers came from Montanans in Action, which declines to reveal its donors.

Montana Gov. Brian Schweitzer (D) has said that Rich is bankrolling the measures and has challenged him to debate their merits. Rich has not responded to this request nor to a similar debate offer from Gov. Ted Kulongoski (D) of Oregon, where Rich's money has been instrumental in putting a spending-cap initiative on the ballot.

## Guest Article II

### Judge Dismisses Case by Former Beverly Hills High School Students and Activist Erin Brockovich

**Suzanne Hatcher**
**Communications Manager**
**Sempra Energy**



More breaking good news came on the legal front today when a lawsuit against Sempra Energy and several other defendants was dismissed by Los Angeles County Superior Court Judge Wendell Mortimer, Jr., in Los Angeles. The suit was filed in April 2003 by former Beverly Hills High School (BHHS) students who claimed they were exposed to unsafe levels of toxins from an active oil rig on campus operated by oil company Venoco Inc. and the nearby central heating and cooling plant once owned by Sempra Energy Solutions. Plaintiffs alleged the existence of a higher-than-expected rate of certain cancers among BHHS students. The plaintiffs' legal team included activist Erin Brockovich. The plant provides heating and cooling for 11 million square feet of commercial and residential space in 15 buildings in an area known as Century City near the BHHS campus. The plant has no connection with the oil operations on the campus.

"We are pleased to learn about today's ruling dismissing the case and look forward to receiving the judge's final order over the next few weeks," says Javade Chaudhri, Sempra Energy's executive vice president and general counsel.

**Insufficient Evidence**

The judge agreed with the defendants that there was insufficient evidence for a jury to decide that the chemicals at issue in the case caused the cancers in the 12 plaintiffs set for trial. The judge will issue a more detailed ruling within 25 days but has already cancelled the trial that was expected to begin in early December. The 12 plaintiffs were selected by both defense and plaintiffs' counsel to go to trial first out of the more than 1,000 plaintiffs in the case. The ruling does not apply to the remaining plaintiffs and an appeal may be filed. The judge also ruled in Sempra's favor in denying punitive damages and rejecting theories of strict liability, battery and intentional infliction of emotional distress.

"We greatly sympathize with the plaintiffs and their families and wish them well. However, there was no evidence of any link between their illnesses and our company's former operations near the school campus," says Chaudhri. "In fact, the plaintiffs never produced any data to support their contentions. When these allegations first surfaced in 2003, public entities, including the South Coast Air Quality Management District, immediately began testing the air at the school. None of those tests, or separate ones by an outside contractor, revealed any harmful levels of chemical emissions at the school."

## Treasury Report

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|---|---|
| On 12/1/2006, the LAAPL account showed a balance of | $4,070.88 |
| Two checks of $40.00 each (membership fees) were deposited | $80.00 |
| The LAAPL account with Bank of America as of January 8, 2007, shows a balance of | $4,150.88 |

# TITLE EXAMINATION PITFALLS IN RESEARCHING FEDERAL MINERAL RECORDS

**By: L. Rae Connet, Esq.**
**PetroLand Services**

Unless you are dealing with rancho lands – lands which passed into private ownership under land grants from the Mexican and/or Spanish governments prior to the territory of California being acquired by the United States – one must consider the possibility that oil and gas minerals were reserved to the United States at the time the land patents were issued.

While the patents are, generally, recorded in the office of the County Recorder, until the later half of the 20th century, recorded documents were transcribed into the public record, and patents were not always properly and fully transcribed. Therefore, it is prudent to obtain a copy of the actual patent issued by the federal government, in order to check for mineral reservations. Only by thoroughly reviewing the records maintained by the U.S. Bureau of Land Management ("BLM") can the title examiner ascertain whether or not the minerals passed into private ownership or whether the minerals are held by an existing federal lease.

Beginning on September 27, 1909, and continuing on July 2, 1910, December 30, 1910, and on other occasions, President Taft withdrew vast areas of public domain from all forms of settlement, entry or disposal under the mineral or non mineral laws of the United States because much of the public domain containing deposits of coal, oil, gas and other minerals was being given away for a nominal price under homestead laws, thus depriving the government of large revenues which it would otherwise ultimately receive from such lands. Millions of acres in California were withdrawn from the public domain by President Taft.

In order to permit the use of the surface of these lands for agricultural and other similar purposes Congress enacted a number of surface entry laws, including the act of July 17, 1914 (38 Stats. 509, U.S.C.A., title 30, secs. 121 et seq.), which provided for an agricultural entry, and the Stock-Raising Homestead Act of December 29, 1916 (39 Stats. 862, U.S.C.A., title 43, secs. 291 et seq.), which provided for a stock-raising entry. These acts provided that all entries made and patents issued thereunder would be subject to a reservation to the United States of all minerals in the lands, together with the right to prospect for, mine and remove the same and to dispose of the minerals in such lands in accordance with the mineral land laws in force at the time of such disposal. Then followed the Mineral Leasing Act of February 25, 1920 (41 Stats. 437, U.S.C.A., title 30, secs. 181 et seq.), under which qualified persons were permitted to enter upon such lands to prospect for oil and gas and other minerals, and, after discovery, to reenter such lands under lease from the United States to extract and remove such minerals. Provision is made for the payment of damages to the agricultural homesteader or the stock-raising entryman.

