



The Override

Every Landman Wants One!

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November, 2011



Los Angeles Association of Professional Landmen

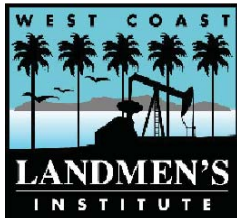
Presidents Message

Joe Munsey, RPL

Southern California Gas Company

We are winding down the end of 2011, which means we are about to enjoy some very important holidays. Since we go dark after our November chapter meeting and its thumbs down on churning out a newsletter for the remainder of the year, it then seems only appropriate to offer holiday greetings to our members and industry friends.

Thanksgiving is around the corner and we trust all take the time to reflect and be grateful for family, friends and living in the greatest nation on God's



Huge Success!

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green earth [thanks Michel Medved for coining that phrase]. Coming on the heels of Thanksgiving we soon rush in the holiday spirit of Christmas and Hanukah. Since I am partial to Christmas, I look forward to celebrating the entire month of the Christmas spirit when most people begin to sharpen their courtesy skills; the stores are filled with Christmas carols, decorations and gifts galore to catch the eye. Then what seems mere moments after Christmas, we are celebrating the end of the year.

Thus, enjoy your Thanksgiving Day, if you celebrate Christmas or Hanukah, then basked in the spirit of your holiday [holy day] and have a Happy and Blessed New Year.

The chapter continues to add new members to its ranks, feel free to browse the remainder of the newsletter and get acquainted with the new applicants who will be voted on for membership at the luncheon. One of the applicants, Noemi Cruz, Esq., of Luna Glushon, here in Los Angeles, debuts with an article for our Issue of the Month Section.

Speaking of new names to be on the look-out, we have a new advertiser, the venerable law firm of Nossaman LLP, which has offices in Orange County, Los Angeles, San Francisco, Sacramento and Washington, DC. For its unveiling here in this award winning newsletter, Nossaman has provided a piece of writing for our Case of the Month, written by Bradford B. Kuhn, Esq., of the Orange County Office.

Plan to attend our luncheon Thursday where we have Pete Radke of Utiliscan introducing some intriguing technology for locating underground substructures. Never mapped out those gathering lines 90 years ago that are now abandoned... maybe this technology could be the key in locating them.



Meeting Luncheon Speaker

Pete Radke holds a B.A. in business from the California State University, Fullerton. He is certified in multiple ground penetrating radar technology applications. His firm **UtiliScan**, an Orange County based enterprise, is a leader in utility locating and imaging which provides real time information to land developers, planners, agencies, engineers and others who are developing and planning to work near concealed utilities/sub-structures associated with pre and post construction projects.

UtiliScan's client base ranges from large corporation, such as the Boeing Corporation, to small engineering firms who need to control and improve safety when working with underground utilities [wet or dry], and any other underground sub-structures not visible to the eye or the current technology in use today.



Editor's Corner

Stephen Harris, CPL

Independent & Guest Editor

I suspect some of you thought I would have retired from writing clarion opinion pieces, but like an old wet dog, I thought I would bark a few observances this month for thought. I will of course attempt to maintain this missive with great alacrity and due dispatch, as instructed by our President.

KEYSTONE: Webster's defines as "a central cohesive source at the top of an arch or vault."

There is a pipeline, called TransCanada Keystone XL Pipeline Project that is in the process of permitting using a new route as below:



Now, let's get to the facts. There is a serious oversupply at Cushing, OK tank farms wherein oil price benchmark WTI – Cushing is quoted daily. This has led

to significant higher California postings, using Buena Vista average, way above normal WTI for lower gravity CA crude oils. While this is good news, albeit a result of storage decanting contangos like we have not seen in a generation as to oil prices, it also is an important harbinger of a break-down in our U.S. transportation sector for petroleum products. The producers in Williston Basin and operators tangling with the Bakken shale are reliant upon a new pipeline for future development.

That "development" which is discussed in a recent summit presented by Rice University, Houston, TX, by Tudor Pickering Holt & CO., sponsors of the Rice Energy Finance Summit held on October 27, 2011, is a projected 10 times gas reserve increase by end of 2013 from year 2000, and as stated in the Oil and Gas Journal on October 3, 2011, there appears to be over 24 billion barrels of estimated ultimate recovery in the Bakken with over 600,000 boe/well. The forecast that the Bakken would be producing 800,000 – 1 MM b/d by 2018, appears to be conservative as the current production is already ahead of the curve. This drilling of so many wells does lead to serendipitous discoveries, and a Marathon Oil Corp., exploration official quoted in the article said he sees a number of plays getting ready to take off in the Williston Basin.

EOG began shipping some of its Bakken crude by railroad unit train to Cushing, OK, on December 31, 2009, and Tesoro Corp., will start rail shipments to its Anacortes, Wash., refinery in 2012.

With Cushing storage at capacity, some Bakken oil is finding its way to Louisiana. The Keystone XL pipeline, if built, could in time help break the Cushing snarl.

On August 26, 2011, the U.S. Department of State (the Department) issued the final Environmental Impact Statement (EIS) for the proposed Keystone XL oil pipeline, which if approved, would run from Alberta, Canada to Texas. Under Executive Order 13337, the Department is responsible for receiving all

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Nominations Chair
TBD

applications for presidential permits for the construction of a pipeline crossing a United States international border. After consultation with eight federal agencies and the public, the Department is charged with making a determination as to whether a permit for the Keystone XL pipeline is in the U.S. national interest.

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Lawyers' Joke of the Month

Tom Dahlgreen, Warren E & P

Editor's Comments: Although Tom is not a practitioner of the law, he insisted on supplying this month's Lawyer's Joke of the Month.

St. Peter was standing watch over the Pearly Gates when 3 groups of people walked up.

The first group were petroleum geologists. Peter waved them through with no problem.

The next group were petroleum engineers. Peter waved them through with no problem.

The third group were petroleum landman. Peter stopped them and said he would have to consult with God. He had a long drawn out discussion with God and God finally decided that since he let the other two groups in, it's only fair that the landmen be let in.

