Award Winning

The Override

Every Landman Wants One!

Volume IV, Issue 3 | May, 2009

Los Angeles Association of Professional Landmen

Inside This Issue:

2008—2009 Officers & Board of Directors

Presidents Message

Joel W. Miller, Energy Asset Analyst
Transamerica Minerals Company

I have really enjoyed serving as President over the last two years. We have seen amazing events happen in our industry since I took office. Oil spot prices were $65/bbl, then shot up to $147 - collapsing to $30. Natural Gas futures were $7, then shot up to $13 - collapsing to $3. $70,000/year starting salaries for landman grads were not uncommon; now landman grads are rejoicing if they can find a company that is actually hiring. People thought the world was running out of oil and now the world is awash in it. Everything changes for the better or worse, but I believe everything happens for a specific reason. If you have a family that loves you, friends who care, and faith in things to come, then you can overcome any obstacle. Life has many twists and turns, but if you have a strong foundation to rest upon, all else will pass. Thanks again for allowing me to serve.

May Luncheon Speaker

Cynthia R. Cohen, Ph.D.

"Demeanor, Deception and Credibility"

- *Lies fail or succeed in the court-room because of the liar's emotions and motivations and the lie detectors ability to detect lies*
- *There are common myths about lying behavior*
- *The ability to detect lies is a learnable skill*

Verdict Success LLC, Dr. Cohen's firm specializing in jury research, trial strategies, and settlement decision-making. Great trial lawyers are driven to understand jury behavior, mastering and winning difficult cases is easier when you understand jurors' perceptions. For over twenty years, Dr. Cohen has advised trial lawyers and corporate counsel make better decisions pre-trial and beyond. Dr. Cohen's expertise, special attention, and professional standards are the highest, coupled with a depth of understanding complex cases.

Dr. Cohen conducts mock trials, case strategy research, focus groups, community attitude surveys, witness preparation, opening statement clinics, video-deposition analysis, jury selection, trial analysis, shadow juries, juror interviews, and mediation communication. With strategic alliances, Dr. Cohen helps trial lawyers win major complex cases across the country.

Editor's Corner

Joe Munsey
Newsletter Chair
Southern California Gas Company

Our reign of terror as Newsletter Chair is swiftly coming to an end. Before the sunset squeezes our last rays of sunlight as Editor, we would like to thank the following persons for making "The Override" a success; i). The LAAPL executive board and our current president, Joel Miller, of Transamerican Minerals, ii). several of the legal community who have provided the content for our Case/Issue of the Month, more so Thierry R. Montoya, Esq. of Ardno, Yoss, Alvarado & Smith, who has provided a steady stream of cases for our publication, iii) Cliff Moore [the keeper of the "holy" lot books for Los Angeles County] for his willingness to provide editorial oversight; and iv). Champion of this award wining publication, Randall Taylor of Taylor Land Services, Inc. Last but not least, you the readers, who did not run me off and endured this column.

All publications at one time or another bears its soul when admitting to withdrawing a story, or a piece therefrom; and generally with much apprehension. We are about to do the same in this column, but not with the usual trepidation the main street press is known for. A nice pat on the back for doing so.

In our May issue we had written the following, "President Elect was not going to run the coal industry out of business, as he stated he would, not now – he needs those jobs; as do the people employed by the coal industry."

My, how things have changed since the election of Obama and his "settlement" with the environmental extremist has come to fruition; ala the dreaded Cap and Trade fiasco winding its way through the malaise we commonly know as the United States Congress – aka the "Foggy Bottomites."

Well, we re-tract this statement because Cap and Trade is barreling down the legislative chute and quite frankly, coal industry jobs are going to be lost, as other energy related industry jobs – plus things are just gonna cost a whole lot more. Why will it pass? Money…. the love of money is the root of all evil as the Good Book points out, and Washington is just not going to be able to walk away from the onslaught of tax revenues they see coming their way once a convoluted version of the Cap and Trade is passed.

Here's the real dilemma on this Cap and Trade legislation. When enacted, the trickle down effect hits Main Street in the pocket book, plus coal producing states will see unemployment rise and all the ancillary industries supporting coal will begin to suffer. Reversing the worst of the Cap and Trade provisions ain't gonna happen fast enough to stop the job losses. Anyone remember the 80's when the oil and gas industry lost hundreds of thousands of workers and professionals? It may very well happen to us again, but this time the coal miners' daughters and sons go down with us.

Here's how reversing bad policy works in Washington – deals needs to be sliced and diced before ill-fated policy is reversed – regardless of the suffering masses. Case in point; Dan Rostenkowski, the House Ways and Means Chairman in the 1980's pushes forward the luxury tax to soak the rich ["Rosty" hails from the same Chicago political cesspool as the current president]. I should also mention he was known as the postage stamp emperor; yup, as a member of congress he is entitled to all the postage stamps he could round up for sending out glowing reports of his largeness. The problem with collecting cases of stamps from the House Post Office is the stamps are allotted for the use of…you got it – sending out "government junk mail." Rosty's problem; turning the stamps in for cash to feather his pockets, he spent time in the clinker for getting caught. Once the luxury tax went into effect, the trickle down affect was the loss of jobs for those who built these behemoths. [I believe the workers are referred to as blue collars types.] Rosty rises to the occasion and comes forth with a rescue, but hold on there, as the yacht industry was bleeding jobs, Rostenkowski was clutching onto the ill fated outfall of his opulence tax until he was assured of other pet concessions – blue collar workers be damned.

I think you know where this is going – reversing bad policy does not happen overnight, and to our brethren in the coal industry start kissing your sweet jobs good bye. Cap and Trade legislation is by no means a way of cleaning up the air – that is the marketing department selling the sizzle; it is the love of money that is driving that locomotive down the track. Cap and Trade is just another disguised version of what used to be called indulgences, shell out the bread, baby, and thy sins be forgiven.

Onward and forward, our best revenge will be an economy that heats up; oil prices rising as demand increases, gasoline at the pump starts pinching the pocket book of the world economy and we are off on a boom again. What's not to like about that?

