



The Override

Every Landman Wants One!

Volume IX, Issue VI

September, 2015



Presidents Message

Ernest Guadiana, Esq., President
Locke Lord LLP

To all chapter members and friends of LAAPL, I want to welcome everyone back from summer vacation. Wherever you may have travelled, I'm sure you are glad to be back in Southern California (although I'm sure everyone was hoping oil prices would have rebounded over the summer). As a New York transplant, I know that getting on a plane back to Southern California always puts a smile on my face, no matter where I was coming from; so much so that I still don't understand why anyone would leave Southern California to go on vacation somewhere else. Accordingly, I applaud all of you, who opted for a staycation,



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As Chapter President, I want to first thank our newly elected officers who have volunteered their time and efforts to assist me in running this fine professional organization. Without them, nothing would get done. I look forward to a great year with this stellar executive board and chairs to keep LAAPL on its steady course of success.

I know this past year has been a strain on many of our members. With the decline in oil prices, lay-offs have been occurring and business is down for much of the industry. However, this is just another cycle in our business, and I'm sure it will pass in time with our industry becoming ever stronger. In the meantime, many of our members have transitioned their skills into other areas of energy, such as renewable project developments. Being in California, with its high renewable energy mandates, one of my goals as Chapter President this year will be assist our members in obtaining the knowledge needed to aid in this transition, if they so choose. And I believe this approach is in line with the recent developments of

Presidents Message
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Meeting Luncheon Speaker

"Do's and Don'ts of Right-of-Way Acquisition During the Pre-litigation Process"



Artin N. Shaverdian, Esq., Partner, Law Firm of Nossaman LLP, is an experienced litigator representing business entities, public agencies and individuals in a broad range of commercial and real estate related disputes. In addition to his business and real property litigation practice, Mr. Shaverdian specializes in eminent domain / inverse condemnation litigation, other valuation related litigation, and the acquisition/disposition of real property.

Artin provides strategic advice and counseling to his clients to creatively resolve or proactively avoid disputes and has served as lead counsel on the acquisition of thousands of parcels of real property for some of California's largest infrastructure projects.



Opinionated Corner

Joe Munsey, RPL
Southern California Gas Company
Director
Publications/Newsletter Co-Chair

For the most part, every year when the September issue of “The Override” is published we start off wishing all had a full summer of work and play and then launch off on a diatribe of the politics of the day. So we change it up a bit for this debut issue as Co-chair of the Newsletter/Publication Committee for the 2015-2016 term. That’s right, our incoming Chapter President, Ernest Guandiana, Esq. is giving me another shot at the helm, along with my faithful and fellow Co-chair Randall Taylor, RPL

Trusting all worked and played hard during the summer as we sweated out low oil prices affecting the industry. About the only thing that cooled off and went cold, certainly has not been the heat Southern Californians are unaccustomed to experiencing, is the center piece of The Clean Energy and Pollution Reduction Act of 2015, also known as SB 350. I am still in a daze wondering how Team Sacramento can come up with the idea that Californians would be able to reduce its petroleum needs 50% by the year 2030.

To explain how the mechanics of how eminent domain works here in the State of California, we have Artin N. Shaverdian, Esq., Partner, Nossaman LLP, speaking at our September luncheon at the Long Beach Petroleum Club. Artin may be able to shed some light on how the state and local public agencies/governments vie for our properties using those police powers they wield so effectively when a taking is on the horizon.

If by chance you miss the luncheon, the following week is the 33rd West Coast Landmen’s Institute taking place in the backyard of the LA Basin at the Marriott Del Rey, trust we see you at either place, or both.

LAAPL 2015 - 2016 Elected Officers

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

<u>Office</u>	<u>Elected Candidate</u>
President ¹	Ernest J. Guadiana, Esq., Associate, Lock Lord LLP
Outgoing President ²	Jason Downs, RPL, BreitBurn Management Company
Vice President	John R. Billeaud, Freeport-McMoRan Oil and Gas
Secretary	Cliff Moore, Independent
Treasurer	Sarah Downs, RPL, Downchez Energy
Director	Joseph D. Munsey, RPL, Senior Land Advisor Southern California Gas Company
Director	Randal Taylor, RPL, President, Taylor Land Services, Inc.

¹Per 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.

²Per Article 8 (2) the outgoing President shall also serve as director.

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... Dennis R. Luna

For more information, contact:

Dennis R. Luna

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2015–2016 Officers & Board of Directors

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Vice President
Freeport McMoRan Oil & Gas
661-395-5286

Jason Downs, RPL
Past President
Breitburn Management Company LLC
213-225-5900

Cliff Moore
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Independent
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562-639-9433

Joe Munsey, RPL
Director
Southern California Gas Company
949-361-8036

Randall Taylor, RPL
Director
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949-495-4372

Mike Flores
Region VIII AAPL Director
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Randall Taylor, RPL, Co-Chair

Communications/Website Chair
Suzy Husner
PetroLand Services
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Independent
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310-795-7300
Leah Hoover, Independent
310-795-2272

Nominations Chair
Paul Langland, Esq.
Independent
310-997-5897

Golf Chairs
Jason Downs, RPL
Chip Hoover
Leah Hoover

Chapter Board Meetings

No Chapter Board Review this month.



Treasurer's Report

As of 5/16/2015, the
LAAPL account \$22,692.18
showed a balance of

Deposits \$10,245.00

Total Checks,
Withdrawals, Transfers \$ 8,635.51

Balance as of 9/10/2015 \$ 24,301.67

Merrill Lynch Money
Account shows a total \$ 10,929.27



New Members and Transfers

Cambria Rivard, JD Membership Chair, California Resources Corporation

Welcome! As a Los Angeles Association of Professional Landmen member, you serve to further the education and broaden the scope of the petroleum landman and to promote effective communication between its members, government, community and industry on energy-related issues.

Transfers

Joseph Munsey, RPL
Southern California Gas Company

From
662 Camino De Los Mares, SD 1420
San Clemente, CA 92678

To
1919 State College Blvd., ML 8301
Anaheim, CA 92806

Charles Wadell
President
Cal Pacific Land Services, Inc.

