

# The Override

Every Landman Wants One!

Volume II, Issue 3

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Los Angeles  
Association  
of Professional  
Landmen

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## Presidents Message

**Joel W. Miller, Energy Asset Analyst**

**Transamerica Minerals Company**

Hope everyone who participated in the golf tournament had a great time. I heard some good reports and congratulations to those of you who played well or won raffle prizes. Your time and money was spent wisely to help our organization and more importantly help out the R.M. Pyles Boys Camp in the mission they serve.

As you all know LAAPL is hosting the 25th Annual West Coast Landman Institute in Santa Barbara on Oct. 3-5th. I would certainly encourage everyone to attend and come seeking education, friendships, and definitely a good time and great venue.

To put some perspective on the age of our workforce, I will be 25 years, 1 month, and 1 day old on the first day of this year's W.C.L.I. but the vast majority of our industry employees are not. University Energy Management and Petroleum Land Management programs are beginning to grow tremendously but only to partially fill the gap in states such as OK, TX, NM, and CO. Very few young people move to California to work in oil and gas. Therefore, encourage young co-workers to get involved at work, in local associations, and attend events. We can't learn unless you teach us.

I look forward to seeing everyone at our next meeting.

**Joel, President**

LAAPL 07-08

*"My grandfather rode a camel, my father rode a camel, I drive a Mercedes, my son drives a Land Rover, his son will drive a Land Rover, but his son will ride a camel."*

Quote by Sheikh Rashid bin Saeed Al Maktoum (1912-1990)



## September Luncheon Speaker

Our September speaker is Tom Walker, consulting petroleum engineer with Evans & Walker in Fountain Valley, California. He received a B.S. in Petroleum Engineering from Texas A&M University. Mr. Walker's area of expertise is oil and gas valuation work, domestically and internationally.

Oil price forecasts are regularly featured on the front page of the newspaper and on various news organizations' web pages. These forecasts will likely differ in their view of oil prices over time, but they do have one thing in common – they will be found to be wrong.

This presentation will cover high level reasons for preparing forecasts, information on various techniques used to forecast prices, an in-house forecast of long term oil price trends, and a survey of the current oil price forecasts.





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## Editor's Corner

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

I'm back as your Newsletter Chair for 2007-2008 - did anyone think I would go away quietly? Joining me again at my behest [arm twisting] as Publisher is Randall Taylor of Taylor Land Service, Inc.

The California "greens" versus the "oil bizness". For those of us here in the Golden State doing land work on the downside of the big oil plays of the past, it is amusing to see or detect the "surprise" of those in the hinterlands of the United States realizing there exists big oil in California. Hailing from the Michigan oil patch, I had heard California was a prolific producer of oil and gas but never knew the extent of the oil patch here in California. The perception of being a green state does not seem to line up with the amount of production coming from California. We plan to bring a few articles to the member's attention in coming issues of the "Override" highlighting the attempt to make California a totally green state; at the same time as millions of barrels are being produced while state and local governments reap the rewards of taxes from production. Yes Martha, state and local governments curse big oil while at the same time they count on the revenues of oil and gas to keep their budgets afloat.

Our Case/Issue of the Month will be handled by Julie Carter, Esq., partner at Day Carter & Murphy LLP. Julie will

discuss the issue concerning seismic trespass. Well now, you did not get that permit from a surface or mineral owner because your friends do it that way. Perhaps you should read the article and if you any questions you can contact Julie at [jcarter@daycartermurphy.com](mailto:jcarter@daycartermurphy.com).

The last quarter of year is a busy time for the LAAPL. Starting In September we kick off our fall meetings at the Petroleum Club with our speaker Tom Walker of Evans and Walker as he discusses oil pricing – a topic of interest to the world to say the least. Then it is on to Santa Barbara in November where the LAAPL hosts the 25th year of the West Coast Land Institute. Rounding out the year are the holidays – Thanksgiving and Christmas/Hanukah. As of the date we wrote this column, you have 110 days, or less depending on which holiday you celebrate, to get your shopping done.

Trusting we see you all at the Petroleum Club on September 20th; and bring a friend.