Meanwhile, we have an excellent speaker lined up this month...Dr. Cohen; Jack Quirk, who has written an excellent piece in our Case/Issue of the Month; new chapter officers are being elected and the food at the Petroleum Club still delights us all. Things are just plain looking up for the Los Angeles Chapter.

See you at the Petroleum Club May 21st. And may God bless.

Lawyers' Joke of the Month

Jack Quirk, Esq.
Bright and Brown

From the syndicated carton strip Maxine...

BAIL EM OUT?!

Back in 1990, the Government seized the Mustang Ranch brothel in Nevada for tax evasion and, as required by law, tried to run it. They failed and it closed.

Now we are trusting the economy of our country and our banking system to the same nit-wits who couldn't make money running a whore house and selling whiskey.

Kind of makes you worry.....doesn't it?

OUR HONORABLE GUESTS

March's luncheon topic brought out several guest to the Long Beach Petroleum Club. Our guests of honor who attended:

[Wretched we are! We have forsaken the visitor sign-in sheet and cannot report all the visitors who attended – "known" guest of honor who attended:]

Cody Lee's [luncheon speaker] sister

Joseph Y. Langevin, MCR - Independent

Mark H. Evans - Aeneas Group

Jennifer D. Evans - Aeneas Group

CHAPTER BOARD MEETINGS

The Board of Directors held its board meeting at the Long Beach Petroleum Club in March.

Issues discussed:

- Officer nominations
- LAAPL 5th Annual Mickelson Golf Classic – confirming date and location
- LAAPL to host WCLI – confirming date and location
- Review of chapter by-laws for any proposed changes
- Website: post newsletters, interactive with CIPA & use of membership list
- Discussion of industry news via LAAPL email list

The Board of Directors meet 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.

SCHEDULED LAAPL LUNCHEON TOPICS AND DATES

May 21st, 2009

Cynthia Cohen, Ph.D.

Jury Consultant

"Demeanor, Deception & Credibility

Officer Elections

September 17, 2009

TBD

November 19, 2009 8

TBD

Treasurer's Report

As of 4/1/2009, the LAAPL account showed a balance of	$14,735.98
Deposits	$406.20
Total Checks, Withdrawals, Transfers	$ 4,532.68
Balance as of 4/30/2009	**$ 10,609.30**
Merrill Lynch Money Account shows a total	$11,096.90

New Members and Transfers

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

Joseph Y. Langevin, MCR
Independent
7977 Vista Del Rosa Street
Downey, CA 90240
562-413-1374
j.langevin@yahoo.com

Mark H. Evans
Aeneas Group
100 Bayview
Suite 4200
Newport Beach, CA 92660
949-500-8346
mark@aeneasgrp.com

Jennifer D. Evans
Aeneas Group
100 Bayview
Suite 4200
Newport Beach, CA 92660
949-500-8346
Jennifer@aeneasgrp.com

Transfers

None to Report

Corrections

Stephen T. Harris' email address was listed as oil.gas@ste.net
Should have read:
Oil.gas@gte.net

We apologize for any inconvenience this may have caused.

Guest Article

CANADA STRIKES OIL (TEXAS TEA) BEFORE TEXAS?

Part I of the Canadian Oil Story

Joe Munsey
Newsletter Chair
Southern California Gas Company

Find Detroit on the map. Travel about 70 miles northeasterly on Interstate 94 to Port Huron, Michigan. Before crossing the Blue Water Bridge, look across the beautiful St. Clair River and see where it all began. Hang a right when arriving on the other side of the border in the Town of Sarnia and head northerly a short distance to Oil Springs and Petrolia.

"Say it Ain't so Joe"

We offer our condolences to our Texan brethren; the oil biz did not start in your part of the world, to the anguish of all things Texan. Ye of the Pennsylvanian high and low lands – please take note.

The "commercial" hunt for oil, black gold, "Texas Tea" [perhaps we should now call it "Canadian Tea"] was discovered in North American in none other than the Michigan Basin before Col. Drake made his find in Pennsylvania. Albeit, there is a twist to this little known fact, the first oil discovery [dug by shovel] was found on the other side of the border in Ontario, Canada, in an area known as Black Creek, later renamed Oil Springs. [I wonder why?]

Okay, oil had been "discovered" thousands of years ago; Noah used bituminous tar to keep the ark from sinking. We know the Native Americans (Californians) were known to use it for all sorts of stuff – we had oil seeps in California; and elsewhere? But the modern day commercial discovery of oil took place in an area clearly known to belong to our neighbors to the North.

Another oil field trash factoid – oil field trash workers began migrating from Oil Springs, Ontario, to the outermost regions of the world, teaching the locals how to find and produce oil. Exploration and production was on its first roll.

Now we *commence* [a bit of surveyor lingo] with the rest of the story.

Landman's Roots Go Back to the Original Drillers of the Oil and Gas Industry

Not often do you come across someone whose roots go back to the origins of an industry; especially an individual whose family was part of the founding pioneers who fueled [pun intended] the industrial world. Or spoken into today's language – morphed the industrial revolution for the next century plus; and will continue to do so regardless of the raving mad greenies.

I ran into Murray E. Brown, a professional landman, on the landmanconnecction.com site, Brown hails from the Province of Ontario. Thinking we could offer a bit of oil biz lore to someone living in Ontario, I proceeded to dazzle Murray with my vast wealth of oil history. A disclaimer to the reading audience, I had worked the Michigan Oil Patch for most of the 80's and early 90's; was in the employ of Canadian brokerage firm, Elexco, Ltd., operating as Elexco Land Services, Inc. in Port Huron, MI[1].

Well, Mr. Brown came back with a pleasant and attention-grabbing response and I found out he held a bit of oil biz knowledge himself. The Brown Family legacy was on the cutting edge of the humble beginnings of exploration, drilling and producing in the oil industry, starting with his great grandfather circa 1870 in Petrolia, Ontario, Canada. He went on to say, "Petrolia and the Oil Springs area hold title to the first commercial oil well drilled in North America. Oil was first discovered in the 1860's in Oil Springs not far from Petrolia. The world's first gusher and oil exchange started in the area." Uh? I was outfoxed by another landman.