From
7222 Edinger Ave, Suite 200
Huntington Beach, CA 92647

To
7245 Garden Grove Blvd. Suite M
Garden Grove, CA 92841

New Member Requests
Robert "Hunter" Latham
Signal Hill Petroleum
2633 Cherry Ave
Signal Hill, CA 90755
hlatham@shpi.net

Corrections
None to report

New Members
None to report

Scheduled LAAPL Luncheon Topics and Dates

September 17, 2015

Artin N. Shaverdian, Attorney at Law
NOSSAMAN LLP

Topic: "Do's and Don'ts of Right-of-Way Acquisition During the Pre-litigation Process"

November 19, 2015

TBD

January 28, 2016

[4TH Thursday]

Annual Joint Meeting with
Los Angeles Basin Geological Society

March 17, 2016

TBD

May 19, 2016

TBD

Officer Elections

Lawyers' Joke of the Month

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

A guy goes into a store, wanders around a bit, asks the clerk:

“In what aisle could I find the Polish sausage?”

The clerk looks at him and says, “Are you Polish?”

The guy, clearly offended, says, “Well, yes I am. But let me ask you something.... If I had asked for Italian sausage would you ask me if I was Italian?”

Or if I had asked for German bratwurst, would you ask me if I was German?

Or if I asked for a kosher hot dog would you ask me if I was Jewish?

Or if I had asked for a Taco would you ask if I was Mexican?

Would you?... Would you?...”

The clerk says, “Well, no!”

“If I asked for some Irish whiskey, would you ask if I was Irish?”

“Well, I probably wouldn’t!”

With deep self-righteous indignation, the guy asks,

“Well then, why did you ask me if I’m Polish because I asked for Polish sausage?”

The clerk replies, “Because you’re at Home Depot.”



**Randall Taylor, RPL
Petroleum Landman**

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Rick Peace, President

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President's Message
continued from page 1

LAAPL. Just in the past few years, we changed the name of our organization from the Los Angeles Association of Petroleum Landmen to the Los Angeles Association of Professional Landmen to showcase that our members are not purely limited to oil and gas activities, but can aid in a wide array of land development.

Now, to matters at hand. After having a very successful showing at the Mickelson Annual Golf Tournament this year at its new location at Angeles National, we are continuing the year with the following events occurring in September, which I hope you all can attend:

1. On Thursday, September 17th, we have Artin Shaverdian, a Partner at Nossaman LLP, discussing the intricacies of acquiring rights-of-ways. Mr. Shaverdian will put an emphasis on how to acquire these rights without having to enter litigation and, in the inevitable chance of litigation occurring, how to take steps in order to be successful in a litigation. I know that many of our members deal with obtaining rights-of-way on a regular basis, so this will be a great presentation to attend to keep everyone sharp.

2. On September 23rd – 25th, please plan on attending the West Coast Landmen's Institute with a line-up that will cover a wide array of topics relevant to today's environment. There is still time to sign up if you have not done so already.

With that said, I'm honored to be your President this year, and cannot wait to see what LAAPL will accomplish this year.

Our Honorable Guests

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

Robert "Hunter" Latham, Signal Hill Petroleum



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CONTACTS

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Patrick T. Moran:	RPL, Senior Land Negotiator
Sharon Logan:	CPL, Senior Landman
Sam Sheehan:	Landman, GIS Technician

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Chapter President Announces Committee Chairs

Our newly elected Chapter President, Ernest J. Guadiana, Esq., Associate, Law Firm of Lock Lord LLP, announces his Committee Chairs for the 2015 – 2016 term. The Los Angeles Association of Professional Landmen will be greatly served by the following members:

Membership Chair	Cambria Rivard, JD., Land Negotiator California Resource Corporation (562) 495-9373 (office) Cambria.rivard@crc.com
Hospitality Chair	Chip Hoover, Independent (310) 795-7300 – Cell choover@petrolandservice.com Leah Hoover, Independent (310) 795-2272 – Cell lhoover@petrolandservice.com
Education Chair	James D. Pham, J.D. Independent (310) 349-0051 Ext 112 (949) 500-0909 – Cell jdpham@email.com
Publishing/Newsletter Chair	Randall Taylor, RPL, President Taylor Land Services (949) 495-4372 randall@taylorlandservice.com Joseph D. Munsey, RPL, Senior Land Advisor Southern California Gas Company (949) 361-8036 jmunsey@Semprautilities.com
Website/Communications Chair	Suzy Husner, Contract Landman PetroLand Services (310) 349-0051 shusner@petrolandservice.com
AAPL Region VIII Director <i>[Serving out Two Year Term - Appointment not necessary]</i>	Mike Flores, Legislative Affairs Luna/Glushon (310) 990-8657 – Cell mflores@lunaglushon.com
Legislative Chair	Mike Flores, Legislative Affairs Luna/Glushon (310) 990-8657 – Cell mflores@lunaglushon.com Olman Valverde, Esq., of Counsel Luna/Glushon 310-556-1444 ovalverde@lunaglushon.com
Mickelson Golf Classic Chair	Jason Downs, RPL Breitburn Management Company (213) 225.0347 jason.downs@breitburn.com
Nominations Chair	TBD

TELL THE STATUS QUO TO WATCH ITS BACK.