So Peter went back to the Pearly Gates, stood there for a few minutes, shook his head and then walked back to God's office. Peter stood at God's doorway and said "Well they're gone!" God gave Peter a quizzical look and asked "the landmen?" "No", Peter said "The Pearly Gates".

Our Honorable Guests

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

- Ann E. Gildersleeve, Southern California Edison Company
- Maria Parcell, Southern California Edison Company
- Jerry Willson, Independent
- John Bellezzie, Independent
- Adrienne Wiggins, PetroLand Services
- Anthony Smith, PetroLand Services
- Cecelia Richardson, Oxy
- Christopher Cucchicra, Oxy

Chapter Board Meetings

The 2011 – 2012 Board of Directors held its first board meeting in September. Some items discussed:

- LAAPL and LABGS joint meeting
- Treasurers' Report
- Appointing Chair for Website Committee
- Appointing Chair for Michelson Golf Classic
- Reporting by Educational and Membership Chairs
- WCLI
- The Need to Appoint Nominations Chair

Other matters – notes of meeting can be reviewed upon request

The Board of Directors regularly holds its meetings on the third Thursday of the month after the Chapter meetings. 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

November 17th

Peter Radke
UtiliScan

"Can Radar Locate Below Ground Structures"

January 26th

[4th Thursday]

Annual Joint Meeting with
Los Angeles Basin Geological Society
W.C. "Rusty" Riese, Past Vice
President of AAPG

*"Oil Spills, Ethics and Society:
How They Intersect & Where the
Responsibility Resides"*

March 15th

John Harris, Esq.
Meyers Nave

May 17th

Paul Cowdery, Parcel Quest
"Assessing Minerals"
Officer Elections



Treasurer's Report

As of 9/1/2011, the LAAPL account showed a balance of	\$17,466.82
Total Deposits	\$2,410.00
Total Checks, Withdrawals, Transfers	\$191.20
Balance as of 10/27/2009	\$19,658.62
Merrill Lynch Money Account shows a total	\$11,096.90

Lawyers' Joke of the Month II

Cliff Moore, Independent

1) A friend was at his front gate talking to a neighbor one morning.

Neighbor: I see you were in an accident.

Friend: Yeah, I hit a lawyer yesterday.

Neighbor: Well, that would explain the blood but what's with all the leaves and stuff.

Friend: I had to chase him all through the park.

2) I was consulting with my attorney at the end of the Santa Monica pier.

He leaned back for effect while making a point and fell over the railing into shark infested waters.

When I met him after he swam back to shore he didn't have a scratch on him.

Why?

Professional courtesy.



Editor's Corner

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TransCanada Keystone Pipeline, LP (Keystone) filed an application in 2008 for a Presidential Permit with the Department of State to build and operate the Keystone XL Project. Project consists of a 1,700 mile crude oil pipeline and related facilities that would primarily be used to transport Western Canadian Sedimentary Basin crude oil from an oil supply hub in Alberta, Canada to delivery points in Oklahoma and Texas. The proposed Project would be also capable of transporting U.S. crude (Bakken, Niobrara, Woodford, etc) to those delivery points. The proposed project could transport up to 830,000 b/d and is estimated to cost \$7 billion. If permitted, it would begin operation in 2013, with the actual date dependent on necessary permits, approvals and authorizations.

So far so good, right?

Two things I have not mentioned – (1) so-called environmentalists that not only hate oil companies, but hate, with a passion, crude oil itself; and (2) Warren Buffet.

In spite of the Environmental Impact Statement (EIS) being approved over a three year period, other federal agencies, independent scientists and engineers, subject matter experts, as well as tens of thousands of comments from the public helping to form the final EIS, along with reviews from the EPA, DOE, and the Department of Transportation's Pipeline and Hazardous Materials Safety Administration (PHMSA), which oversees pipeline safety, there has been significant opposition mounted by the environmental groups, that included a march on Washington last week. For further information on the Keystone XL Project and its permitting process, I suggest reading the 27 page Executive Summary "Final Environmental Impact Statement for the Proposed Keystone XL Project," dated August 26, 2011, by the United States Department of State Bureau of Oceans and International Environmental and Scientific Affairs.

Let me know if you have trouble finding it and I will send a pdf of this report to any reader.

I have actually assisted and managed some years ago an EIR / EIS / Negative Declaration under the 1972 CA "CEQA" permit process and it was exhaustive and expensive. I have no doubt that given the size of the Project, all issues of any impact, remote or otherwise, including studies as to fresh water aquifers were thoroughly analyzed and studied.

In today's politically charged environment, following the law and abiding by all heretofore rules and regulations as to environmental compliance, means ABSOLUTELY NOTHING, when it comes to a Presidential election coming up.

The benefits are obvious from a crude oil line bearing down from Canada, through Montana, the edges of North and South Dakota, Nebraska, Kansas, Oklahoma and Texas – all oil producing states. The history of the oil business is the history of oil wells and pipelines/railroads. Where would this country be if the "Big 8 inch" and "Big 10 inch" lines were not built during the WWII years? Without oil tankers on the high seas, and pipelines terrestrially, most of our produced oil and products would not make it to market.

To me, disrupting or blocking a vital to U.S. security infrastructure that will create thousands of new construction jobs (unions and labor are fully behind the pipeline project) and allow less reliance on foreign oil, for no good damn reason other than politics, is treason plain and simple. Every war last century had blood and oil involved, and that paradigm has not changed this century. Given the oil shale and other unconventional fuels we are developing in this country, it is indeed possible to achieve energy self independence one day in the near future. That is a statement that I had thought would never be uttered again by any U.S. oilman.

A decades-long crusade by the environmental left to convince us that oil is evil, unsustainable, and destroying our planet has yet to accomplish its goal of eliminating oil as a fuel, but it has succeeded in making oil damned expensive. New technologies for extraction and transport of previous unrecoverable oil promise to reverse that trend. That is where the Keystone XL pipeline comes in.