I get out-maneuvered again when Jack Norman, my old boss and Principal owner of Elexco, lays another bit of Canadian oil business insight on me, that story shows up in the next issue of "The Override."

So I put the challenge to Brown, tell me about it and we will make you "famous" in the landman world of the LA Basin with your story and here it is.

The Brown Family Oil Story

Many Americans came to the area to become part of this newfound industry. Standard Oil Company was started in Petrolia by US investor John D. Rockefeller [really?]. One of the first oil barons was not Rockefeller but an American who wandered into Petrolia. [That comes up in the next issue.]

Cable tool drilling was developed during the Petrolia oil boom period. The use of this technology continued until the rotary drill bit was refined [hello papa Huges]. Amazing enough, cable drilling is still in used in Ontario, Michigan and Ohio. [If it works, why break it?]

The producing oil fields were shallow, at only about 250 feet; they also produced a large amount of natural gas. Maybe Jed Clampett was on to something, just aim the shotgun, shoot straight into the ground and find oil. Like "good" oil men, not knowing what to do with the gas; drillers simply released the gas into the air. [The greenies will be livid for sure on this bit of industry's past tradition, but "Cap and Trade" is coming to a country near you and the industry WILL pay for its past and future sins.]

Canada Strikes Oil continued on page 5

Canada Strikes Oil
continued from page 4

All sorts of well stimulation "tricks" where tried and refined, including the use of nitroglycerine; drop a nitro torpedo down the well and see what happens. Obviously, early "cutting edge technologies" were trial and error, costing human lives, especially with the use of nitroglycerine. [No surprises here.] However, early drilling and production methods that were developed during this era are still being used today the world over.

Murray's **great grandfather**, Joseph Brown, came to the area in 1870. Joseph's family consisted of 8 boys and 4 daughters. [That's a clan.] The Brown Family became part of the pioneer drillers who were now in huge demand by the emerging international oil companies. [Big oil was on the rise, the "Seven Sisters" were soon to come….and go.]

For thirty years, the Town of Petrolia was the centre for dispatching of foreign drillers. Generally, the drillers would take on a year or multi year contract with a company. Many families kept their belongings semi packed, once a contract was acquired, the family and the driller would only have a couple of days to leave. [So this is how teepee living began in the oil business?] Many of the contracts were with firms such as Standard Oil, British and Royal Dutch Shell, as well as nationalized oil companies of countries like India.

The Brown Family joined the oil field trash clans and took on assignments worldwide; Balkins, Romania, Iraq, Cuba, China, India, Burma, South America, Australia, New Zealand, Indonesia and Russia. A great uncle was assigned by Imperial Oil to investigate the "oil sands" of northern Alberta, Canada. He went into the remote area by horse and mule pack in the 1920's. His report: "the oil sands require technology we do not possess at this time." [They are still working as we speak on improving that particular technology.]

Murray's grandfather drilled in Persia, Saudi Arabia, China, Sumatra and Borneo. Murray's father was born in the jungle of Borneo in 1927. His three uncles where also born in an area known then as the Dutch East Indies. [Does that make them Indians?]

When the great depression arrived, the demand for oil decreased and the drillers headed back to Petrolia. One ancestor decided to stay in India where he remarried and raised another family. [Wonder where they are now?]

Murray's **grandfather** came back to Petrolia and re-opened some of the original producing fields and did what he knew best, oil production. [Good idea not to stray too far from the family business.] Guess it was not in the books that **grandfather** would become an oil baron, but it provided enough income to get the family through the depression.

Murray's **father** did not continue the rough and tumble drilling business and after the Second World War his father became a dentist in Petrolia. Ah, but the oil biz was still in the family blood line and Doctor Dad invested in the startup of several oil producing companies.

Sun Setting on the Brown Family Oil Legacy?

Our current Mr. Brown initially wanted to become a farmer and thus studied agriculture. The lure of the oil industry was still in the blood and he started a high pressure steam washing service specializing in the drilling and petro chemical business. [Guess it just runs deep in the Brown Family.] Leaving the farming to others, Murray eventually advanced to an executive position with a cementing, fracing, and pipeline pressure testing corporation.

Never one to sit still, and always seeking more knowledge of the industry, Murray started as a part time landman while working as a corporate executive. Finally in 1992, Murray created Bluewater Energy Quest, a multi service land company, which he still is involved in today as a one person operation, while semi retired. [Does anyone every leave the oil business?]

Murray's son and two daughters worked for the firm while university students before they took on their own careers in other fields. [Ummmm….the oil blood line appears to be thinning out.] Perhaps the sun is setting on the Brown Family oil legacy.

Like all "good" landmen, Murray enhanced his credentials with specialized training from the University of Western Ontario in negotiation mastery, alternative dispute resolution and human resources. Murray says his extensive career has included drilling project management, lease acquisition, seismic project management, damage claims, expropriation, high voltage power line right of ways, gas storage fields, prospect generation, title searcher, pipeline lease acquisitions, meter sites; and teaching negotiation strategies the oil patch.

Murray Brown has no regrets of his career choices and always enjoys sharing his lifetime of experiences with others in the industry. As Saturday Night Live icon Dennis Millers says, "ABC – always be closing," what landman is not doing that while awake or sleeping?

How often do you have the opportunity to meet up with someone whose roots go way back to the beginning of the oil biz? Rarely, but you can meet Murray Brown on www.landmanconnection.com.

In the next issue of "The Override," the first oil baron family.

[1]Figure out what the acronym "Elexco" stands for and you are entitled to a free lunch at a place of your choice in Orange County. All Elexco employees and family members are naturally not eligible; and you must claim your prize here in Orange County – so start planning a trip to paradise and then return home.

SPECIAL EVENT

AAPL To Hold Its 55th Annual Meeting In Clearwater Beach, Florida

To register online or for a downloadable registration form, please go to www.landman.org.