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EDUCATIONAL CORNER

James D. Pham, JD, JD Energy Solutions, LLC
Education Chair

September 2015

WI/NRI Workshop

When: September 11, 2015

Where: Houston, TX

RL/RPL Continuing Education Credits: 6.0

CPL Recertification Credits: 6.0

CPL/ESA Ethics Credits: 0.0

Negotiations Seminar

When: September 18, 2015

Where: Dallas, TX

RL/RPL Continuing Education Credits: 6.0

CPL Recertification Credits: 6.0

CPL/ESA Ethics Credits: 0.0

Oil and Gas Lease Fundamentals

When: September 24, 2015

Where: Midland, TX

RL/RPL Continuing Education Credits: 6.0

CPL Recertification Credits: 6.0

CPL/ESA Ethics Credits: 0.0

CPL EXAM ONLY

When: September 25, 2015

Where: Grand Rapids, MI

RL/RPL Continuing Education Credits: 0.0

CPL Recertification Credits: 0.0

CPL/ESA Ethics Credits: 0.0

Pooling Seminar

When: September 28, 2015

Where: Denver, CO

RL/RPL Continuing Education Credits: 5.0

CPL Recertification Credits: 5.0

CPL/ESA Ethics Credits: 0.0

Ethics 360

When: September 17, 2015

Where: Denver, CO

RL/RPL Continuing Education Credits: 0.0

CPL Recertification Credits: 0.0

CPL/ESA Ethics Credits: 4.0

2015 Texas Land Institute

When: September 21, 2015

Where: Houston, TX

RL/RPL Continuing Education Credits: 6.0

CPL Recertification Credits: 6.0

CPL/ESA Ethics Credits: 1.0

Field Landman Seminar

When: September 24, 2015

Where: Midland, TX

RL/RPL Continuing Education Credits: 2.0

CPL Recertification Credits: 2.0

CPL/ESA Ethics Credits: 0.0

RPL EXAM ONLY

When: September 25, 2015

Where: Grand Rapids, MI

RL/RPL Continuing Education Credits: 0.0

CPL Recertification Credits: 0.0

CPL/ESA Ethics Credits: 0.0

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Educational Corner - continued

October 2015

2015 Appalachian Land Institute

When: October 1, 2015 – October 2, 2015

Where: Washington, PA

RL/RPL Continuing Education Credits: 12.0

CPL Recertification Credits: 12.0

CPL/ESA Ethics Credits: 1.0

Marketable Title

When: October 7, 2015

Where: Fort Worth, TX

RL/RPL Continuing Education Credits: 5.0

CPL Recertification Credits: 5.0

CPL/ESA Ethics Credits: 0.0

Field Landman Seminar

When: October 15, 2015

Where: Tulsa, OK

RL/RPL Continuing Education Credits: 0.0

CPL Recertification Credits: 0.0

CPL/ESA Ethics Credits: 0.0

Fundamentals of Land Practices & OPTIONAL RPL Exam

When: October 26, 2015 – October 27, 2015

Where: Midland, TX

RL/RPL Continuing Education Credits: 6.0

CPL Recertification Credits: 6.0

CPL/ESA Ethics Credits: 1.0

Field Landman Seminar

When: October 29, 2015

Where: Traverse City, MI

RL/RPL Continuing Education Credits: 2.0

CPL Recertification Credits: 2.0

CPL/ESA Ethics Credits: 0.0

WI/NRI Workshop

When: October 2, 2015

Where: Midland, TX

RL/RPL Continuing Education Credits: 6.0

CPL Recertification Credits: 6.0

CPL/ESA Ethics Credits: 0.0

Oil and Gas Land Review, CPL/RPL Exam

When: October 13, 2015 – October 16, 2015

Where: San Antonio, TX

RL/RPL Continuing Education Credits: 17.0

CPL Recertification Credits: 17.0

CPL/ESA Ethics Credits: 1.0

2015 Gulf Coast Land Institute

When: October 22, 2015 – October 23, 2015

Where: Lafayette, LA

RL/RPL Continuing Education Credits: 9.0

CPL Recertification Credits: 9.0

CPL/ESA Ethics Credits: 1.0

JOA Workshop

When: October 27, 2015 – October 28, 2015

Where: The Woodlands, TX

RL/RPL Continuing Education Credits: 14.0

CPL Recertification Credits: 14.0

CPL/ESA Ethics Credits: 0.0

Due Diligence Seminar

When: October 30, 2015

Where: Dallas, TX

RL/RPL Continuing Education Credits: 5.0

CPL Recertification Credits: 5.0

CPL/ESA Ethics Credits: 0.0

November 2015

Negotiations Seminar

When: November 4, 2015

Where: San Antonio, TX

RL/RPL Continuing Education Credits: 6.0

CPL Recertification Credits: 6.0

CPL/ESA Ethics Credits: 0.0

CPL Exam Only

When: November 7, 2015

Where: Greeley, CO

RL/RPL Continuing Education Credits: 0.0

CPL Recertification Credits: 0.0

CPL/ESA Ethics Credits: 0.0

Ethics 360

When: November 6, 2015

Where: Tulsa, OK

RL/RPL Continuing Education Credits: 4.0

CPL Recertification Credits: 4.0

CPL/ESA Ethics Credits: 0.0

RPL Exam Only

When: November 7, 2015

Where: Greeley, CO

RL/RPL Continuing Education Credits: 0.0

CPL Recertification Credits: 0.0

CPL/ESA Ethics Credits: 0.0

Oil and Gas Land Review, CPL/RPL Exam

When: November 10, 2015 – November 13, 2015

Where: Fort Worth, TX

RL/RPL Continuing Education Credits: 17.0

CPL Recertification Credits: 17.0

CPL/ESA Ethics Credits: 1.0

CPL EXAM ONLY

When: November 18, 2015

Where: Pittsburgh, PA

RL/RPL Continuing Education Credits: 0.0

CPL Recertification Credits: 0.0

CPL/ESA Ethics Credits: 0.0

Marketable Title

When: November 19, 2015

Where: Houston, TX

RL/RPL Continuing Education Credits: 4.0

CPL Recertification Credits: 4.0

CPL/ESA Ethics Credits: 0.0

Fundamentals of Land Practices & OPTIONAL RPL Exam

When: November 17, 2015 – November 18, 2015

Where: Pittsburgh, PA

RL/RPL Continuing Education Credits: 6.0

CPL Recertification Credits: 6.0

CPL/ESA Ethics Credits: 1.0

Field Landman Seminar

When: November 19, 2015

Where: Houston, TX

RL/RPL Continuing Education Credits: 0.0

CPL Recertification Credits: 0.0

CPL/ESA Ethics Credits: 0.0

AAPL's Home Study program allows members to earn continuing education credits at their own convenience and schedule. The courses cover the issues most relevant to today's landman and cost between \$30 and \$75 to complete.