The opposition from the left claims a catastrophic risk of contamination of the Ogallala aquifer should the pipeline suffer a breach. The aquifer underlies virtually all of Nebraska, and several other states, and supplies drinking water and irrigation to millions of people. These are serious concerns, but entirely inapplicable. The wild-eyed excesses of the radical left does indeed prove that green insanity takes root in even normally sensible states.

The subject aquifer is a giant filter system, not a lake, consisting of layer after layer of sedimentary rock, silt, clay and sand. This is why leaked oil would simply migrate toward the nearest substrata, where it will remain localized. According to Professor James Goeke, a hydro-geologist who retired from the University of Nebraska earlier this year after a forty year career of studying the Ogallala aquifer and the Sand Hills region that overlies it, and being the world's foremost expert in the aquifer, states that "the geologic structure of the formation precludes any possibility that oil could travel for more than a few hundred feet in any direction before encountering substrata. Quite simply, the aquifer and the land above it are not in any real danger from this project." So if the left is still perpetuating a demonstrable falsehood, then what is the motive for the radical Left's opposition?

The environmentalists well know that changing the route at this stage will result in the invalidation of the existing EIS (the real aim of the protestors),

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thereby creating a need to begin the entire process anew. This time, the Left is confident that they will be able to demagogue and politicize the process sufficiently to preclude another approval.

Now, let's look at who the players are if the pipeline never gets built. In an interesting article on October 11, 2011 in the American Thinker, journalist Joe Herring posits that the "usual idiots" like Daryl Hannah and progressive agenda-driven scientists like global-warming alarmist James Hanson of NASA and other Hysterical-Left, Hollywood usual suspects, are merely being used for people like Dick Holland, a close friend of Warren Buffet.

Holland, an original investor of Buffet's Berkshire Hathaway, and a close friend of Buffet with the same political philosophy, worked with Buffet to secure, one year after Obama was elected, the giant railroad, the Burlington Northern Santa Fe (BNSF). The BNSF has more than 32,000 miles of tracks and right-of-way and is the railroad with the best existing north-south infrastructure. In fact, it is quite well situated to perform precisely the task for which TransCanada has proposed to build a pipeline.

As Mr. Herring points out, the opposition to the pipeline is not only tainted, but intellectually and scientifically bankrupt. The agenda is not big oil, environmentalism, or even green energy; it appears to be garden-variety crony capitalism, an Obama administration specialty.

So, I see on Monday this week in the Los Angeles Times (LAT) that the "Pipeline Decision May Be Delayed" article on first page, talking about thousands of Obama supporters, including donors, environmentalists, campaign volunteers and so forth marching on the Capital last weekend protesting the pipeline. There was a quote from John Adams, director of the Natural Resources Defense Council

saying "My guess is, if there is a delay, it could very well kill the pipeline of its own weight."

On Tuesday this week, the LAT reports again, "Pipeline Process Under Review," and a supporter of the Project was quoted as saying "We welcome an independent review by the inspector general's office so that these latest claims by professional activists and lawmakers who are adamantly opposed to our pipeline project can be addressed," by TransCanada's spokesperson, Terry Cunha.

And now today, Thursday this week, in a feed from Reuters just in "The Obama Administration plans to announce on Thursday it will explore a new route for a Canada-to-Texas oil pipeline, delaying a final approval beyond the 2012 U.S. election." Another quote, "it's a huge victory, and it would probably be the biggest environmental gift that Obama has given us," said Tony Lallorardo, a spokesman at the National Wildlife Federation.

There you have it – crony capitalism at its finest and for the American people; well, we get "hosed" again.

Thank you -

Stephen T. Harris, CPL

Chapter President Appoints Chairs

Our Chapter President recently appointed the following members as Chairs:

Michelson Golf Classic Chair:

Terry L. Allred, RPL
Director of Land,
Zodiac Energy LLC

Website/Communications Chair:

Odysseus Chairtakis, RPL
Contract Landman,
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New Members and Transfers

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Stanford Petroleum Investments Funds

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, Founding 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/alumni/support/pif> or call or email David Gordon, Executive Administrator, Petroleum Investments Committee, Stanford School of Earth Sciences, at (650) 723-9777 or dsgordon@stanford.edu to see how you can help.



Mickelson Golf Classic

2011 MICKLESON GOLF CLASSIC

*Jennifer Parkes, Land Technician, Venoco, Inc.
Jason Downs, Downchez Energy, Inc.
Pat Moran, RPL, Senior Landman, Venoco, Inc.
Golf Committee Co-Chairpersons*

The 7th Annual LAAPL Mickelson Golf Classic held at Malibu Golf Club on Friday, August 12th was a major success to benefit the R.M. Pyles Boys Camp. This camp has been a favored beneficiary of this golf tournament for several years.

Established in 1949 by Mr. Pyles, a Huntington Beach oilman, 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. To give boys a new confidence in life through a high quality challenging wilderness camp experience. R.M. Pyles Boys Camp continues to follow up with year-round programs to support and reinforce values learned at camp.

With the generosity of those who supported the tournament, LAAPL was able to contribute the second largest amount of money in the history of this event to benefit the camp at \$6,829.33.

“Malibu Golf Course” took on its new name this year, the clubhouse restaurant being fully renovated; and a beautiful outdoor area being added as well. The weather was grand and the course was in great shape.

We enjoyed a large number of attendees that included 47 golfers. Our first place team included Brent Davenport, Carl Glatz, and Frank Schulte who took advantage of the course conditions by shooting a noteworthy seventeen under 55.

However, the real winners of this tournament are those boys who are able to attend the R.M. Pyles Boys Camp due to a successful tournament and everyone’s contribution. The LAAPL and Co-chairs extends its sincere appreciation and gratitude to each and every sponsor, attendee, and volunteer for their support and generous contributions to this year’s fundraiser.