Dates: June 17th – June 20th
Host Hotel: Hilton Clearwater Beach Resort

The entire Education Program is approved for up to 17 continuing education credits, including one ethics credit and two CPL/ESA credits. The following topics will be covered:

- Public Lands Access and Other Issues
- Negotiations & The Petroleum Landman
- OCS – Gulf of Mexico Discussions & Update
- Ethics and the Landman
- Uranium updates, Prices, Activity and Royalties
- The Outlook for Energy: A view to 2030
- Regulatory & Envrionmental Issues in Appalachia
- History of Law for Landmen
- Current Issues in Wind Energy Law
- Geology 101
- Geologic Discussion of Western States (WY & ND) Shale Plays

SPECIAL EVENT

LAAPL Chapter to Host West Coast Landman Institute

At our LAAPL Board meeting in March 2009, the Board of Directors unanimously made the decision to host the West Coast Landman Institute for 2009. Edgar Salazar, Land Manager, PXP Plains Exploration, has volunteered to chair the event with the help of Kevin Rupp, CPL, Independent, current Chapter President, to act as co-chair.

The 27th Annual West Coast Land Institute

When:
October 7 – 9th

Where:
Hotel Mar Monte
1111 East Cabrillo Blvd.
Santa Barbara, CA 93103

Room Rates:
$139 per night in Newly Remodeled Rooms
For Hotel Reservations call 800-643-1994 or 805-963-0744 and reference WCLI09.

Schedule of Events:

- Wednesday, October 7th: Welcome Dinner at the Hotel Mar Monte
- Thursday, October 8th: Breakfast, Lunch, and Conference
- Thursday Night: Rooftop Clambake at the Canary Hotel
- Friday, October 9th: Breakfast & Conference

THANK YOU LETTER

R.M. PYLES BOYS CAMP "THANKS" LAAPL

Edgar G. Salazar, Land Manager
PXP Plains Exploration
Golf Committee Chairperson

Edgar Salazar reports receiving a letter of thanks from Stephen J. Makoff, Executive Director, R. M. Pyles Boys Camp, in receipt of the $4,380.70, which represents the net proceeds realized from the golf tournament held in August of last year. Edgar chaired the 2008 successful 4th Annual Mickelson Golf Classic which allowed the LAAPL's to contribute to the camp – which is the Chapter's once a year benefit fund raising event.

Established in 1949, by oil man Mr. Pyles, the R. M. Pyles Boys Camp is dedicated to the task of building healthier and happier generations of productive Americans firmly endowed with the ideals and principles of our freedom loving country.

Edgar and the LAAPL Board of Directors thank everyone for their support and generous contributions to this fundraiser. We look forward to the 5th Annual Michelson Golf Classic in 2009.

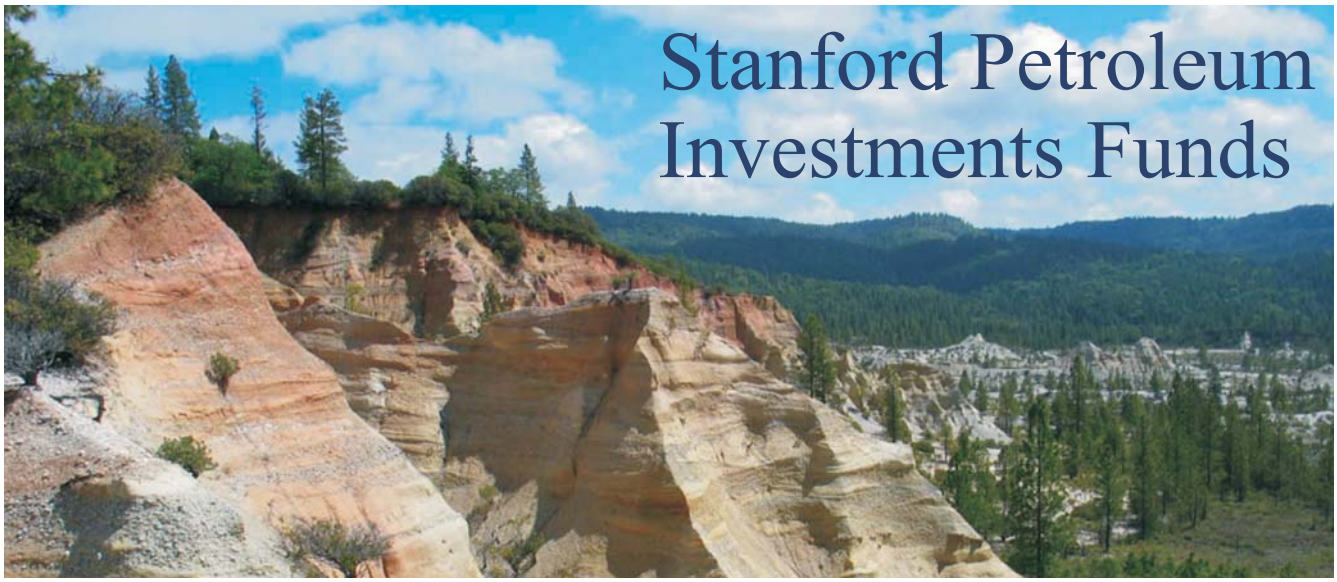

Photo courtesy of Andreas Mulch

Investing in Energy to Support Education and Research

"Today's computational capacity and the availability of large volumes of data from ground-based observations and satellites offer new opportunities for understanding how the Earth system works and how human activities interact with Earth processes. The Stanford Center for Computational Earth and Environmental Science will enable the development of sophisticated models to address questions about energy and freshwater resources, natural hazards, climate change, and other global issues."

Jerry M. Harris, Director, Center for Computational Earth and Environmental Science, Professor and Former Chair, Department of Geophysics, Stanford University; Director, Stanford Wave Physics Laboratory; Past Distinguished Lecturer, Society of Exploration Geophysicists, American Association of Petroleum Geologists, and Society of Petroleum Engineers.

The alumni-managed Stanford Petroleum Investments Funds own, manage, and acquire producing oil and gas royalties and other energy investments. Income from these investments provides essential discretionary funding in support of energy and environmental education and research and other programs of the Stanford School of Earth Sciences. The Petroleum Investments Funds provided seed funding to help launch the Stanford Center for Computational Earth and Environmental Science.