To receive continuing education credits via a home study course:

- [Download or print out the course \(PDF format\)](#)
- [Answer all questions completely](#)
- [Submit the answers as instructed along with the appropriate fee](#)

If you have questions or would like more information, please contact AAPL's Director of Education Christopher Halaszynski at (817) 231-4557 or LAAPL's Education Chair James Pham at (949) 500-0909 or jdpham@email.com.

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\$75.00 – Buy Now

[#101](#) Due Diligence for Oil and Gas Properties

Credits approved: 10 CPL/RPL/RL

\$75.00 – Buy Now

[#102](#) The Outer Continental Shelf

Credits approved: 5 CPL/RPL/RL

\$37.50 – Buy Now

[#104](#) Of Teapot Dome, Wind River and Fort Chaffee: Federal Oil and Gas Resources
Credits approved: 5 CPL/RPL/RL
\$37.50 – Buy Now

[#105](#) Historic Origins of the U.S. Mining Laws and Proposals for Change
Credits approved: 4 CPL/RPL/RL
\$30.00 – Buy Now

[#106](#) Going Overseas: A Guide to Negotiating Energy Transactions with a Sovereign
Credits approved: 4 CPL/RPL/RL
\$30.00 – Buy Now

[#108](#) Water Quality Issues: Safe Drinking Water Act
(SDWA)/Clean Water Act (CWA)/Oil Pollution Act (OPA)
Credits approved: 4 CPL/ESA/RPL/RL
\$30.00 – Buy Now

[#109](#) Common Law Environmental Issues and Liability for Unplugged Wells
Credits approved: 4 CPL/ESA/RPL/RL
\$30.00 – Buy Now

Ethics Credit Courses

Two ethics courses are available. Each course contains two essay questions. You may complete one or both of the questions per course depending on your ethics credits needs. Each question answered is worth one ethics continuing education credit.

[#103](#) Ethics Home Study (van Loon) – 1 or 2 questions
Credits approved: 2 CPL/RPL/RL & 2 Ethics
\$15.00 per question – Buy Now

[#107](#) Ethics Home Study (Sinex) – 1 or 2 questions
Credits approved: 2 CPL/RPL/RL & 2 Ethics
\$15.00 per question – Buy Now

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Legislative Update



by Mike Flores & Olman Valverde, Esq.
Luna & Glushon



Oil Reduction Mandate Dropped From SB 350

On September 9, Governor Brown, with State Senator Kevin de Leon, (D-Los Angeles) the author of SB 350, stood together in the State Capital Building steps as the Governor announced the oil reduction mandate portion of SB 350 had been dropped. The bill, known as The Clean Energy and Pollution Reduction Act of 2015, had three main components that were to be in effect by 2030, 1.) the reduction of California's use of petroleum to 50%, 2.) boost renewable-electricity use by 50%, and 3.) double the energy efficiency of existing buildings. The mandate for the 50% reduction of petroleum, was the center-piece of the bill.

There were three main arguments used by those opposed to the bill, specifically the oil reduction mandate, 1.) minority communities felt the mandate would hurt California's economy and the working-class residents, 2.) the oil reduction mandate carried too much unknown economic costs, and 3.) the bill provided no provision that would legislate oversight of the California Air Resources Board (CARB), which currently has free reign in its oversight of SB 32, The California Global Warnings Solution Act of 2006.

The Governor indicated the main roadblocks for moderate Democrats in the state Assembly dealt with CARB, an unelected body with broad powers, to set vehicle emissions and fuel standards to decide how the state will reduce oil use. The Governor refused to pass the legislation if it calls for a reduction of CARB's oversight powers.

The reaction was swift by the supporters of the bill. The Strategy and Communications Director Jamie Henn, of sb350.org issued the following statement:

“Big Oil succeeded in gutting one of the most important provisions of this bill. Let's face it: Governor Brown got his hat handed to him. Now, the clearest way he can fight back against the industry is by banning fracking in California -- and that's something he can do on his own, without the State Legislature. California has already dethroned King Coal--today's news that the UC system will be joining the state's pension funds in beginning to divest is a major step forward. Now, it's time to take on Big Oil with everything we've got.”

On the other side, Catherine Reheis-Boyd, president of the Western States Petroleum Association, stated “Californians are best served by inclusive energy policy and by a legislative body that retains authority on issues so critically important to jobs, communities and our way of life.”

California State Assembly Elects New Speaker

Assemblyman Anthony Rendon (D-Lakewood) has been elected Speaker-Elect of the Assembly replacing Assemblymember Toni Atkins (D-San Diego). Rendon, who was elected to the Assembly in 2012, has the required 29 votes with the formal vote taking place in January 2016.

The Speaker-elect has a strong interest in the environment and served two years as head of California League of Conservation Voters. He has publicly stated his support of SB 350 and SB 32, both bills are strongly opposed by the oil & gas industry.

He is eligible to serve until 2024 and currently chairs the Assembly Utilities and Commerce committee.

Two Bills Left Standing in Final Week of Legislative Session

As the final week of the California Legislative is upon us, the number of bills attempting to impose further regulation on the oil & gas industry, fell from 30 to 2 - with SB 350 and SB 32 still alive, although SB 350 (as discussed above) is a markedly different bill from what it was only this past Monday.

Senator Fran Pavley (D-Moorpark) is the author of SB 32, the bill, also known as the son of AB 32, extends the initial goals of SB 32 (2006 version) by dramatically reducing greenhouse gas emissions 80 percent below 1990 levels by the year 2050. Similar to what was discussed previously in SB 350, the bill also provides no oversight to CARB and opens the door to the possibility of raising taxes, fees and/or additional oversight of the industry.