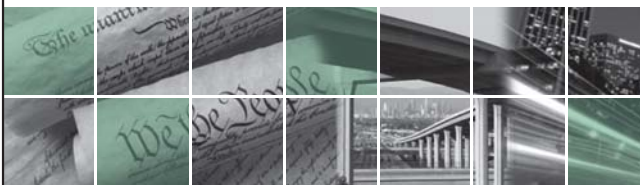
We look forward to the 8th Annual Mickelson Golf Classic in 2012. Taking on the duties of the Mickelson Golf Chair is LAAPL’s Past President, Terry Allred, RPL, of Zodiac Exploration. Pat Moran, RPL, and Jennifer Parkes, both of Venoco, Inc., will be supporting Terry as committee members. LAAPL looks forward to a successful 2012 year!



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Case of the Month

Eminent Domain Opinion Demonstrates Need to Get Final Order Right the First Time

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

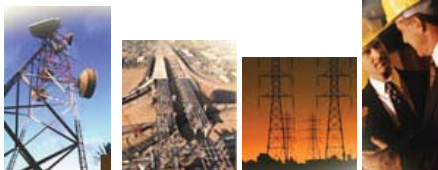
All eminent domain attorneys, landmen, right of way agents, and public agencies know the importance of getting the Final Order of Condemnation right. After all, it's the document that gets recorded, effecting the transfer of title to the agency upon the conclusion of an eminent domain action. But sometimes mistakes occur, and when they do, the condemning agency typically has a remedy.

In DFP, LTD v. Sacramento Regional County Sanitation District, an unpublished opinion recently issued, the agency requested a nunc pro tunc order revising the final order to correct a "scrivener's error." The error: the recorded final order stated that the agency acquired an easement over the larger parcel, when what the agency actually condemned was a fee interest. (For those who didn't study Latin in high school, nunc pro tunc is just a fancy way of saying that the order is corrected retroactively.)

So far, so good. The court signed the order, and the corrected final order was recorded. There was just one, small problem. Between the date the "easement" final order was recorded and the date the corrected "fee" final order was recorded, someone bought the larger parcel.

The result was a quiet title action by the buyer, arguing that the agency possessed only the easement interest reflected on title at the time the sale occurred. The buyer claimed to be a bona fide purchaser for value, not bound by the subsequent final order.

We don't yet know the final outcome of this story; the current opinion merely reverses a trial court order sustaining a demurrer. But the court of appeal did suggest that if the new owner was an actual bona fide purchaser, with no knowledge of the agency's intent to acquire a fee interest, the agency may be out of luck. The lesson is easy to see: take extra care in getting that final order right the first time. Mr. Kuhn can be reached at bkuhn@nossaman.com.



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29th Annual WCLI

29th Annual West Coast Landmen's Institute a Success

*Jason Downs, Downchez Energy
Education Chair*

The Los Angeles Association of Professional Landmen (LAAPL) and the Bakersfield Association of Professional Landmen (BAPL) recently held their 29th Annual West Coast Landmen's Institute, at the Fess Parker Doubletree Resort in Santa Barbara, California. The venue turned out to be amazing and well suited for the event.

It provided a perfect setting to network and catch up with fellow members of our profession. Not only was it a great networking event but West Coast Land Institute was a superb learning opportunity for all land professionals in the oil and gas industry. We had a star studded set of speakers for the event which enticed a large turnout, quite possibly the highest attended WCLI on record with over 140 Oil & Gas professionals.

Those of you who attended were able to receive 10 credits towards RLP continuing education credits or CPL recertification credits.

Even a few landmen were able to enjoy golf Wednesday afternoon at Ojai Valley Inn and Spa prior to the WCLI event, lucky you!

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Issue of the Month

Loan to Own? How to Keep Your Oil Well Out of Your Lender's Grasp Until the Court Can Decide the Merits of the Lender's Foreclosure Action¹

*By Noemi Cruz, Esq., Luna & Glushon
Century City, California*

In these days of economic downturn and of complicated over-the-counter-derivative project finance loans² that “go south” before you can say “lickety-split,” how can you, the oil/gas producer, keep your oil/gas wells in your possession, in operation and out of the lender’s grasp until your finance contract dispute with the lender can be decided in court?

1. Multiple Ways to Take Your Collateral

The veritable arsenal of judicial and non-judicial procedures available to a lender to take possession or control of property pledged as collateral for a loan is reminiscent of Simon & Garfunkle’s Fifty Ways to Leave Your Lover. The lender can file a judicial foreclosure action – a court action to foreclose on the collateral – which is often the business itself, including the oil and gas lease and the oil/gas wells to be improved with the loan. A judicial foreclosure action takes time, however. Both the producer and the lender have to prepare and present their claims and defenses in court, observing court set timelines and procedures, and allowing the court to decide their respective claims on the merits. The producer remains in possession and control of the oil/gas well until the court issues a final judgment, and, if the judgment is appealed, until the appeal is resolved. In other words, the status quo is preserved until the action is resolved.

“Until the action is resolved” may be longer than a lender wants to wait to take possession or control of the collateral. For this reason, a lender may proceed with a non-judicial foreclosure (which is the sale of the business, the lease, the oil/gas wells and other property pledged as collateral at a trustee’s sale to pay off the loan – without any court involvement).³ The lender may also pursue “provisional remedies,” simultaneously with the court action and the non-judicial foreclosure proceeding. Provisional remedies are temporary remedies awarded before a judgment is issued in the judicial foreclosure action.⁴ Depending on the type of property pledged, and on the terms of the finance contract, these remedies can include freezing the company’s production proceeds⁵ and asking the court to appoint a receiver.⁶

2. The Producer’s Remedies – a TRO and a Preliminary Injunction

A producer who receives a notice of default from the lender needs to act fast. If the producer does not pay the accelerated amount the lender has declared due within the deadline set by the lender – the lender’s notice of sale of the collateral at a non-judicial foreclosure sale will not be long in coming. Keep in mind, the three months after which the lender can proceed with the trustee’s sale go by ever so quickly. Moreover, the lender’s “asset freeze” of the producer’s production revenue, which is generally of indefinite duration, may fast leave the producer unable to continue operation of the business. To defend against the lender’s actions, the oil/gas producer must file a complaint and a motion to obtain a court order to prevent or “enjoin” the lender from (1) continuing to pursue its non-judicial foreclosure proceeding, (2) prevent the lender from initiating any new provisional remedies, and (3) reverse any “asset freeze,” until the judicial foreclosure action is resolved.⁷

Time is of the essence for the producer. The producer must file its motion for a preliminary injunction⁸ in time for the motion to be decided by the court before the date set for the trustee’s sale and before the “asset freeze” forces the producer to shut down due to lack of operating revenue. Since this may not be possible, the producer may also be required to file an ex parte application asking the court to immediately issue a temporary order that restrains all foreclosure-like actions by the lender, from the date the motion is filed, to the date the motion is decided by the court.⁹ If the court grants the temporary restraining order (“TRO”) and the preliminary injunction, the status quo will be preserved; the producer will remain in possession and in operation of the business until the judicial foreclosure case is resolved.