If you would like to sell or donate producing oil and gas royalties or learn more, visit **http://earthsci.stanford.edu/support/pif** or call or email David Gordon, Associate Dean, Stanford School of Earth Sciences, at (650) 723-9777 or dsgordon@stanford.edu to see how you can help.

PIF
Petroleum
Investments
Funds

LAAPL ELECTION FOR 2009 – 2010 OFFICERS

Officers will be elected by a vote of membership in attendance at the May 21, 2009 Regular Meeting at the Long Beach Petroleum Club.[1]

President[2]	Thomas G. Dahlgren, Industrial Relations & Land Coordinator, Warren E & P
Outgoing President[3]	Joel W. Miller, Senior Energy Asset Analyst, Transamerica Minerals Company
Region VIII AAPL Director[4]	Joel W. Miller, Senior Energy Asset Analyst, Transamerica Minerals Company

OFFICE	CANDIDATE
Vice President	Stephen T. Harris, Independent, Oxy Petroleum/THUMS
Secretary	Jennifer D. Evans - Aeneas Group
Treasurer	Charlotte Hargett, Land Technician, PXP Plains Exploration
Director	Joseph D. Munsey, Senior Land Agent, Southern California Gas Company
Director	L. Rae Connet, Esq., Managing Partner, PetroLand Services

[1]Per Section VII (7)(c), voting for the slate of officers is to be done by secret ballot. A motion will be brought to the floor asking the members to vote and pass a resolution permitting a departure from said Section VII (7)(c) at the May 2009 meeting.

Per Section VII (7a) of the by-laws, at or prior to the regular meeting scheduled nearest [emphasis added] to April 15th of each membership year, the membership will be provided with a list of nominees for officers of Vice President, Secretary, Treasurer and two (2) Directors. Due to the scheduling of the Chapter's meetings, a list of nominees will be presented to the members at our May luncheon, including a list published in the May issue of the "Override." A motion will be brought to the floor asking the members to vote and pass a resolution permitting a departure from said Section VII (7)(a) at the May 2009 meeting.

[2]Per Section 7(3) the Vice President shall succeed to the office of the President after serving his or her term as Vice President and shall hold the office of President for the next twelve (12) months.

[3]Per Article 8 (2) the outgoing President shall serve as director.

[4]Not an elected position and not a member of the LAAPL Board – by Board appointment for a two year period. Joel W. Miller was appointed in 2008.

EXERCISING YOUR SURFACE ENTRY RIGHTS: "USE THEM OR LOOSE THEM?"

John Quirk, Esq.

BRIGHT AND BROWN

Paper given at the Annual West Coast Landmen's Institute

1. General Principals of Mineral Related Surface Use
2. The "Surface" Owner Misnomer
3. Limitations on Mineral Related Surface Use Rights
4. Preemption of Surface use Rights:

- Limitations on The Right of Governmental Land Use Authorities to Prohibit or Impose Conditions Upon Oil and Gas Operations
- Governmental Preemption of Mineral Related Surface Use Rights
- Private Developmental Preemption of Mineral Related Surface Use Rights
- Governmental/Private Party Preemption of Mineral Related Surface Use Rights

1. General Principles of Mineral Related Surface Use

Uncertain and Imprecise Terminology

Dabney-Johnston Oil Corp. v. Walden (1935) 4 Cal.2d 637, 650-651: "The failure of those who are dealing in oil rights to precisely describe the nature of the interests granted is due part to the recent development of the oil industry. The law pertaining thereto is still in a formative stage. An analysis of the nature of oil interests which may be created involves an application of the common-law rules which crystallized before there were extensive dealings in subsurface fugacious substances. In the several jurisdictions in this country there is a contrariety of description as to the nature of these interests, and in a single jurisdiction, as in this state, there are conflicting expressions as to the description of oil interests. [Citation omitted.] It is not surprising, in view of the lack of a definite terminology descriptive of these interests, that those who are dealing in oil interests have difficulty in describing the interest transferred, and that ambiguous and uncertain instruments are presented to the courts for analysis. Such instruments must be construed as a whole in the light of the circumstances under which they were executed and the expressed intent of the parties at that time."

Profit a Prendre

Dabney-Johnston Oil Corp. v. Walden (1935) 4 Cal.2d 637, 649: "The owner of land has the exclusive right on his land to drill for and produce oil. This right inhering in the owner by virtue of his title to the land is a valuable right which he may transfer. The right when granted is a profit a prendre, a right to remove a part of the substance of the land. A profit a prendre is an interest in real property in the nature of an incorporeal hereditament [i.e., akin to an easement]." Thus, a severed mineral interest is an encumbrance upon the remaining separately owned fee simple interest.

Implied Mineral Related Surface Use Rights

Dabney-Johnston Oil Corp. v. Walden (1935) 4 Cal.2d 637, 649-650: "... although the oil and gas in place doctrine is rejected, interests in oil rights which are estates in real property may be granted separate and apart from a grant of surface [i.e., fee simple] title. The grantee of the profit has a right to such possession of the surface as is necessary and convenient for the exercise of the profit, but he has no general estate in the surface."

Callahan v. Martin (1935) 3 Cal.2d 110, 122: "If the oil and gas lessee is not granted exclusive possession of the surface by the terms of the lease, he has nevertheless a right to such possession as is necessary and convenient for the exercise of the profit, which, in fact, may preclude any other surface possession."

Wall v. Shell Oil Co. (1962) 209 Cal.App.2d 504, 513: "The true rule is that (1) where the owner of a parcel of land sells a portion thereof reserving or excepting the oil and mineral rights therein, or where a person purchases the oil and mineral rights in a specific tract of land, the surface area of such lands may be subjected only to such burdens as are reasonably necessary to the full enjoyment of the mineral estate in such particular specific parcels and the surface area may not be burdened by installation or surface fixtures designed to serve oil producing facilities located without the parcels; but (2) the owner of the surface area [i.e., fee simple interest] in the parcel following such sales or transfers may not by any

subsequent subdivision of the surface area deprive the owner of the oil and mineral estate of his rights in the entire parcel. [1] Further, each subsequent purchaser of a subdivision thereof, taking with notice of the prior sale and reservation rights, takes knowing that his surface ownership may be burdened in part, and, in very rare cases perhaps, in its totality, by the reasonable exercise of the rights of the owner of the oil and mineral estate; and this without regard to whether or not the oil or mineral underlies the particular subdivision, or whether the facilities located thereon serve facilities located without the subdivision, so long as they do not lie beyond the original tract."