## YOUNGEST MEMBER OF LAAPL CELEBRATES BIRTHDAY

The LAAPL Wishes our youngest chapter member a very well deserved happy birthday cheer. One would have to search high and low to uncover a "younger" member who can lay claim to being the "Rock of Gibraltar" of its chapter. On behalf of the Board and members we wish Bill Michelson a belated happy birthday.

## "OUR HONORABLE GUESTS"



May's luncheon was another successful LAAPL Chapter luncheon meeting held at the Long Beach Petroleum Club. Our guests of honor who attended:

- Tina Kraus, City of Huntington Beach
- Lisa Rupp
- Pat (?), Cresta Land Services

## 2007 MICKLESON GOLF CLASSIC A SUCCESS Edgar G. Salazar, Land Manager PXP Plains Exploration Golf Committee Chairperson



The 3rd annual LAAPL Mickelson Golf Classic held at the Malibu Country Club on August 4 was a rousing success. 28 golfers, numerous sponsors, generosity and assistance from many supported the LAAPL in raising over \$4000 to the benefit of the R.M. Pyles Boys Camp.

After a brief morning overcast, the fog dissipated for a perfect day of golf; 85 degrees and a slight breeze. The ideal conditions led to low scores posted by at least two scramble teams:

1st place - Gary Plotner, Mike McPhetridge, Jim Drennan and Dan Sparks with the incredible score of 59

2nd place - Joel Miller and Larry McCamish (Kevin Rupp in spiritual support) with a "not to shabby" 61.

Individual honors - Gary Plotner, longest drive and Joel Miller, closest to the pin.

Stephen Makoff, Executive Director of R.M. Pyles Boys Camp, addressed the dinner crowd, citing moving examples of the successes of his outstanding organization.

Then on with the raffle where outstanding prizes were provided, including airline tickets, vacation stays to beach destinations, and many more. Though Gary Plotner didn't win any of the big ticket prizes, he seemed to be in the receiving end of golf honors and several other prizes; congratulations Gary on a big day.

Once again, the LAAPL thanks everyone for their support and generous contributions to this fundraiser. We look forward to the 4th Annual Michelson Golf Classic in 2008.



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## WCLI Article

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### LAAPL 2007 WCLI SPEAKERS

The “Override” is pleased to announce the Chapter’s line of speakers as follows:

- Carlin Yamachika, Attorney, Day Carter Murphy LLP  
*“Ethics in the Workplace”*
- Rock Zierman, Chief Executive Officer, California Independent Petroleum Association  
*Legislative Update--New political issues affecting oil & gas operations in California*
- J. Michael Melancon, Offshore Technical Compliance  
*“Behind the Scenes at the Minerals Management Service”*
- Douglas P. Imperato, PhD, Consulting Geologist  
*Since March 16, 1993, Dr. Imperato has been a California Registered Geologist. To date, his clients have drilled more than 100 of his oil and gas prospects throughout California, with a success rate among the highest in the industry.*
- Rae Connet, Attorney/Principal—Petroland Services  
*Subsurface Trespass & The Measure of Damages.*
- Rob Lindermanis, Petrobridge Investment Management, LLC  
*Capital in the E&P Sector.*
- Jack Quirk, Attorney, Bright & Brown:  
*The Rule Against Perpetuities and Fee Simple vs. Surface Title.*
- Marina M. Voskanian—California State Lands Commission  
*Challenges & Opportunities for Operating in Environmentally Sensitive Basins.*
- Dale Hoffman, CPL, Senior Staff Landman--Pioneer Natural Resources Alaska, Inc.  
*Working in the Great Land--overview of oil and gas in Alaska with an emphasis on land work and its parallels and dissimilarities to those in the Lower 48.*

## “CHAPTER BOARD MEETINGS

The 2006 – 2007 LAAPL Board of Directors held its last official meeting at the Long Beach Petroleum Club on May 17, 2007. The “Override” editor was in attendance and reports the following matters was discussed:

- West Coast Landmen’s Institute – Committee Chairs, Speakers, Sponsorship. Contract was signed with the hotel reserving space for the seminar.
- LAAPL 3rd Annual Mickelson Golf Classic – confirming date and location. Discussed sponsorship and using the revenue raised, after deducting expenses, as a donation to the Pyles Boys Camp.