3. Test for Obtaining a TRO and a Preliminary Injunction

To obtain a TRO and a preliminary injunction, the oil/gas producer has to prove to the court either (1) the producer is likely to succeed on the merits of its claims and to suffer irreparable harm if the injunction is not granted, the balance of equities tips in its favor, and that an injunction is in the public interest;¹⁰ or (2) “serious questions going to the merits,” a balance of hardships that tips sharply in its favor, a likelihood of irreparable injury and that the injunction is in the public interest.¹¹

a. Likelihood of Success On the Merits

To prove likelihood of success on the merits, the producer must submit evidence which shows the producer, more likely

*Issue of the Month
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than not, will succeed in proving at least one of the claims raised in its complaint. If the producer's complaint alleges the lender breached the loan contract, the court could find the producer is likely to succeed on the merits under the Winter test, where (1) the producer submits evidence that the lender materially breached the contract, for example, by failing to provide a significant part of the loan¹² and (2) that, at the time of the lender's breach, the producer was substantially in compliance with the loan agreement.¹³ This result is especially likely if the lender fails to submit evidence contradicting the producer's evidence of the lender's breach and of the producer's substantial performance.

b. The Producer Is Likely to Suffer Irreparable Harm

Irreparable harm is harm that cannot be compensated with money.¹⁴ Among the factors that support a finding of irreparable harm are (1) threatened destruction of a business,¹⁵ (2) threat of bankruptcy,¹⁶ (3) the inadequacy of money damages for loss of a business of many years' standing,¹⁷ and (4) loss of intangible benefits, including loss of business good will, reputation and advertising presence.¹⁸ The threatened loss of real property, including the oil and gas lease, also supports a finding of irreparable harm, as real property is unique and money damages are inadequate to compensate for such a loss.¹⁹ The lender's threatened non-judicial foreclosure and its freezing of the producer's production revenue expose the producer to each of these losses. Thus, the producer will likely succeed in showing that, if the court does not issue the TRO and the preliminary injunction, the producer will be irreparably harmed.

c. The Balance of Hardships Tips Sharply in Favor of the Producer

In balancing the hardships, the Court determines the harm that granting or denying an injunction will have on the parties. If the injunction is not issued and the lender continues to withhold the producer's production revenue and/or forecloses non-judicially on the business, the producer will lose its real property, its business, and its reputation and good will, and it will be irreparably harmed. The lender, on the other hand, cannot show any similar risk of hardship. If the court issues the injunction, the impact on the lender, at most, will be a temporary delay in the lender's ability to foreclose on the business and real property – not irreparable harm. Therefore, the balance of hardships tips sharply in favor of the producer.²⁰

d. Harm to the Public Interest If the Injunction Is Not Granted

Courts must also consider the public interest as a factor in balancing the equities.²¹ There is a public interest in the accurate resolution of real property disputes.²² Issuing an injunction will promote more accurate resolution of the real property dispute between the producer and lender: it will allow time for the court to review the validity and merits of the lender's and producer's respective claims. There is also a public interest in minimizing job loss. Thus, to the extent that foreclosure of the producer's business will result in the loss of jobs, there is a public interest in issuing the injunction.²³ In fact, the producer's interest in providing continued employment to its employees could tip the balance of equities in the producer's favor.²⁴ Finally, there is a public interest in preventing damage to the environment.²⁵ Therefore, an injunction should be issued if taking the wells out of the hands of an experienced producer and placing them in the hands of an inexperienced receiver or agent of the lender will result in environmental harm, or if the asset-freeze results in shut-down of the oil/gas wells without the funds necessary to comply with regulations designed to ensure an environmentally safe shut-down.

4. Conclusion

An oil/gas producer, faced with a lender's notice of default on a loan, should consider filing a court action, an ex parte application for a TRO and a motion for a preliminary injunction, each of which must be well-supported with evidence. By submitting the evidence required for the court to issue a TRO and a preliminary injunction, the producer can prevent the lender from taking possession and control of the producer's business and assets until the court can determine whether the lender's claim that the producer has defaulted on the loan has merit.

Noemi Cruz, Esq., can be reached for comments at ncruz@lunaglushon.com

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¹This article is not intended as legal advice. Very specific timing requirements apply to default, foreclosure and injunction procedures and this article does not purport to address those, but strives to give only an overall view of how laws applicable to obtaining a TRO and a preliminary injunction may apply in an action for breach of a loan contract. This article also does not explore every possible provisional remedy.

² “Project financing,” “loan agreement,” “loan contract” and “loan” are used interchangeably herein.