2. The "Surface" Owner Misnomer

The common reference to the owner of the fee simple interest in land from which the mineral interest has been severed and is separately held as the "surface" owner is an unfortunate misnomer. Such reference tends both to overstate and to understate the interest of such owners of a "mineral-encumbered" fee simple {or **"MEFS"**} interest. The rights and interests of MEFS owners extend to far more than the mere "surface" of the land. Their ownership extends from the heavens to the center of the earth. Conversely, they do not "own" the surface, in the sense that they have the sole or even the paramount right to use and improvement of the surface of the land. Their use is subject to the superior (but narrower) surface rights of the mineral interest owner.

The MEFS owners (of mineral-encumbered fee simple) as owners of a general estate in the land, are entitled to any lawful use or improvement of the land, while owners of the severed mineral interest have no general estate--their use rights are both (a) limited to that which is necessary and convenient to the enjoyment of the mineral interest and (b) within that limitation superior to the broader surface use rights of the mineral-encumbered fee simple interest.

3. Limitations on Mineral Related Surface Use Rights

The specific content of mineral related surface use rights is limited in a given context by a variety of factors.

Reasonably related to exercise of the mineral interest within the affected property.

As noted above, mineral interest owners do not have a general interest. Their use and improvement is limited to what is reasonably related to exercise of their mineral interest. *Howard v. County of Amador* (1990) 220 Cal.App.3d 962, 972: "Another way in which the enjoyment of property may be divided is through the creation of a subsurface interest, such as a mineral interest. A mineral lease does not give the holder the exclusive right to possession and enjoyment of the property. Instead, it gives the holder the right to extract minerals from the property and to reduce them to personal property. All other rights in the land, including surface uses, are retained by the landowner. Regardless of the term of a mineral lease, the interest created is a profit a prendre, which is an incorporeal hereditament." [Citations omitted throughout.]

Lough v. Coal Oil, Inc. (1990) 217 Cal.App.3d 1518, 1526: "In the instance where one entity has fee simple ownership of the property to all depths, that owner has the exclusive right to drill for and produce oil and gas on that property. The exclusive right to drill for and produce oil and gas can be granted to another by use of an oil and gas lease which assigns the right to explore for and produce oil and gas to the lessee under the lease, subject to certain terms and conditions generally, including a royalty payable to the fee owner of the property. [1i]... There is a significant difference between a permanent right to extract oil and gas and the interest of a lessee under an oil and gas lease. An oil and gas lease is a privilege to take oil and gas for a limited duration and includes other duties, such as the duty to commence and complete the well with diligence and within a reasonable time. [1]] In California, an oil and gas lease with a "so long thereafter" habendum clause creates a determinable fee interest in the nature of a profit a prendre, an interest that terminates upon the happening of the specified event with no notice required." [Citations omitted throughout.]

Property Specific Use.

Bourdeau v. Seaboard Oil Corp. (1940) 38 Cal.App.2d 11; *Bourdeau v. Seaboard Oil Corp.* (1941) 48 Cal.App.2d 429; *Bourdeau v. Seaboard Oil Corp.* (1944) 63 Cal.App.2d 201, 205 {a successful action by a fee simple or surface interest owner against a unit operator for an overburdening of his land in the conduct of unit operations}: "As long as the [unit operator] confined its use of the surface of [plaintiff's land] to producing oil and gas from [that land], it was not a trespasser, but when it entered and used the surface [of that land] for the production, treatment and handling of oil and gas from other lands [within the unit], to that extent it became a trespasser...."

The doctrine of "accommodation," requires that the mineral interest and the mineral-encumbered fee simple interest both attempt to make reasonable accommodation for the surface use needs of the other. *Wall v. Shell Oil Co.* (1962) 209 Cal.App.2d 504, 516-517: "The law is clear that '[the grantee of the profit has a right to such possession of the surface as is *necessary and convenient* for the exercise of the profit, but he has no general estate in the surface.' Reasonableness in

the exercise of rights is a fundamental tenet of law, whether in the field of real property or in the countless other areas of personal relationships. It is true also that the necessary and convenient use of the surface in the exercise of the profit 'in fact may preclude any other surface possession....'

It is equally clear that, as conditions change, the 'reasonableness' of any particular exercise of a right may also change. An act which would be reasonable in the wilderness might be totally unreasonable in an urban area. The owner of oil rights has a right to develop them, and the owner of the surface area has a right to develop that. Society has an interest in both such developments. Though the right of the owner of land subject to a prior oil and mineral estate is subordinate thereto, yet he may exercise and develop his rights of ownership to the fullest, even though this exercise may in some degree affect the rights of the oil and mineral owner, so long as they do not prevent his enjoyment of his prior rights or unreasonably interfere therewith."

Mineral related surface use can also be limited by the specific terms and provisions of the severing grant document, of a specific oil and gas lease, or other binding agreement.

Mineral related surface use also is limited by the provisions of applicable laws, including zoning and land use regulations, environmental laws and regulations, health & safety laws and regulations, regulations of the Division of Oil, Gas and Geothermal Resources (the "DOG" and, please, not the DOGGR).

4. Preemption of Mineral Related Surface Use Rights

To a greater or lesser extent all of the factors that may impose limitations on mineral related surface use rights can also extend so far as to actually or effectively preempt all mineral related surface use. Where this affects only a relatively modest portion of a larger mineral tract it is not particularly unusual nor (in most cases) particularly troubling to the mineral interest owner/lessee/operator.