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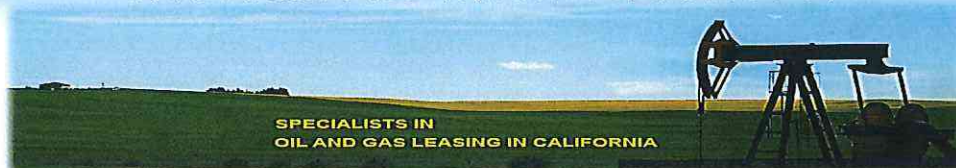
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Case of the Month - Right of Way



Eminent Domain for Public Improvements Supporting Private Development Projects

Bradford B. Kuhn, Esq., Partner, Law Firm of Nossaman LLP

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With the improving real estate economy, there has been an influx of new large development projects throughout California. With these new proposed developments, it is common for local government agencies to require public improvements — such as streets or utilities — to support the influx of traffic and people to a previously undeveloped area. Those public improvements commonly take place off the developer's property, so what happens if surrounding property owners do not want to sell their land to support such improvements for a private development? Can eminent domain be utilized, and if so, how does it work?

A recent example of this situation appears in an article in last week's Voice of San Diego titled Developer and County May Seize Private Property for Lilac Hills Development Project. According to the article, the County of San Diego has conditioned approval of a new 600-acre, 1,700-home project on the developer's widening two existing roads that border the project. In order to do so, the developer will be required to acquire several private properties from owners who are unwilling to sell. So what happens next?

The developer will make reasonable efforts to acquire the property voluntarily, but if unsuccessful, ultimately, the decision will be up to the local government agency on how to proceed.

The law provides that the agency can either assist with acquiring the land for the off-site improvements, or waive the condition of approval. (See Gov. Code, sec. 66462.5.) Where the off-site improvements are necessary to satisfy safety standards, it is unlikely the condition will be waived. Therefore the local agency generally condemns the necessary property. The agency typically has 120 days after the approval of the final map to acquire the property by negotiation or commence eminent domain proceedings.

While this process may seem unfair, essentially giving a developer the extraordinary power of eminent domain for a private project, the concept is that a local government agency cannot limit approval of a project on a condition that is completely outside the developer's control. And while developers should be hesitant to resort to requiring the local agency to use eminent domain, this process provides a powerful negotiating tool.

Once the process is complete and the agency acquires the necessary property, the developer will then typically complete the improvements, and reimburse the agency for acquiring the off-site property interests (including the agency's attorneys' fees). This is generally negotiated on the front-end through some sort of reimbursement or development agreement.

Even with the elimination of redevelopment in California, we will likely be seeing more and more eminent domain to support public infrastructure supporting private development projects as the real market continues to improve.

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Case of the Month - Oil & Gas

Chesapeake Exploration, L.L.C. v. Hyder Royalty – Royalty Clause: Free and Clear or Cost Free

By Manning Wolfe, Esq.

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Background: The appeal arose out of a dispute involving the construction of the royalty and overriding royalty clauses in the Hyder oil and gas lease, between Appellants - Chesapeake Exploration, L.L.C. and Chesapeake Operating, Inc., and the Appellees - the royalty interest holders. Royalty owners filed suit against Chesapeake alleging a breach of the lease. Chesapeake counterclaimed to recover overpaid royalties.

Facts: Chesapeake, as lessee, produced gas and sold it at the well to a Chesapeake affiliate, which took title. The affiliate gathered and transported the gas to a delivery point, where a third party took possession and transported it downstream to a point of sale. Another unaffiliated third party purchased the gas and took title. Chesapeake accounted to the royalty owners on the sales price at the point of sale.

Issue: The dispute between the parties arose from each party's interpretation of the royalty and overriding royalty clauses of the lease. Chesapeake contended the royalty clause is applicable to the wells on the leased premises, and overriding royalty clauses on off-lease wells, allowed them to deduct appellees' share of post-production costs and expenses incurred between the "point of delivery" and the "point of sale". Appellees countered that their royalty interest is not subject to any post-production costs, regardless of where the costs are incurred.

At issue in the case was the \$1,750,000 in third party transportation costs that Chesapeake incurred between the point of delivery and the point of sale.

Chesapeake pointed to the "or" language in the royalty clause, arguing that it was disjunctive and allowed deduction of post-production costs incurred after the point of delivery, but before the point of sale. The lease also provided that Chesapeake would pay a "perpetual, cost-free ... overriding royalty" on production obtained from certain off-lease wells. The royalty owners contended that this "cost-free overriding royalty" meant that it was free of both production and post-production costs. Chesapeake contended that the language simply reinforces the nature of an overriding royalty, which is that an overriding royalty is not subject to production costs but is subject to post-production costs. The royalty clause provided that Chesapeake would pay royalty as a percentage of the price "actually received by (Chesapeake) for such gas" and that the royalty would be "free and clear of all production and post-production costs and expenses . . . incurred between the well-head and point of delivery or sale . . . to a third party."

Trial Court Ruling: The trial court held for the royalty owners, asserting that post-production costs are not deductible if the royalty clause contains the words "free and clear" or "cost free."

Rationale on Appeal: The Appellate court acknowledged the general rule that post-production costs are deductible from royalty, but the parties may modify the general rule by agreement. The court reasoned that it would be contrary to the plain reading of the royalty clause to interpret the lease language to exclude post-production costs from the wellhead to the point of delivery, but include post-production costs from the point of delivery to the point of sale.

Bottom Line: By express provisions, parties may agree to effectively exclude post-production costs, notwithstanding industry custom that royalties are subject to these costs.

Final Judgment: The appellate court affirmed the trial court and entered a final judgment in favor of appellees (the royalty interest holders); awarding them damages for breach of the royalty and overriding royalty clauses, attorney's fees, and pre-judgment and post-judgment interest.

Judgment affirmed.

Reference: Chesapeake Exploration, L.L.C. v. Hyder, 427 S.W. 3d 472 (Tex. App.—San Antonio 2014, pet. filed).