The Board of Directors meets 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 luncheons.

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

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## Lawyer’s Joke of the Month

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### Jack Quirk, Esq. Bright and Brown

An alleged creditor harassed W. C. Fields until the actor ducked into a barbershop to avoid him. The tenacious fellow went in as well, and Fields yelled in exasperation, “I’ve told you ‘No’ ten times now. Just to shut you up, I’ll agree to the matter to my lawyer next time I see him.” The fellow pressed, “Will you take the proper steps if he says that I’m right?” “I certainly will,” Fields responded. “I’ll ask another lawyer.”



## LAAPL CHAPTER OFFICERS FOR 2007 – 2008

At our May luncheon, the LAAPL members voted in for office:

- President: Joel W. Miller, Energy Asset Analyst, Transamerica Minerals Company
- Vice President: Rae Connet, Esq., Petroland Services
- Secretary: Sharona Noormand, Independent
- Treasurer: Charlotte Hargett, Land Technician, PXP Exploration
- Director: Joe Munsey, Land Advisor, Sempra Energy Utilities
- Director: Edgar Salazar, Land Manager, PXP Exploration

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## NEW MEMBERS AND TRANSFERS

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Our Chapter Board of Directors welcomes the following new member to the Los Angeles Chapter:

Sharona Noormand  
Independent  
1974 Coldwater Canyon  
Beverly Hills, CA 90210  
noormand@aol.com  
310-666-5790

**No Transfers**



## Treasurers Report

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As of 4/3/2007, the LAAPL account held a balance of	\$ 6,142.40
Payment to: Custom Copy Central	\$ 246.56
Printing of Directory	
The LAAPL account with Bank of America as of April 3, 2007, shows a balance of	\$ 5,898.84
Merrill Lynch Money Account shows a total	\$10,259.32

**SCHEDULED LAAPL  
LUNCHEON TOPICS AND  
DATES**

September 20, 2007

Tom Walker, Consulting Petroleum Engineer, of Evans and Walker  
"Oil Price Forecasting"

October 3, 2007

West Coast Land Institute

November 15, 2007

Speaker – TBD

January 17, 2008

Joint Meeting With  
Los Angeles Basin Geological Society

March 20, 2008

Speaker - TBD  
Officer Nominations

May 15th

Speaker – TBD  
Officer Elections

**LAAPL CHAPTER TO HOST  
WEST COAST LANDMAN  
INSTITUTE**

This year the WCLI will be held in Santa Barbara as announced by our Co-chairs, Kevin Rupp, CPL, Independent, and Edgar Salazar, Land Manager, PXP Plains Exploration. For further information please contact Kevin at 805-340-0498 or Edgar at 323-298-2449.

When: October 3 – 5, 2007

Where: Hotel MarMonte [Right on the Beach!]

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Rates: Special room rates from \$129 to \$189 per night Extended Rates of \$159 to \$169 for Friday and Saturday



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Venoco is an independent energy company primarily engaged in the acquisition, exploration and development of oil and natural gas properties. It has headquarters in Denver, Colorado and regional offices in Carpinteria, California and Houston, Texas. Venoco operates three offshore platforms in the Santa Barbara Channel, has non-operated interests in three other platforms, operates three onshore properties in Southern California, has extensive operations in the Northern California's Sacramento Basin and operates 18 fields in the Texas Gulf Coast and South Texas. Venoco is publicly traded on the New York Stock Exchange under the symbol "VQ".

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## SEISMIC TRESPASS

“But All My Friends Do It.”

By: Julie A. Carter

Day Carter & Murphy, LLP

Seismic surveys and other geophysical operations are a common and important element of oil and gas exploration. Yet, confusion and differences of opinion regarding the law relating to geophysical operations, together with the lack of clear law on the subject permeate nearly every aspect of a geophysical seismic shoot. As a result, varied and inconsistent practices with respect to the permitting of geophysical operations and the payment of damages, for example, have developed. Merely following the practices of other operators, therefore, may not be a wise practice. This article briefly examines the legal relationship between the mineral rights owner and other interested parties when it comes to seismic operations.