There are the circumstances in which the mineral interest's surface use rights are completely (or nearly so) preempted either by private development or by government regulation or restriction or by a combination of private development and government regulation/restriction. In that connection, we should point out some general limitations on such preemptive actions followed by a discussion of some fairly typical scenarios in which such preemption nonetheless takes place.

- Limitations Upon The Right Of Governmental Land Use Authorities To Prohibit Or Impose Conditions Upon Oil and Gas Operations

The principles which limit the power of government to prohibit or impose conditions upon the exercise of the mineral related surface rights of the mineral owner or lessee are for the most part founded upon the prohibition of the taking of property, for public use "without due process of law" or "without just compensation" in the Fifth Amendment to the U.S. Constitution and the requirement in Article I, section 19 of the California Constitution that "private property may be taken or damaged for public use only when just compensation ... has first been paid."

In *Pennsylvania Coal Co. v. Mahon* (1922) 260 U.S. 393, the U.S. Supreme Court struck down a Pennsylvania law requiring coal operators to conduct their operations in such a way as not to cause damage to the surface. The Court held that the coal interest was the dominant estate and that the enjoyment of the right could not be "confiscated" by such regulation without compensation. "The general rule, at least, is that while property may be regulated to a certain extent, if regulation goes too far it will be recognized as a taking." (Id., at 415.) Perhaps anticipating situations such as those under consideration here, the Court, Mr. Justice Holmes, continued as follows:

> "We are in danger of forgetting that a strong public desire to improve the public condition is not enough to warrant achieving the desire by a shorter cut than the constitutional way of paying for the change." (Id. at 416.)

In *People v. Associated Oil Co.* (1930) 211 Cal. 93, the California Supreme Court upheld a preliminary injunction granted to the State Director of Natural Resources enjoining oil field operators from discharging to the atmosphere and wasting some 77 billion cubic feet of natural gas per year. The injunction was issued under the authority of the California Oil and Gas Conservation Act and was challenged on the ground that the Act represented an uncompensated taking of the oil and gas interests affected.

The following standard for determination was adopted by the Court:

> "The difficulty usually arises in determining whether the particular right sought to be regulated or prohibited is subject to such regulation or prohibition and whether in the particular case the legislature has gone too far with the resultant unlawful taking. It may not be disputed that the use of private property is a right as such entitled to protection as the property itself, and an undue restriction on the use thereof is as much a taking for constitutional purposes as appropriating or destroying it." (Id., at 99-100, quoting Pennsylvania Coal Co. v. Mahon, supra, 260

U.S. 393.)

These principles have been applied over the years in the separate contexts of the prohibition of use and the imposition of conditions upon use which are, accordingly, separately discussed in (a) and (b), below.

(a) Limitations Upon The Right To Prohibit Use

A prohibition upon the use of land is a "regulatory taking" for which compensation is required if it deprives the owner "of substantially all reasonable use of his property." (Griffin Development Co. v. City of Oxnard (1985) 39 Cal.3d 256, 266.) The U.S. Supreme Court has found a taking to result from regulation which effectively deprives the owner of "a fundamental element of the property right." (Kaiser Aetna v. United States (1979) 444 U.S. 164, 179-180.)

In the absence of a severance of the mineral interest, where it remains in the hands of the fee simple interest owner, a prohibition of oil and gas operations may not be a deprivation "of substantially all reasonable use of his property." (Griffin, supra.) However, a different result seems appropriate if the individual in question has no interest in these lands other than the oil and gas interest (because it has been severed from ownership of the fee simple interest). That interest is of no value unless some provision is made for its enjoyment through surface operations in which oil and gas may be reduced to possession on the surface of the land. In such circumstances, prohibition of oil and gas operations upon the surface of these lands should be held a taking of the most fundamental element of the property right which is usually referred to as the oil and gas interest (particularly if the severance of interests takes place before the enactment of the governmental prohibition in question). (Kaiser Aetna, supra.) Such a prohibition would preclude the mineral interest owner from any use of its property. (Griffin, supra.)

(b) Limitations On The Right To Impose Conditions Upon The Approval Of Operations

The same constitutional provisions described above require that conditions imposed upon the approval of oil and gas operations be confined to those which address a public need emanating from the proposed use. (Liberty v. California Coastal Commission (1980) 113 Cal.App.3d 491, 500-504; see also, Ayers v. City Council of Los Angeles (1949) 134 Cal.2d 31, 42 and Scrutton v. County of Sacramento (1969) 275 Cal.App.2d 412, 421.) In Mid-Way Cabinet etc. Mfg. v. County of San Joaquin (1967) 257 Cal.App.2d 181, 192, the Court struck down conditions imposed upon the approval of a land use permit holding that "justification of conditions depends upon there being some real relationship between the thing wanted by the landowner from the government and the quid pro quo exacted by the government therefor." (See also, Monterey Oil Co. v. City Court (1953) 120 Cal.App.2d 31, 40.)

- Governmental Preemption of Mineral Related Surface Use Rights

Consider this example:

Wilbur Longgone is the grandson of the former owners of the "Old Ranch" (± 200 acres) in Kings County, California. In the early 1940's Wilber's grandparents sold the ranch and moved to Hanford to open a barber shop, reserving from the sale 100% of the oil and gas interest.

Wilbur, who now lives in Riverside County (raising drought resistant water melons), is the present owner of the entire mineral interest in the Old Ranch area.

In 1997 (by which time the former Old Ranch area was on the margin of the densely developed area adjacent to the City of Hanford (but still just beyond the actual city limits), the County decided to change its zone classification from "EA" (exclusive agricultural) to "MRE-50" (monstrous residential estates, 20-acre minimum lot size). Before doing so, the County conducted public hearings before the Planning Commission and County Board of Supervisors. Notice of these public hearings was published in the local newspaper and mailed to all the owners of real property within 500 feet of the exterior boundaries of the Old Ranch area. At the conclusion of the public hearing before the Board of Supervisors (at which no one speaks in opposition to the proposed zone change classification), the Board unanimously approves the zone change.

Oh! By the way -- the mailing addresses for notice were taken from the most recent tax rolls of the Kings County Assessor. Since the mineral interest in the Old Ranch area has never been developed (although it had been leased several times, most recently in 1996), neither Wilbur Longgone nor his current mineral lessee received notice of this proposed change in zone classification.