Side Box:

Drafting Note: The case referenced *Heritage Res., Inc. v. NationsBank*, 939 S.W.2d 118, 121 (Tex. 1996). In *Hyder*, the royalty clause specifically stated that "*Heritage Resources, Inc. v. NationsBank* . . . shall have no application to the terms

*Case of the Month - O & G
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and provisions of this Lease.” The royalty owners contended that this language indicated that their royalty interest was not subject to any post-production costs and expenses, regardless of where such costs were incurred. In Heritage, the court held that the parties modified the general rule in their agreement by expressly excluding all post-production costs.

The issue in Heritage between market value at the well and “no deduction” from market value at the well, did not exist in Hyder. However, the Hyder court determined that as in Heritage, it must give contractual terms their plain and ordinary meaning unless the instrument shows the parties’ intent to use the terms in a different sense. The opinion construed Heritage very narrowly, so that at least as to a proceeds lease, language to avoid deduction of post-production costs should be easy to draft.



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Guest Article

Eagle Ford Mineral Owners Armed With Fighting Money

By Jennifer Hiller

San Antonio Express-News, Publisher; June 29, 2015

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More than 1 billion barrels of oil have flowed from the Eagle Ford Shale, and area courthouses remain a tangle of lawsuits as people battle over who owns what.

Mary Moczygemba was 74 years old and running out of money to run her farm.

It was 2000, years before anyone in South Texas had heard of the Eagle Ford Shale, the 400-mile-long oil field concealed beneath thousands of feet of rock. Moczygemba signed deeds transferring 400 acres in Wilson and Karnes counties to two of her sons.

There was nothing mentioned about minerals. At the time, no one thought about them at all. A decade later, though, oil fever overtook a region usually obsessed with high school football, drought cycles and hunting seasons. Moczygemba realized she had sold her minerals along with the surface of the family ranch, according to court documents.

A family meeting with her other seven children followed, and in 2012 she filed a lawsuit against the two sons she had sold the land to for breach of fiduciary duty because of “their moral, domestic and personal relationship of trust and confidence.”

“Nobody knew if those minerals were ever going to have any value, did they?” an attorney asked Mary Moczygemba in a deposition.

“Yeah,” Mary said. “But after they started leasing, they should have come, ‘Well, Mom, look. We’re going to be leasing. Let’s just share it.’”

“All right,” the attorney said.

“Wouldn’t that have been nice?” she asked.

But what would be nice and what holds up in court are different things sometimes.

More than 1 billion barrels of oil have flowed from the Eagle Ford Shale, and South Texas courthouses remain a tangle of lawsuits as people battle over who owns what, what percentage of minerals they really conveyed with a land sale and — bedeviling even to oil and gas attorneys — the meaning of fractions in documents signed 60 years ago.

At stake: millions of dollars and family relationships strained by the wealth of the Eagle Ford, considered the most profitable U.S. shale field.

“We are on the forefront of it,” San Antonio attorney Trace Burton said. “So much of this has been mesquite and prickly pear and white-tailed deer until now.”

Other parts of Texas with outsized oil fields have walked this path. Attorneys say there’s far less messiness about mineral ownership in West Texas and East Texas, where people long ago sued each other over 20th-century oil fortunes in the massive Permian Basin and East Texas oil fields, and courts settled disputes.

But no one paid much attention to oil and gas in South Texas until now.

“Minerals weren’t worth a whole lot for a long period of the time,” Karnes City attorney Clinton Butler said. “People just weren’t thinking of it. The thing they were thinking of was the land they were buying and selling.”

Many cases at their core deal with regret and the heartbreak of what could have been. If anyone suspected another Texas oil boom would have happened, they definitely would not have sold their minerals — not even to a family member.

In Moczygemba’s case, each son paid \$40,000 for 200 acres. It was a sweetheart deal, but Moczygemba wanted to sell to her sons at a below-market price, court documents state.

Her two sons filed a motion for summary judgment to have her suit thrown out, arguing they didn’t have a fiduciary duty to their mother and the statute of limitations — usually four years — had run.

The trial court agreed that it was too late, barring Moczygemba’s claims.

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She appealed, but the appeals court in San Antonio in February also ruled against her and in favor of her two sons, Tommy and Harry.

“While the deeds are evidence that Mary’s mineral interests passed to her sons, they are not evidence that the mineral interests were wrongfully transferred to her sons,” the opinion says.

Burton said South Texas courts are full of fights like this, but Texas law is unforgiving when it comes to wanting to re-trade a deal, absent proof of fraud or a mutual mistake.

“Some people just can’t sleep at night,” said Burton. “Why it hits so close to home is that for a lot of people, it’s their longtime family ranch. The family aspect tends to resurrect old rifts between family members. You pour millions of dollars on top of those old rifts and they don’t necessarily heal. It exacerbates it.”

San Antonio resident Barbara O’Neal has been filing affidavits at the Live Oak County courthouse and taking out classified ads in the local newspaper, hoping to unravel an old oil and gas lease. The convoluted history goes back to the early 1990s, when O’Neal’s aunt signed a power of attorney document and ended up in a long-term lease with an oil company owned by family members.

O’Neal said her aunt later tried to get out of the lease, but died in 2003. Her aunt willed her mineral estate to her great nieces and nephews — a different generation of the family than currently is receiving the royalties on about 14,000 acres of land.

“I just want to get rid of the lease,” said O’Neal, the trustee of the mineral estate. “It would be free and clear for future generations.”

The ‘Gasoline Fire’

The first Eagle Ford well struck in late 2008, and soon after, the family feuds started. But often, it’s oil companies that unearth problems.

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Companies get a drill site title opinion before moving a rig onto a ranch — a final legal review identifying everyone with an interest in the minerals. In case of confusion, the company throws its hands up and steps back. It holds the royalty payments in a suspense account and lets potential owners fight in court.

“They start the gasoline fire and then back away,” Butler said.

Many South Texas disputes stem from the old “Producers 88,” the standard lease used in earlier days of Texas oil.

It stipulated the mineral owner would receive a 1/8th royalty. That is, for every 100 barrels of oil produced, the money from 12.5 barrels would go to the mineral owner.