Patents issued under the Act of July 17, 1914 were supposed to contain mineral reservations, but not all of them did so. No judicial decision has been found implying a reservation into patents issued under the Act of July 17, 1914, so if the patent is silent as to a reservation, a title examiner is probably safe in concluding that the minerals passed to the patent holders. However, this loophole was closed under the Stock-Raising Homestead Act of 1916. The Act expressly reserved to the U.S. all the minerals. Subsequently, judicial decisions interpreting that Act held that a reservation of the minerals in favor of the U.S. is implied by the nature of the entry onto the land and shall be read into the patent, even if the patent is silent as to a mineral reservation. Accordingly, the title examiner in California must give due consideration to the date a patent issued as well as the act under which the patent issued, and may even need to determine if the land in question was withdrawn from the public domain before the patent was issued. If the lands were withdrawn and subsequently patented under the Stock-Raising Homestead Act, it is probable that an oil and gas reservation in favor of the United States will be implied into the patent, even if the patent in silent as to such a reservation.

One of the first steps in reviewing the BLM's records is to check the Historical Index for the Township in question. The Historical Index is supposed to list all the entries onto the lands in the subject Township, as well as each of the federal leases and patents. While the Historical Index may provide answers to some preliminary questions, this article attempts to demonstrate some of the pitfalls of relying upon the BLM's Historical Index in lieu of reviewing the actual files maintained by the BLM. For example, where a lease has been segregated (as discussed below) the Historical Index may show that the lease has terminated as to the segregated portion. Yet, a thorough review of the BLM's files may reveal a very different story.

When a lessee discovers oil or gas underlying a portion of the federally leased lands and desires to pool that portion with other lands and commit it to a Unit, the U.S. government will "segregate" the lease into two parts, one part being that portion within the unit and the other part remaining

un-unitized. Often the lease is then referred to as the "A" lease (the unitized portion) and the "B" lease (the un-unitized portion).

Generally, any lease partially committed to any unit after July 29, 1954, shall be segregated, as of the effective date of unitization, into separate leases. The segregated lease covering the non-unitized portion of the lands shall continue in force and effect for the term of the lease or for 2 years from the date of segregation, whichever is longer. (43 C.F.R. § 3107.3-2; 48 FR 33662, July 22, 1983, as amended at 53 FR 17357, May 16, 1988.)

The segregated leases are then subject to automatic termination for the failure to pay annual rentals. (Act of July 29, 1954, 58 Stat. 583.) However, if the lease was issued prior to the promulgation of the Act of July 29, 1954 it is not subject to the automatic termination provisions of that Act. The unpaid delay rentals become a debt owed to the U.S. and collectible as any other debt. The lessee may cancel the lease by filing a relinquishment of the lease or the U.S. may terminate the lease only upon notice of default followed by a 30 day cure period. If the lessee pays the pass-due delay rentals upon recent of the notice of default, the lease does not terminate. It should be noted that since the amount of the delay rentals is often very small, the U.S. Mineral Management Service ("MMS") does not always take action for a number of years. Moreover, since the notice of default must be issued by the BLM, it requires coordination between the MMS and the BLM, which can result in no action being taken for a decade or more. Therefore, if a segregated federal lease was issued prior to July 29, 1954, one cannot simply note the lack of production and the failure to pay delay rentals and conclude that the lease has terminated. Nor can one rely upon the Historical Index to draw such a conclusion. Only careful study of the full BLM file will reveal whether or not a notice of default has been issued and the curative period expired without payment in order to conclude that the lease has, in fact, terminated.

Current Federal Regulations prohibit the BLM from approving any assignment of a separate zone or deposit. (43 C.F.R. §3106.1 provides that "An assignment of a separate zone or deposit, or of part of a legal subdivision, shall be disapproved.") However, this was not always the case. Again, only a full review of the BLM files will inform the title examiner as to whether or not the lease has been segregated by subsurface zones or strata. For example, this author has examined a federal lease issued in 1944 that has been segregated multiple times, both as to surface area and as to subsurface strata. The Unit Agreement was approved by the BLM in 1968 and any production under the Unit Agreement continues to hold all the areas segregated out – both the non-unitized surface area and the non-unitized subsurface zones within the Unit Area.

Whether attempts can be made to drill into federal lands which appear to be open to lease and who has the right to do so, depends on a variety of factors if the lease has been segregated. The lessee's interest in any federal lease can be segregated into three aspects: the Record Title rights, the Operating Rights, and any Overriding Royalty Rights or other purely financial rights.