### SURFACE ACCESS

Seismic exploration takes place primarily on the surface of the land. For example, explosives are set off in small boreholes in the ground, generating seismic waves which are rebounded and recorded some distance away from the explosion. Although seismic operations take place almost exclusively on the surface of the land, it is the mineral rights owner who is the party with the authority to grant permission to conduct a seismic operation.

Upon the severance of the title to the minerals from the surface, a superior right of entry arises in the mineral owner. The rationale is that unless the owner of the minerals was to enjoy a right to enter upon the surface to work the minerals, that severance would not occur. This superior right includes a right to enter the surface to evaluate the minerals in order to determine whether the interest is worth further exploration. *Yates v. Gulf Oil Corp.* 182 F.2d 286 (Tex. C.A. 1950) holding that there exists an implied right of the mineral

rights owner to enter the lands under which his subsurface rights exist for the purpose of conducting geophysical exploration.] While the mineral owner generally possesses the right to authorize geophysical operation, in the event of severed surface and mineral estates, you should nevertheless review the severance document to confirm there were no restrictions or limitations placed on the exercise of such right by the mineral owner.

Notwithstanding this relatively clear legal principal, seismic survey crews routinely approach surface owners prior to the surface entry seeking their consent. If the mineral rights owner has not also given its consent, any seismic operations on that property will constitute a trespass. Moreover, if the mineral owner has given its consent through a lease or otherwise, also seeking the unnecessary consent of a surface owner can lead to additional problems where the surface owner denies permission or imposes new conditions for such entry. In short, in approaching a surface owner for consent, a seismic crew should be careful not to inadvertently grant the surface owner more legal rights or at least negotiating leverage than the surface owner is entitled.

Although there are no California cases dealing specifically with surface access issues related to seismic operations, the Texas court in *Phillips Petroleum Company v. Cowden* 241 F.2d 586 (1957) clearly held that the consent of the severed surface owner alone was insufficient. Further, the Texas court rejected Phillips' argument that only the surface owner's consent is required where the surface entry and seismic operations were intended to evaluate minerals underlying adjacent properties which were not owned by the

defendant-mineral owner. The court held that although a mineral owner may not permit others to invade the surface for the purpose of exploring neighboring property, this at most gives the surface owner a concurrent, but not exclusive, right to forbid such operations. Thus, for large seismic shoots involving sources and receivers on adjacent lands, it is advisable the consent of both mineral and surface owners be obtained.

### TENANTS IN COMMON

When two or more parties own the mineral rights, the question arises as to whether all mineral rights owners must consent to the geophysical operations. Generally, each cotenant has the right to possession of the whole of the estate, but must account to the other cotenants. For example, one cotenant, regardless of how small his or her fractional interest, may drill an oil well on his or her property without the consent of the cotenants subject to an obligation to account to the other cotenants for the net profits of the activity. Accordingly, it is likely that any one mineral owner may grant permission to conduct a seismic operation on the property without the consent of the other cotenants, but the consenting mineral owner may be open for an action for an accounting or compensation to the cotenants.

Nevertheless, certain practical considerations may affect whether or not an operator will rely on the consent of less than all the cotenants to conduct geophysical operations. If less than all the cotenants have consented, then the right is not exclusive. Any of the non-consenting cotenants would be free to authorize a third party to conduct geophysical operations on the property, which raises the risk of a competitor invading or interfering with the project.

*continued from page 5*

Further, if the seismic survey dictates the leasing and further exploration of the property, the non-consenting cotenant may be even more difficult, and may drive even a harder bargain, during subsequent lease negotiations. Such considerations may influence the extent to which efforts are made at the outset to obtain the consent of all of the cotenant mineral owners.