The lease was so common that the “1/8th royalty” language got borrowed from the oil and gas lease and inserted into real estate deeds.

And it can create a modern-day legal mess if someone sold land but reserved part of the royalty.

“If you’ve got about two days we can sit down and go through double fractions,” Butler said. “That question is constantly before the court. It’s hard to pin down what’s what.”

The fight is this: If the sellers reserved half of the 1/8 royalty, what does it mean? Did they reserve one-half of one-eighth — which equals a fixed 1/16th of the minerals?

Or did they mean to reserve a floating interest in one-half of whatever future royalty is paid?

Many judges only consider the “four corners” of the deed. If the document says half of 1/8th royalty, then it means 1/16th.

Other judges agree with the “estate misconception theory” — the idea that parties from a certain time period mistakenly assumed that 1/8th is all that ever would be paid on a royalty. A 20 to 25 percent royalty is common in modern leases.

“You can find cases that go both ways,” Butler said. “There’s a lot of room for argument on either side, I think.”

A case out of Karnes County, the heart of the Eagle Ford and the county with the richest wells, dealt with a 1950 land sale.

*Guest Article - Eagle Ford
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George and Elsie Ann Prochaska sold a tract of land to John and Frances Regmund, but reserved “one-half of the one-eighth royalty. ...”

Fast forward more than five decades and a new lease in which the Regmund family has negotiated a lease with a 1/5th royalty.

The Prochaska and Regmund heirs went to court about whether the Prochaskas should receive 1/16th or 1/10th of the royalty — 6.25 percent or 10 percent of the oil production.

The trial court found in favor of the Prochaskas and their “floating” royalty argument, and so did the appeals court in San Antonio. The courts said the Prochaska heirs should get half of whatever royalty is paid.

But district and appellate courts around the state have had different interpretations of the fixed- or floating-interest question, San Antonio attorney Ezra Johnson said.

“We’ll see if the Supreme Court resolves it in some way,” Johnson said. “Do we look at the four corners of the deed or bring in everything and try to figure out the intent at the time?”

The Winter Garden

Some of the South Texas lawsuits go back to an even earlier period, harkening back to an era of land-development schemes.

Ambitious real estate hustlers in the early 20th century sold scrubby South Texas as a farmer’s paradise: the Winter Garden. The name lingers today in Dimmit, Zavala, Frio and La Salle counties.

Promoters would bring in prospective land-seekers, who some called land-suckers, by train from places like Indiana and Illinois. A common deal might include 10 acres, a lot in town and the promise of a year-round growing season.

“They would water down citrus trees and make it look like it’s fertile ground,” Burton said. “We’ve heard cases of land promoters eating the dirt and saying it’s so good you can eat it. It was that kind of hillbilly promotion.”

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But it's impossible to farm or run cattle successfully on 10 scrubby acres without irrigation, even in the sandy soil of the lyrically named Winter Garden. Many buyers never showed up. Some who did soon abandoned the small tracts.

Eventually, the plots were swallowed into vast ranches, fenced in and forgotten — until now.

But under Texas law, if you fence in land, you eventually can acquire it legally — along with the minerals.

In La Salle County, some parts of what's now Altito Ranch were purchased around 1910 by people who never took possession of the land or paid taxes, court documents state.

By 1916, H.D. Storey started acquiring land and fencing in the Altito Ranch, and his heirs have operated the ranch ever since.

Storey's descendants filed more than two dozen adverse possession cases in 2013 against people from North Carolina to California — the heirs of the one-time land-seekers.

A Houston lawyer for the ranch declined to comment, saying that some adverse possession cases still are pending. But Altito Ranch is far from alone — nearly identical lawsuits are common across the region as ranchers try to clear title on undersized parcels of their property.

"Nobody knows who owns what in Helena," attorney John Petry said, referring to the Karnes County ghost town. "If you're on there, you're on it. What Texas law wants is for people to use the property they own. It's use it or lose it."

Some communities were railway stops that never really got off the ground — places like Zella, Dull, Prince or San Fernando.

Other promotion-driven communities thrived for a time. Fowlerton had 2,000 residents but faded after droughts and, according to the Texas State Historical Association, a series of lawsuits against the Fowler brothers, who marketed the town.

In some cases, the title to the old town lots is too hopelessly convoluted to bother with. After the branches on the family tree have grown, hundreds of heirs may have a tenuous claim to the sliver of land — some minor fraction of an acre. Which, even in the Eagle Ford Shale, is not worth fighting for. "Good luck," Burton said.

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*Guest Article - Eagle Ford
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An oil company, not wanting to deal with possibly hundreds of people, will form a unit around the lots, leaving a little island in the middle of an oil field, Johnson said. "If it's small enough, they'll be declared 'undrillable' and no one will touch it. It's radioactive," Johnson said. "There are very few undrillable tracts in the state of Texas. And I strongly suspect Fowlernton will be undrillable."

But the adverse possession cases create confusion — or lottery-like hope — for the heirs of the land seekers. "What are you suing me for?" one man scrawled back on a piece of paper filed at the La Salle County Courthouse.

"People who are not from Texas or who aren't following these trends get these outsized ideas of what their 1/640th of 1/8th of an acre is going to get them," Johnson said. "Sometimes it's hard to convince folks that somebody else who has been living on that land for 100 years has a better claim than you do, and also with the cost of fighting that, ultimately your best bet is just to let it go."

Even for the current ranch owners, fighting small adverse possessions to create a clear chain of title doesn't always make financial sense. But oil money makes all kinds of litigation possible.

"I've got clients spending an incredible amount to fight a 4-acre adverse possession," Butler said. "It comes down to what kind of capital does the client have to spend. This is land that had been in their family for generations. They've got fighting money."

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CLARIFICATION: An earlier version of this story incorrectly stated the compensation for an oil and gas lease for Barbara O'Neal's aunt, due to incorrect information provided to the Express-News.