³ Non-judicial foreclosure is a lender preferred method because the foreclosure occurs quickly, without court involvement. Typically, the borrower gives the lender a deed of trust pledging the business, its production proceeds and other assets (including real and personal property) as collateral for the loan. The deed of trust empowers the lender to proceed directly against the property, without filing a court action, if the borrower fails to make a payment or otherwise defaults on the loan. MILLER & STARR § 10: 178 (3rd ed. 2011); See Koch v. Briggs, 14 Cal. 256 (1859) and Fogarty v. Sawyer, 17 Cal. 589 (1861) codified into CAL. CIV. CODE § 2932. The lender declares the loan in default, records a notice of default and notifies the borrower of the default within the timelines set forth in the loan agreement and in accord with the laws of the state in which the real property is located. The lender notifies the borrower of the lender’s intent to sell the property at a trustee’s sale if the amount demanded is not fully paid within the lender’s deadline. MILLER & STARR § 10:181 (3rd ed. 2011); See Jones v. Sierra Verdugo Water Co., 63 Cal.App. 254 (1923). The lender “accelerates” the loan payments, as allowed by the loan contract and deed of trust, by declaring due on a given date, the entire loan principal plus interest and other fees (not just the past due amount). MILLER & STARR §§10:02-1:10; 10:186 (3rd ed. 2011); see Gantry Contr. Co. v. Am. Pipe & Contr. Co., 49 Cal.App.3d 186 (1975). If the borrower does not fully pay the amount demanded within the lender’s deadline, the lender sends a “notice of trustee’s sale,” notifying the borrower of the date, time and place that the trustee will sell the property. MILLER & STARR § 10:198 (3rd ed. 2011); CAL. CIV. CODE § 2924. One limitation on the lender is that the trustee cannot proceed with the sale until at least three calendar months after the default notice was recorded. *Id.*

⁴ Provisional remedies include TROs, preliminary injunctions, prejudgment appointment of a receiver, and attachment. Such remedies are intended to maintain the status quo by preserving property or protecting a person’s safety. BLACK’S LAW DICTIONARY 18c (9th ed. 2009).

⁵ The “freezing production proceeds,” also called an “asset freeze,” can be initiated with or without court action. Where an oil producer has assigned its production (the assignor) to the lender (the assignee) as security, the lender can request a court order attaching or garnishing the monies derived from sale of the producer’s crude. FRCP 64. Or the lender can simply demand, of the oil producer’s crude buyer (the account debtor), that the crude buyer make all payments for the crude to the lender instead of to the oil producer. If the producer notifies the crude buyer that the lender’s claim is disputed, the crude buyer will likely stop making payments to anyone until the issue of who is entitled to payment is resolved by court order – thus indefinitely depriving the oil producer of its production revenue. See Cal. Uniform Commercial Code § 9406. Official Comments, Subsection (a).

⁶ A lender asks the court to appoint a disinterested person to take control of the business and its assets and to operate the business on a day to day basis. The receiver’s function is to take and preserve the property at issue in the litigation. See FRCP 66, and New York Life Ins. Co. v. Watt West Invest. Corp 755 F.Supp. 287, 292 (E.D. C.A. 1991). This is a harsh remedy; it ousts the owner from possession and control of the business before the merits of the lender’s claim of default is decided by the court. It is also very costly to the business because the receiver is entitled to fees and expenses for his services, which may include fees for lawyers, accountants and other staff hired to assist the receiver. Schwarzer, Tashima and Wagstaffe, Cal. Prac. Guide: Fed. Civ. Pro. Before Trial, (The Rutter Group 2011), §13:17.3, Comment.

⁷ The producer must also timely oppose the lenders’ motion to appoint a receiver. Opposition to the receiver motion is not addressed in this article.

⁸ A preliminary injunction is a provisional remedy issued before the final disposition of the case. Its function is to preserve the status quo and to prevent irreparable loss of rights prior to judgment. Sierra On-Line, Inc. v. Phoenix Software, Inc., 739 F.2d. 1415, 1422 (9th Cir. 1984). In essence, the court “tells a party what to do or not to do.” *Niken v. Holder* (2009) __ US __, 129, S. Ct. 1749, 1757. The injunction protects the substantive relief sought by the complaint. It is an extraordinary and drastic remedy. *Munaf v. Geren*, 553 U.S. 674, 676 (2008). The court can issue an injunction only on a clear showing that the plaintiff is entitled to such relief. *Winter v. Natural Resources Defense Council, Inc.*, 555 U.S. 7, 129 S. Ct. 365, 375 (2008).

⁹ The test for a TRO is the same as that for a preliminary injunction. *Cal. Indep. Sys. Operator Corp. v. Reliant Energy*, 181 F.Supp.2d 1111, 1126 (E.D. Cal. 2001) citing *Dumas v. Gommerman*, 865 F.2d 1093, 1095 (9th Cir. 1989).

¹⁰ *Winter*, 129 S. Ct. at 374; See *Sierra Forest Legacy v. Rey*, 577 F.3d 1015, 1021 (9th Cir. 2009).

¹¹ *Alliance for the Wild Rockies v. Cottrell*, 632 F.3d 1127, 1132 (9th Cir. 2011).

¹² *Pry Corp of America v. Leach*, 177 Cal. App. 632, 639 (1960) (Only a material breach of contract excuses further performance by the injured party and entitles that party to terminate the contract.)

¹³ *Consolidated World Investments, Inc. v. Lido Preferred Ltd.*, 9 Cal. App. 4th 373, 380 (1992) (A plaintiff suing for breach of contract must prove it has performed all conditions or was excused from performance.)

¹⁴ For example, money cannot compensate for the loss of one’s business. A business provides an income stream. It provides a living for the owner, his family and for members of the community. It generates good will and a presence and reputation for the business in the community. Money does not adequately compensate the owner for these losses.

¹⁵ See, *Semmes Motors, Inc. v. Ford Motor Co.*, 429 F.2d 1197, 1205 (2d Cir.1970).

¹⁶ *Id.* (Business affected was of twenty years’ standing.)

¹⁷ *Id.* at 1205 (quoting *Bateman v. Ford Motor Co.*, 302 F.2d 63, 66 (3d Cir. 1962).)

¹⁸ *Mahroom v. Best Western Intern., Inc.*, No. C 07-2351 JF (HRL), 2009 WL 248262, *3 (N.D. Cal. Feb. 2, 2009) (“intangible benefits such as business good will, reputation and advertising presence often are not quantifiable, and thus their loss may amount to irreparable harm.”)

See also *Rent-A-Center, Inc. v. Canyon Television and Appliance Rental, Inc.*, 944 F.2d 597, 603 (9th Cir. 1991) (intangible injuries . . . qualify as irreparable harm.)