#### **ADJACENT OWNER**

For 3D seismic operations to accurately image a geologic structure, seismic data must be gathered from alongside the structure as well as the structure itself. Thus, the very nature of 3-D seismic requires a larger geographical area, which means more parties will potentially be affected. It also means that minerals will likely be evaluated by the survey which are not located beneath the lands on which the sources and receivers are actually placed. To avoid a seismic trespass, therefore, the consent of each potentially affected mineral owner/lessee must be obtained even if their lands are not the principal subject matter of the survey.

The situation often arises where the sources are on Tract A, the receivers are on Tract C and the vibrations resulting in recorded data are from Tracts A, B, and C. The question arises whether there has been a trespass against the non-consenting owner of Tract B. Generally, to have a trespass, there must be a physical entry. Early cases held there was no trespass against Tract B since there was no actual entry onto the property and no physical damage to the property. *Kennedy v. General Geophysical Co.*, 213 SW.2d 707 (Tex App. 1948). The trend, however, has been to find relief for the owner of Tract B under various theories including trespass, assumpsit, loss of speculative value, interference with the right to contract, invasion of privacy, unlawful acquisition of a trade secret, and misappropriation. Although no California case has arisen, it is likely that a California court will follow the trend and either dispense with the

physical entry requirement or find that the sound waves emanating from the explosives or other sources are in fact a physical entry.

#### **DAMAGES**

The law in California appears to be wide open as to what damages may accrue, if any, for a seismic trespass. The party committing the trespass of course has gained valuable knowledge. It is less clear what the mineral owner has lost. Damages will necessarily depend on the facts of each case and the theory upon which the cause of action is based. In *Cassinis v. Union Oil Co.*, 14 Cal. App. 4th 1770 (1983) (trespass resulting from injection of wastewater), the court expressed substantial flexibility in the determination of damages in trespass cases, and indicated that the particular facts of the case will have bearing. Damages may include obtaining the data, reasonable value of the exploration right, loss of speculative value for leasing and further development, reasonable value of the information gained by defendant and, in cases of bad faith, punitive damages.

The court, in *Phillips*, supra, found the damages to be the reasonable market value of the use made of the property independent of the benefits that appellants actually received. The court disregarded the fact that the tests were not designed or calculated to evaluate the defendant's minerals, and that the data obtained from the non-consenting land was of such poor quality that it was unreliable and essentially worthless. Thus, *Phillips* provides authority for a cause of action concerning indirect acquisition of seismic data through the use of nearby lands. The court did limit compensation to only that part of the property that was "occupied" by the exploration operation.

Another argument could be that the mineral owner has lost the speculative value of his minerals. Damages for speculative value are rarely granted as they cannot be determined with certainty. If the information is made public, a cause of action for slander of title may also be available. Courts,

however, appear reluctant to grant damages based on loss of market value primarily based on lack of evidence as to damage. Still, it seems a good argument exists that there should be recoverable damages in the form of diminution in value of land based on the loss of speculative value; not knowing whether oil and gas is under their land is more valuable than knowing there is none.

To help protect against an action, a lessee should delete or blackout any areas where information was gained without consent and take any other action possible to avoid the acquisition of data from un-permitted tracts. This action helps with an argument that lessor cannot establish any damage to his property rights since no information detrimental to lessor has been revealed and thus only nominal damages may be awarded. This can be very difficult where doing so also results in a loss of valuable information in the survey area.

*Julie Carter is a partner at Day Carter & Murphy LLP specializing in oil and gas law. She can be reached at [jcarter@daycartermurphy.com](mailto:jcarter@daycartermurphy.com).*



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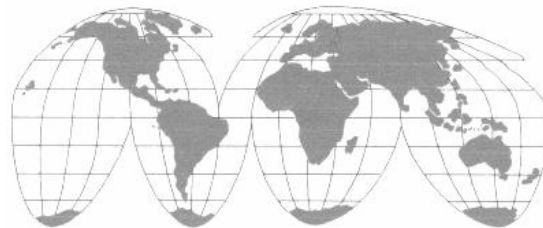
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Vanita Menapace, Associate Landman

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Mark Hooper, Land Mapping (Contract)

Patricia Pinkerton, Landman (Contract)

Harry Harper, (Retired, Land Consultant)

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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