The Record Title Holders have the obligation to pay rent, and own the rights to assign and relinquish the lease. The owners of the Operating Rights have the right to enter upon the leased lands to conduct drilling and related operations, including production of oil or gas. The owners of overriding royalties have only a financial interest, which does not affect the relationship between the lessee and the government.

The BLM files often reveal decisions by the BLM concerning the matters discussed in this article. In some cases, the title examiner will even find opinions from the Solicitor General, interpreting a key point in determining whether or not a lease has terminated.

The BLM's files may also contain assignments that do not appear of record in the County Recorder's office – especially if they are assignments of Record Title rights. The lessee's are more likely to record assignments of the Operating Rights, but even those are not always recorded and they can be found only in the BLM records. Unfortunately, even the BLM records are not comprehensive, especially when the lease has been segregated. With a segregated lease, one can examine a complete BLM file for one Serial Number and not discover key assignments of Record Title Rights, but examination of all the segregated files often provides the missing documentation necessary to close the chain of title.

It is not uncommon for clients to want title examination reports "yesterday" or for clients to request that the title research start at some recent point in time rather than going back to the date of patent, or before. The clients' desire to take shortcuts, either to reduce costs or expedite the examination, are understandable and the land consultants' desire to please the client is natural. However, when a decision is made to take shortcuts, the land consultant should be cautious and take steps to inform the client as to the risks involved in taking such shortcuts. Acquiring an interest for tens of thousands of dollars may warrant shortcuts, but committing hundreds of thousands or even millions of dollars on drilling suggests that taking the time to do a thorough title examination is well worth the cost and the time it takes.

Following are some of the regulations relevant to the matters discussed in this Article:

43 C.F.R. § 3100.05- Definitions.

Record Title "means a lessee's interest in a lease which includes the obligation to pay rent, and the rights to assign and relinquish the lease. Overriding royalty and operating rights are severable from record title

interests." 43 C.F.R. § 3100.0-5(c).

Operating Rights" (working interest) means the interest created out of a lease authorizing the holder of that right to enter upon the leased lands to conduct drilling and related operations, including production of oil or gas from such lands in accordance with the terms of the lease." 43 C.F.R. § 3100.0-5(d).

Transfer "means any conveyance of an interest in a lease by assignment, sublease or otherwise. This definition includes the terms: Assignment which means a transfer of all or a portion of the lessee's record title interest in a lease; and sublease which means a transfer of a non-record title interest in a lease, i.e., a transfer of operating rights is normally a sublease and a sublease also is a subsidiary arrangement between the lessee (sublessor) and the sublessee, but a sublease does not include a transfer of a purely financial interest, such as overriding royalty interest or payment out of production, nor does it affect the relationship imposed by a lease between the lessee(s) and the United States." 43 C.F.R. § 3100.05-(e).

Operating Rights Owner "means a person or entity holding operating rights in a lease issued by the United States. A lessee also may be an operating rights holder if the operating rights in a lease or portion thereof have not been severed from record title. 43 C.F.R. § 3100.0-5(j).

43 C.F.R. § 3101.3-2 Separate leases to issue.

"A lease offer for lands partly within and partly outside the boundary of a unit shall result in separate leases, one for the lands with the unit, and one for the lands outside the unit."

43 C.F.R. § 3106.7-5 Effect of transfer.

"A transfer of record title to 100 percent of a portion of the lease segregates the transferred portion and the retained portion into separate leases. Each resulting lease retains the anniversary date and terms and conditions of the original lease. A transfer of an undivided record title interest or a transfer of operating rights (sublease) shall not segregate the transferred and retained portions into separate leases."

43 C.F.R. § 3107.3-2 Segregation of leases committed in part.

"Any lease committed after July 29, 1954, to any cooperative or unit plan, which covers lands within and lands outside the area covered by the plan, shall be segregated, as of the effective date of unitization, into separate leases; one covering the lands committed to the plan, the other lands not committed to the plan. The segregated lease covering the nonunitized portion of the lands shall continue in force and effect for the term of the lease or for 2 years from the date of segregation, whichever is longer." [48 FR 33662, July 22, 1983, as amended at 53 FR 17357, May 16, 1988]

## NEW MEMBERS AND TRANSFERS

| NEW MEMBERS | TRANSFERS |
|---|---|
| None | None |

## CHAPTER BUSINESS MEETINGS - 2007

The Chapter's Executive Board resumes its duties for 2007 as we start the New Year. The Executive Board will carry on its strategy of successfully leading the LAAPL.

The Executive Officers and Directors trust all members enjoy a wonderful Christmas or Hanukkah and wish all the best for the New Year.

The Executive Board meets quarterly on the third Thursday of the month at 11:00 AM at the Long Beach Petroleum Club. Board meeting dates coincide with the LAAPL's quarterly luncheons.

We encourage members to attend and see your Executive Board in action.