¹⁹ See *Sundance Land Corp. v. Community First Fed'l Sav. & Loan Ass'n*, 840 F.2d 653, 661-62 (9th Cir. 1988).

²⁰ See, e.g., *Naderski v. Wells Fargo Bank, N.A.*, No. CV 11-1783 CAS (CWx), 2011 WL 1627161, *2 (C.D. Cal. Apr. 25, 2011); *Sencion v. Saxon Mortg. Services, LLC*, No. 5:10-cv-3108 JF, 2011 WL 1364007, *3 (N. D. Cal. Apr. 11, 2011).

²¹ *Caribbean Marine Services Co. v. Baldrige*, 844 F.2d 668, 674 (9th Cir. 1988).

²² See *Cruz v. Wash. Mut. Bank*, No. 11CV471 DMS (POR), [] 2011 WL 883098 (S. D. Cal. Mar. 14, 2011).

²³ *Alliance for the Wild Rockies*, 632 F.3d at 1138-39 (preventing loss of jobs is a proper consideration in the public interest analysis an issuing an injunction is in the public interest.)

²⁴ *Bates Drug Stores, Inc. v. Holder*, No. CV-11-0167-EFS, 2011 WL 1750066, *3 (E.D. Wash. May 6, 2011).

²⁵ *Amoco Production Co. v. Village of Gambell, Alaska*, 480 U.S. 531, 545 (1987); *Consolidated Delta Smelt Cases*, 717 F. Supp.2d 1021, 1069 (E. D. Cal. 2010).

Oil & Gas News

California Governor Signs Five New Pipeline Safety Bills into Law

*Summary Provided by SempraNews©
September 16, 2011 & October 11, 2011*

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The explosion killed eight people, injured dozens and destroyed 38 homes. It was the nation's deadliest gas explosion in a decade that sparked a blaze across 25 acres and left a 26-foot-wide crater that is still there today where the pipeline ran.

California lawmakers held a joint press conference last week to announce the anticipated passage of a package of bills aimed at natural gas pipeline safety.

Cindy Howell, director of State Government Affairs, Sempra Energy, provides the summary of the five bills which passed. "San Bruno was a wake-up call, and this legislation is the beginning of a sea change in the regulatory arena on the issue of safety," Howell said. "I expect more state legislation next year, and the federal government will act as well.

Summary of Bills

Natural Gas Pipeline Safety Plan [Senate Bill 705 (Mark Leno, San Francisco, D)]

This bill would require each gas corporation to develop a plan, for the safe and reliable operation of its commission-regulated gas pipeline facility, including activities the company routinely performs such as: identify and

minimize hazards and systemic risks; identify the safety-related systems that will be deployed to minimize hazards; and provide for appropriate and effective system controls, with respect to both equipment and personnel procedures, among others.

Emergency Response [Senate Bill 44 (Ellen Corbett, San Leandro, D)]

This bill is about coordinated communication with local responders. More specifically, SB 44 requires the California Public Utilities Commission (CPUC) to establish compatible emergency response standards, that owners or operators of commission-regulated gas pipeline facilities would be required to follow. SB 44 also requires the owners of intrastate transmission lines to provide the State Fire Marshal and the chief fire official of the applicable local government with instructions on how to access and utilize the National Pipeline Mapping System developed by PHMSA to improve local response capabilities for pipeline emergencies.

Automatic and Remote Controlled Valves [Senate Bill 216 (Leland Yee, San Francisco, D)]

This bill provides that the commission shall require the installation of automatic shut-off or remote controlled sectionalized block valves on both of the following facilities, if it determines those valves are necessary for the protection of the public: (A) intrastate

transmission lines that are located in a high consequence area. (B) intrastate transmission lines that traverse an active seismic earthquake fault. SB 216 also requires each owner or operator of a commission-regulated gas pipeline facility to provide a valve location plan, along with any recommendations for valve locations.

Natural Gas Pipeline Safety [Assembly Bill 56 (Jerry Hill, San Mateo, D)]

This bill implements numerous safety-related measures on the operation of natural gas pipeline facilities regulated by the CPUC. It requires better coordination with local responders, the installation of automatic and remote shut-off valves, and a comprehensive pressure testing plan among many other things.

Balancing Accounts for TIMP and Related Capital Expenditures [Senate Bill 879 (Alex Padilla, Van Nuys, D)]

SB 879 is a response to accusations that PG&E redirected funding for pipeline maintenance to other things. The legislature sought to prevent that with this bill. SB 879 requires the CPUC to establish a balancing account for recovery of expenditures related to the transmission integrity management program. The bill also increases the CPUC's statutory cap on penalties from \$20,000 to \$50,000 per violation.

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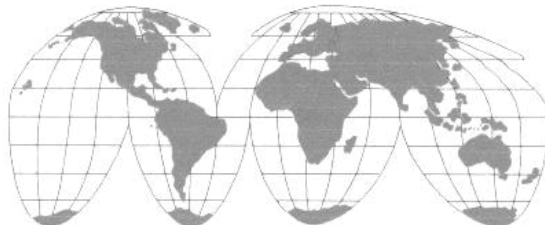
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When: December 2nd – 3rd, 2011

Where: Pittsburgh, PA

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Educational Corner

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Where: Oklahoma City, OK

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CPL Recertification Credits: 7.0
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When: February 28th – March 2nd, 2012
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CPL Recertification Credits: 18.0
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MARCH 2012

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Where: Reno, NV

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CPL Recertification Credits: 0.0
CPL/ESA Ethics Credits: 0.0

Oil & Gas Land Review (CPL/RPL Exam)

When: March 20th – 23rd, 2012
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Educational Corner

APRIL 2012

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CPL/ESA Ethics Credits: 0.0

WI/NRI Workshop

When: May 10, 2012

Where: Nacogdoches, TX

This institute is accredited by AAPL

RL/RPL Continuing Education Credits: 6.0

CPL Recertification Credits: 6.0

CPL/ESA Ethics Credits: 0.0

JUNE & JULY 2012

AAPL Annual Meeting

When: TBD, 1st or 2nd week of June

Where: San Francisco, CA

58th Annual Rocky Mountain Mineral Law Institute

When: July 19th – 21st, 2011

Where: Newport Beach, CA

Continuing education credits are available via home-study. To receive credits for a home study course:

1. Download or print the course (PDF format)
2. Answer the questions
3. Submit the answers along with the appropriate fee

Home Study Courses cost: \$7.50 per CE credit

#100 Environmental Awareness for Today's Land Professional

10 ESA, 10 CPL, 10 RPL (\$75)

#101 Due Diligence for Oil and Gas Properties

10 CPL, 10 RPL (\$75)



Educational Corner

#102 The Outer Continental Shelf

5 CPL, 5 RPL (\$37.50)

#104 Of Teapot Dome, Wind River and Fort Chaffee: Federal Oil and Gas Resources

5 CPL, 5 RPL (\$37.50)

#105 Historic Origins of the U.S. Mining Laws and Proposals for Change

4 CPL, 4 RPL (\$30)

#106 Going Overseas: A Guide to Negotiating Energy Transactions with a Sovereign

4 CPL, 4 RPL (\$30)

#108 Water Quality Issues: Safe Drinking Water Act

(SDWA)/Clean Water Act (CWA)/Oil Pollution Act (OPA)

4 ESA, 4 CPL, 4 RPL (\$30)

#109 Common Law Environmental Issues and Liability for Unplugged Wells

4 ESA, 4 CPL, 4 RPL (\$30)

Ethics Courses

Two ethics courses are available (4 questions total @ \$15 per question answered). One (1) ethics point for each question answered.

#103 Ethics Home Study (van Loon) - 1 or 2 questions

#107 Ethics Home Study (Sinex) - 1 or 2 questions

www.landman.org



Job Postings

Sr. Landman **Job Post #-75-11**

Location: **Bakersfield**
Salary Range: **DOE**
Responses Due by: **November 15, 2011**

Position Key Deliverables:

- Responsible for the acquisition, maintenance and disposition of those categories of E&P assets associated with the company's ownership of rights necessary to explore for and produce oil, gas and other mineral resources
- Acquire oil and gas leases, options, seismic permits, and other rights to real property for the company's exploration and development efforts
- Deliver profitable business opportunities to the company with respect to the company's real property assets

Position Roles & Responsibilities:

- Serve as a focal point in dealing with internal representatives, lessors, third parties, and other stakeholders with whom the company does business
- Research, interpret and deliver factual information on lease histories, joint ventures, title to assets and other business items necessary to conduct operations
- Acquire real property rights and interests and ensure marketable title to acquired assets
- Draft and execute a wide variety of agreements in acquiring, maintaining and granting rights and interests in real property
- Set up and help maintain property records on our Lease Data system
- Provide business advice to technical groups in carrying out their responsibilities
- Present profitable business opportunities to the company
- Present alternatives and creative solutions to business problems and assist in their implementation
- Foster and maintain positive relationships with parties the company is engaged to do business with

Critical Skills and Knowledge:

- BS degree in related field and 15+ years of petroleum land experience desired
- MBA or JD preferred
- Understanding of lease and legal matters related to oil and gas leases
- Understand the basics of E&P operations and the process flow for each of these areas of activity
- Manage exploration leasing plays and provide detailed reports to customers
- Strong customer focus with ability to communicate effectively with personnel in different job disciplines
- Good writing and verbal skills, with an emphasis on legal writing
- Bias for action
- Detail oriented
- Ability to multi-task

Software/Database Knowledge:

- Word, Excel, PowerPoint
- Leasedata (preferable, but not required)
- GIS

Aera Energy offers competitive compensation and benefits plans, as well as a safe, teamwork environment. Benefits include: health & well-being benefits; competitive bonus; 401(k); pension; 9/80 work schedule (every other Friday off); 4 weeks paid vacation; complimentary fitness centers and much more!

To be considered for this opportunity, please do the following: 1) [complete the Application for Employment](#) 2) complete the Voluntary Equal Opportunity Form (optional) 3) complete the Disclosure and Authorization to Obtain Information 4) attach your resume. Failure to submit an employment application, signed Disclosure and Authorization Form to Obtain Information and your resume by the posting's closing date will result in you not being considered for this position.

Please send the completed documents and your resume to: jobs@aeraenergy.com.

We look forward to hearing from you.

Aera is committed to Equal Employment Opportunity





Land Technical Associate - Bakersfield

Job Post #70-11

Due Date: 11/30/2011

Position Key Deliverables:

- Timely and accurate set-up of land records and related contracts

Position Roles & Responsibilities:

- Under guidance of the Land Technician, timely set-up, meticulously proof and maintain new oil and gas leases and agreements
- Clean-up of files acquired from parent companies and mergers
- Research projects for Landmen (using LeaseData queries, RealQuest, Titleworks, ParcelQuest, etc.)
- Maintain accurate leasehold schedules
- USDA Reporting on Ag/Grazing leases
- Notarize company documents
- Assist all Land personnel

Education, Critical Skills and Knowledge:

- Must have prior experience in oil and gas land administration (oil and gas leases, surface leases, operating agreements, farmouts, etc.)
- Foundation in land legal descriptions preferred
- Excellent oral and written communication skills
- Detail oriented
- Ability to multi-task
- Experience with audits
- Notary preferred, if not company training available

Internal Resources:

- Finance
- Division Order
- Property Tax
- Central Files
- Field Production Units

Software/Database Knowledge:

- Word, Excel, Access, Outlook
- LeaseData



Job Postings - continued

To be considered for this opportunity, please do the following: 1) [complete the Application for Employment](#) 2) complete the Voluntary Equal Opportunity Form (optional) 3) complete the Disclosure and Authorization to Obtain Information 4) attach your resume. Failure to submit an employment application, signed Disclosure and Authorization Form to Obtain Information and your resume by the posting's closing date will result in you not being considered for this position.

Please send the completed documents and your resume to: jobs@aeraenergy.com.

We look forward to hearing from you.

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