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Wednesday – Friday

September 23 – 25, 2015

The Bakersfield Association of Professional Landmen (BAPL) and the Los Angeles Association of Professional Landmen (LAAPL) proudly presents the 33rd Annual West Coast Landmen's Institute, to be held at the [Marina del Rey Marriott](#).

As in the past, this year's Institute should prove to be a superb learning opportunity for all land professionals, attorneys, and other professionals who work in the oil and gas industry. The Registration Fee of \$250 (\$300 if received after September 11th – \$50 more for non-members of the BAPL or LAAPL) and includes i. online Institute papers, ii. the Wednesday evening reception will be in their new Sinder Lounge, iii. roof top/penthouse luncheon overlooking the harbor, and iv. a full breakfast each morning. Thursday's dinner will be overlooking the harbor at the Chart House! In addition, we are offering the true "Independent" a reduced rate of \$50 off the above rate, but only prior to September 11th!**

****In this context, an Independent Landman is defined as any individual who receives compensation for their services, either on a per diem or hourly basis (1099), and who does not routinely employ other Landmen to work on a contract basis for their benefit. In other words, Brokers and Independents who have assistants do not qualify as an Independent Landman for the discounted registration fee.**

We anticipate AAPL will award Nine (9) RLP Continuing Education Credits or CPL Recertification Credits and One (1) Ethics Credit, for participation in this Institute. See Speaker Line-up on next page.

Registrants should make overnight accommodations directly with [Marina del Rey Marriott](#), by calling 800.228.9290, 310.301.3000 or online at [Book your group rate for West Coast Landmen's Institute Meeting](#), and reference the West Coast Landmen's Institute (WCLI).

We have a limited number of rooms secured at a rate of \$209 per night at [Marina del Rey Marriott](#), but you must book your reservation by Friday, August 28th (rates go up to \$339/night after this date) to take advantage of this reduced rate. Room availability is not guaranteed after this date! Independents: Share a room with another and save!

Individuals will be responsible for their own reservations. You have 72-hours prior to your arrival date in which to cancel your reservation. *All no shows and cancellations within this period will be charged to the individual.* We are guaranteed a minimum number of rooms each night, so we ask you to consider using WCLI's block of rooms at [Marina del Rey Marriott](#), if you are planning your lodging in the area for this event. Rooms rates are the same three (3) days prior and three (3) after our event, based on availability.

For the WCLI Golf Tournament, we have reserved a limited number of tee times at Los Verdes Golf Course for Wednesday, September 23, 2015. Los Verdes Golf Course is tucked above the cliffs in Rancho Palos Verdes and is one of the top rated Public courses in California. Cost per player is \$100.00, which includes golf, lunch and a limited bar tab - so drink fast. We are shooting for a noon tee off, so if you're interested, complete the attached Sponsor / Registration Form. See you there.

<p>33rd Annual</p>  <p>WEST COAST LANDMEN'S INSTITUTE</p>	<p>Marina del Rey Marriott Wednesday – Friday September 23 – 25, 2015</p>
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AGENDA

Wednesday, September 23rd

Noon - \$100 (Includes lunch and a limited bar tab)

Golf at Los Verdes Golf Course (Los Verdes Golf Course is tucked above the cliffs in Rancho Palos Verdes and is one of the top rated Public courses in California)

6:00 PM – 6:30 PM

Registration for Welcome Reception

6:30 PM - 9:30 PM

Welcome Reception at the Marina del Rey Marriott Sinder Lounge

Thursday, September 24th

6:45 AM – 8:00 AM

Registration, Breakfast & Networking

8:05 AM – 8:15 AM

Opening Remarks, Agenda Adjustments, Etc.

8:15 AM – 8:20 AM

Regional AAPL Director's Update

8:20 AM – 9:20 AM

“Drafting Around Environmental Disasters“
Dennis Luna, Partner, Olman Valverde, of Counsel
Luna & Glushon

9:20AM – 9:30 AM

Break

9:30AM – 10:30 AM

“Affidavits of Real Property of Small Value, Petition for Determination of Ownership of Real Property and Heggstad Petitions”
Rae Connet, Owner
PetroLand Services

10:30AM – 10:40 AM

Break

10:40 AM – 11:40 AM

“Advantages of Farmout Agreements in Troubled Times”
Sean Murphy, Partner, Josh Baker, Partner
Day Carter Murphy

Thursday - September 24th (Con't)

Noon – 1:30 PM	LUNCH Rooftop/Penthouse at the <i>Marina del Rey Marriott</i> “AAPL Update” Marc Strahn, President of AAPL
1:30 PM – 2:30 PM	“Dealing with Distressed Assets” Philip Eisenberg, Partner, John Harris, Partner Locke Lord LLP
2:30 PM – 2:40 PM	Break
2:50 pm – 3:50 pm	“These are the Times that Try the Soul” Jack Quirk, Partner Bright & Brown
3:50 PM – 4:00 PM	Break
4:00 PM – 5:00 PM	“Bankruptcy Issues Related to the Oil and Gas Industry” Oren Haker, Partner, Michael Sherman, Associate Stoel Rives LLP
6:00PM – 7:00 PM 7:00PM – 8:30 PM	Hosted Cocktail Reception Harbor Side at the <i>Chart House</i> Dinner at the <i>Chart House</i>

Friday - September 25th

7:00 AM – 8:00 AM	Breakfast and Networking
8:00 AM - 8:30 AM	“Legislative Update” Rock Zierman, CEO California Independent Petroleum Association
8:30 AM - 8:45 AM	Break
8:45 AM - 9:30 AM	“Valuation of Oil & Gas Properties for Probate Proceedings” TBD
9:30 AM - 9:40 AM	Break
9:40 AM - 10:40 AM	“Global Industry Overview and Predictions” Dave Kilpatrick, President Kilpatrick Energy
10:40 AM - 10:45 AM	Break
10:45 AM - 11:45 AM	“Ethical Update on Recent Case Law” Anthony Marino, Partner Slattery, Marino & Roberts
11:45 AM - 12:00 PM	Closing Remarks and Acknowledgements