Oh, yes! You also might want to know that under Kings County zoning regulations oil and gas operations, including seismic and well drilling and operation, are permitted of right (that is, without further specific approval) in the EA zone classification but are completely prohibited in the MRE-500 zone classification.

In 1998, after paying delay rentals for several years and only six months before the expiration of its 3-year primary term, Wilbur's lessee, Crude Oil Inc., with offices in Tulsa, Oklahoma and Grand Island, Nebraska engages a local land professional to find out what permits and/or approvals are required for its proposed deep test "Old Ranch #1" well. Within 24 hours our land professional calls Crude Oil back to inform them that oil and gas operations, of any kind, cannot be conducted on the surface of the Old Ranch area.

✓ What are the rights of the parties?

- Private Developmental Preemption of Mineral Related Surface Use Rights

Consider this example:

Same as above, but the zone change in 1997 was initiated by Old Ranch Development and the new zone classification allows both oil and gas development and residential development on minimum 1.5-acre lots. Concurrently with the zone change, Old Ranch Development applied for approval of a subdivision map creating the 130 1.5-acre lots and a 0.5-acre common recreation area with pool, tennis courts and indoor recreation center. Both applications were approved.

Crude Oil's land professional reports back that, although oil and gas operations are permitted on the property, there are some very expensive homes already built on each of the lots and that, considering the homes, common recreation area, streets, etc., there is no site remaining for oil and gas operations.

✓ What are the rights of the parties?

- Governmental/Private Party Preemption of Mineral Related Surface Use Rights

Consider this example:

Same as the first case, above, but (i) although Wilbur has been able to lease his Old Ranch mineral interest a number of times, no one has attempted to take a lease since 1965, (ii) the zone change in 1997 was initiated by Old Ranch Development and (iii) the new zone classification allows both oil and gas development and residential development on minimum 1.5-acre lots.

In 1998, Old Ranch Development has applied for approval of a subdivision map creating the 130 1.5-acre lots and a 0.5-acre common recreation area with pool, tennis courts and indoor recreation center. Both applications are pending.

Wilbur learns about the Old Ranch Development proposal from a friend in the area. He writes to the Kings County Planning Department requesting that the County require Old Ranch Development to set aside some areas for potential oil and gas operations.

The planning staff writes back a letter declining to propose any such action to the Board of Supervisors.

Wilbur attends the Board of Supervisors hearing and requests such a set aside for potential oil and gas operations. But the Board approves the project applications without any such requirement.

✓ What are the rights of the parties?

Consider this example:

The County requires a permit approved by the Planning Commission before any seismic operations can be conducted. Wilbur has leased the property to Crude Oil, Inc., which wants to conduct a 3-D seismic shoot on his land as part of a 3,000- acre project. Old Ranch Development objects to the grant of the seismic permit, demanding that an EIR be completed and certified because the County's approval of the permit would be a discretionary act and because Old Ranch Development believes that the seismic operation has the potential for a substantial adverse impact on the environment.

Crude Oil, Inc. is not willing to spend the time and money required for preparation and certification of an EIR. They have already told Wilbur that if an EIR is required due to the inclusion of his property in the project, they will exclude his land or abandon the project altogether and spend their seismic budget in a more "friendly" environment.

CEQA's initial 3-step process (as provided in 14 Cal. Code of Regs., § 15002(k), i.e., in the "State CEQA Guidelines" of the California Resources Agency, prescribed pursuant to the authority of the California Environmental Quality Act ("CEQA"), Public Resources Code, §§ 21083 and 21087).

(1) ...the lead agency examines the project to determine whether the project is subject to CEQA at all. Is the activity a private project requiring discretionary governmental approval? Yes. (Guidelines § 15002(b)(3).)

(2) ...the lead agency conducts an 'initial study' to determine if the project may have a significant [adverse] effect on the environment (i.e., "Does the activity have the potential to cause a significant adverse effect on the environment?"). "A significant effect on the environment is defined as a substantial adverse change in the physical conditions which exist in the area affected by the proposed project." (Guidelines § 15002(g).)

(3) If the initial study shows that the project may have a significant [adverse] effect, the lead agency takes the third step and prepares an EIR. ("If a lead agency is presented with a fair argument [based on substantial evidence] that a project may have a significant [adverse] effect on the environment, the lead agency shall prepare an EIR [at the expense of the applicant] even though it may also be presented with other substantial evidence that the project will not have a significant effect on the environment." (Guidelines, § 15064((g)(1).)

✓ What are the rights of the parties?

Consider this example:

The County does not require any discretionary permit for seismic operations, but only requires a ministerial permit for the use of County roads. Before issuing any such permit, the County's public works department must (at the applicant's cost) give advance written notification to all of the owners of real property within 500' of the exterior boundaries of the proposed operations and cannot issue a permit for the use of the County's roads within 500 feet of the land of any property owner who objects.

Old Ranch Development objects. The public works department insists that Crude Oil, Inc. remove Wilbur's lands from the seismic project before issuing a permit for the use of the County's roads in the project.

Wilbur's attorney tells him that there appear to be various constitutional arguments under which this requirement may be invalidated and that, for only $150,000 to $500,000 and in only 8-24 months, Wilbur's right to be included in the seismic operation over the objection of Old Ranch Development can be vindicated.

Crude Oil, Inc. is unwilling to wait or to pay all or any substantial part of that amount and so excludes Wilbur's land from the project before obtaining its road use permit from the County.

✓ What are the rights of the parties?

[1]But see, since enacted, Government Code section 65091 concerning required notification of proposed development projects, in part as follows: "(a) When a provision of this title requires notice of a public hearing to be given pursuant to this section, notice shall be given in all of the following ways: …. (2) When the Subdivision Map Act (Div. 2 (commencing with Section 66410)) requires notice of a public hearing to be given pursuant to this section, notice shall also be given to any owner of a mineral right pertaining to the subject real property who has recorded a notice of intent to preserve the mineral right pursuant to Section 883.230 of the Civil Code."